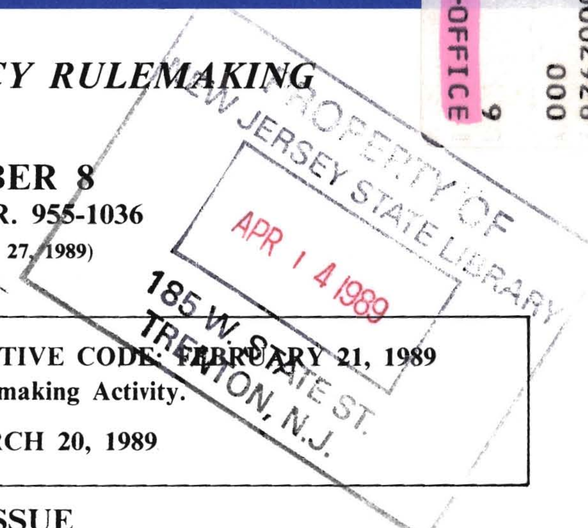
NEW JERSEY REGISTER

SET01
STATE LIBRARY
LAW DIVISION
P.O. BOX 1898
TRENTON NJ 08625
INTER-OFFICE 9
0002928
000

THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 8
April 17, 1989 Indexed 21 N.J.R. 955-1036
(Includes adopted rules filed through March 27, 1989)



MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 21, 1989
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 20, 1989

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

Interested persons comment deadline **956**

BANKING
Mortgage loan practices .... 957(a)
COMMUNITY AFFAIRS
Retirement community full disclosure .... 958(a)
Ombudsman for the institutionalized elderly: extension of comment period .... 958(b)
ENVIRONMENTAL PROTECTION
Historic Preservation Grant Program .... 958(c)
HIGHER EDUCATION
Stafford Loan Program: institution compliance standards . 963(a)
HUMAN SERVICES
Medicaid program: newborn care .... 965(a)
Public Assistance Manual: Medicaid coverage of newborn children .... 967(a)
CORRECTIONS
Infirmary care .... 969(a)
Municipal detention facilities: surveillance of detainees; reporting deaths .... 969(b)
INSURANCE
Life and health insurance advertising: third-party endorsements .... 970(a)
Rating organizations: private passenger automobile filings .... 973(a)
Health service corporations: notice of increased rates .... 973(b)
LABOR
Unemployment Compensation and Temporary Disability: disclosure of information .... 975(a)
LAW AND PUBLIC SAFETY
Commercial driving schools .... 976(a)
TRANSPORTATION
Parking and standing restrictions along Route 27 in Linden and Route 67 in Fort Lee .... 978(a)
TREASURY-GENERAL
Public Employees' Retirement System: school year members .... 979(a)
Teachers' Pension and Annuity Fund: school year members .... 980(a)
Teachers' Pension and Annuity Fund: lump-sum purchases .... 980(b)

RULE ADOPTIONS

AGRICULTURE
Soil and water conservation projects: cost sharing .... 981(a)
Emergency acquisition of development easements on farmland .... 981(b)
BANKING
Mortgage loan practices .... 981(c)
Licensed check cashing .... 990(a)
ENVIRONMENTAL PROTECTION
Closure of hazardous waste facilities .... 991(a)
New Sweden and Oyster Creek wildlife management areas .... 1002(a)
Solid waste facility and transporter registration fees .... 1002(b)
Hazardous waste management: permit standards .... 1010(a)
HEALTH
Residential alcoholism treatment facilities: bed standards .. 1011(a)
HIGHER EDUCATION
Managerial employees at State colleges: annual salary increases .... 1011(b)
EOF grants: eligibility procedure; refunds .... 1011(c)
Educational Opportunity Fund Program .... 1012(a)
EOF grants: student eligibility .... 1012(b)
EOF grants: award amounts .... 1013(a)
HUMAN SERVICES
AFDC program: voluntary restricted payments .... 1013(b)

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **May 17, 1989.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

RULEMAKING IN THIS ISSUE—Continued

Public Assistance Manual: correction to N.J.A.C. 10:81-6 ..... 1014(a)
CORRECTIONS
Inspection of outgoing correspondence ..... 1014(b)
Inspection of outgoing publications ..... 1014(c)
LABOR
Employer wage reporting, penalty abatement requests, hearings ..... 1015(a)
LAW AND PUBLIC SAFETY
Multiple dwelling reports concerning racial composition ... 1016(a)
Architects and certified landscape architects: change of address; service of process ..... 1016(b)
Temporary help service firms; booking agencies ..... 1016(c)
TREASURY-GENERAL
Catastrophic Illness in Children Relief Fund: surcharge collection ..... 1017(a)
TREASURY-TAXATION
Alcoholic Beverage Tax ..... 1018(a)
Cigarette Tax ..... 1018(b)
Unfair Cigarette Sales Act rules ..... 1019(a)
Corporation Business Tax ..... 1019(b)
Motor Fuels Tax ..... 1020(a)
Motor fuels retail sales ..... 1020(b)
Transfer inheritance and estate tax ..... 1021(a)
ELECTION LAW ENFORCEMENT COMMISSION
Campaign funding: administrative corrections to N.J.A.C. 19:25-15.14 and 15.46 ..... 1021(b)
ECONOMIC DEVELOPMENT AUTHORITY
Vendor activities representing conflict of interest ..... 1022(a)

EMERGENCY ADOPTION

TRANSPORTATION
Classification of prospective bidders ..... 1023(a)

PUBLIC NOTICES

COMMUNITY AFFAIRS
Uniform Construction Code: public hearing on State-sponsored changes ..... 1024(a)
ENVIRONMENTAL PROTECTION
Advisory against consumption of channel catfish ..... 1024(b)
Coastal Management Program: routine program implementation ..... 1024(c)
Petition to amend Manchester portion of Pinelands Land Capability Map: review extension ..... 1025(a)
HEALTH
Day Care Services for Victims of Alzheimer's Disease and Related Disorders: grant program ..... 1025(b)
Family Caregiver Education and Support Program: grant availability ..... 1026(a)
LAW AND PUBLIC SAFETY
Contract and common carrier applicants ..... 1026(b)

INDEX OF RULE PROPOSALS AND ADOPTIONS 1027

Filing Deadlines

May 15 issue:
Proposals ..... April 17
Adoptions ..... April 24
June 5 issue:
Proposals ..... May 5
Adoptions ..... May 12
June 19 issue:
Proposals ..... May 19
Adoptions ..... May 26
July 3 issue:
Proposals ..... June 5
Adoptions ..... June 12

NEW JERSEY REGISTER

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

Material published in the New Jersey Register is the property of the State of New Jersey. However, it may be copied, reproduced or republished by any person for any purpose whatsoever without permission, providing that no such reproduction or republication shall bear the title "New Jersey Register" or "Official Rules Publication" without the written permission of the Director, Office of Administrative Law.

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

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 42-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.

RULE PROPOSALS

BANKING

(a)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

Mortgage Loans, Fees, Charges, Obligations Definitions

Proposed Amendment: N.J.A.C. 3:1-16.1

Authorized By: Mary Little Parell, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:1-8.1 and 17:11B-5 and 13.
Proposal Number: PRN 1989-183.

Submit comments by May 17, 1989 to:
Robert M. Jaworski
Deputy Commissioner
Department of Banking
CN 40
Trenton, N.J. 08625

The agency proposal follows:

Summary

A new subchapter, N.J.A.C. 3:1-16, is being adopted in this issue of the New Jersey Register governing the mortgage application and commitment process of all mortgage lenders. This proposed amendment is designed to further refine and modify the definitions rule in response to various comments received. Specifically, the amendment will amend the definitions in N.J.A.C. 3:1-16.1 for "current market yield" and "substantial fault of the borrower", and will add definitions for "borrower" and "borrower's agent".

The term "current market yield" will be modified to include components specifically addressed to portfolio lenders and special loan programs for which there may be no identifiable secondary market. The definition for "substantial fault of the borrower" will be expanded to include situations where significant processing delay has resulted from actions or inactions of the "borrower's agent", and will be amended to provide that a borrower's submission of information or documentation to a lender in response to the lender's request for same will be considered "timely" if within the time frame established by the lender, even if that time frame extends beyond seven calendar days following receipt of the request. The term "borrower's agent" will be defined to refer essentially to "persons or entities hired, contracted or requested by the borrower to supply information or documentation to the lender". Lastly, the term "borrower" will be defined to mean "a natural person or persons to whom credit is offered or extended primarily for personal, family or household purposes." The definition will clarify that mortgage loans to corporations or partnerships and loans to individuals purely for business or investment purposes would fall outside the scope of the rule.

Social Impact

The proposed amendment will clarify that the new rules do not apply to loans to corporations or partnerships or to individuals purely for business or investment purposes. The amendment will also make the definition for "current market yield" more relevant as to portfolio lenders and special loan programs for which there may be no identifiable secondary market. And the amendment will lessen, to some extent, the impact of the new rules upon lenders in cases where a substantial delay in the processing of a mortgage loan is attributable to the actions of third parties over whom the lender has little or no influence.

Economic Impact

The economic impact of the new rules upon lenders and brokers will be lessened somewhat through the elimination of responsibility to return fees or extend lock-ins in situations where the delay resulted from actions of third parties over whom the lenders have little or no influence. In addition, by clarifying the scope of the new rules as applying only to "consumer-type" mortgage loans, the compliance burden upon lenders and brokers may be reduced.

Consumers may be economically affected by the change attributing to them the delays resulting from actions of certain third parties. However, since such attribution is only to those third parties over whom the borrower should have considerable influence, it will be within the borrowers' power to lessen or eliminate any potential adverse economic impact.

Little economic impact upon the Department is expected.

Regulatory Flexibility Analysis

Many of the institutions which are subject to the new rules are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment to the new rules, however, imposes no new compliance requirements upon those institutions and, in fact, lessen their regulatory burden to some extent.

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

3:1-16.1 Definitions

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

"Borrower" means a natural person or persons to whom credit is offered or extended primarily for personal, family or household purposes.

"Borrower's agent" means a person or entity hired, contracted or requested by the borrower to supply information or documentation to the lender. A borrower's agents may include the seller, the borrower's attorney, depository institutions, title insurance companies, employer, spouse, surveyor, etc. A borrower's agents shall not include any person or entity hired, contracted or selected by the lender to perform a service or provide information or documentation to the lender, such as an appraiser, a credit reporting agency, the lender's attorney, the investor, etc.

...

"Current market yield" means:

1. In the case of a mortgage loan originated under a special program of, or committed for sale before expiration of the lock-in agreement to, a particular secondary market purchaser, the yield being sought by that purchaser for that loan; or

2. In the case of a mortgage loan not originated or committed as described in paragraph 1 above and not to be held in the lender's portfolio, the yield being sought, for the type of mortgage loan applied for, by the secondary market purchaser which purchased the highest dollar volume of such mortgage loans from the lender during the preceding 12-month period; **or**

3. In the case of a mortgage loan to be held in the lender's portfolio, the average commitment rate offered by the lender, for the type of mortgage loan applied for, during the preceding 30-day period.

...

"Substantial fault of the borrower" means that the borrower **or the borrower's agent**:

1. Failed to provide in a timely manner information or documentation required by the lender;

2. Provided or omitted any information, in the application or subsequently, which upon verification proves to be significantly inaccurate causing the need for review or further investigation by the lender;

3. Failed to produce on or before the date specified by the lender, all of the documentation specified in the commitment or closing instructions as being required for closing; or

4. Failed to be ready, willing and able to close the loan on or before the date specified by the lender;

5. For purposes of this definition:

i. A [borrower] **person** provides information or documentation "in a timely manner" if such information and documentation is received by the lender within seven calendar days after the [borrower] **person** receives a request for same **or within the time frame established by the lender if that time frame extends beyond seven calendar days after receipt of the request**; and

ii. Information is "significantly inaccurate" if the correct information would, in the reasonable opinion of the lender, cause the borrower to be disqualified for the type of loan for which the borrower has applied or cause the secondary market source for which the loan is originated to refuse to purchase the loan.

COMMUNITY AFFAIRS

(a)

DIVISION OF COMMUNITY RESOURCES

Retirement Community Full Disclosure Requirements; Planned Real Estate Development Full Disclosure Act Regulations

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

Proposed Amendments: N.J.A.C. 5:26-1.3 and 11.7.

Authorized By: William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-11 and 45:22A-35.

Proposal Number: PRN 1989-180.

Submit comments by May 17, 1989 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The Planned Real Estate Development Full Disclosure Act, P.L. 1977, c.419 (N.J.S.A. 45:22A-21 et seq.), which governs all sales of units and interests under a common promotional plan involving common interests in real property, superseded the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (N.J.S.A. 45:22A-1 et seq.), which regulated only the sale of units and interests in retirement communities. The 1977 act, however, provided that properties already registered or issued a notice of filing under the 1969 act would continue to be regulated under that act.

N.J.A.C. 5:17, the Retirement Community Full Disclosure Requirements, is scheduled to expire on June 1, 1989 in accordance with Executive Order No. 66(1978). Since the Department of Community Affairs has received no complaints, and has had no occasion to take any action, under N.J.A.C. 5:17 in recent years, and since it is very likely the case that there are no longer any units registered under the 1969 act being offered, or which might be offered, for sale by the developer, the Department has determined that N.J.A.C. 5:17 ought to be repealed rather than re-adopted. However, because it is still possible, though unlikely, that units registered under the 1969 act remain unsold somewhere in New Jersey, N.J.A.C. 5:26, the Planned Real Estate Development Full Disclosure Act Regulations, is being amended to eliminate the exclusion of properties registered under the earlier act from the applicability of the rules adopted under the 1977 act. The Department finds that provisions of these rules that might be applicable to any units registered under the 1969 act and still unsold are satisfactory for that purpose and no separate or different rules are necessary.

Social Impact

Since there are probably no properties still subject to the 1969 act, and even if there are, the requirements of N.J.A.C. 5:26, as applied to such properties, would be substantially the same as those of N.J.A.C. 5:17, there will be no discernable social impact as a result of the proposed repeal and amendments.

Economic Impact

For the reasons indicated with regard to the social impact, the proposed repeal and amendments should not have any discernable economic impact.

Regulatory Flexibility Statement

Since there will be no practical social or economic effect upon any developer who may still be holding a property registered under the 1969 act, there can be no differential effect on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:17.

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

5:26-1.3 Definitions

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

"Act" means the Planned Real Estate Development Full Disclosure Act, Chapter 419, P.L. 1977, N.J.S.A. 45:22A-21 et seq., as amended**; provided, however, that "act" means the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (N.J.S.A. 45:22A-1 et seq.) when applied to any portion of a retirement community issued a notice of filing or registered pursuant thereto.**

...

5:26-11.7 Applicability

(a) These rules shall be applicable as follows:

1. To any portion of a planned real estate development which [does] **did** not have on [the effective date of the Act] **November 22, 1978**:

i.-ii. (No change.)

2. (No change.)

3. To any portion of a retirement community, regardless of the issuance of building permits or approval of site plans or subdivision plats[, which has not] **and regardless of whether it has** been issued a notice of filing pursuant to the Retirement Community Full Disclosure Act, P.L. 1969, c.215 (N.J.S.A. 45:22A-1 et seq.) or [which] has [not] been registered pursuant thereto. [Those portions of retirement communities so filed or registered shall remain under the jurisdiction of the Retirement Community Full Disclosure Act;]

4.-6. (No change.)

(b)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Notice of Extension of Comment Period Ombudsman Practice and Procedure and Public Notice Requirements

Proposed Readoption: N.J.A.C. 5:100

Take notice that the deadline for the submission of comments to the proposed readoption of N.J.A.C. 5:100, published in the February 21, 1989, New Jersey Register at 21 N.J.R. 368(a), has been extended to May 4, 1989. Comments may be submitted on or before that date to:

Steele R. Chadwell, General Counsel
Office of the Ombudsman for the Institutionalized Elderly
28 West State Street, Room 305
CN 808
Trenton, New Jersey 08625-0808

ENVIRONMENTAL PROTECTION

(c)

NEW JERSEY HISTORIC TRUST

Historic Preservation Grant Program

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

Authorized By: Christopher J. Daggett, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 and P.L. 1987, c.265.

DEP Docket Number: 015-89-03.

Proposal Number: PRN 1989-197.

Submit comments by June 2, 1989 to:
Donald J. Stout
Regulatory Officer
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Historic Preservation Grant Program awards on a competitive basis for historic preservation projects for the improvement, restoration, stabilization or rehabilitation of historic properties owned by State, county and municipal governments and by tax-exempt nonprofit organizations in accordance with the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L. 1987, c.265.

The proposed new rules establish the procedures to be followed when applying for a historic preservation grant, historic preservation activities eligible for funding, and the criteria for the selection of projects to be funded.

The proposed rules provide as follows:

N.J.A.C. 7:4A-1 sets forth the purpose of this chapter and defines certain terms used in the rules.

N.J.A.C. 7:4A-2 establishes the applicants, property and activities that are eligible for funding under the Historic Preservation Grant Program. The subchapter also establishes the grant application procedure.

N.J.A.C. 7:4A-3 establishes the procedure for the allocation of historic preservation grant funds, the criteria for review and ranking of applications for the purpose of determining priority for funding, and the procedure for payment of the grant.

N.J.A.C. 7:4A-4 provides that, as a condition of the approval of a historic preservation grant application, the applicant shall agree that the historic property for which a grant has been requested shall remain accessible to the public or shall be made and remain accessible. The subchapter establishes minimum acceptable degrees of public access.

N.J.A.C. 7:4A-5 provides that to assure that the continued preservation of grant-assisted historic properties and to assure that public benefit shall continue to accrue from the use of public funds after the expenditure of the grant moneys, the New Jersey Historic Trust (Trust) shall not make grant assistance available until an agreement conveying an easement on the grant-assisted historic property is executed between the Trust and the grant recipient and all other parties having an interest in the historic property.

N.J.A.C. 7:4A-6 provides that a project sign shall be prominently located and maintained on the project site acknowledging that the historic preservation project is being funded with grant assistance available through the New Jersey Historic Preservation Grant Program.

It should be noted that references to N.J.A.C. 7:4 found in proposed N.J.A.C. 7:4A-1.3, 2.2(a)5 and 2.4(c)9 refer to a chapter entitled "New Jersey Register of Historic Places" which the Department will soon be proposing.

Social Impact

The proposed new rules provide the procedure and criteria for making grants available for the improvement, restoration, stabilization or rehabilitation of historic properties owned by the State, county and municipal governments and by tax-exempt nonprofit organizations. The preservation of these historic properties will preserve an important element of the State's historic heritage which would otherwise be lost.

Economic Impact

The proposed new rules will facilitate the distribution of funds for and provide the means by which funds are made available for historic preservation projects. It is anticipated that the preservation and restoration of historic properties with funds provided under the Historic Preservation Grant Program will play an important part in local revitalization efforts.

Environmental Impact

The proposed new rules will result in a positive environmental effect because they will help to provide funds for the improvement, restoration, stabilization or rehabilitation of historic properties within the State of New Jersey.

Regulatory Flexibility Analysis

The purpose of the proposed new rules is to provide a procedure by which grants are given to State, county and municipal governments and tax-exempt nonprofit organizations for historic preservation projects. Some tax-exempt nonprofit organizations may qualify as small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In voluntarily applying for the funding provided under these rules, all applicants are required to comply with the application procedures and assistance approval conditions of the rules. The administrative costs of doing so will vary considerably with each project. The Department has determined that to impose lesser requirements on small businesses would be contrary to the preservation purpose of the grant program, as historic significance of properties is not necessarily related to the form or size of the owning entity.

Full text of the proposal follows.

CHAPTER 4A
HISTORIC PRESERVATION GRANT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:4A-1.1 Purpose

This chapter shall constitute the rules of the New Jersey Historic Trust in the Department of Environmental Protection for the Historic Preservation Grant Program providing for the award of grants on a competitive basis for historic preservation projects, for the improvement, restoration, stabilization, or rehabilitation of historic properties owned by State, county and municipal governments and by tax-exempt nonprofit organizations in accordance with the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L. 1987, c.265.

7:4A-1.2 Severability

If any portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

7:4A-1.3 Definitions

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

"Act" means the "New Jersey Green Acres, Cultural Centers and Historic Preservation Bond Act of 1987," P.L. 1987, c.265.

"Applicant" means the State, county or municipal government or nonprofit organization that submits an application for a historic preservation grant.

"Approved project period" means the amount of time prescribed in the project agreement during which the grant recipient must complete the approved historic preservation project to be eligible for the full amount of funding authorized for the project.

"Grant recipient" means the applying State government agency, county or municipal government or nonprofit organization named in a project agreement executed with the Trust 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 cost" means the expenses incurred in connection with a historic preservation project including construction costs and the procurement of engineering, architectural, inspection, planning, legal or other professional services directly related to the historic preservation project.

"Historic preservation grant" means monies approved by the New Jersey Historic Trust for funding of a historic preservation project.

"Historic preservation project" means work directly related to the improvement, restoration, stabilization or rehabilitation of a historic property, structure, facility or site.

"Improvement" means the act of upgrading the basic physical condition of a property in a manner consistent with the Standards and Guidelines for Historic Preservation Projects (36 C.F.R. Part 1207) adopted by the Secretary of the United States Department of the Interior now in effect and as may subsequently be modified, changed or amended. This type of activity includes upgrading mechanical systems providing appropriate barrier-free access for handicapped persons and bringing a property into conformance with building codes.

"National Register of Historic Places" means the national list of districts, sites, buildings, structures and objects signficant in American history, architecture, archeology, 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)).

"Project agreement" means a document executed by the New Jersey Historic Trust and a grant recipient which provides grant assistance in an amount and for a historic preservation project approved by the Trust subject to conditions to assure the continued preservation and benefit to the public of an historic property assisted with an historic preservation grant.

"Preservation" means the act or process of applying measures to sustain the existing form, integrity, and material of an historic property.

"Rehabilitation" means the process of returning the property through repair or alteration to a contemporary use that is appropriate and compatible with the historic nature of the property, while preserving those portions or features of the property that are significant to its historic, architectural, and cultural values.

"Restoration" means the process of accurately recovering the form and details of a historic property and its setting as it appeared at a particular period of time by removal of later work or by replacement of missing earlier work. Restoration may include a full restoration (exterior and interior) or a partial restoration of the historically and/or architecturally significant parts of a structure. Sufficient documentation from the period must be provided to establish historic form and detail.

"Secretary of the Interior's Standards" means the Standards and Guidelines for Historic Preservation Projects (36 C.F.R. Part 1207) adopted by the Secretary of the United States Department of the Interior now in effect and as may subsequently be modified, changed or amended.

"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 archeological value regardless of the value of any existing structure.

"Stabilization" means the application of measures designed to sustain the form and extent of an historic resource essentially as it now exists. Stabilization is aimed at halting further deterioration and enhancing safety, rather than attempting to rebuild or recreate lost historic features. Stabilization includes techniques to arrest or slow deterioration of a site, structure, or object. Improvements in physical conditions to make the property safe, habitable, or otherwise useful can be part of stabilization, as can minor repairs that do not change or adversely affect the fabric, appearance, or historic value of the property.

"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 located at N.J.A.C. 7:4 for receiving and processing nominations and approval of 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, archeology and culture which the Commissioner of the Department of Environmental Protection is authorized to expand and maintain under the "New Jersey Register of Historic Places Act," N.J.S.A. 13:1B-15.128 et seq.

"State Review Board" means the body 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 or not the nominated area, site, structure or object satisfies the criteria for listing in the State and National Registers of Historic Places.

"Structure" means a work constructed by man 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 succession 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

7:4A-2.1 Eligible applicants

State, county and municipal governments and tax-exempt nonprofit organizations are eligible to submit applications for historic preservation grants.

7:4A-2.2 Eligible property

(a) To be eligible for an historic preservation grant, the specific property for which an application is submitted shall, at the time of the Trust's receipt of the application, 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 shall have possession and sufficient control over the property pursuant to 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 25 years or more as of the date of the Trust's receipt of the application for an historic preservation grant; 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. Individually listed in the National or State Register of Historic Places; or
4. 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
5. 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.

7:4A-2.3 Historic preservation activities eligible for funding

(a) The following historic preservation activities are eligible for funding by the historic preservation grant program:

1. Rehabilitation;
2. Restoration;
3. Stabilization;
4. Improvement;
5. Non-construction activities related directly to the development, implementation, operation and monitoring of historic preservation projects. Such activities may be funded up to 25 percent of the total amount of the approved historic preservation grant. Eligible non-construction activities shall consist of preparation of:
   i. Architectural plans, designs, specifications, cost estimates and other contract documents;
   ii. Feasibility studies;
   iii. Historic structure reports;
   iv. Historic landscape reports;
   v. Archeological reports;
   vi. Architectural reports;
   vii. Engineering reports;
   viii. Historic research reports; or
   ix. Project completion reports;
6. Project signs, required under N.J.A.C. 7:4A-6; and
7. Interpretive signs or plaques approved by the Trust for funding as part of an historic preservation grant.

(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. Construction of new structures including accurate reconstructions except that this activity may be eligible for an historic preservation grant if it is a minor and necessary component of an historic preservation project approved for funding;
3. Personnel or administrative overhead or any other indirect cost;
4. Ceremonial expenses;
5. Expenses for publicity (with the exception of the required project sign);

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 judgments arising from construction, or equipping of a facility, whether determined by judicial process, arbitration, negotiation, or otherwise;
12. Services, materials, or equipment obtained under any other State program;
13. Costs of discounts not taken;
14. Contract cost overruns, not approved, that exceed the allowable amount as per the contract specifications;
15. Fundraising, including grant application preparation;
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 on behalf of 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 on behalf of a nonprofit corporation which has not been awarded in compliance with the Local Public Contracts Law if the aggregate cost of contracts for the historic preservation project funded with an 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.

7:4A-2.4 Procedures

(a) The 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 and the New Jersey Register.

(b) The following three basic steps constitute the historic preservation grant application procedure:
1. The applicant shall submit a written application for each historic preservation project.
2. A notice of receipt of application will be sent by the Trust to each applicant.
3. If the application is approved, funds shall be distributed in accordance with a project agreement between the Trust and the applicant which specifies, among other things, the following:
i. Amount of grant;
ii. Project period; and
iii. Project scope.

(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 shall contain at least the following information:
1. Statement of the significance and condition of the property;
2. A narrative description of the proposed project;
3. Cost estimates for proposed work;
4. Black and white photographs and color slides of the property;
5. Evidence of matching funds commitment as specified at N.J.A.C. 7:4A-2.5;
6. Long-range plans for the future preservation of the property;
7. 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, names of lessors and lessees, and a copy of a long-term lease meeting the requirements of N.J.A.C. 7:4A-2.2(a)2;
9. If the property for which a historic preservation 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 municipality, 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. An applicant may re-submit the application or submit a revised or new application in a subsequent grant round.

(e) Application materials for projects not funded shall be retained by the Trust for 90 days following the announcement of grant awards. The materials shall be returned if the applicant submits a writtten request to the Trust within the 90 day period. After 90 days the Trust may discard all application materials for non-funded projects.

7:4A-2.5 Matching funds

(a) To be eligible for a grant for a historic preservation project, the applying tax-exempt nonprofit organization or State, county or municipal government unit 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. State funds shall not be used as the matching share of project costs by the applying tax exempt nonprofit organizations or county or municipal government units.

(b) Funds generated prior to December 1, 1985 shall not satisfy the matching funds requirement.

(c) Funds raised by the applicant for up to two years prior to the date of enactment of the Act (December 1, 1987), as well as after that date, for ongoing historic preservation projects, and of which the project described in the application is a significant and substantial part, may satisfy the matching funds requirement in (a) above.

(d) Funds raised and spent by the applicant for up to two years prior to the date of enactment of the Act (December 1, 1987), as well as after that date, for ongoing historic preservation projects, and of which the project described in the application is a significant and substantial part, may satisfy the matching funds requirement in (a) above if:
1. As part of the application, the applicant submits all contracts, invoices, evidence of payment, plans and specifications 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 that the work was performed in accordance with the Secretary of the Interior's Standards.

(e) An applicant's matching share shall consist only of cash raised by the applicant as provided in (b) and (c) above or funds spent by the applicant on an on-going historic preservation project as provided in (d) above.

SUBCHAPTER 3. ALLOCATION OF HISTORIC PRESERVATION GRANT FUNDS

7:4A-3.1 Allocation of historic preservation grant funds

(a) In each grant round historic preservation grant funds shall be allocated in accordance 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 shall be established by the Trust based on the criteria set forth in N.J.A.C. 7:4A-3.2

(b) The Trust reserves the right to limit funding to less than the amount requested in an application.

7:4A-3.2 Criteria for review and ranking of applications for historic preservation grants

(a) All applications for eligible historic preservation projects in a given grant round shall, for the purpose of determining priority for funding, be ranked on the basis of the following competitive criteria:

1. Significance of resource which shall involve consideration of the following:

i. Degree to which a property is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of the State, according to the evaluation criteria for the National Register of Historic Places;

ii. Degree of significance locally or at the regional, State, or national level;

iii. Degree of significance as first, last remaining, or best example of its kind;

iv. Integrity of a property's location, design, setting, materials, workmanship, feeling, and association; and

v. Degree to which a property retains its historical features and setting;

2. Physical condition of the property, including any immediate threat of collapse, demolition or inappropriate use or development; notice of code violations; and deterioration requiring stabilization;

3. Plans for the preservation of the structure which shall involve consideration of the following:

i. Plans for use and interpretation of the historic property;

ii. Preservation and maintenance plans;

iii. Relationship of project to State, county and municipal preservation planning;

iv. Visibility and ability of project to serve as a catalyst for further preservation of historic resources; and

v. Potential impact of project on the community;

4. Compliance with the Secretary of the Interior's Standards reflected in:

i. Project plans, specifications and any other documents for work that has not been done for which the application for a historic preservation grant has been submitted; or

ii. Work underway or completed that is part of an on-going historic preservation project for which the application for a historic preservation grant is submitted;

5. Administrative capability of applicant which shall involve consideration of the following:

i. Completeness of project concept;

ii. Place of project in long-range plans of applicant;

iii. Quality of project consultants;

iv. Relationship of project to applicant's resources;

v. Financial resources and financial plan of applicant;

vi. Realistic time frame for project;

vii. Applicant's experience in managing historic preservation projects; and

viii. Qualifications and experience of applicant's staff;

6. Source and commitment of funds to match the grant requested;

7. Financial plans for the continued preservation of the historic structure after the expenditure of historic preservation grant money; and

8. Degree and kind of public access.

(b) Funds shall be distributed to achieve a geographical, racial and ethnic balance as well as a balance between size and types of projects, and historical or cultural period of the resources assisted by the program.

7:4A-3.3 Grant payment

(a) After the project agreement has been fully executed, the Trust shall, subject to its approval of invoices submitted pursuant to (b) below, reimburse the grant recipient for expenditures incurred by the grant recipient for historic preservation activities which are eligible for funding under N.J.A.C. 7:4A-2.3 and are within the scope of the historic preservation project described in the project agreement. The total amount of all reimbursements shall not exceed the amount of the grant.

(b) Reimbursement shall be made under (a) above based on itemized invoices 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 shall submit invoices to the Trust for approval prior to reimbursement. The invoices shall itemize the cost of labor and materials and describe the work performed for which reimbursement is requested. The invoices shall 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) Ten percent of the total amount of each grant shall be retained by the Trust. The Trust shall deduct as retainage an amount equal to 10 percent of each payment approved under (b) above. The retainage shall be kept by the Trust until the historic preservation project has been completed and the project has been audited by the Trust. The retainage shall be disbursed based on the findings of the audit.

7:4A-3.4 Grant amount

The minimum grant for a historic preservation project shall be $10,000; the maximum grant shall be $1,100,000.

SUBCHAPTER 4. PUBLIC ACCESS

7:4A-4.1 Public access to the historic property

(a) As a condition of the approval of a historic preservation grant application, the applicant shall agree that the historic property for which a grant has been requested shall remain accessible to the public or shall be made and remain accessible to the public. The degree and kind of public access shall be negotiated by the Trust and the applicant based on the specific characteristics of the historic property and the type of work approved for a historic preservation grant. The following shall constitute the minimum acceptable degrees of public access depending on the type of work approved for a historic preservation grant:

1. When the historic property is not generally accessible to the public, it shall be open to the public a minimum of six hours a day at reasonably spaced intervals a minimum of 12 days a year for 20 years commencing upon completion of the project.

2. When the interior of the historic property is not generally accessible to the public, it shall be open to the public a minimum of six hours a day at reasonably spaced intervals a minimum of 12 days a year for 20 years commencing upon completion of the project.

3. When the interior of the historic property is generally accessible to the public, no additional public access is required.

4. Under (a)1 and 2 above, a sign shall be maintained on the historic property in public view one week prior to and on the day of public access or a public notice shall be placed in an appropriate local paper.

SUBCHAPTER 5. EASEMENT

7:4A-5.1 Easement on the historic property

(a) To assure the continued preservation of grant-assisted historic properties and to assure that public benefit shall continue to accrue from the use of public funds after the expenditure of the grant moneys, the Trust shall not make grant assistance available until an easement agreement executed between the Trust and the grant recipient and all other parties having an ownership interest in the historic property is recorded. The easement agreement shall 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 shall be determined by the aggregate total of grant assistance made available under this chapter, as follows:

1. From $10,000 to $25,000—five years;

2. From $25,001 to $50,000—10 years;

3. From $50,001 to $100,000—15 years;

4. From $100,001 to $200,000—20 years; and

5. From $200,001 and above—20 years or such additional period as the Trust may reasonably require.

SUBCHAPTER 6. PROJECT SIGNS

7:4A-6.1 Project signs

(a) At the initiation of a historic preservation project funded by a historic preservation grant, a sign acknowledging that the project is being funded with grant assistance available through the New Jersey Historic Preservation Grant Program administered by the New Jersey Historic Trust in the New Jersey Department of Environmental Protection shall be prominently located and maintained on the project site.

(b) The project sign shall be fabricated and erected by the grant recipient in accordance with specifications contained in the project agreement.

(c) The costs of fabricating and erecting the project sign are eligible for funding under N.J.A.C. 7:4A-2.3(a)6. The costs of replacing or maintaining the project sign are not eligible for funding.

HIGHER EDUCATION

(a)

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

Guaranteed Student Loan Program
Policy Governing Educational Institution Compliance; Corrective Measures

Proposed Repeal and New Rule: N.J.A.C. 9:9-11.2
Proposed Amendments: N.J.A.C. 9:9-11.1, 9:9-11.3, 9:9-11.4

Authorized By: The New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.

Authority: N.J.S.A. 18A:72-10.

Proposal Number: PRN 1989-186.

Submit comments by May 18, 1989 to:
Grey J. Dimenna, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, NJ 08625

The agency proposal follows:

Summary

The New Jersey Higher Education Assistance Authority (the Authority) is statutorily responsible for the supervision of the Stafford Loan Program in New Jersey. The rules proposed for revision set forth requirements for participating institutions to ensure compliance with procedures, standards by which institutions will be evaluated, corrective measures, and provisions for appeals. In the administration of this area, the Authority has become aware of the need to clarify the rules further. To that end, Authority staff has pruned and restructured the material in light of its enforcement experience. The Authority now proposes to repeal a portion of the present rules and amend the remainder, resulting in a more specific and better organized set of rules.

In preparing these rules, the Authority has consulted with those involved in the institution monitoring and evaluating process and believes that the proposed rule and amendments will provide an effective framework for the supervision of the Stafford Loan Program in New Jersey.

Social Impact

The proposed new rule and amendments will help ensure that schools are providing proper administration to the student loan program by requiring compliance with established standards. By requiring this compliance, schools are encouraged to increase the effectiveness of support services provided to Stafford Loan Program borrowers. Strengthening administration and support services of the institutions ensures the students of a stronger student loan program.

Economic Impact

The proposed new rule and amendments set forth criteria whereby the Authority can assure itself that Stafford Loan procedures are being followed. The proposed rule and amendments do not have a direct economic impact upon the State's institutions of higher education. They do, however, impact on these institutions in the following sense. In order for schools to meet the requirements set forth in this subchapter, often they must dedicate employees, materials, equipment, or other resources to ensure compliance with the standards. The amount of monies necessary to meet the standards obviously varies from institution to institution.

Regulatory Flexibility Statement

The proposed new rule and amendments impact upon certain proprietary schools which are considered to be small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

As stated above, the rules require such schools to meet certain criteria in order to ensure the quality of the student loan program. In order to meet these requirements, the schools must dedicate certain employees, materials, equipment, or other resources. However, the proposed rules do not place any recordkeeping, bookkeeping or compliance requirements on such businesses which are not elsewhere imposed by other Federal or State regulations. These schools are held to the same standards as other institutions in the administration of the Stafford Loan Program. The standards cannot be lessened for small businesses of this nature without seriously diluting the quality of the student loan program.

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

SUBCHAPTER 11. POLICY GOVERNING EDUCATIONAL INSTITUTION COMPLIANCE WITH THE [GUARANTEED STUDENT] **STAFFORD** LOAN PROGRAM; CORRECTIVE MEASURES

9:9-11.1 Standards

(a) Institutions of higher education participating in the [Guaranteed Student] **Stafford** Loan Program shall comply with existing Federal and State **statutes,** regulations and standards governing the program.

(b) Individual institutions shall be periodically evaluated by an Authority program [review] **audit** to confirm their program compliance. In the performance of this [review] **audit**, auditors shall be given access to all records relative to student loans, including but not limited to:

1. Loan applications;
2. Notes/Disclosure Statements evidencing loan obligations outstanding;
3. Individual student loan ledgers;
4. [A current listing of defaulted student loans] **Attendance records where these are required to be maintained**;
5. Admissions' applications;
6. Evidence of admission;
7. Needs analysis documents;
8. Financial aid award letters; and
9. Correspondence files pertaining to student loan accounts.

(c) A **draft** report outlining the findings of the auditors will be provided to the institution for comment. The institution shall respond within [a reasonable time] **two weeks of receipt of the draft report** and this response will be included in the auditors' final report.

(d) Institutions determined to be in noncompliance as a result of this [review] **audit** shall be subject to corrective or disciplinary action initiated by the Authority.

[9:9-11.2 Evaluation review procedures

(a) Program review findings utilized to ascertain program noncompliance shall include but not be limited to the following areas:

1. The student loan default rate;
2. Student withdrawals before completion of programs or academic years;
3. Failure to provide timely notification to the Authority of student enrollment status changes;
4. Failure to refund loan monies to lenders on behalf of students or refunds not made in a timely manner; and
5. Failure of student files to include information required pursuant to Federal regulations, or inaccurate or missing student files.

(b) Institutions which exceed any of the standards set forth in this subsection demonstrate serious deficiencies in loan program adminis-

tration and these institutions shall be subject to corrective action by the Authority. The standards of noncompliance for the categories enumerated in (a) above shall be:

1. For audits concerning the period 1984-85:
i. Paragraph (a)1 above: 33 percent; and
ii. Paragraphs (a)2 through 5 above: 33 percent.
2. For audits covering the period 1986-87:
i. Paragraph (a)1 above: 30 percent; and
ii. Paragraphs (a)2 through 5 above: 23 percent.
3. For audits covering the period 1988-89:
i. Paragraph (a)1 above: 25 percent; and
ii. Paragraphs (a)2 through 5 above: 15 percent.
4. For audits covering the period 1990 and thereafter:
i. Paragraph (a)1 above: 20 percent; and
ii. Paragraphs (a)2 through 5 above: 10 percent.
5. For audits covering time periods which fall into more than one of the categories set forth in (b)1 through 4 above, the audit shall be governed by the standards pertaining to the earliest audited year.

(c) This subchapter shall not restrict the Authority's ability to limit, suspend, or terminate an institution's Guaranteed Student Loan Program participation where the program review indicates that the institution is in substantial violation of other Federal or state Guaranteed Student Loan Program regulations.]

9:9-11.2 Audit procedures

(a) Every school participating in the Stafford Loan Program shall be subject to selection for a program compliance audit. Those institutions with a student loan default rate in excess of 20 percent have a significant probability of selection.

(b) All audits shall cover the prior two fiscal year period, and may be expanded up to the prior five year period if preliminary audit findings indicate significant noncompliance, in the opinion of the auditors, in one or more of the examined areas set forth in (c) below.

(c) Program audit findings utilized to ascertain program noncompliance shall include, but not be limited to, the following areas:

1. Student withdrawals before completion of the first quarter of program instruction or completion of the academic year;

2. Failure to provide documentation of timely notification to the Authority and lenders of student enrollment status changes;

3. Failure to refund loan monies to lenders on behalf of students;

4. Refunds to lenders on behalf of students not made in a timely manner;

5. Failure of student files to include information required pursuant to Federal and State regulations, or inaccurate files; and

6. Student files missing throughout the time period the auditors are on site.

(d) The auditors shall compute the percentage of noncompliance for each of the categories specified in (c) above.

(e) Noncompliance percentages shall be used to calculate violation points which are weighted to reflect the more serious nature of certain audit categories. The violation points shall be calculated as follows:

1. The percentage of withdrawals before completion of the first quarter of program instruction or completion of the academic year shall be multiplied by one;

2. The percentage of failure to provide timely notification of student enrollment status changes shall be multiplied by one;

3. The percentage of failure to refund loan monies to lenders on behalf of students shall be multiplied by four;

4. The percentage of failure to make refunds to lenders on behalf of students in a timely manner shall be multiplied by two;

5. The percentage of student files with incomplete or inaccurate data shall be multiplied by two;

6. The percentage of files missing in their entirety shall be multiplied by four.

(f) The weighted violation points for each of the categories specified in (c) above shall be added together, and this total shall be divided by the number of auditable categories to determine a "Noncompliance Index".

(g) Institutions with a "Noncompliance Index" of 10.0 or greater shall be considered to demonstrate serious deficiencies in loan program administration and these institutions shall be subject to corrective action by the Authority.

(h) This subchapter shall not restrict the Authority's ability to limit, suspend, or terminate an institution's Stafford Loan Program participation where the program audit indicates that the institution is in substantial violation of other Federal or State Stafford Loan Program statutes and/or regulations.

9:9-11.3 Sanctions

(a) The extent of corrective or disciplinary action initiated by the Authority for violations as established in N.J.A.C. 9:9-11.2 shall be determined by [the number of categories where such violations are present] **the institution's "Noncompliance Index" as determined pursuant to N.J.A.C. 9:9-11.2 (d), (e) and (f).**

[1. Institutions with a violation in one of the categories set forth in N.J.A.C. 9:9-11.2 shall be allowed continued participation in the Guaranteed Student Loan Program but shall be required to provide an acceptable plan of corrective action to the Authority within 90 days of formal violation notification.

2. Institutions with violations in two of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with a notice of intent to limit their participation in the Guaranteed Student Loan Program to 50 percent of their entering classes for a period of 18 months. Additionally, the institution shall submit to the Authority an acceptable plan of corrective action within 90 days of formal limiting notification.

3. Institutions with violations in three of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with a notice of intent to suspend participation in the Guaranteed Student Loan Program for 18 months. The institution shall submit a plan of corrective action which must be approved by the Authority before formal reinstatement will be considered.

4. Institutions with violations in four or more of the categories set forth in N.J.A.C. 9:9-11.2 shall be served with a notice of intent to terminate participation in the Guaranteed Student Loan Program.]

1. Institutions with a "Noncompliance Index" between 10.0 to 14.9 inclusive shall be allowed continued participation in the Stafford Loan Program but shall be required to provide an acceptable Plan of Corrective Action to the Authority within 90 days of formal notification of violation.

2. Institutions with a "Noncompliance Index" between 15.0 to 24.9 inclusive shall have their participation in the Stafford Loan Program limited to 50 percent of their entering classes for a period of 9 months. Additionally, the institutions shall submit to the Authority an acceptable Plan of Corrective Action within 90 days of formal notification of limitation.

3. Institutions with a "Noncompliance Index" between 25.0 to 34.9 inclusive shall have their participation in the Stafford Loan Program limited to 50 percent of their entering classes for a period of 18 months. Additionally, the institutions shall submit to the Authority an acceptable Plan of Corrective Action within 90 days of formal notification of limitation.

4. Institutions with a "Noncompliance Index" between 35.0 to 69.9 inclusive shall be suspended from participation in the Stafford Loan Program for 18 months. The institutions shall submit an acceptable Plan of Corrective Action before formal reinstatement will be considered.

5. Institutions with a "Noncompliance Index" of 70.0 or more shall be terminated from participation in the Stafford Loan Program.

9:9-11.4 Appeal [rights] **procedure**

(a) The Director of the Authority is authorized to institute any corrective action set forth in N.J.A.C. 9:9-11.3. Any institution which is sanctioned shall have the right to appeal the Director's action [to the Authority] within [20] **30** days of the [determination] **date of the letter notifying the institution of the sanction.**

(b) [To initiate an appeal, the following procedure shall be utilized:

1. The petitioner shall file with the Director the original copy of the petition, together with proof of mailing.

2. The petition must be verified and must state the name and address of the petitioner, and a statement of the essential facts giving rise to the contesting of the Authority imposed sanction.] **The Authority shall provide an institution with an informal pre-hearing conference which may subsequently be followed by a formal appeal process if the institution chooses to exercise this right.**

[(c) The Director shall bring the petition before the Authority in a timely manner. The institution shall be provided with the opportunity for a hearing pursuant to the requirements 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. The Director shall notify the petitioner of the Authority's decision in the matter.]

(c) To initiate the informal pre-hearing conference, the following procedure shall be utilized:

1. The petitioner shall file with the Director a letter providing the essential facts giving rise to the contesting of the Authority imposed sanction and indicating its desire to appeal the determination.

2. Upon receipt of the letter outlined in (c)1 above, the Director shall schedule a conference between representatives of the institution and members of the NJHEAA staff. The purpose of this conference is to allow the parties to mediate or narrow the dispute.

3. If the pre-hearing conference conducted under (c)2 above is unsuccessful in achieving resolution of the dispute, the institution shall have the right to file a formal appeal of the Authority imposed sanction.

(d) To initiate a formal appeal, the following procedure shall be utilized:

1. The petitioner shall file with the Director the original copy of a formal petition, together with proof of mailing.

2. The petition must state the name and address of the petitioner, and a statement of the essential facts and legal grounds giving rise to the contesting of the Director's imposed sanction.

(e) The Director shall bring the petition before the Authority in a timely manner. The petitioner may appear before the Authority but if it chooses not to do so the Director shall notify the petitioner of the Authority's decision in the matter. The institution shall be provided with the opportunity for a hearing pursuant to the requirements 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.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual, Medically Needy Manual, New Jersey Care Manual

Proposed Amendments: N.J.A.C. 10:49-1.1, 10:70-3.4 and 10:72-3.4

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-3, 6a (1)(5) b (3); 30:4D-12.

Proposal Number: PRN 1989-188.

Submit comments by May 17, 1989 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN-712
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments concern newborn children whose mothers are eligible for Medicaid (Title XIX) coverage. The current rules require the mother to notify the county welfare agency board of social services (CWA) in order to establish eligibility for the newborn. In addition, when the newborn was discharged from the hospital, any services rendered by a Medicaid provider had to be billed under the newborn's Medicaid number.

These amendments enable Medicaid providers, including hospitals, physicians, and clinics, to submit claims for Medicaid reimbursement using the mother's Medicaid number for a specified time period which appears in N.J.A.C. 10:49-1.1(d). The time period extends from the date of birth until the last day of the month in which a 60 day time frame ends. For example, a newborn born January 5th would be eligible on his or her mother's number through March 31st, because this is the last day of the month in which a 60 day time period ends. However, providers should use the newborn's number when it is assigned, regardless of the time between delivery and the date of service. After the expiration of the "60 day post-partum extension" for newborns, providers must submit claims using the newborn's number.

Hospital providers are reminded to submit the PA-1C (Public Assistance Inquiry Form) to the county welfare agency board of social services as soon as possible following delivery to facilitate the Medicaid number being assigned to the newborn, and to aid in the eligibility determination process. The PA-1C should contain the mother's signature and date of birth of the newborn.

Hospital providers may submit claims through the electronic media claim (EMC) processing system under the mother's person number but only within the time frame mentioned in this summary previously, or until the newborn's number is assigned, whichever comes first. If the EMC claim is rejected, the hospital provider is responsible for resubmitting the claim hard copy with the date of birth of the newborn and the notation "NEWBORN PLUS SIXTY" in location 94 on the UB-82 claim form.

Non-institutional providers, such as clinics, physicians, etc, must submit hard copy claim under the mother's previous number but only within the time frame specified previously in this summary. The patient information section of the claim form should give identifying information about the mother. The words "NEWBORN PLUS SIXTY" must be entered on the claim form. The place of entry on the specific claim form appears in the text of the rule at N.J.A.C. 10:49-1.1(d)2iii.

Also prepared for amendment are the Medically Needy Manual N.J.A.C. 10:70, and the New Jersey Care Manual, N.J.A.C. 10:72, to indicate that a child born to a woman eligible for Medicaid shall be eligible for 60 days following the child's birth without a redetermination of income. After the 60 day period, and up to one year, the child will remain eligible for Medicaid so long as the mother remains eligible, regardless of whether an application has been made.

N.J.A.C. 10:49-1.1(b) is amended to provide an updated listing of persons who are eligible for Medicaid as a result of amendments to Federal and State legislation. The list includes children and caretaker relatives eligible for and receiving Aid to Families with Dependent Children (AFDC), including deemed recipients of AFDC, persons receiving foster care adoption assistance under Title IV-E of the Social Security Act. The listing also includes those persons who can qualify for AFDC for extended periods. For example, a person can qualify for Medicaid for up to 15 months after losing AFDC as the result of the expiration of certain income disregards, and up to 12 months after losing eligibility for AFDC as a result of earnings or hours of employment, or the receipt of New Jersey Unemployment or Temporary Disability Insurance Benefits.

The listing also includes those persons who are eligible under the Optional Categorically Needy Program. This program establishes eligibility for pregnant women, dependent children under the age of two, and the aged, blind or disabled, at 100 percent of the Federal poverty level; also included are persons receiving Supplemental Security Income (SSI) and institutionalized individuals whose income comes within the Medicaid "cap" standard (and whose resources are within applicable program limits). The complete list appears in the text below. This amended list does not contain any new groups of eligible individuals. Those persons are already eligible for Medicaid.

Social Impact

The proposed amendments impact on newborns and should assist them in obtaining services for a limited period after delivery. The newborns will be considered eligible under the mother's number and will not have to establish their own eligibility immediately after delivery. However, it must be noted that if the mother is not Medicaid eligible at the time of delivery, then eligibility for both mother and child has to be established.

The amendments impact on Medicaid providers, especially those who treat newborns, including hospitals, physicians, and clinics. Providers may bill the Medicaid program using the mother's Medicaid number and get reimbursed. If the claim is rejected, providers are responsible for making a follow-up inquiry and/or submitting a corrected billing. Providers are reminded to adhere to the time frames contained in N.J.A.C. 10:49-1.12 regarding times for claim submittal and follow up inquiry.

The amendments also impact on county welfare agencies boards of social services who are responsible for determining eligibility.

Economic Impact

The proposed amendments should have no economic impact. No new groups of eligibles are being added. No additional services are being provided. The amendments are designed to facilitate the process by which providers bill for and receive payment for services that are already covered by the New Jersey Medicaid Program.

Medicaid patients are not required to pay for Medicaid services.

Regulatory Flexibility Analysis

That portion of the amendments which pertains to establishing eligibility for Medicaid patients and newborns does not require a regulatory flexibility analysis because Medicaid patients, and CWA's, are not small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. In addition, some hospitals would not be considered small businesses, because they employ more than 100 full time employees.

However, there are providers, including physicians, clinics, and perhaps a small hospital, that would meet the statutory definition of a small business, that is, a business which employs fewer than 100 full time employees. The amendments do not really impose any additional reporting, record keeping or other compliance requirements. Medicaid providers are already required to complete and submit claim forms within the prescribed time periods. The amendments do not change the existing claim forms. Providers might have to make an entry indicating that a newborn is being billed under the mother's number, but this requirement is designed to facilitate claim processing and payment to the provider. There should be no capital costs associated with these amendments, which are designed to minimize any adverse economic impact by utilizing existing claim forms, which are supplied by the government, and by expediting payment.

Therefore, no regulatory flexibility analysis is required for these amendments, because Medicaid providers are already required by State law (N.J.S.A. 30:4D-12) to maintain sufficient records documenting services rendered to Medicaid patients. In addition, both Federal and State regulations require providers to submit claims within one year from date of service (see 42 CFR 447.45 (d); N.J.A.C. 10:49-1.12). An exemption from the analysis requirement is also claimed because the public health, safety and general welfare should benefit from the newborn's ability to obtain medical treatment and services under the mother's number.

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

10:49-1.1 Who is eligible for Medicaid

(a) (No change.)

(b) The following groups are eligible for medical and health services covered under the New Jersey Medicaid Program when provided in conjunction with program requirements specifically outlined in the second chapter of each service manual. The groups are not all inclusive:

1.-2. (No change.)

[3. Persons who are eligible to receive financial assistance as determined by the county welfare agency. Such persons are:

i. Families with dependent children including children 18 to 21 years of age.

4. Persons who meet the income standards of need applicable to their circumstances under one of the financial assistance programs referred to above, but who are not receiving or do not apply for such cash assistance. Such persons are eligible for "Medicaid Only" under the New Jersey Medicaid Program;

5. Persons 65 years of age and above who do not meet eligibility standards of the categorically-related assistance programs, but whose medical needs qualify them under the New Jersey State Medical Assistance to the Aged Continuance Program (MAA). (New recipients are no longer accepted in this program);

6. Children in foster care and under sponsorship of the Division of Youth and Family Services (DYFS);

7. Certain persons in the State and county psychiatric hospitals and/or State schools for the developmentally disabled as determined eligible by the Department of Human Services.

8. Persons who would be eligible for financial assistance under one of the above programs except for a requirement that is specifically prohibited by Federal law or regulations, such as execution of a reimbursement agreement.

9. An individual 65 years of age and older, or an individual who is blind or disabled pursuant to federal regulations (either 42 CFR 435.530 or 42 CFR 435.540 et seq.) who meets the income and resource standards of the Optional Categorically Needy Program (OCN) (see N.J.A.C. 10:72-4.1) is eligible under New Jersey Care . . . Special Medicaid Programs.

i. An individual is determined eligible by the County Welfare Agency/Board of Social Services. The individual's income cannot exceed 100 percent of the federal poverty level adjusted for family size. Resources cannot exceed the limits of N.J.A.C. 10:72-4.5.

10. Pregnant women and children up to two years of age who meet income standards of the Optional Categorically Needy Program, (OCN) are eligible under New Jersey Care . . . Special Medicaid Programs.

i. Individuals are determined to be eligible by the county welfare agency or board of social services. They must have family income which does not exceed 100 percent of the Federal poverty level.

ii. Pregnant women are eligible during pregnancy and through 60 days following the last day of pregnancy.

iii. Children up to age two will be phased in as follows:

(1) Provided all other eligibility criteria are met, effective July 1, 1987, children up to age one are eligible, and effective October 1, 1987, children up to the age of two are eligible. A child under age one year whom application is made and who is eligible prior to October 1, 1987, and before his or her first birthday, will be deemed to meet the age requirements until October 1, 1987.]

3. Children and caretaker relatives eligible for and receiving Aid to Families with Dependent Children (AFDC);

4. Deemed recipients of AFDC including;

i. Persons denied AFDC solely because the payment would be less than $10.00;

ii. Persons whose AFDC payment is reduced to zero ($0.00) because of over payment recovery;

iii. For a period of four months, persons losing AFDC because of the receipt of child or spousal support; and

iv. For up to 15 months, persons losing AFDC as the result of the expiration of certain income disregards;

5. For a period of 12 months from the first month of ineligibility, persons losing eligibility for AFDC as a result of earnings or hours of employment, or the receipt of New Jersey Unemployment or Temporary Disability Insurance Benefits;

6. Persons ineligible for AFDC because of requirements that do not apply under Medicaid;

7. For a period of one year, the child born to a Medicaid eligible woman, so long as the woman remains eligible for Medicaid;

8. Persons for whom adoption assistance agreements are in effect pursuant to Section 473 of the Social Security Act (42 U.S.C. §673) or for whom foster or adoption assistance is paid under Title IV-E of the Act;

9. Persons eligible for Supplemental Security Income (SSI) because of requirements that do not apply under Medicaid;

10. Persons receiving only mandatory State supplemental payments administered by the Social Security Administration;

11. Certain former recipients of Supplemental Security Income (SSI) who would still be eligible for SSI except for entitlement to or increase in the amount of Social Security benefits;

12. Persons eligible for, but not receiving, AFDC or an optional State supplement.

13. Children under the age of 21 years who meet the income and resource requirements for AFDC but do not qualify as dependent children;

14. Persons who require and are eligible for institutional care, but also are eligible and have chosen home and community-based health care services under an approved waiver pursuant to Section 1915(c) of the Social Security Act (42 U.S.C. 1396 n.);

15. Persons who are in institutions for at least 30 consecutive days and who are eligible under a special income level (the Medicaid "cap") that is higher than the income level for a non-institutionalized SSI or State supplement recipient;

16. Pregnant women whose income is below 100 percent of the federal poverty level as fixed by 42 U.S.C. 990 2(2);

17. For a period of 60 days, women who have applied for Medicaid benefits before the last day of pregnancy and who are eligible for Medicaid on the last day of pregnancy;

18. Children under the age of two, as well as aged, blind and disabled persons whose income is below 100 percent of the Federal poverty level, as fixed by 42 U.S.C. 990 2(2), and whose resources are below the standards applicable for the medically needy;

19. Persons 65 years of age or older who do not meet the eligibility standards of the categorically needy or medically needy and who are eligible for the Medical Assistance to the Aged Continuance (MAA) program. (No new applications are accepted for this coverage);

20. Certain persons between 22 and 65 years of age in governmental psychiatric institutions; and

21. Refugees who are eligible under the Refugee Resettlement Program.

(c) (No change.)

(d) Exceptions to eligibility: The following are exceptions to the eligibility process:

1. Newborn: Although both the mother and newborn infant may be eligible recipients on the date of delivery, the newborn infant is not immediately assigned a Person Number. In order to expedite payment to [the practitioner and the hospital for inpatient hospital services rendered to a newborn during the mother's confinement, allowance has been made to reimburse providers using the mother's Health Services Program (Medicaid) Case Number and Person Number. When the mother is discharged from the hospital , services to the newborn may no longer be claimed by the practitioner and/or hospital under the mother's Person Number. The mother must contact the county welfare agency or board of social services to obtain a Person Number for the newborn. It is the duty of the practitioner or the hospital to contact the county welfare agency/board of social services to obtain the newborn's Person Number for billing purposes.] **providers before this number is assigned, the provider is permitted to bill for services provided to the newborn using the mother's Person Number on the claim form. The period for which newborn services may be billed under the mother's Person Number extends from the date of birth until the last day of the month in which a 60 day time frame ends, or until the newborn is assigned his or her own Person Number, whichever happens first. For example, if a newborn's date of birth is January 5th, the 60 day period ends March 6th, and claims may be submitted through March 31st using the mother's Person Number provided the newborn has not been assigned his or her own Person Number in the meantime. Claims for services provided to the newborn after March 31st would be processed only if the required information about the newborn is used (Person Number, name, age, sex, etc.). To facilitate the assignment of a Person Number for the purpose of adding the name of the newborn to the Medicaid eligibility file, the hospital should complete and submit to the county welfare agency board of social services, the Public Assistance Inquiry Form (PA-1C) that includes the date of the birth of the newborn and the signature of the mother. The newborn's Person Number shall be used as soon as it is available to the provider. The practitioner or any other type of provider should request the newborn's Person Number from the mother at each encounter.**

2. Billing Instructions: The following procedures must be used when submitting claims for services provided to a newborn under the mother's Person Number, as described in (d)1 above.

i. Hospitals: Claims for services to the newborn may be submitted through the EMC processing system under the mother's Person Number but only within the time frame specified in (d)1 above or until the newborn is assigned his or her own Person Number, whichever happens first. If the claim is denied during the time when the newborn is still eligible, resubmit the claim "hard copy" with the date of birth of the newborn and the notation "NEWBORN PLUS SIXTY" in the "REMARKS" line, location 94 on the UB-82 claim form.

ii. Practitioners and other providers: Claims submitted for services provided to the newborn must be on a separate claim form and not combined for services provided to the mother. Claims for services provided the newborn must be submitted on hard copy under the mother's Person Number but only within the time frame as specified in (d) 1 above or until the newborn is assigned his or her own Person Number, whichever happens first. In the "patient information" section of the claim form, give the mother's name, age, sex and HSP (Medicaid) Case/Person Number. The date of birth of the newborn and the words "NEWBORN PLUS SIXTY"† must be marked on the respective claim forms as indicated below.

†NOTE: The phrase "NEWBORN PLUS SIXTY" distinguishes the newborn from the mother for claims submitted under the mother's HSP (Medicaid) Case Number/Person Number.

iii. The designated location on the claim forms for the DATE OF BIRTH and the phrase "NEWBORN PLUS SIXTY" is as follows:

1500 N.J. (Health Insurance Claim) .... Use area 24
MC-3 (Home Health Claim) .... Use area 22
MC-6 (Prescription Claim Form) Use area in the left hand corner, under the words "CASE NUMBER"
MC-12 (Transportation Claim Form) .... Use area 12D
MC-14 (Independent Outpatient Health Facility) ... Use area 13D

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

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

10:70-3.4 Eligibility group criteria

(a) (No change.)

(b) AFDC-related: The following eligibility groups are within the AFDC-related eligibility category:

1. Pregnant women: Needy women of any age during the term of a medically verified pregnancy, **through the end of the month during which the 60th day from delivery occurs.**

i. A child born to a woman eligible as a pregnant woman under the provisions of this chapter shall remain eligible for a period not less than 60 days from his or her birth (and up to one year so long as the mother remains eligible for Medicaid) whether or not application has been made, if the child lives with his or her mother. Eligibility of the newborn will be determined without regard to income for the 60-day period following the child's birth.

2. (No change.)

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

10:72-3.4 Eligible persons

(a) The following persons who meet all eligibility criteria of this chapter are eligible for Medicaid benefits:

1.-2. (No change.)

3. The child [resulting from the pregnancy of] **born to** a woman eligible for Medicaid under the provisions of this chapter shall remain eligible [so long as the mother is eligible as a pregnant woman under the terms of (a)1i above and] **for a period of not less than 60 days from his or her birth, (and up to a period of one year, so long as the mother remains eligible for Medicaid, whether or not application has been made, if** the child lives with his or her mother. Eligibility of the [child resulting from the pregnancy] **newborn** will be [made] **determined** without regard to income for the 60-day period following the child's birth.

4.-8. (No change.)

(a)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Other Governmental Programs/Medicaid Eligibility for Newborns

Proposed Amendments: N.J.A.C. 10:81-8.22 and 8.23

Authorized By: Drew Altman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-6 and 44:10-3.

Proposal Number: PRN 1989-189.

Submit comments by May 17, 1989 to:
Marion E. Reitz, Director
Divison of Public Welfare
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments at N.J.A.C. 10:81-8.22 and 8.23 align State rules with Federal statutes on medical assistance for mothers and newborns, as specified in the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) and the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509). Similar amendments are being proposed concurrently in this issue of the New Jersey Register by the Division of Medical Assistance and Health Services (DMAHS), since that Division coordinates the administration of medical assistance with the public welfare program.

The proposed amendment at N.J.A.C. 10:81-8.22(b)3 provides for liberalized post-partum medical coverage for children born during a family's 12 month work-related Medicaid extension, and their mothers. As a result, such individuals may be eligible for additional medical coverage if the 60-day post-partum period continues beyond the termination of the family's extension period.

Language has been added at N.J.A.C. 10:81-8.22(e) to state that newborns of Medicaid eligible women who have applied prior to or on the date of birth of the child are eligible for medical benefits, as is the mother, through the last day of the month during which the 60-day post-partum period ends, regardless of other program requirements. It is important to note that since New Jersey provides full month coverage for any month in which eligibility exists for a portion of that month, the mother and child will continue to be eligible for benefits throughout the calendar month in which the post-partum period expires. Additionally, so long as the mother remains eligible and the child resides with her, the child remains eligible for Medicaid for a period of one year, whether or not application for assistance has been made.

New text has been added at N.J.A.C. 10:81-8.22(f)2ii to stipulate that newborns of eligible women are considered as having applied for assistance, effective the date of birth, upon receipt of a valid Form PA-1C, Public Assistance Inquiry.

N.J.A.C. 10:81-8.23(d)2i(l) has been revised to incorporate the eligibility of the newborn and the continuing eligibility of the mother, under Medicaid Special coverage, through the last day of the month in which the 60-day post-partum period ends. Language concerning delivery of the child has been deleted since it is implied in the context of the proposed change.

Technical amendments have been made throughout the text to incorporate the preferred usage "family" instead of "unit" and "his or her" instead of "his/her".

Social Impact

The proposed amendments codify existing policy directives requiring Medicaid coverage of both the pregnant woman and the newborn child. Further, the proposed amendments formalize eligibility coverage and notify the public and provider community of the coverage extension. The amendments do not significantly alter the number of new eligibles, but are intended to provide medical benefits to those few individuals who would be otherwise unable to qualify for assistance.

As these amendments do not adversely affect any clients and may benefit some individuals, favorable reception is expected. There will be no significant impact upon the public.

Economic Impact

The proposed amendments will have no substantial economic impact because most individuals affected would have been eligible for medical assistance under existing rules. The proposed changes are primarily for the purpose of aligning State rules with Federal statutes.

Regulatory Flexibility Statement

These proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required inasmuch as the rules govern a public assistance program designed to certify eligibility for medical assistance 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]:

10:81-8.22 Persons eligible for medical assistance

(a) All children and their parents or needy parent-persons who are eligible for AFDC money payments (-C, -F and -N segments) are eligible for Mediciad benefits. If an eligible [unit] **family** chooses not to receive a money payment, members are eligible for Medicaid only. Medicaid coverage commences with the date that eligibility is established.

(b) Extension of Medicaid benefits: Extended Medicaid benefits shall be provided former AFDC families in accordance with the provisions of this subsection.

1.-2. (No change.)

3. New members added to the eligible [unit] **family** during the 12 month extension period are not included under the extended coverage with the exception of a child born to the family during the 12 month extension period. **For children born during this period, the child and the mother may be eligible for additional coverage if the 60-day post-partum period continues beyond the termination of the extension period applicable to the remainder of the household (see N.J.A.C. 10:81-8.22(e).**

4.-6. (No change.)

(c) (No change.)

(d) AFDC eligible [units] **families** which receive no AFDC payments solely because the amount payable would be less than $10.00, are eligible for Medicaid benefits. Likewise, AFDC families which would be ineligible for AFDC solely because of rounding of the amount that would otherwise be payable, are eligible for Medicaid benefits.

(e) For newborns of eligible women who have applied (before or on the date of the birth) and are eligible for Medicaid on the date of birth, eligibility continues for both mother and child through the last day of the month in which the 60-day post-partum period ends, without regard to other program requirements. So long as the mother remains eligible and the child resides with her, the child remains eligible for Medicaid for a period of one year, whether or not application has been made for the child.

[(e)] **(f)** Individuals who were admitted to a hospital and were subsequently referred to the CWA through the use of Form PA-1C, Public Assistance Inquiry, may be eligible for Medicaid benefits from the date the PA-1C was completed, provided:

1. (No change.)

2. Except for good cause, the individual applies for Medicaid benefits within three months after the referral is made.

i. (No change.)

ii. Newborns of eligible women are deemed to have applied and shall be added to the Medicaid case, effective the date of birth, upon receipt of a valid Form PA-1C (see N.J.A.C. 10:81-8.22(e) for coverage limits).

10:81-8.23 Medicaid Special

(a) (No change.)

(b) When the individual lives in the same household as his or her natural or adoptive parent(s), financial eligibility will in all cases include the parent's(s') income and resources. If applicable, the deemed income of the stepparent shall be included. For the determination of financial eligibility of an individual under the age of 21, he or she shall be considered to be in an eligible [unit] **family** consisting of the applicant, his or her parent(s) and their dependent children.

(c) When an individual does not live with his or her natural or adoptive parent(s), eligibility shall be determined for an eligible [unit] **family** of one, considering only the individual's income and resources[.] **(see** N.J.A.C. 10:81-8.24(c) regarding LRRs[.]**).**

1. If the individual is married and living with his[/] **or** her spouse, they shall be considered an eligible [unit] **family** of two and all income and resources of both parties shall be considered.

i. Medicaid coverage is not extended to a spouse age 21 or older although his[/] **or** her income must be considered. If the spouse is under 21, both will be included.

2. (No change.)

(d) Rules concerning pregnant women age 21 and over are:

1. (No change.)

2. Eligibility is determined for an eligible [unit] **family** of two (woman and unborn child) based on her income and available resources only, or, if she is married and living with her spouse, on an eligible [unit] **family** of three (woman, spouse and unborn child) including income and available resources of both spouses. Medicaid coverage does not include the spouse even though his income is included in the eligibility determination.

i. A pregnant woman with other dependent children should be assisted in making immediate application for AFDC. If she is found ineligible for AFDC, the CWA shall determine eligibility for Medicaid Special on behalf of her unborn child. The eligible [unit] **family** shall consist of the woman, her spouse if present, any dependent child(ren) and the unborn child. All income and resources shall be applied to the appropriate AFDC-C or -F standard but only the woman and the unborn child may be eligible for Medicaid coverage.

(1) Coverage under Medicaid Special begins with the medical determination of pregnancy and ends, for the mother **and the newborn**, with the [delivery of the child (coverage includes expenses of delivery)] **last day of the month in which the 60-day post-partum period expires**. [At birth, the] **The** child may remain eligible for Medicaid Special in accordance with (b) above; he[/] **or** she will keep the same case number.

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

(e) A pregnant woman under age 21 who is eligible for Medicaid Special in her own right as provided in (b) and (c) above is covered for medical care during pregnancy.

1. If the woman is not covered under those provisions, she may be eligible on behalf of her unborn child as provided in [subsection] (d) [of this section] **above**. In that event, eligibility is determined for an eligible [unit] **family** of two (or three if a spouse is present), and the parents of the expectant mother are evaluated as LRRs.

i. (No change.)

CORRECTIONS

(a)

THE COMMISSIONER

Medical and Health Services
Correctional Facility Infirmary Care
Reproposed Amendment: N.J.A.C. 10A:16-2.9

Authorized By: William H. Fauver, Commissioner, Department of Corrections.
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Proposal Number: PRN 1989-196.

Submit comments by May 17, 1989 to:
Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This reproposed amendment to N.J.A.C. 10A:16-2.9 supersedes the proposed amendment which appeared in the December 5, 1988, issue of the New Jersey Register at 20 N.J.R. 2969(a). The proposed amendment would have modified N.J.A.C. 10A:16-2.9 to include licensed practical nurses, along with registered nurses, as staff members who may be scheduled to provide 24 hour medical care in the infirmary of a correctional facility. The reproposed amendment is submitted in response to a suggestion which was received during the comment period, and further consideration by the Department of Corrections. The reproposed amendment modifies N.J.A.C. 10A:16-2.9 to include licensed practical nurses, along with registered nurses, as staff members who may be scheduled to provide 24 hour medical care in the infirmary of a correctional facility, and require licensed practical nurses on duty to maintain telephone access or communication with a registered nurse or an institutional physician.

Social Impact

The reproposed amendment will provide correctional facilities with additional administrative flexibility in the assignment of nurses to provide 24 hour per day medical care in their infirmaries. This increased flexibility will cause no reduction in the quality of inmate care.

Economic Impact

The reproposed amendment will have no significant economic impact because no additional costs are necessary to implement or maintain this amendment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this reproposed amendment does not impose reporting, record keeping or other compliance requirements on small businesses. This amendment impacts on inmates and the Department of Corrections.

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

10A:16-2.9 Correctional facility infirmary care

(a) (No change.)

(b) Written policies and procedures for infirmary care shall be developed which include, but are not limited to, requirements that:

1.-2. (No change.)

3. A minimum of one [Registered Nurse] **registered nurse or licensed practical nurse** be on duty 24 hours per day;

4.-6. (No change.)

(c) The licensed practical nurse on duty must maintain telephone access or communication with a registered nurse or an institutional physician.

(b)

THE COMMISSIONER

Municipal and County Correctional Facilities
Minimum Standards for Municipal Detention Facilities
Supervision and Care of Detainees; Reporting Deaths
Proposed New Rule: N.J.A.C. 10A:34-2.20
Proposed Amendment: N.J.A.C. 10A:34-2.16

Authorized By: William H. Fauver, Commissioner, Department of Corrections.
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Proposal Number: PRN 1989-181.

Submit comments by May 17, 1989 to:
Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:34-2.16 to indicate that closer surveillance of detainees includes frequent cell checks, at least every 15 minutes, for detainees who are security or suicidal risks and detainees who are exhibiting unusual or bizarre behavior. Proposed new rule N.J.A.C. 10A:34-2.20 has been added to this subchapter to provide procedures for reporting the death of detainees to the New Jersey Department of Corrections.

Social Impact

The proposed amendment to N.J.A.C. 10A:34-2.16 will provide a clearer interpretation of the meaning of closer surveillance, enhancing the effectiveness of the procedure in safeguarding inmates and facility personnel. Proposed new rule N.J.A.C. 10A:34-2.20, which provides procedures for reporting the death of detainees to the Department of Corrections, is designed to establish a uniform Statewide death reporting procedure.

Economic Impact

The proposed new rule and amendment will have no significant economic impact because additional funding is not necessary to implement or maintain the new rule or amendment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule and amendment does not impose reporting, record keeping or other compliance requirements on small businesses. The proposed new rule and amendment impact on municipal detention facilities, municipalities and the Department of Corrections.

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

10A:34-2.16 Supervision and care of detainees

(a) (No change.)

(b) Physical cell checks of detainees shall be made every 30 minutes. [Closer surveillance may be required for detainees who are:

1. Security risks;
2. Suicidal risks;
3. Demonstrating unusual or bizarre behavior; and/or
4. Exhibiting signs of mental illness.]

(c) Closer surveillance, which includes cell checks at least every 15 minutes, shall be made for detainees who are:

1. Security risks;
2. Suicidal risks;
3. Demonstrating unusual or bizarre behavior; and/or
4. Exhibiting signs of mental illness.

Recodify existing (c) through (g) as (**d**) through (**h**) (No change in text.)

10A:34-2.20 Reporting deaths

(a) At the death of a detainee, notification shall be given by the Chief of Police to the Chief, Bureau of County Services, Department of Corrections, within three working days.

(b) Following this notification and within two weeks, a written report shall be submitted by the Chief of Police to the Chief, Bureau of County Services, Department of Corrections. This report shall contain, at minimum, the following information:

1. Detainee's name, age and sex;
2. Date and time of admission into the cell or holding room;
3. Reason for placement in cell or holding room;
4. Logbook entries noting the times of each physical cell check;
5. Circumstances surrounding the death; and
6. Findings of the investigating officer.

INSURANCE

(a)

INSURANCE GROUP

Life and Health Insurance Advertising Endorsements By Third Parties

Proposed Repeal and New Rule: N.J.A.C. 11:2-11.6
Proposed Amendments: N.J.A.C. 11:2-11.1, 11.18, 23.3, 23.5 and 23.8
Proposed Repeal: N.J.A.C. 11:2-11.15

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17B:30-1 et seq., 17B:30-4, 17B:30-15 and 17:22A-1 et seq.

Proposal Number: PRN 1989-194.

Submit comments by May 17, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule and amendments modify the rules concerning endorsements by third parties for all forms of life and health insurance policy advertising by insurers and, if applicable, by insurance producers to the extent that they are responsible for the advertisements of any such policy. The current rules have been determined to be out-of-date, incomplete and not sufficiently responsive to the current insurance marketing climate. Endorsements are defined as "any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or of the terms, benefits or any other aspect of any insurance product".

The proper expansion of life and health insurance coverage is clearly in the public interest. Appropriate advertising can broaden the distribution of insurance, increase the awareness of beneficial forms of coverage, thereby encouraging product competition, and provide the insurance buying public with the means by which it can compare the advantages of competing forms of coverage. Moreover, insurance and its related advertising has become increasingly more common and complex in recent years. Thus, in many ways, insurance, unlike most goods and other services, is a unique product. Indeed, by the time an insured discovers that a particular insurance product is unsuitable for his or her needs, it may be too late for him or her to return it to the marketplace to find a more satisfactory product. For all of these reasons, and more, the buying public should be afforded a means by which it can determine in advance of purchase the complete desirability of the competing products to be sold. This can best be accomplished by advertising which accurately describes the advantages and disadvantages of the insurance product. It is the Department's obligation to prevent unfair, deceptive and misleading advertising and to promote clear, truthful and adequate disclosure of benefits, limitations and exclusions so that, ultimately, the insurance buying public purchases the "right" product at the "right" price (see N.J.S.A. 17:29B-4(2) and 17B:30-3). These principles are, by the proposed new rule and amendments, fully extended to the practice of advertising by third party endorsements.

As previously noted, the proposed new rule and amendments focus on the use of endorsements by third parties. Specifically, the rule and amendments make the following modifications to the existing provisions for life and health insurance advertising.

1. "Salespersons", as defined in the proposed amendments, are required to be licensed as insurance producers if they act as or hold themselves out to the public as being insurance producers, consistent with the provisions of N.J.S.A. 17:22A-2 and 3;
2. Disclaimers as to the availability in New Jersey of a particular offer made by or through a salesperson who should be but is not licensed as an insurance producer must appear in spokesperson advertisements;
3. Full disclosure is required in cases where a spokesperson has a financial interest or acts in a representative or proprietary capacity, or is directly or indirectly compensated for making an endorsement;
4. Health insurance advertising will become subject to the same standards, as modified by the proposed new rule and amendments, as presently exist for life insurance, requiring that advertisements not state or imply that an insurer or policy or contract has been approved or endorsed by any individual, organization or governmental agency except upon the satisfaction of certain conditions;
5. When an insurer has an endorsement referring to benefits received under a policy for a specific claim, it must retain pertinent information relevant to this statement for the Department's review;
6. Insurers cannot use endorsements which are not currently accurate or reflective of the policy or benefits being advertised; and
7. Insurers are required to maintain endorsement and other advertising until the next market conduct examination rather than for a period of not less than four years.

The Department believes that these additional provisions will help ensure that the public purchases an insurance product solely because it is suitable for them and not because of the salesperson or sales techniques employed.

The proposed new rule and amendments are similar to those recently enacted by the State of Florida and include certain provisions of the National Association of Insurance Commissioners (NAIC) model for Medicare supplement insurance.

N.J.A.C. 11:2-11.15 is proposed for repeal because the substance of this section appears within the proposed new amendment to N.J.A.C. 11:2-11.6.

Social Impact

The proposed new rule and amendments will promote fair competition among insurers in advertisements on the merits of the products advertised. By increasing disclosure and clarity in advertisements, the proposed new rule and amendments will protect the public from misleading advertisements and will permit the public to form a clearer understanding of the products advertised. Thus, the proposed new rule and amendments will allow insurance consumers to compare the merits of the various life insurance products on a more meaningful basis.

The proposed new rule and amendments may reduce the use of celebrity spokespersons in the sale of insurance products, since these persons may first be required to be licensed as New Jersey insurance producers. This, in turn, may reduce the incidence of consumers purchasing insurance on

the basis of the identity of the spokesperson rather than, as is more desirable, on the basis of the quality of the insurance product. Similarly, by requiring that the spokesperson be identified as receiving compensation for his or her services, or as having any financial or proprietary interest in the insurer, consumers will not be misled into thinking that the endorsement or testimonial is made purely for reasons related to the quality of the insurance product for sale. The impact of the proposed new rule and amendments may most dramatically be felt by senior citizens purchasing Medicare supplement insurance.

The additional guidelines in the proposed new rule and amendments will better facilitate regulatory oversight of life and health insurance advertising in New Jersey by providing a more detailed and responsible procedure than is presently required.

Economic Impact

Insurers may incur some costs in revising or developing advertisements to comply with the proposed new rule and amendments. The Department of Insurance anticipates no additional costs in monitoring compliance with the proposed new rule and amendments. The Department does not anticipate any direct economic impact on consumers as a result of the proposed new rule and amendments. However, consumers generally, and senior citizens in particular (respecting Medicare supplement insurance), should realize an indirect economic benefit since they will be better informed about insurance products and thus better able to make reasoned, appropriate and beneficial decisions in purchasing insurance products with the limited funds available for that purpose.

The economic effect of the proposed new rule and amendments on insurance producers will be marginal or nonexistent since they only apply to the activities of insurance producers related to the advertisements of insurance policies, rather than to their business operation itself.

The requirement that advertising be maintained by an insurer until the next market conduct examination, rather than for a period of not less than four years may, in some cases, prolong the period of record maintenance, with attendant costs. In many cases, however, such examinations will be conducted within a four year period.

Spokespersons who perform the functions of an insurance producer will be required to secure an insurance producer license and to pay the attendant costs.

Regulatory Flexibility Analysis

The proposed new rule and amendments will primarily affect insurers and may affect insurance producers, of whom only insurance producers are clearly comprised of "small businesses" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are approximately 60,000 licensed insurance producers in the State of New Jersey, operating in various organizational forms from sole proprietorship to corporation. As previously noted, however, insurance producers may be only marginally affected since the proposed amendments relate only to the advertising of insurance producers concerning insurance policies, rather than their own business operation. As a practical matter, this may well be nonexistent in most cases.

The reporting, recordkeeping and other compliance requirements imposed upon the above identified "small businesses" are clearly stated in the proposed new rule and amendments. These include the requirement for insurers to maintain certain claim related data when an endorsement refers to benefits received under a policy for a specific claim.

The requirements concerning the use of spokespersons, including full disclosure and licensure, need not be followed if the spokesperson does not act as or hold himelf or herself out to the public as being an insurance producer. The full disclosure requirements need not be followed where the sole financial interest or compensation of a spokesperson consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances. Furthermore, disclosure as to the receipt of compensation by a spokesperson need not be made where the spokesperson is a company officer who is paid generally, but not specifically, for making the advertisement.

The proposed new rule and amendments will not require "small businesses" to employ the professional services of any person or entity, although advertising professionals may continue to be used to the same extent that they are used under the current rules.

The initial capital costs of compliance with the proposed new rule and amendments are not quantifiable, but will be directly related to the modifications required to be made to the existing advertising practices that are not in compliance with the requirements of the proposed new rule and amendments, including the licensure of spokespersons acting as insurance producers and adherence to the full disclosure provisions. The annual capital costs of compliance are also unquantifiable, and will vary with the amount and type of advertising used.

The proposed new rule and amendments apply to "small businesses" and others on an equal basis since the regulatory abuses sought to be addressed, including the use of deceptive and unfair advertising practices, require a remedy applicable equally to all persons or entities regulated by the Department. However, by clearly stating and publishing the applicable standards and procedures, the Department has made it possible for "small businesses" to avoid or minimize any economic burdens which the proposed new rule and amendments might impose.

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

11:2-11.1 General provisions **and definitions**

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

(d) "Endorsement" means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or of the terms, benefits or any other aspect of any insurance product.

(e) "Person" means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, business trust, corporation and every legal entity.

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

11:2-11.6 [Testimonials] **Endorsements by third parties**

[(a) Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced.

(b) The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement including such statements is subject to all of the provisions of these rules.]

(a) Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

(b) A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

1. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

2. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;

3. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (b)1 or 2 above; or

4. Is in any way directly or indirectly compensated for making the endorsement.

(c) Any person acting as a spokesperson as defined in (b) above, who transacts the business of or holds himself or herself out to the public as being an insurance producer as defined at N.J.S.A. 17:22A-2, and who is required to have a license pursuant to N.J.S.A. 17:22A-3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A-1 et seq. and any implementing rules.

(d) Where, pursuant to (c) above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (e) below, the following statement: "This offer is not available in New Jersey." The requirements of this subsection shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey, and to advertisements which originate in or emanate from New Jersey.

(e) The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this subsection shall be ac-

complished in the introductory portion of the endorsement and shall be given prominence.

(f) If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning, in the manner provided by (e) above. The requirements of this subsection do not apply where the spokesperson is a company officer who is paid generally, but not specifically, for making the advertisement.

(g) The disclosure requirements in (e) and (f) above shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

(h) An advertisement shall not state or imply that an insurer or a policy or contract has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between an organization and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other entity has been secured.

(i) If the person making the endorsement in (h) above has been formed by the insurer or is owned or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

(j) When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of Insurance of the next market conduct examination of the insurer.

(k) Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

(l) Endorsements concerning Medicare supplement insurance shall be filed with the Division of Life and Health of the Department of Insurance at least 30 days prior to their first use. Radio and television testimonials or endorsements shall be filed in transcribed form.

(m) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

11:2-11.15 [Approval or endorsement by third parties] **(Reserved)**

[(a) An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency, unless such is the fact.

(b) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by an individual, group of individuals, society, association or other organization, unless such is the fact.]

11:2-11.18 Insurers' responsibility and control; advertising file; certificate of compliance

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

(e) All such advertisements shall be maintained in said file [for a period of not less than four years] **until the completion by the Department of Insurance of the next market conduct examination of the insurer.**

(f) (No change.)

11:2-23.3 Definitions

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

...

"Endorsement" means any appraisal, analysis, testimonial or other public statement describing or expressing approval of any insurance product or the terms, benefits or any other aspect of any insurance product. ...

"Person" means any individual, insurer, company, association, organization, society, partnership, syndicate, trust, corporation and every legal entity.

...

11:2-23.5 Disclosure requirements

(a)-(j) (No change.)

(k) [Testimonials or endorsements] **Endorsements** by third parties must comply with the following requirements:

[1. Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial the insurer adopts all of the statements contained therein. The statements are deemed to be made by the insurer, and are subject to all the provisions of this subchapter.

2. If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact shall be disclosed in the advertisement; and

3. An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association, or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact shall be disclosed in the advertisement.]

1. Endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using an endorsement, adopts as its own all of the statements contained therein, and the advertisement, including such statements, shall be subject to all of the provisions of this subchapter.

2. A person shall be a "spokesperson" if either his or her image, voice or words are used in making an endorsement and if the person:

i. Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise;

ii. Is an entity formed by the insurer, or is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer;

iii. Is in a policymaking position and is affiliated with the insurer in any of the capacities in (k)2i and ii above; or

iv. Is in any way directly or indirectly compensated for making the endorsement.

3. Any person acting as a spokesperson as defined in (k)2 above, who acts as or holds himself or herself out to be an insurance producer as defined at N.J.S.A. 17:22A, and who is required to have a license pursuant to N.J.S.A. 17:22A-3, shall be considered to be an insurance producer and shall be required to be licensed pursuant to and shall submit to the requirements of N.J.S.A. 17:22A-1 et seq. and any implementing rules.

4. Where, pursuant to (k)3 above, a spokesperson required to be licensed as an insurance producer is not licensed as an insurance producer, the advertisement shall include, in the manner prescribed by (k)5 below, the following statement: "This offer is not available in New Jersey." The requirements of this paragraph shall apply to cases where the advertisement originates in or emanates from another state but is received or appears in New Jersey and to advertisements which originate in or emanate from New Jersey.

5. The fact of a financial interest, or the proprietary or representative capacity of a spokesperson, shall be disclosed in an advertisement. In both television and radio advertising, the disclosure shall be spoken by the spokesperson and, in the case of television, visually presented consistent with the requirements for print advertising in this subsection. In print advertising, the disclosure shall be presented in a type style and size that is at least equal to the largest type otherwise used in the advertisement. The disclosure required by this paragraph shall be accomplished in the introductory portion of the endorsement and shall be given prominence.

6. If a spokesperson is directly or indirectly compensated for making an endorsement, such fact shall be disclosed by use of the phrase "This is a Paid Endorsement" or by words of similar meaning in the manner provided by (k)5 above. The requirements of this paragraph do not apply where the spokesperson is a company officer who is paid generally, but not specifically, for making the advertisement.

7. The disclosure requirements of this subchapter shall not apply where the sole financial interest or compensation of a spokesperson, for all endorsements made on behalf of the insurer, consists of the payment of union "scale" wages required by union rules, and if the payment is actually for such "scale" for television or radio performances.

8. An advertisement shall not state or imply that an insurer or a policy or contract has been approved or endorsed by any individual, group of individuals, society, association, organization, governmental agency or other entity, unless such is the fact and any proprietary relationship between an organization and the insurer is disclosed and the prior written approval of the individual, group of individuals, society, association, organization, governmental agency or other person has been secured.

9. If the person making the endorsement in (k)8 above has been formed by the insurer or is owned, or controlled by the insurer, or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policymaking position in the association, that fact shall also be disclosed.

10. When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection until the completion by the Department of Insurance of the next market conduct examination of the insurer.

11. Endorsements which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefits being advertised shall not be used.

12. An advertisement shall not state or imply that an insurer or a policy has been approved or an insurer's financial condition has been examined and found to be satisfactory by a governmental agency unless such is the fact and without prior written approval.

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

11:2-23.8 Insurers' responsibility and control; advertising file; certificate of compliance

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

(e) All such advertisements shall be maintained in said file [for a period of not less than four years] **until the completion by the Department of Insurance of the next market conduct examination of the insurer.**

(f) (No change.)

(a)

DIVISION OF ADMINISTRATION

Rating Organizations: Private Passenger Automobile Filings

Proposed Repeal: N.J.A.C. 11:3-17

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: 17:1-8.1, 17:1C-6(e) and 17:29A-1 et seq.

Proposal Number: PRN 1989-193.

Submit comments by May 17, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 17:29A-14(c)(4) authorizes the Commissioner to promulgate rules and regulations which establish standards for the submission of proposed rate filings to the Department. N.J.A.C. 11:3-17 was adopted to implement this statute, and became effective on October 6, 1986. These rules set forth the required information to be submitted by rating organizations when making private passenger automobile rate filings for the voluntary market. These rules also establish procedures for the Department's review of proposed rate filings. They also allow a rating organization to make rate filings for insurers that have a two percent or greater market share of the voluntary private passenger automobile market in New Jersey. These rules, however, are not consistent with recent statutory changes.

P.L. 1988, c.119, section 28 (N.J.S.A. 17:29A-6.1), enacted on September 8, 1988, requires the use of a varying market share standard in the review of rate filings. This statute provides that every private passenger automobile insurer that has a market share of at least two percent on January 1, 1989, 1.5 percent on January 1, 1990, and one percent on January 1, 1991, must make its own rates for private passenger automobile insurance based on the insurer's own loss experience. N.J.A.C. 11:3-17, therefore, is inconsistent with the current statutory language.

Furthermore, the Department proposed N.J.A.C. 11:3-16 and 11:3-18, on March 6, 1989 at 21 N.J.R. 611(a), and April 3, 1989 at 21 N.J.R. 839(a), respectively, to implement N.J.S.A. 17:29A-36.2 (enacted September 8, 1988). These rules establish standards for the rate filing data and ratemaking methodologies for private passenger automobile insurers and will replace the current requirements of N.J.A.C. 11:3-17.

Proposed N.J.A.C. 11:3-16 provides standards for the submission of voluntary market private passenger automobile rate filings by both private passenger automobile insurers and rating organizations. Proposed N.J.A.C. 11:3-18 provides the standards for the review of rate filings submitted under proposed N.J.A.C. 11:3-16. These proposed new rules provide submission and review standards for rate filings which are in greater detail than those currently provided in N.J.A.C. 11:3-17.

Since N.J.A.C. 11:3-17 is inconsistent with recent statutory changes and there are proposed new rules which provide more detailed requirements for the submission and review of rate filings made by private passenger automobile insurers and rating organizations, the Department proposes to repeal N.J.A.C. 11:3-17. This will eliminate any confusion regarding current submission and review standards for rate filings made by private passenger automobile insurers and rating organizations.

Social Impact

The proposed repeal will eliminate any possible confusion as to the current requirements imposed on rating organizations for the submission and review of private passenger automobile insurer rate filings. This should benefit insurers and the Department because insurers will be aware of the current rate filing requirements. Therefore, insurers will submit data conforming with the latest statutory requirements.

Economic Impact

There is no economic impact imposed by the proposed repeal in that it removes, rather than imposes, reporting and recordkeeping requirements which are now inconsistent with current statutory language.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed repeal does not impose reporting, recordkeeping or other compliance requirements on "small businesses". The proposed repeal removes reporting, recordkeeping or other compliance requirements which are inconsistent with the statutory language of N.J.S.A. 17:29A-6.1 and 17:29A-36.2.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 11:3-17.

(b)

DIVISION OF ACTUARIAL SERVICES

Health Service Corporation Notice of Increased Rates

Proposed New Rules: N.J.A.C. 11:4-32

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:48E-26d.

Proposal Number: PRN 1989-192.

Submit comments by May 17, 1989 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

These rules are proposed in response to amendments of the Health Service Corporations Act, N.J.S.A. 17:48E-1 et seq., specifically N.J.S.A. 17:48E-26d. The amended act was approved and became effective July 21, 1988. The amendments permit a health service corporation to increase rates for hospitalization benefits under all individual or group contracts issued by the corporation which are not experience rated at any time following an increase in hospital payment rates by the Hospital Rate Setting Commission. This amendment applies only to those increases which are not reflected or anticipated in the health service corporation's contract rates, and which are not offset by savings in other benefit provisions under the contract. The amendments require the Commissioner to approve the form of filing for such increases in contract rates.

The amendments are intended to permit a health service corporation to maintain its contract rates at levels consistent with changes in hospital service and delivery costs. Therefore, the filing of such notice of increased rates applies only to contracts of the health service corporation which include hospitalization benefits as part of the benefit package. Further, the filing of such notice must arise as a result of increases in hospital payment rates by the Hospital Rate Setting Commission which are not reflected or anticipated in the health service corporation's contract rates and which are not offset by savings in other benefit provisions under the contract. Rate increases on contracts which are experience rated are not subject to this rule.

The filing of a Notice of Increased Rates may be disapproved by the Commissioner on or before the day the rates are to become effective, which shall be no later than 20 days following the filing. If the filing is not disapproved, then the contract rate increases shall be deemed to be approved. In his discretion, the Commissioner may waive the 20 day period, or any portion thereof.

A health service corporation is not relieved of its obligation to notify its subscribers affected by the rate changes in accordance with its existing contractual notification requirements. All notification requirements must be complied with by the health service corporation, without exception.

The Act's amendments permit a health service corporation to file a Notice of Increased Rates at the end of every calendar quarter. A health service corporation should not submit a Notice unless it determines that the actions of the Hospital Rate Setting Commission, absent an offset of savings, warrant an increase in its contract rates. All increases in contract rates are to cover a 12-month rating period. Should a health service corporation request an aggregate increase prior to the end of any such 12-month period, the impact of the increased rates shall be considered in the new request.

No standard form is required for filing with the Commissioner, but materials utilized as a filing of a Notice of Increased Rates must present the information in an easily identifiable manner and be well documented, in accordance with the proposed rules.

Social Impact

Social impact of the proposed new rules will result as a by-product of the economic impact. While those consumers whose rates will increase more rapidly will probably not be supportive of the increase, the ability of the health service corporation to anticipate and cover costs more quickly will serve to benefit all of its insureds. Health service corporations will maintain the strength of their financial base, which will benefit all consumers directly and indirectly.

Economic Impact

The economic purpose of the proposed new rules is to permit a health service corporation to keep abreast of the increases in hospital service and delivery costs as those costs relate directly to hospitalization benefits. A health service corporation is not expected to file a Notice of Increased Rates if actions by the Hospital Rate Setting Commission would precipitate an increase that is relatively small, since the cost of reporting to the Department and of sending out notifications to insured subscribers is not insignificant. However, the point at which any particular increase outweighs the costs of complying with reporting and notification requirements is left to the determination of the health service corporation.

Customers of an affected health service corporation will see their premiums increase more frequently, but in smaller increments. While these increases may be more frequent than is true for general rate increases, the amount of each individual increase will be less harmful to the insured's budget. Moreover, the increases will be apportioned directly from the causative factors of the health service corporation's rising costs.

Administrative costs of the Department of Insurance in reviewing the Notice of Increased Rates will be absorbed by the current staff within the current budget.

Regulatory Flexibility Analysis

The Department believes that few, if any, insuring entities subject to the proposed rules are "small businesses" as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Additionally, the proposed new rules impose no undue burden or adverse economic impact upon health service corporations which may qualify as "small businesses". All health service corporations can expect to incur administrative costs involved with filing the Notice of Increased Rates and notifying insured subscribers of the proposed increase. However, since these rate increases are entirely discretionary, all health service corporations are expected to absorb the associated costs without exception as to their size, location, or covered population.

Full text of the proposal follows.

SUBCHAPTER 32. HEALTH SERVICE CORPORATION NOTICE OF INCREASED RATES

11:4-32.1 Purpose and scope

(a) This subchapter outlines the requirements necessary for a health service corporation to increase rates for all hospitalization benefits in response to hospital payment rate increases authorized by the Hospital Rate Setting Commission pursuant to N.J.S.A. 26:2H-4.1.

(b) This subchapter applies only to individual or group contracts of a health service corporation that provide hospitalization benefits which are not experience rated.

(c) This subchapter applies only when a health service corporation can demonstrate that savings in other non-experience rated contract benefits do not offset the payment rate increases authorized by the Hospital Rate Setting Commission.

11:4-32.2 Definitions

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

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

"Contract rates" means those rates charged by a health service corporation to its individual insureds and insured members for non-experience rated products pursuant to filings with the Commissioner under N.J.S.A. 17:48E-27.

"Department" means the New Jersey Department of Insurance.

"Health service corporation" means a health service corporation established pursuant to the Health Service Corporations Act at N.J.S.A. 17:48E-1 et seq., which is organized, without capital stock and not for profit, for the purpose of establishing, maintaining and operating a nonprofit health service plan, and supplying services in connection with the providing of health care or conducting the business of insurance as provided for within the act, or as otherwise subsequently defined by that act.

"Hospital payment rate" means that base rate schedule approved by the HRSC for inpatient and outpatient health care services and delivery in this State, the projected payments of which are utilized by health service corporations, in part, in determining subscriber rates necessary to cover the health service corporation's costs.

"HRSC" means the Hospital Rate Setting Commission established pursuant to N.J.S.A. 26:2H-4.1.

"Notice of Increased Rates" means a filing of notice of rate change to the Commissioner made by a health service corporation following an increase in hospital payment rates by the HRSC. This notice applies only to those contracts issued by the Corporation which are not experience rated, include hospitalization benefits, are not reflected or anticipated in the health service corporation's contract rates, and are not offset by savings in other benefit provisions under the contract.

11:4-32.3 General provisions

(a) A health service corporation shall file with the Commissioner a Notice of Increased Rates providing, with full documentation, the required information as set forth below:

1. A health service corporation shall provide the date of the most recent filing from which its current rates are effective.

2. A health service corporation shall provide the proposed date of implementation of the increased contract rates.

3. A health service corporation shall identify those lines of business and/or products to which the increased rates apply. These lines of business shall be non-experience rated and provide hospitalization benefits.

4. A health service corporation shall provide all documentation necessary to demonstrate an increase in payment rates authorized by the HRSC.

i. The rate of increase anticipated by a health service corporation as a result of increases in payment rates authorized by the HRSC that exist in the health service corporation's current contract rates must be clearly identified by supporting analysis.

ii. The unanticipated rate of increase as a result of increases in payment rates authorized by the HRSC must be clearly identified by supporting analysis.

5. A health service corporation must demonstrate that no offset of savings exists which have accrued or may accrue to other non-experience rated benefit provisions over the 12-month period commencing with the health service corporation's most recent filing from which its current rates are effective.

6. Savings shown to exist shall be deducted from the health service corporation's documented increase in hospital payment rates; this difference shall be quantified in dollars and shall be apportioned over a 12-month period to non-experience rated contracts which provide hospitalization benefits.

7. A health service corporation shall provide a schedule of rates with respect to those lines of business for which the Notice of Increased Rate filing is made.

(b) A health service corporation shall file with the Commissioner a Notice of Increased Rates if the health service corporation determines that the actions of the HRSC, absent a savings offset, warrant an increase in the health service corporation's contract rates, but in no event shall a Notice of Increased Rates be filed more frequently than once every calendar quarter.

(c) The Notice of Increased Rates may be disapproved by the Commissioner on or before the day the rates are to become effective, which shall be no later than 20 days following the filing of the Notice. If the Commissioner does not disapprove the filing by the end of the 20th day, then the contract rate increase shall be deemed approved.

(d) The Commissioner, in his or her discretion, may waive the 20 day period, or any portion thereof.

(e) A health service corporation is not relieved of its obligation to notify subscribers affected by the rate changes in accordance with its existing contractual notification requirements, and shall comply with all such notification requirements prior to implementation of any rate increase.

11:4-32.4 Inquiries

All questions and correspondence concerning this subchapter should be directed to:

Chief, Service Corporation Compliance Bureau
Division of Actuarial Services
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625

LABOR

(a)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Unemployment Benefit Payments
Disclosure of Information

Proposed Amendments: N.J.A.C. 12:17-7.1, 7.2 and 7.3

Authorized By: Charles Serraino, Commissioner, Department of Labor.
Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-11(g).
Proposal Number: PRN 1989-190.

Submit comments by May 17, 1989 to:
Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

In response to questions concerning the disclosure of information, the Department of Labor has decided to propose amendments to existing N.J.A.C. 12:17-7.1, 7.2 and 7.3 which are designed to clarify the circumstances under which confidential information may be released and update a citation to the Federal Register.

The proposed amendment to N.J.A.C. 12:17-7.1 specifies that the disclosure of information rule is applicable to information identifiable to specific individuals or employers. The proposed amendment to N.J.A.C. 12:17-7.2 addresses the release of information to claimants, claimants' representatives, law enforcement officials, non-law enforcement public employees, researchers, and the legislature. The proposed amendment to N.J.A.C. 12:17-7.3 corrects an existing citation. Other changes throughout the subchapter make the rules gender-neutral.

Social Impact

The proposed amendments will benefit the public by assuring that confidential information is not released to unauthorized individuals. The proposed amendments will also provide specific guidelines for the release of information, which will benefit both requesters of information and departmental and employer personnel by removing any ambiguity as to what type of information may be obtained or released, and to whom the information may be given.

Economic Impact

The proposed amendments will have no economic impact on the public, as they merely set forth guidelines for the release of information. The Department does not expect to experience an economic impact as a result of the proposed amendments.

Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or compliance requirements on small businesses, as the amendments affect only the release of existing information. Thus, a regulatory flexibility analysis is not required.

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

12:17-7.1 Administration of New Jersey Unemployment Compensation and Temporary Disability Benefits Law

No disclosure of information obtained at any time from **and identifiable to specific** workers, employers or other persons [or groups] in the course of administering the New Jersey Unemployment Compensation and Temporary Disability Benefits Law shall be made directly or indirectly, except as authorized by the Commissioner or his **or her** representative in accordance with this subchapter.

12:17-7.2 Authorized disclosure of information

(a) Disclosure of any information in the course of administering the New Jersey Unemployment Compensation and Temporary Dis-

ability Benefits Law may be authorized in the following cases for the following purposes:

1. (No change.)

2. To any properly identified claimant for benefits or payments under an unemployment compensation or readjustment allowance law of the [Federal] **federal** government, or of a state or territorial government, or of a foreign government with which reciprocal arrangements have been made, or to his **or her** duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his **or her** claim;

i. Requests for claim-related information received directly from a claimant, in writing, in person or by telephone are to be honored once the identity of the claimant has been verified and provided that the intended use of such information does not conflict with the provisions of N.J.S.A. 43:21-11(g).

ii. Telephone, informal, or written requests from an attorney or other individual who states that he or she is the claimant's representative are not to be honored unless the claimant provides the Department with a signed and dated authorization for the release of the specified information.

3. (No change.)

4. To officers or employees of any agency of the [federal] **Federal** government or any state, territorial or local government (or officers or employees of a foreign government agency with which reciprocal arrangements have been made and which is lawfully charged with the administration of an unemployment compensation or readjustment allowance law) if such disclosures will not impede the operation of, and are not inconsistent with, the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law.

i. Requests by law enforcement agents for the release of Departmental information must be made in writing, and the identity of the requester must be verified prior to the release of information by the showing of a badge, warrant, written and signed request on agency letterhead, or some other similar indication of official purpose.

(1) Information which may be released includes the claimant's name(s), current address, current or most recent employer, and the next scheduled reporting date; and

(2) A request for surveillance or photography in connection with an investigation must be approved in writing by the Director of the Division of Unemployment and Disability Insurance.

ii. Public employees must certify that the information requested is to be used in furtherance of their public duties and must certify in writing that the confidentiality of the disclosed information will be maintained.

(1) Telephone inquiries from legislators or the Office of the Public Advocate may be answered verbally, provided that the identity of the caller can be verified; and

(2) Written requests by State or Federal legislators on official letterhead shall be honored, provided that the information will be used in furtherance of their public duty or provided that the claimant has requested that the information be released.

5. To officers or administrators of public or private organizations such as colleges, universities, or foundations to perform research or engage in public service activities, which can be expected to benefit the residents of New Jersey by improving or promoting their health, safety, economic or social well-being, provided that the benefit of such research or public service activity to New Jersey residents is certified in writing by the administrator of a New Jersey municipal, county or State executive agency, or his or her designated representative, and provided that such disclosure will not impede the operation of, and is not inconsistent with, the purposes of the New Jersey Unemployment Compensation and Temporary Disability Benefits Law, and provided that the officer or administrator of the agency engaged in research or other public service activities certifies in writing that the confidentiality of the disclosed information will be maintained.

12:17-7.3 Unauthorized disclosure of information

Nothing contained in this subchapter shall, or shall be construed to, contravene [Social Security Administration Regulation No. 1] **20 C.F.R. §401.1 et seq. (1987)** relating to the disclosure of official records and information.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Commercial Drivers' Schools

Proposed Readoption: N.J.A.C. 13:23

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

Authority: N.J.S.A. 39:12-4.

Proposal Number: PRN 1989-191.

Submit comments by May 17, 1989 to:
Glenn R. Paulsen
Division of Motor Vehicles
28 South Montgomery St.
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:23 concerning commercial drivers' schools. The most recent amendments to these rules were filed and became effective on June 4, 1984. The rules, which expire on June 4, 1989, are proposed for readoption in accordance with Executive Order 66 (1978).

The rules implement the provisions of the Commercial Driving Schools Law (N.J.S.A. 39:12-1 et seq.) which provides for the licensure of businesses engaged in driving instruction and instructors employed by such businesses. The Division of Motor Vehicles has reviewed the rules in accordance with Executive Order 66 and has determined that said rules are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated." The rules implement the public policy of this State as set forth in N.J.S.A. 39:12-1 et seq. by establishing licensing standards for schools and instructors and setting forth guidelines for transactions between a drivers' school and persons contracting for driving instruction.

N.J.A.C. 13:23-1.1 sets forth definitions of terms used in the substantive sections of the rules.

N.J.A.C. 13:23-2.1 sets forth the general licensing requirement for commercial driving schools. Licensure is predicated upon overall compliance with the application and qualification standards and those sections of the chapter pertaining to the operation of a driving school business. N.J.A.C. 13:23-2.2 specifies the application procedure for licensure. Applicants are required to submit the license fee and fingerprint record with the application. In addition to other documents, an applicant must submit sample contract and receipt forms which he proposes to use in the business. N.J.A.C. 13:23-2.5 restricts the transfer of commercial driving school licenses. The Director must be notified in writing when an agreement is entered into to transfer ownership of the business. The Director may allow continuation of the business pending application for licensure by the new owner (see N.J.A.C. 13:23-2.5(b)).

A driving school business may not be conducted at a location or in a manner which denotes to the public that the business has an official connection with the Division of Motor Vehicles. Changes of business locations may not be effected without the prior approval of the Director (see N.J.A.C. 13:23-2.8 and 2.9). Business locations must be in compliance with all State and local zoning ordinances, building codes, fire codes, and health codes (see N.J.A.C. 13:23-2.10).

N.J.A.C. 13:23-2.12 through 2.14 set forth sign, business hour and office personnel requirements for principal and branch offices. A telephone answering service must be used whenever the principal place of business or branch office is not open to the public. The principal place of business and branch office must be managed by a person having at least two years teaching experience with a commercial driving school.

N.J.A.C. 13:23-2.15 through 2.17 pertain to the licensing of branch offices. The branch office is required to meet all standards established for a principal place of business.

N.J.A.C. 13:23-2.19 through 2.26 set forth recordkeeping requirements for commercial driving schools. A student registry must be maintained depicting the name, address, and contract number for every person receiving instruction from the driving school. A contract file must be maintained by the driving school. The contract between the school and student must include the length of instruction, the type of automobile in which the instruction is to be given, and the fees for instruction and other services to be provided by the driving school. A receipt file must be

maintained containing a copy of all receipts issued by the driving school for monies paid by students. The Division must be informed of all fees charged by a driving school. A schedule of such fees must be filed with the Division. If records required to be maintained by a driving school are lost or destroyed, an affidavit must be filed with the Division setting forth the circumstances of such loss or destruction. Records are required to be maintained for three years at the principal place of business. Said records are subject to inspection by Division employees at any time during business hours.

N.J.A.C. 13:23-2.27 through 2.29 pertain to motor vehicles used in a driving school business. A vehicle identification certificate must be issued for a motor vehicle before it may be used by a school for instruction purposes. The motor vehicle must be equipped with dual control brakes and clutch, if equipped with a manual transmission. The vehicle must also be equipped with seat belts for both student and instructor and with inside and outside rearview mirrors for both student and instructor. The motor vehicle must also be covered by liability insurance in the amounts of at least $250,000/500,000/50,000. The liability insurance policy must provide that said liability coverage cannot be cancelled or terminated unless the Division has at least 30 days prior written notice. Vehicles must bear a "Student Driver" sign when being used for driving instructions.

N.J.A.C. 13:23-2.30 limits the kind of advertising that can be used by a driving school. School advertisements may not guarantee licensure upon completion of instruction. Names, other than the trade name by which the school is licensed, may not be used in any advertisements. A school may not distribute any advertising material in such a manner so as to give the impression that the school has some official connection with the Division or an authorized motor vehicle agent. Advertisements must be based on fact and may not be false, deceptive or misleading. Advertisements which cannot be changed or withdrawn within a period of one week or less must be approved by the Division prior to printing.

N.J.A.C. 13:23-2.31 relates to contract requirements. Instructions may not commence until a written contract, in a form approved by the Division, has been signed and executed by the driving school and student. The student must be provided with a copy of the contract and the original must be retained in the contract file. A school must file with the Director a list of persons authorized to execute contracts on its behalf. A signature record form must be filed in this regard. The Division must be notified in writing whenever a person's authorization to execute contracts has been withdrawn by the school. The contract may not provide for unlimited instruction, (that is, instruction until a license is obtained by the student) or for free or discount instruction if a license is not obtained by the student. A student may rescind a contract within 24 hours of execution and is entitled to a refund for any service which has not been provided by the school. N.J.A.C. 13:23-2.32 proscribes practice driving by students on driving courses established at Division driving test centers. N.J.A.C. 13:23-2.33 requires a driving school to confirm that a prospective student has a valid driver's license or validated examination permit prior to conducting behind-the-wheel instructions. N.J.A.C. 13:23-2.34 provides that a licensed instructor or authorized agent of the driving school must accompany an applicant for the driving test when a school vehicle for which a school vehicle identification certificate has been issued is to be used in taking the road test. N.J.A.C. 13:23-2.35 prohibits a driving school from employing any person who has been convicted of a crime. N.J.A.C. 13:23-2.36 establishes the procedure and requirements for the issuance of authorized agent cards. An applicant for an authorized agent card must be at least 18 years of age, must be of good moral character, must hold a valid New Jersey driver's license and must have a satisfactory driving record. N.J.A.C. 13:23-2.37 prohibits conduct between licensees and their employees with Division employees designed to influence the latter employees' official determinations in licensing matters. N.J.A.C. 13:23-2.38 specifies the Division's authority to suspend a driving school license after due notice.

N.J.A.C. 13:23-3.1 provides for the licensure of a person as an instructor as a condition to said person providing driving instructions for a driving school. An applicant for an instructor's license must be at least 21 years of age, must hold a valid New Jersey driver's license and must submit to a criminal investigation (see N.J.A.C. 13:23-3.3 and 3.4). The instructor's license is required to be in the possession of the instructor when he or she is giving driving instructions or when accompanying a student to the Division's road test site (see N.J.A.C. 13:23-3.6). An instructor's license is required to be surrendered to the Division upon termination of the instructor's employment with a driving school designated on the license. This requirement must be satisfied by the driving school (see N.J.A.C. 13:23-3.8). Applicants for instructor's licenses are subject to specialized testing as part of the licensing procedure and must submit proof of having completed the National Safety Defensive Driving Program (see N.J.A.C. 13:23-3.9). An applicant for an instructor's license must be of good character. A criminal record is disqualifying (see N.J.A.C. 13:23-3.10). Instructors are subject to the requirements specified in N.J.A.C. 13:23-3.11 and may not act in such a way as to attempt to influence Division employees in their official determinations relative to the licensing of the instructor's students (see N.J.A.C. 13:23-3.11). N.J.A.C. 13:23-3.12 provides for the denial or suspension of an instructor's license upon due notice in writing. The accumulation of nine or more points because of convictions for motor vehicle offenses constitutes good cause for the denial or suspension of an instructor's license.

N.J.A.C. 13:23-4.1 requires a driver's school to provide facilities for conducting classroom instruction contracted for by students. Generally, the facility may not be more than 15 miles from the principal place of business or branch office of the school. The Division may, in its discretion, authorize the use of classroom facilities beyond the 15 mile requirement. A classroom facility may be used by various driving schools; a schedule must be filed with the Division indicating the dates and times the respective schools will be conducting classroom instruction at the facility (see N.J.A.C. 13:23-4.1). The classroom facility must be approved by the Division and must contain seating for at least 10 students and enumerated equipment and materials used in providing classroom instruction (see N.J.A.C. 13:23-4.2 and 4.3). Classroom curriculum must be approved by the Division. Classroom instruction must be available to students at least once each month.

Social Impact

The rules proposed for readoption have a beneficial social impact. The rules promote the public welfare by promoting fairness in dealings between a driver's school and prospective students. Full disclosure of all fees which a driver's school shall charge a prospective student are required to be listed in form contracts used by schools. A prospective student may rescind a contract within 24 hours of execution with a full refund for instructions or other services that have not been provided by the school. The public welfare is also promoted by the licensing standards imposed on prospective applicants for school licenses and instructor's licenses. The licensing standards disqualify persons with criminal records. The rules also promote the public welfare by proscribing deceptive advertising and requiring prior approval by the Division of proposed advertising which because of its nature and form of publication (that is, telephone directory) may not be retracted for a substantial period of time.

Economic Impact

There is an economic impact on the Division of Motor Vehicles in that its Business License Compliance Unit is responsible for the processing of applications for the various types of licenses and certificates provided for in the rules. The Unit is also responsible for monitoring compliance of driver schools and instructors with the regulatory provisions and for proposing administrative suspension proceedings against violators. An initial license fee of $250.00 and an annual renewal license fee of $100.00 must be paid to the Division by commercial driving schools pursuant to N.J.S.A. 39:12-2. An initial license fee of $75.00 and an annual renewal license fee of $30.00 must be paid to the Division by commercial driving school instructors pursuant to N.J.S.A. 39:12-5. Those sections of the chapter which deal with deceptive advertising and contractual rights of students are expected to protect the economic interest of the general public.

Regulatory Flexibility Analysis

The proposed readoption continues to impose the reporting and recordkeeping requirements currently required by this chapter. Driving schools continue to be subject to the recordkeeping provisions contained in N.J.A.C. 13:23-2.20 through 2.23. N.J.A.C. 13:23-2.20 requires that a student registry be maintained by a driver's school listing the name, address and contract number with respect to every person provided instruction by the school. N.J.A.C. 13:23-2.21 specifies that a service record be maintained by a driving school listing the date, type and duration of instruction, and instructor providing the driving instruction. N.J.A.C. 13:23-2.22 provides for the maintenance of a contract file by driver schools. All original contracts entered into between the school and its students are required to be maintained as part of this file. N.J.A.C. 13:23-2.23 requires a driver's school to maintain a receipt file for monies paid to the driver's school by its students. The records specified above must be maintained for a period of three years (see N.J.A.C. 13:23-2.26).

To date, the Division has licensed 140 entities to engage in the business of a drivers' school. Most, if not all, of these schools qualify as small

businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption will not require small businesses to engage additional professional services for compliance therewith. The records are of a kind that would be maintained in the ordinary course of business. Therefore, the rules do not impose additional reporting or recordkeeping burdens on small businesses nor do they necessitate initial capital and annual expenditures for reporting or recordkeeping compliance by small businesses.

The general licensing provisions contained in the rules have uniform application to all entities which engage in the business of driving instruction. It is not feasible to exempt small businesses from these requirements in light of the statutory licensing requirement. The rules limit the economic impact on small businesses by providing for the joint use of classroom facilities by various schools.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:23.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping
Routes N.J. 27 in Union County and N.J. 67 in Bergen County
Proposed Amendments: N.J.A.C. 16:28A-1.18 and 1.71

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

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

Proposal Number: PRN 1989-195.

Submit comments by May 17, 1989 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish "no stopping or standing" zones along Route N.J. 27 in the City of Linden, Union County, Route N.J. 67 in Fort Lee Borough, Bergen County, and "no parking bus stop" zones along Route N.J. 67 in Fort Lee Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Additionally, the proposed amendments will establish restrictions during certain hours for street cleaning and stopping or standing in Fort Lee Borough, Bergen County. The rule pertaining to Route N.J. 67 was further amended to provide clarity along the eastbound and westbound sides in Fort Lee Borough.

Based upon requests from local government officials in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Routes N.J. 27 and N.J. 67 and the "no parking bus stop" zones along Route N.J. 67 were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.18 and 1.71 based upon the requests from the local government officials and the traffic investigations.

Social Impact

The proposed amendments will establish "no stopping or standing" zones along Route N.J. 27 in the City of Linden, Union County, and Route N.J. 67 in Fort Lee Borough, Bergen County, and "no parking bus stop" zones along Route N.J. 67 in Fort Lee Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Additionally, the proposed amendments will establish restrictions during certain hours for street cleaning and stopping or standing in Fort Lee Borough, Bergen County. The rule pertaining to Route N.J. 67 was further amended to provide clarity along the eastbound and westbound sides in Fort Lee Borough. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs and the local government will bear the costs for "no parking bus stop", and "no stopping or standing certain hours" zones signs. Motorists who violate the rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

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

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

16:28A-1.18 Route 27

(a) The certain parts of State highway Route 27 described in this subsection shall be designated and established as "no stopping or standing" zones.

1. Through 16. (No change.)

17. No stopping or standing in the City of Linden, Union County: [along the east side (East St. George Avenue), beginning at the northerly curb line of East Baltimore Avenue and extending to the southerly curb line of Chandler Avenue.]

i. Along the east side (East St. George Avenue):

(1) Beginning at the northerly curb line of East Baltimore Avenue and extending to the southerly curb line of Chandler Avenue.

ii. Along both sides:

(1) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in the areas where an official township resolution has been submitted.

16:28A-1.71 Route 67

(a) The certain parts of State highway Route 67 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the [provision] **provisions** of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Fort Lee Borough, Bergen County:

[i. Near side bus stops:

(1) Lincoln Avenue (130 feet);

(2) Bridge Plaza South (105 feet).]

i. Along Lemoine Avenue:

[ii.] **(1)** Far side bus stops:

[(1) Along Lemoine Avenue:]

(A) (No change.)

(B) Columbia Avenue—Beginning at the southerly curb line of Columbia Avenue and continuing to a point 120 feet south therefrom.

(2) Near side bus stops:

(A) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 107 feet northerly therefrom.

(B) Lincoln Avenue—Beginning at the northerly curb line of Lincoln Avenue and extending 155 feet northerly therefrom.

(C) Whiteman Street—Beginning at the northerly curb line of Whiteman Street and extending 155 feet northerly therefrom.

(D) Bridge Plaza South—Beginning at the northerly curb line of Bridge Plaza South and extending 105 feet northerly therefrom.

(3) Mid-block bus stop:

(A) Between Main Street and Bridge Plaza South—Beginning 132 feet north of the northerly curb line of Main Street and extending 149 feet northerly therefrom.

ii. Along Palisade Avenue:

(1) Far side bus stops:

(A) Riverdale Drive—Beginning at the southerly curb line of Riverdale Drive and extending 165 feet southerly therefrom.

(B) Forest Road—Beginning at the southerly curb line of Forest Road and extending 150 feet southerly therefrom.

(C) Route N.J. 5—Beginning at the southerly curb line of State highway Route 5 and extending 114 feet southerly therefrom.

[(B) Riverdale Drive—Beginning at the southerly curb line of Riverdale Drive and extending 165 feet southerly therefrom.

(C) Forest Road—Beginning at the southerly curb line of Forest Road and extending 150 feet southerly therefrom.

(D) Route 5—Beginning at the southerly curb line of State highway Route 5 and extending 114 feet southerly therefrom.

iii. Near side bus stop:

(1) Along Lemoine Avenue:

(A) Myrtle Avenue—Beginning at the northerly curb line of Myrtle Avenue and extending 107 feet northerly therefrom.

(B) Lincoln Avenue—Beginning at the northerly curb line of Lincoln Avenue and extending 155 feet northerly therefrom.

(C) Whiteman Street—Beginning at the northerly curb line of Whiteman Street and extending 155 feet northerly therefrom.

iv. Mid-block stop:

(1) Along Lemoine Avenue:

(A) Between Main Street and Bridge Plaza South—Beginning 132 feet north of the northerly curb line of Main Street and extending 149 feet northerly therefrom.]

2. (No change.)

3. Along the easterly (northbound) side in Fort Lee Borough, Bergen County:

i. Along Lemoine Avenue:

[i.] **(1)** Far side bus [stop] **stops:**

[(1) Along Lemoine Avenue:]

(A) through (G) (No change.)

(H) Washington Avenue—Beginning at the northerly curb line of Washington Avenue and extending 105 feet northerly therefrom.

[ii.] **(2)** [Midblock] **Mid-block** bus stop:

[(1)] **(A)** Between Bridge Plaza North and Lincoln Avenue—Beginning [460] **326** feet north of the northerly curb line of Bridge Plaza North and extending [168] **154** feet northerly therefrom.

ii. Along Palisade Avenue:

(1) Near side bus stops:

(A) Route 5—Beginning at the prolongation of the southerly curb line of Route 5 and extending 155 feet southerly therefrom.

(B) Palisade Terrace—Beginning at the northerly curb line of Palisade Terrace and extending 155 feet southerly therefrom.

(2) Far side bus stop:

(A) Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 100 feet northerly therefrom.

[4. Along Palisade Avenue (Route 67) northbound on the easterly side in Fort Lee Borough, Bergen County:

i. Near side bus stops:

(1) Route 5—beginning at the prolongation of the southerly curb line of Route 5 and extending 155 feet southerly therefrom.

(2) Palisade Terrace—Beginning at the northerly curb line of Palisade Terrace and extending 155 feet southerly therefrom.

ii. Far side bus stop:

(1) Horizon Road—Beginning at the northerly curb line of Horizon Road and extending 100 feet northerly therefrom.]

(b) The certain parts of State highway Route 67 described in this **sub**section are designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1. No stopping or standing in Fort Lee Borough, Bergen County:

i. Along both sides:

(1) [From the junction of Route 5 to the southerly curb line of Tom Hunter Road.] **For the entire length within the corporate limits of Fort Lee Borough including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas, no parking certain hours. Signs to be posted only in areas where an official borough resolution has been submitted.**

(c) The certain parts of State highway Route 67 described in the subsection are designated and established as "no stopping or standing" zones during certain hours. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs.

1. No stopping or standing in Fort Lee Borough, Bergen County:

i. Along the easterly (northbound) side:

(1) Between the hours of 8:00 A.M. and 4:00 P.M., between a point south of the prolongation of the southerly curb line of Lincoln Avenue and the intersection of New York Avenue.

(2) Mondays from 5:00 A.M. to 7:00 A.M. (Street cleaning) from Dahill Square to Bridge Plaza North.

ii. Along the westerly (southbound) side:

(1) Tuesdays from 5:00 A.M. to 7:00 A.M. (Street cleaning) from Bridge Plaza North to Dahill Square.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System School Year Members

Proposed Amendments: N.J.A.C. 17:2-4.3

Authorized By: Board of Trustees, Public Employees' Retirement System, Janice Nelson, Secretary.

Authority: N.J.S.A. 43:15A-17.

Proposal Number: PRN 1989-184.

Submit comments by May 17, 1989 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 17:2-4.3 eliminates the reference to 10 months as the minimum time required to receive credit for a full year of service if a school employee's work year is less than 12 months.

Social Impact

The proposed amendment will affect current and future school employees whose contractual work year is less than 12 months per year. This change will benefit such employees by allowing them a full year's service credit for their actual work year.

Economic Impact

The proposed amendment should not have any serious, adverse, economic effect upon the Public Employees' Retirement System in general due to the small number of employees who fall within the category affected by this amendment. The affected employees will benefit due to the increased service credit allowed.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules of the Division of Pensions only impact upon public employers and/or employees.

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

17:2-4.3 [Ten- and twelve-month] **School year** members

Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's credit shall be given during any consecutive 12 months[, and ten months shall be the minimum school year for which one year's credit may be allowed].

(a)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund
School Year Members
Proposed Amendment: N.J.A.C. 17:3-4.3

Authorized By: Teachers' Pension and Annuity Fund, Anthony Ferrazza, Secretary.
Authority: N.J.S.A. 18A:66-56.
Proposal Number: PRN 1989-185.

Submit comments by May 17, 1989 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 17:3-4.3 attempts to clarify the situations involving school employees whose required full year of employment is for a duration less than 12 months and eliminates the current minimum requirement of 10 months to receive such credit. If an employee's school year is less than 12 months, regardless of duration, he or she may receive credit for the full year of service credit within the Teachers' Pension and Annuity Fund (TPAF).

Social Impact

The proposed amendment will afford current and future members of the TPAF whose full year of employment actually is for a duration less than 12 months. This change will benefit school employees whose "full year" of employment is for a period of less than 12 months, by allowing them a full year's service credit for such period.

Economic Impact

The proposed amendment should not have any serious, adverse, economic effect upon the TPAF due to the fact that relatively few employees fall within the category of employees affected by this amendment. The affected employees will benefit due to the increased service credit allowed.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules of the Division of Pensions only impact upon public employers and/or employees.

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

17:3-4.3 [Ten- and 12-month] **School year** members

Members whose salaries for a school year are considered as a full year's compensation shall be given **service** credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's credit shall be given during any consecutive 12 months[, and ten months shall be the minimum school year for which one year's credit may be allowed].

(b)

DIVISION OF PENSIONS

Teachers' Pension and Annuity Fund
Purchases and Eligible Service
Proposed New Rule: N.J.A.C. 17:3-5.9

Authorized By: Teachers' Pension and Annuity Fund, Anthony P. Ferrazza, Secretary.
Authority: N.J.S.A. 18A:66-56.
Proposal Number: PRN 1989-187.

Submit comments by May 17, 1989 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front Street
CN 295
Trenton, N.J. 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to provide for immediate crediting of service purchased by a lump-sum payment. The statutes relative to various types of purchases provide that a member will receive full credit for purchased service upon the completion of one year of membership after the election to make the purchase and the payment of at least one-half of the amount of the purchase cost. These provisions have been interpreted in the past as requiring one year of membership after the election to make the purchase even if the purchase is paid in a lump sum. This interpretation can work a hardship on members who would qualify through a purchase of service credit for benefits requiring a specific amount of service credit, such as ordinary disability retirement or early retirement, but cannot satisfy the one-year membership requirement after the election to purchase because of illness or disability.

The statutory provisions relative to the one-year membership requirement can reasonably be interpreted as applying to installment purchases. For a disability retiree who is making an installment purchase, these provisions relieve the retiree from paying the full cost for the purchase. The retiree receives full credit after a year of additional membership and payment of one-half the cost. For other types of retirement, the retiree receives only a prorated amount of service credit for the amount actually paid if the person retires without completing the installment purchase. This rule would provide full pension credit for lump-sum purchases immediately. A member electing this option would not be able to benefit from the provision for payment of only half of the purchase cost in the case of disability retirement. This would only be applicable to members making installment purchases and the one-year additional membership requirement would apply.

Social Impact

This proposed new rule will benefit the members of the retirement system by permitting immediate crediting of service purchased by a lump-sum payment. Members unable to satisfy the one-year additional membership requirement would be able to make purchases and receive benefits based on the purchases.

Economic Impact

No significant economic impact on the retirement system is anticipated from the adoption of this proposed new rule. The number of persons actually making lump-sum purchases is expected to be small. For such individuals, the economic impact will be positive, as full service credit will be given upon receipt of the lump sum payment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping or other compliance requirements on small businesses. The rules of the Teachers' Pension and Annuity Fund affect only public employers and employees.

Full text of the proposal follows.

17:3-5.9 Lump-sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the Teachers' Pension and Annuity Fund Law (N.J.S.A. 18A:66-1 et seq.) and the rules of the retirement system.

RULE ADOPTIONS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Soil and Water Conservation Project Cost-Sharing
Adopted Amendment: N.J.A.C. 2:76-5.3

Proposed: February 6, 1989 at 21 N.J.R. 230(a).
Adopted: March 23, 1989 by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Filed: March 27, 1989 as R.1989 d.213, **without change.**
Authority: N.J.S.A. 4:1C-5f.
Effective Date: April 17, 1989.
Expiration Date: August 29, 1989.

Summary of Public Comments and Agency Responses:

COMMENT: The Burlington County Agriculture Development Board commented in support of the proposed amendment. The Board found the proposed amendment a timely and appropriate response to the high current demand for easement purchase funds as compared to the current demand for soil and water conservation project grants.

RESPONSE: The Committee agrees that the respective funding levels available under the proposed rule amendment reflect more accurately the relative demands for funding for easement purchases and for soil and water conservation project grants.

Full text of the adoption follows:

2:76-5.3 Approved practices and cost-share provisions

(a) (No change.)

(b) The following cost-share provisions shall be applicable for soil and water conservation projects:

1. Upon certification of a farmland preservation program or a municipally approved program, the committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

0 to 50 acres at $400/acre
51 to 100 acres at $100/acre
101 to 516.7 acres at $60/acre

i.-ii. (No change.)

2. Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76-5.6 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

i. Approval of funds shall not exceed the amount determined in (b)1 above.

ii. (No change.)

(b)

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Emergency Acquisition of Development Easements
Adopted New Rules: N.J.A.C. 2:76-9.1 and 9.2

Proposed: February 6, 1989 at 21 N.J.R. 231(a).
Adopted: March 23, 1989 by the State Agriculture Development Committee, Arthur R. Brown, Jr., Chairman.
Filed: March 27, 1989 as R.1989 d.214, **without change.**
Authority: N.J.S.A. 4:1C-5f and 31.2.
Effective Date: April 17, 1989.
Expiration Date: August 29, 1989.

Summary of Public Comment and Agency Response:

COMMENT: The Burlington County Agriculture Development Board commented in support of the proposed rules as another tool for protecting productive agricultural land. The Board stated that while comprehensive municipal master plans and ordinances which adequately protect farmland should help minimize the emergency situations addressed by the rules, the proposed rules are important for providing the flexibility necessary under genuine emergency conditions.

RESPONSE: The Committee notes the support of the Board and agrees that a matrix of complementary techniques are necessary to protect agricultural land in New Jersey.

Full text of the adoption follows:

SUBCHAPTER 9. EMERGENCY ACQUISITION OF DEVELOPMENT EASEMENTS

2:76-9.1 Scope

This subchapter sets forth the emergency conditions under which the State Agriculture Development Committee (SADC) may provide up to 100 percent funding for the purchase of development easements on farmland pursuant to N.J.S.A. 4:1C-31(c)-(e) as amended.

2:76-9.2 Emergency purchase conditions

(a) If the SADC determines that there is a substantial likelihood that the use of the land will change from productive agriculture to non-agriculture, the SADC may provide up to 100 percent of the cost of development easements on the following:

1. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where the SADC determines that the purchase would be in the interest of the State regardless of whether the respective county agriculture development board (CADB) is willing to provide funds for the purchase.

2. On farmland which conforms to the priority criteria set forth in N.J.A.C. 2:76-6 and where both the SADC and the respective CADB determines that the purchase is in their respective interests and no county funding is immediately available.

(b) The SADC may require the county to provide additional cost share funds beyond those currently required for future purchases of development easements in the event of the 100 percent SADC funding pursuant to (a)2 above.

BANKING

(c)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH
Mortgage Loans
Fees, Charges, Obligations
Adopted New Rules: N.J.A.C. 3:1-16
Adopted Repeal: N.J.A.C. 3:38-5

Proposed: May 16, 1988 at 20 N.J.R. 1021(b).
Adopted: March 10, 1989 by Mary Little Parell, Commissioner, Department of Banking.
Filed: March 10, 1989 as R.1989 d.191, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 17:1-8.1, 17:11B-5 and 13.
Effective Date: April 17, 1989.
Operative Date: July 16, 1989.
Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:

The Department of Banking (DOB) received 26 public comments in response to the proposed rules. Eleven comments were received from or on behalf of licensed mortgage bankers or brokers, five from commercial banks, two from savings banks, one from a savings and loan association, two from private attorneys, four from trade associations and one from a legislator. A summary of comments and responses follows:

N.J.A.C. 3:1-16.1

COMMENT: One comment suggests that the definition of "broker" should be clarified to expressly include those who improperly engage in unlicensed brokering activities and additional types of lenders when they act merely as brokers.

RESPONSE: Such a change is consistent with the intent of the proposed rules and will be effected.

COMMENT: Several comments address the definition of "current market yield." Several commenters suggest that the definition is ambiguous, particularly with regard to whether the phrase "during the preceding calendar year" modifies "primary secondary market purchaser" or "the yield being sought." One commenter offers that "current market yield" should be defined merely as the lock-in rate. Others point out that the definition does not contain a definition of secondary market purchaser, does not take into account that there may be no secondary market purchaser for the particular loan applied for, and/or does not address the situation of a portfolio lender.

RESPONSE: Although the DOB considers the definition to be readily understandable as proposed, it will clarify it to remove any possibility of ambiguity. The DOB rejects the suggestion to define "current market yield" as simply the lock-in rate based upon its belief that it would be unfair to compel a lender to close at a lock-in rate which may have expired through no fault of the lender. An additional definition for "secondary market purchaser" is, in the Department's view, unnecessary, particularly in view of other changes that are being made to this definition. Lastly, the DOB will expand the definition of "current market yield" to account for both portfolio lenders and special loan programs for which there may be no identifiable secondary market. Such an expansion, however, being of too substantive a nature to be incorporated upon adoption, is contained in a proposed amendment published in this issue of the New Jersey Register.

COMMENT: One comment suggests that the definition of "lender" be clarified to expressly include those who improperly engage in unlicensed mortgage banking activities.

RESPONSE: Such a change is consistent with the intent of the proposed rules and will be effected.

COMMENT: Several comments address the definition of "lock-in agreement." One commenter suggests that it should not be limited to agreements executed before commitment. One suggests that it should not include agreements to hold a rate for which the lender requests and receives no fee. A third asks whether it includes a lender's agreement to give the borrower, for no additional fee, the lower of the rate at application (for an adjustable rate loan), or one percent above the rate at application (for a fixed rate loan), and the lender's prevailing rate on the date the borrower notifies the lender to prepare for closing.

RESPONSE: The DOB rejects the suggestion to expand the definition to include post-commitment agreements to hold a rate. A lender can do this by simply issuing a fixed-rate commitment or by changing a prevailing rate commitment to a fixed-rate one. The DOB also rejects the suggestion that "no-fee" lock-ins should be excluded from the definition. The availability of "free" lock-ins may well be the reason a borrower chooses a particular lender. The DOB sees no reason why such a borrower should not have the same rights under the agreement as someone who chooses a lender who charges for a lock-in but offers perhaps other advantages to the borrower. Lastly, the DOB interprets the definition of "lock-in agreement" as not including agreements, like those described by the commenter, that offer interest rate protection until closing. Since such agreements cannot by their terms expire before closing, the additional protections afforded by the rule are unnecessary. The comment, however, does indicate a need for clarification that agreements which guarantee a rate of interest expressed by means of a formula rather than in numbers are included, as well as agreements which specify an expiration date rather than a guarantee for a specific number of days. Such a clarification will be effected.

COMMENT: Several comments address the definition of "mortgage loan." Several commenters suggest essentially that the definition be limited to loans to "consumers" for "personal, family or household purposes." One of these same commenters suggests a dollar limitation on the amount of the loan. Another commenter suggests that the definition be limited to loans requiring payment of a fee before closing. Still another offers that loans made by out-of-State lenders should be excluded.

RESPONSE: The impetus behind the rules, identified in the Summary accompanying the predecessor to this proposal, was a rash of complaints which the department received from consumers during the summer of 1986, and, again, during the spring of 1987. These complaints overwhelmingly came from individuals who had been seeking to obtain financing with which to buy a home and homeowners who had been seeking to refinance their existing higher rate mortgages. The intent of the proposed rules was clearly to afford some measure of protection to such people, as evidenced by the synonymous references to them throughout the Summary accompanying the proposal as both "borrowers" and "consumers."

Consistent with this intent, the DOB will modify the definition of "mortgage loan" in line with the suggestions offered in this regard, that is, by adding a tightly drawn definition for "borrower". Such a modification, however, being of too substantive a nature to be incorporated upon adoption, is contained in a proposed amendment in this issue of the New Jersey Register.

The DOB rejects the notion that the rule should be limited to loans which require payment of fees before closing. The DOB's perception from complaints received is that consumers are too often placed in a "take it or leave it" situation under the present rules of many lenders, with the option of withdrawing their applications not being a viable one for many, for reasons unconnected with the forfeiture of fees paid in advance.

Lastly, the DOB rejects the suggestion to exclude loans made by out-of-State lenders. The DOB considers rules applying to all first mortgage loans which are secured by properties located in New Jersey, regardless where the lender may be located. Such is consistent, the DOB believes, with the legislative intent underlying the Mortgage Bankers and Brokers Acts, N.J.S.A. 17:11B-1 et seq., and the various other laws governing mortgages and mortgage loans in New Jersey, which collectively demonstrate a legislative concern with the purchase and sale of property within New Jersey borders and the need for regulation of all possible aspects of those transactions.

COMMENT: Several commenters wish to see the definition of "promptly refund" or "return" changed to provide lenders with more time to effect refunds or returns.

RESPONSE: The DOB rejects these suggestions, believing that seven (calendar) days is sufficient. The DOB will change the definition by specifying "calendar days" instead of "days."

COMMENT: Several comments address the definition of "receipt" or "received." Some commenters suggest that it should be expanded to include definitions of "receipt by the borrower" and "receipt by the broker." Others suggest different places where receipt should be deemed effected, for example, the office designated by the lender as the place where the application will be processed, or the bank's principal lending office. Another suggests deleting branch offices or brokers' offices as acceptable places where receipt may be effected.

RESPONSE: The DOB agrees that definitions should be added to govern receipt by brokers and borrowers. These new definitions will be along the same lines as the definition contained in the proposal for receipt by a lender, except that "receipt by a borrower" will include a provision allowing for constructive receipt.

Since the rule permits a lender to designate any office as the place where documentation must be submitted, there is no need to specify more precisely at which offices receipt shall be considered effected or to delete the reference to branch offices or brokers' offices as being acceptable places to submit documents in the absence of any such designation. No change will therefore be made in response to these comments.

COMMENT: Several comments express the view that the definition of "substantial fault of the borrower" does not deal adequately or fairly with the situation where significant processing delays are the result of actions or non-actions of a third party, such as, for example, the seller, the borrower's attorney, the title company, the surveyor, the appraiser, the credit reporting agency, the borrower's employer, etc.

RESPONSE: The DOB agrees that delays by certain third parties are more properly attributable to the borrower than to the lender when attempting to assign responsibility for delay to one or the other. For this reason, the DOB will modify the definition to include failure by the "borrower's agent" to do that which the borrower is obligated to do. A definition for "borrower's agent" will be added, to wit, "a person or entity hired, contracted, requested or authorized by the borrower to supply information or documentation to the lender," with examples of who does and does not fall within this definition being included for clarity. These modifications, however, being of too substantive a nature to be incorporated upon adoption, are contained in a proposed amendment published in this issue of the New Jersey Register.

COMMENT: The definition of "substantial fault of the borrower" sets forth four scenarios in which a borrower will be deemed at fault for a delay. Several comments take issue with one or more of these scenarios.

One commenter asserts that the wording in paragraph 1 is ambiguous and suggests corrective language. Others suggest that paragraph 3 should be changed to require documents to be submitted sometime before closing, and to require the documents indicated in the closing instructions as well as in the commitment be submitted. Another suggests a change that would attach responsibility to the borrower under paragraph 5 if the borrower provides information which is "significantly inaccurate or causes the need for review . . . ."

RESPONSE: For purposes of clarity, paragraphs 1 to 4 will be reworded slightly and renumbered. Additionally, paragraph 1 will be reorganized to remove any potential ambiguity. Paragraph 3 will be modified to permit the lender to specify the date when all documentation must be submitted and to clarify that required documents will include those listed in the closing instructions as well as the commitment.

The suggestion to change paragraph 5 is rejected. If a borrower provides substantially complete and correct information, it should not be deemed the borrower's fault if the lender should determine near the end of the processing cycle that further review is warranted.

COMMENT: Several comments address the definitions of "in a timely manner" and "significantly inaccurate" which are included as paragraph 5 within the definition of "substantial fault of the borrower." One commenter suggests that seven calendar days is not sufficient time for the lender's attorney to review the documents. Others indicate that information should be deemed "significantly inaccurate" if the correct information "could" or "would, in the lender's opinion" cause the borrower not to qualify for the loan or the secondary market purchaser to refuse it.

RESPONSE: The first of these comments is rejected. Review time is within the lender's control, that is, the lender need but make its request sufficiently in advance to permit both a seven-day response and an adequate period for attorney review. The second comment is accepted. The phrase in question will be modified to read "would, in the reasonable opinion of the lender . . . ."

COMMENT: One comment suggests that the definition of "trust funds" in this section should exclude escrows for completion of repairs, etc.

RESPONSE: This comment is rejected. Such escrows are intended to fall within the definition of "trust funds."

COMMENT: One comment suggests that a definition of "day" is needed to specify that it refers to "calendar day" unless otherwise stated.

RESPONSE: Such a change is unnecessary since all references in the regulation to "day" will identify whether it is a "business" or a "calendar" day. A definition of "business day" will be added.

N.J.A.C. 3:1-16.2

COMMENT: One comment asserts that the term "application fee" should be defined as any fee imposed by a lender for accepting or processing a mortgage loan application.

RESPONSE: The DOB agrees to such a change, which merely brings the definition of the term "application fee" in line with its long-accepted meaning.

COMMENT: Several comments object to the inclusion in the definition of "commitment fee" of the qualification that the amount of the fee be "reasonably related to its purpose." They view this qualification as a form of price fixing and unworkable. Another comment expresses a need to clarify the distinction between "commitment fee" and "discount points."

RESPONSE: The DOB believes the subject qualification to be necessary to prevent lenders from simply including within their "commitment fees" what are ordinarily considered "discount points" (which can be considered part of the lender's consideration for making the loan), thereby enabling them to collect those points before closing. The lender is free to set its commitment fee at whatever level it deems appropriate to cover its risk that the loan once committed does not close. However, when the fee is set at a level which, when viewed together with the discount points associated with the loan, appears to have no reasonable relation to the attendant risk, it appears appropriate at least that a question be raised and the matter be subject to DOB review.

The DOB further believes that the distinction between "commitment fee" and "discount points" requires no further clarification. As stated in the definition, a "commitment fee" is the licensee's consideration for becoming bound to make the loan and is payable only if and when the licensee becomes so bound, that is, when the commitment is accepted. Discount points, on the other hand, are payable only at closing, and represent, implicitly, at least, consideration for actually making the loan.

COMMENT: Several comments suggest that the definition of "lock-in-fee" should be modified to make clear that a lock-in-fee can be collected a brief time before inception of the lock-in period. The commenters maintain that lenders should not be forced to secure secondary market coverage for a lock-in before they have collected the lock-in fee.

RESPONSE: The DOB rejects this suggestion. Once a lock-in agreement is executed by both parties and the lock-in fee paid, the lender is bound, in the event the loan is approved and closed within the lock-in period, to deliver the agreed rate. That a lender may have to use its own funds to secure secondary market coverage or is unable to secure coverage for the agreed rate or, even, perhaps, chooses not to secure coverage, does not and should not affect the lender's obligation under the agreement.

COMMENT: Two comments point out that a "warehouse fee" is a fee charged "by" rather than "to" a lender for the cost associated with holding the mortgage loan pending its sale to a permanent investor.

RESPONSE: The DOB agrees to make this technical correction.

COMMENT: Several comments address the language in N.J.A.C. 3:1-16.2(a)7 which permits lenders to be reimbursed for "third party charges." One or more commenters specifically maintain that lenders should be permitted to recoup from borrowers the following fees: outside counsel review fee, tax service fee, certified check fee, certified check fee that includes a processing fee added by the lender, inspection fee (to cover the cost of a pre-closing inspection on a loan involving new construction), update fee (for new credit checks where the original ones lapsed), and mortgage insurance premiums. Another commenter suggests that only charges for "costs associated with the lender's overhead" not be reimbursable from borrowers.

RESPONSE: Outside counsel document review fees, update fees, certified check fees, inspection fees and one-time mortgage insurance premiums paid by lenders to third parties appear to be legitimate "third party charges" under the proposed rule which may be recouped from borrowers. A processing fee added by a lender to a certified check fee is clearly associated with the lender's overhead and should not be reimbursable from a borrower. Tax service fees are fees charged by service companies to lenders who choose to procure their services to administer their tax escrow accounts for them. As such, tax service fees represent a double charge to borowers—the service fee itself and a separate fee equal to the interest the lender earns on the borrower's money while it is held in escrow. The DOB therefore believes it inappropriate to permit tax service fees to be reimbursable from borrowers.

The DOB further believes that the qualifying language in the rule is necessary to prevent lenders from unfairly charging borrowers for things that should be part and parcel of their business operations and do not represent expenses incurred on behalf of borrowers. To clarify this, a modification will be made to the rule that reimbursable third party charges will include only "charges paid or actually incurred by a lender on behalf of a borrower incident to the processing of a mortgage loan application or the closing of the loan."

COMMENT: One comment suggests that "discount points," defined in N.J.A.C. 3:1-16.28a, should be collectible at any stage in the application process. Another suggests that they should be collectible "on or after commitment." A third suggests that they be collectible at application in the form of "origination fees".

RESPONSE: These suggestions are rejected. The DOB has observed that the collection of discount points by lenders early in the application process places borrowers in a position of economic duress should the process not proceed in accordance with their expectations, particularly when points are collected before even a commitment is issued. Once a commitment is issued and accepted, the lender may collect a commitment fee, which may be expressed in terms of a percentage of the loan amount.

COMMENT: One comment suggests that the prohibition in N.J.A.C. 3:1-16.2(b) against a lender charging any fee not enumerated in (a) would forbid the charging of any post-closing fee, including a fee to convert one of the newly developed "convertible" loans from a variable to a fixed rate. The implication of the comment is that post-closing fees should not be regulated.

RESPONSE: The provision was not intended to prohibit post-closing fees, such as the conversion fee mentioned by the commenter or late fee, etc. Its scope is no broader than the authorization in subsection (a) to charge enumerated fees "incident to the origination, processing or closing of a mortgage loan" and it will be deleted as mere surplusage.

N.J.A.C. 3:1-16.3

COMMENT: Several comments question the need for the disclosure required in N.J.A.C. 3:1-16.3(a), maintaining that Federally mandated

disclosures, required to be made within three days following a lender's receipt of the application, should be deemed sufficient. One comment questions whether the requirement applies in the case of telephone applications.

RESPONSE: The suggestion to delete this requirement is rejected. The DOB believes that the subject disclosure serves a useful purpose, much like a receipt consumers might demand when they order goods and pay a deposit. The information that must be provided is simple and minimal, can be mostly pre-printed and may be included as part of the application itself, so that the burden on lenders is negligible.

If and when a fee is accepted as part of a telephone application, the requirement in this subsection to make written disclosure applies.

COMMENT: Several comments address the requirement in N.J.A.C. 3:1-16.3(a)4 that the lender provide in its disclosure "a realistic estimate of the time required to issue a commitment." Some commenters argue that there is not enough information available at application upon which to make such an estimate. Some argue for a good faith "range" within which the commitment is "likely" to be given. One asserts that the estimate should not have to be given until no later than three days following receipt of the application. One asks whether the estimate must be a date specific, and one questions the wording of the provision, asserting that it should more correctly refer to the "time required to process the application to enable the lender to issue the commitment."

RESPONSE: The DOB is of the view that borrowers need to know, before paying any money, how long the process is expected to take, and to be able to rely upon that information to a great extent. The burden upon the lender, moreover, is not a great one. Significantly, the rule does not set limits on processing times. Rather, each lender is permitted to set its own limits, consistent, presumably, with current experience and business objectives. Should a lender receive an application which, upon subsequent review, appears likely to require extended processing, the lender may simply redisclose the more realistic time frame, making clear that if the borrower is not satisfied, he or she may withdraw the application and receive a prompt refund of all fees paid.

The DOB will modify the proposed disclosure to require provision of "a realistic estimate of the number of days required to issue a commitment following receipt of the application by the lender."

COMMENT: Several comments ask that some measure of flexibility be introduced into the requirement in N.J.A.C. 3:1-16.3(a)5 that the lender disclose the "name of a person" to whom questions may be addressed. Suggestions in this regard include that lenders have the option of providing a person's title or the name of a department within the organization.

RESPONSE: The DOB will modify this provision to permit the title of a person to be disclosed in lieu of a name.

COMMENT: One comment suggests that lenders be required to also provide a detailed description of the mortgage loan process as part of their initial disclosure.

RESPONSE: While such information might be helpful to a segment of borrowers, the DOB is of the view that borrowers pay most attention to those disclosures which are most relevant to their immediate situations, such as disclosures concerning fees when paid, lock-ins when executed, and commitments when issued.

A requirement for the disclosure of more general information about the mortgage loan process would, we believe, exceed the appropriate reach of this rule. The DOB, however, will investigate the possibility of developing or encouraging the development of such materials and will seek assistance in this endeavor from relevant industry trade associations, Federal and other State agencies and individual lenders.

COMMENT: Three comments suggest that the three-day disclosure requirement in N.J.A.C. 3:1-16.3(c) is duplicative of Federal requirements and should therefore be eliminated. One comment questions whether the three-day disclosure requirement applies in the case of telephone applications.

RESPONSE: The DOB agrees that where Federal law requires such a disclosure, the requirement in this rule is duplicative. However, there may be situations where the Federal law does not apply. In any event, the elimination of duplication is covered under N.J.A.C. 3:1-16.10.

The disclosure is intended to be required even in the case of applications taken by telephone. The DOB will modify the rule to make this clear.

COMMENT: Two comments suggest that if "settlement charges" include charges collected before closing, their disclosure would be duplicative and, hence, unnecessary.

RESPONSE: The DOB believes this disclosure serves a useful purpose even though some of the information contained in it may be disclosed elsewhere. It represents the only document, other than the settlement sheet at closing, that gives the borrower an idea how much the loan will actually cost, including interest, points, and all the various additional charges and costs associated therewith.

COMMENT: Subsection (d) gives borrowers the right to withdraw an application and, under three specified sets of circumstances only, to receive a refund of fees paid. One commenter suggests that a provision be included making the borrower responsible to pay additional fees and charges where the lender so advises the borrower before withdrawal. The example the commenter gives is where a lender orders a follow-up credit check without first receiving payment therefor from the borrower. Another commenter questions whether this provision applies to a withdrawal from a lock-in agreement and whether it requires return of a lock-in-fee. A third commenter asks whether non-refundable fees may include charges associated with the lender's overhead.

RESPONSE: The DOB rejects the first suggestion. The DOB's view is that borrowers should not be responsible to pay additional fees once they have withdrawn the application and that lenders can adjust their business practices accordingly.

Lock-in fees are required to be refunded following withdrawal of an application only in the three specified scenarios. Otherwise, the refundability of such fees is determined by the language in the lock-in agreement.

Lastly, the rule permits lenders, by appropriate disclosure, to make many fees non-refundable, including application fees that include or wholly represent costs associated with the lender's overhead, and generally gives effect to "non-refundability" provisions. It is only in the particular circumstances specified that such provisions are, in effect, overridden by the rule.

COMMENT: One set of circumstances specified in the rule which will require the return of otherwise "non-refundable" fees is where the lender has failed to issue a commitment within the time frame disclosed at application through no substantial fault of the borrower. Several commenters object to being required to return fees in situations where they were not to blame for the delay. Another commenter suggests that lenders who use staff appraisers be permitted to retain appraisal fees. Yet another asserts that issuance of a credit denial within the disclosed time frame should render this provision inapplicable.

RESPONSE: The modification of the definition of "substantial fault of the borrower" which the Department has indicated will be proposed answers the first of these comments. The DOB agrees with the thrust of the second comment that the wording of this provision, in effect, penalizes institutions who decide to use staff appraisers. The DOB will modify the language to allow institutions not to refund expended appraisal fees, regardless whether those fees are paid to staff or outside appraisers. Lastly, the DOB will make explicit that a justifiable credit denial within the promised time frame will not trigger a refund of non-refundable fees.

COMMENT: Another set of circumstances specified in the rule which will require the return of otherwise "non-refundable" fees is where the application is denied, or a commitment is issued on terms and conditions substantially dissimilar to those for which applied, for reasons the lender essentially should have known at application. One comment expresses a need to define the term "substantially dissimilar." Another questions whether the provision permits borrowers to accept "dissimilar" but otherwise advantageous deals. Another questions whether "non-refundable application fees" would have to be refunded under this provision. Yet another suggests that the requirement to refund under this provision should only apply where the lender had actual knowledge at application that the borrower did not qualify for the loan for which he or she applied. A final comment points out that the loan originator may not be the loan underwriter.

RESPONSE: The DOB agrees that a definition of "substantially dissimilar" would be helpful and will add such a definition.

If a borrower accepts a "substantially dissimilar" commitment, the provision, on its face, does not apply. The phrase "all funds paid to the lender" includes "non-refundable application fees." The DOB considers a subjective standard of "actual knowledge" to be unworkable and unfair to borrowers and rejects this suggestion. Lastly, while the DOB understands the distinction between loan originators and loan underwriters, it believes that lenders have an obligation to keep their originators well informed and current on the lenders' products and general underwriting standards.

N.J.A.C. 3:1-16.4

COMMENT: Subsection (a) provides what information shall be contained in a lock-in agreement. One comment suggests that a "commitment

fee" can also be locked-in and, if it is, should be disclosed. Another comment asks whether the provision applies to telephone applications.

RESPONSE: The DOB agrees that disclosure is appropriate in the event a commitment fee is locked-in and will add language to require such disclosure. This provision requires that all lock-in agreements be in writing, regardless that the application itself may have been verbal.

COMMENT: Subsection (b) requires the lender to make a good faith effort to process the application before the expiration date of the lock-in. One comment suggests that the phrase "and any extension thereof" be added to cover the situation where a lender agrees to an extension.

RESPONSE: The DOB agrees with this suggestion and will insert the quoted language.

COMMENT: Subsection (c) requires a refund of a lock-in fee to a borrower in the event the loan application is denied. One comment raises the possibility that the lock-in fee may have been paid by someone other than the borrower, in which case the refund should be paid to that person.

RESPONSE: The DOB acknowledges this possibility and will modify the language of this provision to require the lender to simply "refund any lock-in fee."

COMMENT: Subsection (d) specifies that lock-in agreements submitted by mail or through a broker must be ratified in writing by the lender to be effective and that the borrower may rescind the agreement until receipt of such ratification. One comment argues that the ratification requirement is too one-sided in favor of the borrower in a volatile market. Another comment suggests that a borrower's rescission should be effective upon mailing. A third suggests a need for specification as to an appropriate form of ratification. A fourth argues for a definition of "receipt" by the borrower. Yet another comment offers that the final sentence of this subsection should read: "If a borrower elects to so rescind, the lender shall promptly refund any lock-in fee paid." A final comment argues that there should be an exception to the ratification requirement where the lender actually signs the lock-in agreement and issues it to the borrower, who, in turn, signs the agreement and returns it to the lender by mail or through a broker.

RESPONSE: The DOB rejects the argument that this provision is overly protective of borrowers. Indeed, the ratification requirement offers protection to lenders in a volatile market by permitting them to reject an agreement when rates have rapidly escalated, and to make a counter-offer.

The DOB agrees that a rescission should be effective upon mailing of a notice of same to the lender. Language to that effect will be added to this subsection.

The suggestion of a need for a specified form of ratification is rejected in favor of a modification which would merely require that the lock-in agreement be signed by the lender before it becomes effective and would permit the borrower to rescind until receipt of a copy of the fully executed agreement. This modification also serves to respond to the request for an exception for lock-in agreements which are pre-executed by the lender.

A definition of "receipt" by a borrower will be proposed (see comment to N.J.A.C. 3:1-16.1).

Lastly, the DOB agrees that the language offered by one commenter to replace the last sentence of this subsection is an improvement, and will make such a modification.

N.J.A.C. 3:1-16.5

COMMENT: One comment questions how the disclosure requirements in subsection (a) affect telephone applications.

RESPONSE: The DOB will modify the proposal to make clear that any commitment, whether it be the end result of a written or a telephone application, must be in writing.

COMMENT: A comment relative to paragraph (a)4 asks whether a prevailing rate commitment must provide a "basis, index or method" with which to determine the rate at closing.

RESPONSE: Subparagraphs (a)4i and ii are alternate procedures, that is, if a lender chooses not to tie the rate to a basis, index or method as provided in (a)4i, it may simply provide in its commitment the explanatory (and cautionary) language required in (a)4ii.

COMMENT: A comment relative to subparagraph (a)4ii suggests that for clarity the quoted language therein be changed to read "The interest rate will be the rate established no later than ___ days before closing by the lender in its discretion as its prevailing rate." Another comment to this subparagraph expresses concern that it would not permit a rate policy that gives the borrower the higher of the rate at application or the rate when he or she requests a closing.

RESPONSE: The DOB will modify the rule in response to both of these comments by changing the required disclosure to "The interest rate will be the rate established by the lender in its discretion as its prevailing rate" followed by a statement indicating when the prevailing rate will be set.

COMMENT: A comment relative to subparagraph (a)4iii suggests that DOB add the word "necessarily" to the required disclosure after the word "not". Another comment suggests that the disclosures required by the paragraph be "assuming the prevailing rate on the date the commitment issued." A third comment asserts that this disclosure requirement will only confuse borrowers.

RESPONSE: The DOB accepts the first two of three suggestions and will modify the required disclosure accordingly. The DOB believes that the disclosure will not be confusing to borrowers, but will add language that the disclosure is for illustrative purposes only. The alternative of simply not requiring disclosure of finance charge, annual percentage rate and payment schedule in a prevailing rate loan commitment is deemed less desirable.

COMMENT: One comment to paragraph (a)5 argues that disclosure of the amount of a commitment fee in the commitment should not be required since it must have already been disclosed in the three-day disclosure.

RESPONSE: The DOB rejects this argument since the commitment is the logical place for disclosure of a commitment fee regardless that the amount of that fee may have been previously disclosed.

COMMENT: Redundancy was also cited in one comment as a reason not to require the disclosure mandated in paragraph (a)6. Another comment suggests that the disclosure should be for "All other charges to be paid by the borrower . . ."

RESPONSE: We accept the latter suggestion and observe that it resolves much of the redundancy problem identified in the former. As to any remaining redundancy, the DOB believes it to be necessary.

COMMENT: A comment states that the disclosure mandated in paragraph (a)7 for variable rate loans needs to be reconciled with the new Regulation Z requirements.

RESPONSE: The more comprehensive Regulation Z requirements, where they apply, will have to be met notwithstanding this provision. Should it be determined that Regulation Z requirements are in some way inconsistent with, rather than merely more comprehensive than, the requirements of this section, the DOB will modify its requirements accordingly at a later date.

COMMENT: One comment suggests the addition of language to the effect that some of the disclosures required by subsection (a) may be estimates.

RESPONSE: The DOB will add such language.

COMMENT: One comment asserts that the disclosure requirements contained in subsection (a) do not address telephone applications.

RESPONSE: The DOB will modify the proposal to expressly require a written commitment to be issued in connection with any application.

COMMENT: A comment suggests the addition of language permitting the disclosures required by subsection (a) to be made in one or more documents.

RESPONSE: The DOB rejects this suggestion. The rule in its present form already permits this.

COMMENT: Numerous comments address the requirement in subsection (c) that the terms of a prevailing rate loan be fixed no later than three business days before closing. The main thrust of the comments is that this requirement will merely serve to delay closings. A predominant concern expressed in the comments, moreover, is how redisclosure is to be effected. Several commenters also suggest the addition of a waiver provision.

RESPONSE: The DOB believes that fixing of terms prior to closing is important to lenders and borrowers alike, to provide adequate time to prepare for closing, to eliminate or, at least, reduce "surprises" at closing, etc. The DOB is, however, attentive to the concerns about delaying closings and the appropriate form of notification and will modify the provision to require redisclosure only if and in whatever form, oral or written, the borrower requests. The suggestion to permit waivers of the 3-day requirement to fix the loan terms is rejected, since it would likely result merely in the inclusion of standard waiver forms in all loan packages.

COMMENT: One comment to subsection (d) asks whether all of the listed conditions must apply before the commitment fee shall be deemed refundable under that provision.

RESPONSE: The DOB will modify the provision by adding the word "and" after the first condition listed to make clear that all conditions must be met.

COMMENT: One comment suggests that the second condition in subsection (d) should read: "Any requirement of the loan purchaser not set forth in the commitment is not met." This is intended to allow lenders to retain commitment fees in cases where the borrower fails to fulfill an express condition in the lender's commitment, which may also happen to be a condition of the loan purchaser.

RESPONSE: The comment is rejected. The DOB believes that retention of a commitment fee under those circumstances would be permitted without modification of the language in this subsection.

COMMENT: Several comments to the third condition listed under subsection (d) suggest the need for a definition of "powerless to attain compliance."

RESPONSE: The DOB will modify the language of this condition to require that the borrower is "willing but unable to attain compliance."

N.J.A.C. 3:1-16.6

COMMENT: One comment suggests that it is too difficult under the rule for the lender to prove that a lock-in period expired "through no substantial fault of the borrower."

RESPONSE: This comment is rejected. The DOB believes that adequate systems and record-keeping will suffice to enable lenders to prove compliance under the rule, particularly in view of the modification which will be made to the definition of "substantial fault of the borrower," as previously discussed.

COMMENT: A comment points out that it is redundant to say, in paragraph (a)1, that the lender shall refund "any lock-in fee and any commitment fee," since a lock-in fee is defined as part of the commitment fee.

RESPONSE: The DOB rejects this comment, believing the language of the rule to present less chance of misinterpretation.

COMMENT: Numerous comments address paragraph (a)2. Chief among them is an assertion that the provision is ambiguous in situations where a commitment has been issued, that is, that to require a commitment to be extended "14 days following [its] issuance" makes little sense. Other comments include that: the provision is unfair to lenders who are unable to close because of problems beyond their control; lenders, not borrowers, should be given the option whether to refund fees or close; borrowers are not adequately protected by the provision in cases where the commitment is issued near expiration of the lock-in; the provision does not allow lenders to give the lock-in rate where it may be advantageous for them to do so; and the provision should only provide for return of the lock-in fee where the lock-in period expires.

Commenters also questioned: whether the requirement to refund the lock-in fee where the loan closes above the lock-in rate would have any effect upon enforceability of the commitment; whether the term "gross profit or spread" includes investors' servicing fees or points attributable to a lender's overhead; how this section applies to portfolio lenders; and whether a lender is permitted under this provision to receive the same "gross profit or spread" as if the loan had closed on time.

RESPONSE: The DOB agrees that the proposed language in paragraph (a)2 is ambiguous and in need of clarification. The provision will be clarified to expressly indicate that (1) when a commitment is issued before the expiration date of the lock-in, the lender's obligation shall be to extend the lock-in (and the commitment, if necessary) for up to 14 days following expiration of the lock-in and (2) when a commitment is not issued before the expiration date of the lock-in, the lender's obligation shall be to extend the lock-in for up to 14 days following issuance of the commitment. This clarification also serves to answer the comment that the provision does not adequately protect borrowers in cases where the commitment is issued only a short time before the lock-in expires. The rule gives borrowers a minimum of 14 days to close in that circumstance.

The DOB disagrees with the assertions that this provision is, in one way or another, unfair to lenders, particularly in view of previously discussed modification of the definition of "substantial fault of the borrower" proposed in this issue of the New Jersey Register. The DOB is also of the belief that a requirement to refund the lock-in fee under these circumstances, standing alone, would not represent an adequate remedy for borrowers who have relied upon lenders' promises and representatives.

The DOB sees nothing in the rule which would prevent a lender from closing at the lock-in rate rather than the "current market yield" in situations where it might be advantageous for it to do so. The lender's mandate is to close at "a rate and points which are <u>no higher than</u> that which would provide a current market yield."

The DOB sees the rule as having no effect upon the enforceability of a commitment. Based upon the definition set forth in the rules for "current market yield," points attributable to the lender's overhead would be viewed by the DOB a part of a lender's "gross profit or spread." Investors' servicing fees, however, would not, since they would be part of "the yield being sought" by the investor for the loan and thus a part of "current market yield."

The applicability of this section to portfolio lenders is addressed by the previously discussed modification which will be made to the definition of "current market yield."

Lastly, the DOB believes the provision is clear that lenders who must close loans under this provision at the "current market yield" are entitled to receive "no gross profit or 'spread' " on those loans.

COMMENT: One comment to subsection (b) suggests that the provision expressly permit commitments to be extended longer than 14 days if the borrower and lender agree.

RESPONSE: The DOB rejects this suggestion. The provision does not prohibit lenders from granting further extensions.

N.J.A.C. 3:1-16.7

COMMENT: The only comment received suggests that "reasonable notice" be defined somewhere in the regulation to mean notice provided to the lender "at least seven business days before closing."

RESPONSE: The DOB rejects this suggestion, believing that what constitutes "reasonable notice" will depend upon individual circumstances as well as the lender's specific instructions.

N.J.A.C. 3:1-16.11

COMMENT: One comment to subsection (a) suggests that brokers should be able to collect points "up front" in cases where the borrower anticipates closing more than 30 days from application or has filed an application with another lender.

RESPONSE: The DOB rejects this suggestion, believing that borrowers should not have to put up substantial sums of money in connection with a mortgage loan application before they receive an acceptable loan commitment.

COMMENT: One comment to paragraph (b) 5 asserts that the specific services provided by brokers are intangible and not quantifiable, implicitly suggesting that this requirement be deleted.

RESPONSE: The DOB rejects the implicit suggestion to delete this disclosure requirement, believing borrowers to be entitled to know exactly what services, tangible or intangible, the broker is offering to perform in return for its fee.

COMMENT: One comment to subsection (c) asks what happens if a lender issues a commitment which is generated electronically at the broker's office.

RESPONSE: So long as the commitment is issued and executed by the lender in its own name, the fact that the commitment was generated electronically at the broker's office would not violate the prohibition set forth in this subsection.

COMMENT: One comment to this section suggests the addition of a new subsection stating that a lender is not responsible for monitoring compliance by brokers with this subsection.

RESPONSE: The DOB rejects the suggestion to add such a provision, believing that the rule clearly places that responsibility solely on the broker.

N.J.A.C. 3:1-16.12

COMMENT: Two comments suggest that a 60 day lead time for implementation of this rule is too short.

RESPONSE: The DOB accepts the suggestion to increase the lead time, to 90 days (July 16, 1989) particularly in view of the further substantial changes to be proposed and adopted.

General Comments

COMMENT: One comment asserts that a better approach to dealing with the problems with which these rules are concerned is to more effectively and harshly deal on an individual basis with those lenders which abuse consumers.

RESPONSE: One of the problems with the suggested approach lies in defining under what circumstance a lender shall be deemed to be "abusing" its customers. These rules attempt, among other things, to do that. The comment is therefore rejected.

COMMENT: One comment suggests that the rules be withdrawn asserting that it will be costly, unnecessary, burdensome to lenders and disruptive.

RESPONSE: The DOB rejects this comment believing the rules to be necessary, fair to both lenders and borrowers and not overly burdensome

to the great majority of lenders who conduct their businesses honestly and efficiently.

COMMENT: One comment suggests the addition of a penalty provision.

RESPONSE: Effective enforcement and penalty provisions already exist in the statutes governing the various categories of mortgage lenders for violation of Departmental regulations.

COMMENT: One comment suggests that the rules "sunset" after one year, thereby mandating that the Department take a fresh look at the situation and assess how well the rules have worked.

RESPONSE: The DOB is and will be open to suggestions for additional modifications to the rules as the need may arise. The DOB believes that such a flexible and responsive approach is preferable to an automatic sunset provision such as is suggested and therefore rejects this suggestion.

COMMENT: One comment asserts that no disclosure other than those mandated by Federal Regulation Z should be required.

RESPONSE: The DOB disagrees, believing the additional disclosures required by the rules to be both necessary and not overly burdensome.

COMMENT: One comment offers that the rules may cause lenders not to offer certain types of loan options, such as lock-ins, thereby transferring interest rate risk entirely to borrowers.

RESPONSE: The comment is rejected as mere speculation. The DOB believes the rules to be sufficiently fair and flexible not to cause attractive loan options to become unavailable. In the unlikely event that they do, the DOB will review the rules to determine whether they continue to serve the public interest.

COMMENT: One comment suggests that the rules will destroy the dual banking system in New Jersey by forcing State-chartered institutions, to remain competitive with their Federal counterparts, to convert to Federal charters.

RESPONSE: The DOB rejects this comment. Most depositories should find their operations affected in only minor ways by the rules. Moreover, the DOB expects the rules to establish industry standards for the processing of mortgage loan applications, standards which Federally chartered depositories will find themselves compelled by competitive forces to comply. Enabling legislation to make the rules applicable to Federal depositories is also a possibility.

Full text of the adopted repeal can be found at N.J.A.C. 3:38-5.

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

SUBCHAPTER 16. MORTGAGE LOANS, FEES, CHARGES, OBLIGATIONS

3:1-16.1 Definitions

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

"Broker" means any *[New Jersey licensed]* mortgage broker ***as that term is defined in N.J.S.A. 17:11B-1d***, or any *[New Jersey licensed mortgage banker]* ***lender*** when accepting and processing a mortgage loan application on behalf of a lender which will issue the commitment or loan denial.

Business day" means any day on which the office or offices of the lender or broker are open to the public to provide financial services. A day shall not be regarded as a business day solely because the lender or broker conducts some transactions by appointment for particular customers on that day. A day may be a business day even though the lender or broker does not make entries into the books of the business on that day.

"Current market yield" means the yield being sought***, for the type of mortgage loan applied for,*** by the *[lender's primary]* secondary market purchaser ***which purchased the highest dollar volume of such mortgage loans from the lender*** during the preceding 12-month period.

"Lender" means a bank, savings bank, savings and loan association, credit union, or *[New Jersey licensed]* mortgage banker ***as defined in N.J.S.A. 17:11B-1c***.

"Loan commitment" or "commitment" means a signed statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

"Lock-in agreement" means an agreement between the lender and the borrower, executed at any time prior to issuance of a commitment, whereby the lender guarantees for a *[stated period of time]* ***specified number of days or until a specified date*** the availability of a specified rate of interest ***or specified formula by which the rate of interest will be determined*** and/or specific number of discount points, provided the loan is approved and closed within that stated period of time. The term "lock-in agreement" does not include an agreement to fix the rate on a prevailing rate loan 12 or fewer days before closing where appropriate disclosures have been made under the provisions of this subchapter.

"Mortgage loan" means any closed-end loan ***to a borrower which is*** secured by a first mortgage on real property located in New Jersey on which there is a one to six family dwelling, a portion of which may be used for nonresidential purposes.

"Promptly refund" or "return" means to refund or return to the borrower within seven ***calendar*** days following receipt of a written request for same from the borrower.

"Receipt" (or "received") means***:***

1. In the case of the lender, actual receipt (or actually received) at the office ***or by the person*** designated by the lender ***or broker*** as the place where ***or the person to whom*** the application or documentation must be submitted or, if no such place ***or person*** is designated, at the lender's ***or broker's*** principal office or any of its branch offices *[or, if the lender is acting through a broker, at the broker's office]* ***; or***

2. In the case of a borrower, actual receipt (or actually received) where the document or correspondence is personally delivered to the borrower or sent to the borrower by registered or certified mail or by means of a commercial delivery service, or three days following deposit in the regular U.S. mail*.

"Substantial fault of the borrower" means that ***the borrower***:

1. *[The borrower has failed]* ***Failed*** to provide ***in a timely manner*** information or documentation required by the lender *[in a timely manner]*;

[2. The borrower or the borrower's attorney has failed to close the loan on or before the date specified by the lender;]

2. Provided or omitted any information, in the application or subsequently, which upon verification proves to be significantly inaccurate causing the need for review or further investigation by the lender;

3. *[The borrower has failed]* ***Failed*** to produce *[at]* ***on*** or before the *[closing]* ***date specified by the lender***, all of the documentation specified in the commitment ***or closing instructions*** as being required for closing; or

[4. The borrower has provided or omitted any information, in the application or subsequently, which upon verification proves to be significantly inaccurate causing the need for review or further investigation by the lender.]

4. Failed to be ready, willing and able to close the loan on or before the date specified by the lender.

5. For purposes of this definition:

i. A borrower provides information or documentation "in a timely manner" if such information and documentation is *[delivered to and]* received by the lender within seven calendar days after the borrower receives a request for same; and

ii. Information is "significantly inaccurate" if the ***correct*** information *[as verified]* would***, in the reasonable opinion of the lender,*** cause the borrower to be disqualified for the type of loan for which the borrower has applied or *[would]* cause the secondary market source for which the loan is being originated to refuse to purchase the loan.

"Trust fund***s***" means funds which are held in accordance with the terms of a written agreement between the lender and the borrower or seller, which provides that upon the occurrence of a specific condition or event the funds or a portion thereof shall be disbursed to the borrower or seller. Trust funds do not include escrows collected or held by the lender for taxes and insurance.

3:1-16.2 Fees and charges

(a) No lender shall charge a borrower any fees incident to the origination, processing or closing of a mortgage loan other than the following, except as otherwise permitted by State and Federal law.

1. Application fee: Defined as any fee imposed by a lender or broker for accepting *[and]* ***or*** processing a mortgage loan application. The application fee shall not be based upon a percentage of the principal amount of the loan or the amount financed;

2. Credit report fee;

3. Appraisal fee;

4. Commitment fee: Defined as a fee, exclusive of third-party charges, imposed by a lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its commitment and payable on or after acceptance of the commitment, except a lock-in fee charged pursuant to (a)5 below. The amount of any commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan or the amount financed;

5. Lock-in fee: Defined as that portion of the commitment fee charged by a lender as the consideration for execution and fulfillment of the terms of a lock-in agreement. No lock-in fee shall be received by a lender prior to inception of the lock-in period;

6. Warehouse fee: Defined as a fee charged *[to]* ***by*** a lender for the cost associated with holding the mortgage loan pending its sale to a permanent investor and payable at closing;

7. Reimbursement for third party charges paid or actually incurred by a lender *[for services rendered]* ***on behalf of a borrower*** incident to the processing of a mortgage loan application ***or the closing of the loan***. Reimbursable third-party charges shall not include costs associated with the lender's overhead, charges incurred by a person or entity other than the lender, or charges for activities ***to be*** undertaken or events *[occurring]* ***to occur*** after the loan closing; and

8. Discount points or fractions thereof: A discount point is defined as an amount of money equal to one percent of the principal amount of the loan and payable only at closing.

[(b) No lender may charge any fee in connection with a mortgage loan not expressly authorized in (a) above or specifically otherwise authorized by State or Federal law.]

3:1-16.3 Application process

(a) Before accepting any application fee in whole or in part, any credit report fee, appraisal fee or any fee charged as reimbursement for third party charges, a lender shall make written disclosure to the borrower (which disclosure may be contained in the application) setting forth:

1. An identification of the type, nature and amount of each such fee or charge;

2. Whether all or any part of such fees or charges are refundable;

3. The terms and conditions for the refund, if all or any part of the fees or charges are refundable;

4. A realistic estimate of the *[time]* ***number of days*** required to issue a commitment ***following receipt of the application by the lender***; and

5. The name ***or title*** of a person within the lender's organization to whom the borrower may address written questions, comments, or complaints and who will be required to promptly respond to such inquiries.

(b) The disclosures required in (a) above shall be acknowledged in writing by the borrower and maintained by the lender and a copy of such acknowledgment shall be given to the borrower.

(c) Not later than three business days after the lender receives the borrower's *[written]* application, or before closing of the loan, whichever is earlier, the lender shall provide the borrower with a good faith estimate as a dollar amount or range of each charge for a settlement service which the borrower is likely to incur.

1. For the purpose of this subsection, "settlement service" shall mean a charge which the lender anticipates the borrower will pay at or before settlement based upon the lender's general experience.

2. With respect to the settlement charges imposed on a borrower by the lender (and not by third parties), the lender shall indicate which, if any, of such fees are refundable in whole or in part and the terms and conditions for such refund.

(d) The borrower may, without penalty or responsibility to pay additional fees or charges, withdraw an application at any time prior to acceptance of a commitment. Upon such withdrawal, the lender shall be responsible to refund to the borrower only those fees and charges to which the borrower may be entitled pursuant to the terms set forth in the written disclosure required by (a) above, except that:

1. Where the lender has failed to provide the borrower with the written disclosure required by (a) above, the lender shall promptly refund to the borrower all funds paid to the lender;

2. Where the lender has failed to issue a commitment ***or justifiable credit denial*** and its realistic estimate of the time needed to do so has expired through no substantial fault of the borrower and the borrower has withdrawn his ***or her*** application as a result, the lender shall promptly refund to the borrower all funds paid to the lender except ***appraisal fees and*** fees paid or actually incurred by the lender to third parties;

3. Where an application is denied, or a commitment is issued on terms and conditions substantially dissimilar to those for which the application was submitted and which are unacceptable to the borrower, for reasons (other than bona fide underwriting considerations) which the lender knew or should have known at the time of application from the facts disclosed on the face of the application, the lender shall promptly refund to the borrower all funds paid to the lender. ***For purposes of this paragraph, a commitment is issued on terms and conditions which are "substantially dissimilar" to those for which the application was submitted if the interest rate, discount points or commitment fee as set forth in the commitment is higher than, or the term of the loan as set forth in the commitment is different than, the corresponding terms of the loan for which application was made.***

3:1-16.4 Lock-in agreements

(a) All lock-in agreements shall be in writing and shall contain at least the following provisions:

1. The expiration date of the lock-in, if any;

2. The interest rate locked in, if any;

3. The discount points locked in, if any;

4. ***The commitment fee locked in, if any;**

5. The lock-in fee, if any; and

*[5.]****6.*** A statement advising of the provisions of (b), (c) and (d) *[(if applicable)]* below ***if applicable*** and of the provisions of N.J.A.C. 3:1-16.6(a).

(b) The lender shall make a good faith effort to process the mortgage loan application and stand ready to fulfill the terms of its commitment before the expiration date of the lock-in agreement ***and any extension thereof***.

(c) In the event a lock-in agreement is executed and the loan applied for is denied, the lender shall promptly refund *[to the borrower the]* ***any*** lock-in fee ***paid***.

(d) Any lock-in agreement received by a lender by mail or through a broker must be *[ratified in writing]* ***signed*** by the lender before it will become effective. The borrower may rescind the lock-in agreement *[at any time]* until receipt of *[such ratification]* ***a copy of the agreement signed by the lender*** by providing the lender with written notification of such rescission. ***Mailed notification of rescission shall be effective upon mailing. If a borrower elects to so rescind, the lender shall promptly refund*** *[A borrower electing to so rescind shall be entitled to a prompt return of]* any lock-in fee paid.

3:1-16.5 Commitment process

(a) At or before issuance of a commitment, the lender shall disclose ***in writing*** the following:

1. The expiration date of the commitment;

2. The amount financed, which shall mean the amount of credit provided to the borrower or in his or her behalf;

3. In the event the interest rate is not subject to change before expiration of the commitment,

i. The finance charge, which shall mean the dollar amount the credit will cost the borrower;

ii. The annual percentage rate, which shall mean the cost of the credit to the borrower as a yearly rate; and

iii. The payment schedule, which shall mean the number, amounts and timing of payment scheduled to repay the obligation;

4. In the event the interest rate is subject to change before expiration of the commitment,

i. The basis, index or method, if any, which will be used to determine the rate at closing. Such basis, index or method shall be established and disclosed with direct reference to the movement of an interest rate index or of a national o! regional index that is available to and verifiable by the borrower and beyond the control of the lender; or

ii. A statement in at least 10-point bold type that "The ***interest*** rate will be the rate established by the lender in its discretion as its prevailing rate *[_____ days before closing]*" ***followed by a statement in the same type indicating when the prevailing rate would be set and advising the borrower of his or her right to demand redisclosure of the rate and points pursuant to subsection (c) below once they are so set***; and

iii. In addition to the requirements of (a)4i or ii above, the finance charge, annual percentage rate and payment schedule assuming the *[loan were to close]* ***prevailing rate*** on the date the commitment issued, prefaced by a statement that:

"The figures set forth below ***are for illustrative purposes only. They*** reflect the rate now in effect, NOT ***necessarily*** the rate you will pay at closing, which will be established as indicated in this commitment."

5. The amount of the commitment fee, if any, and whether and under what circumstances the commitment fee shall be refundable;

6. All other charges ***to be paid by the borrower***, including but not limited to, warehousing fees and discount points;

7. In the event the interest rate, annual percentage rate or term may vary after closing*[;]* ***,***

i. An identification and specification of the terms which are variable;

ii. The circumstances under which the above terms may change;

iii. Any limitation on a change;

iv. The effect of a change; and

v. An example of the payment terms that would result from an increase;

8. The time, if any, within which the commitment must be accepted by the borrower; and

9. Whether any fees or discount points set forth in the commitment are subject to change before closing and, if so, the circumstances under which such fees or discount points may change.

(b) The provisions of a commitment cannot be changed prior to expiration of the specified period within which the borrower must accept it. ***If any information necessary for an accurate disclosure required by (a) above is unknown to the lender at the time disclosure is required, the lender shall make the disclosure based upon the best information reasonably available to it and shall state that the disclosure is an estimate.***

(c) If the interest rate (or initial interest rate in the case of a variable rate loan), discount points or fees set forth in the commitment are subject to change before closing, such terms shall be fixed *[and redisclosure of such terms made]* no later than three business days before the loan closes. ***The borrower may demand that the lender advise him or her, either orally or in writing, of such terms once they are so fixed and the lender shall promptly comply with any such demand.***

(d) A commitment fee shall be refundable when the following occur:

1. The commitment is contingent upon approval by parties to whom the lender seeks to sell the loan; ***and***

2. The loan purchaser's requirements are not met; and

3. The borrower is *[powerless]* ***willing but unable*** to attain compliance with those requirements.

3:1-16.6 Expiration of lock-in or commitment

(a) In the event a lock-in agreement has been executed, and the loan does not close before the expiration date of either the lock-in agreement or any commitment issued consistent therewith through no substantial fault of the borrower, the borrower may:

1. Withdraw the application or reject or teriminate any commitment, whereupon the lender shall promptly refund to the borrower any lock-in fee and any commitment fee paid by the borrower; or

2. Have the lock-in agreement *[or commitment]* extended *[or modified until closing or]* ***for no more than*** 14 days following ***expiration of the commitment or, where no commitment issued before expiration of the lock-in, for no more than 14 days following*** issuance of the commitment, *[whichever comes earlier,]* ***and modified*** so that the loan is closed at a rate and points which are no higher than that which would provide a current market yield but no gross profit or "spread" to the lender. The borrower shall be responsible for the lock-in fee only if the loan is closed at or below the lock-in rate and points. All other terms and conditions of the loan shall be as specified in the commitment, regardless whether the loan closes before or after the expiration date of the commitment.

(b) In the event a lock-in agreement has not been executed and a commitment has been issued, and the loan does not close before the expiration date of the commitment through no substantial fault of the borrower, the borrower may:

1. Terminate the commitment, whereupon the lender shall promptly refund to the borrower any commitment fee paid by the borrower; or

2. Have the commitment extended for a reasonable period of time, not to exceed 14 days, to permit closing.

3:1-16.7 Closing

Provided that the conditions of its commitment have been met, and upon reasonable notice, the lender shall be ready, willing and able to meet any closing date scheduled in accordance with the terms of its commitment.

3:1-16.8 Trust funds

Before accepting any trust funds, each lender shall disclose in writing to the party or parties depositing such funds the purpose for which the fund is established, the amount of the trust fund, the period for which the trust fund will be held and the conditions upon which the funds will be disbursed or released.

3:1-16.9 No private right of action

A failure to comply with this subchapter shall not be deemed to provide a party to the transaction with any legal rights or remedies he or she would not otherwise enjoy pursuant to the contractual relationship between the parties.

3:1-16.10 Compliance with Federal law

Where any disclosure is required pursuant to this subchapter which is also required by any Federal law or regulation, compliance with such Federal law or regulation shall be deemed to be compliance with this subchapter.

3:1-16.11 Special rules for brokers

(a) No broker shall charge or collect from a borrower on its own behalf any fees other than an application fee and discount points or fractions thereof.

(b) Before accepting any loan application, the broker shall make written disclosure to the borrower in a separate service agreement setting forth:

1. The amount of the broker's application fee, if any;

2. Whether and under what circumstances all or any part of the broker's application fee may be refundable;

3. The amount of any discount points ***to be*** charged by the broker for its services;

4. A statement advising of the provisions of (c) below;

5. A detailed listing of the specific services that will be provided or performed by the broker; and

6. Whether the broker places loans exclusively with any three or fewer lenders and, if so, the name(s) of such lender(s).

(c) No broker may execute a lock-in agreement or issue a commitment on its own behalf or on behalf of any lender or guarantee acceptance into any particular loan program or promise any specific loan terms or conditions.

(d) No broker may accept a lender's lock-in agreement from a borrower or any lock-in fee in connection therewith unless the lock-

in agreement contains all of the disclosures required in N.J.A.C. 3:1-16.4(a).

(e) The disclosures required in (b) above shall be acknowledged in writing by the borrower and maintained by the broker and a copy of such acknowledgement shall be given to the borrower.

3:1-16.12 *[Effective]* ***Operative*** date

This subchapter shall become *[effective (60 days following the publication of its adoption in the New Jersey Register.)]* ***operative on July 16, 1989***.

(a)

DIVISION OF BANKING

Check Cashers; Conduct of Business

Adopted Amendment: N.J.A.C. 3:24-5.1

Proposed: September 19, 1988 at 20 N.J.R. 2353(a).

Adopted: March 23, 1989 by Mary Little Parell, Commissioner, Department of Banking.

Filed: March 27, 1989 as R.1989 d.219, **without change.**

Authority: N.J.S.A. 17:15A-16.

Effective Date: April 17, 1989.

Expiration Date: August 20, 1989.

Summary of Public Comments and Agency Responses:

The Department of Banking received comments from five sources in response to the proposed amendments: the Public Advocate, the New Jersey Check Cashers Association, and three licensed check cashers.

COMMENT: The Public Advocate made a specific recommendation concerning the proposed amendment at N.J.A.C. 3:24-5.1(a)2iii where a customer makes two transactions, one to cash a check and another to purchase food stamps, a money order, or food items. The Public Advocate recommended that the check casher be required to give a separate receipt for each transaction so that the check cashing transaction would be clearly distinguishable.

RESPONSE: The proposed provision requires that the receipt specify, among other things, the amount of the check cashed, the amount of the fee charged and the amount of the cash given to the person cashing the check. It is the intention of the Department that the receipts sufficiently distinguish these elements so that the check cashing transaction can be examined separately from other transactions which may have occurred at the same time. Therefore, the Department does not think that it is necessary to require licensees to provide separate receipts.

COMMENT: The Public Advocate also suggested that the Department require that the receipts contain information beyond that specified in the proposed amendment, for example, the address of the check casher if the check casher has a branch office, and the individual license number of each licensed location. The Public Advocate further suggested that the receipt contain the Department's "800" number for registering complaints and a brief description of the Department's regulatory role in supervising licensed check cashers.

RESPONSE: The proposed provision requires that the receipt for each transaction contain the name of the check casher and a number identifying the teller who completed the transaction. In the Department's view, this is sufficient information to enable the customer to file and substantiate a complaint. If identification of the specific office is needed, the customer can submit the street address of the office, or obtain its individual reference number from the sign which the rule requires to be displayed. The sign also displays the Department's "800" number and therefore, in the Department's view, eliminates the necessity for requiring the number to be included on the receipt. The Department's address on the sign as the appropriate place to lodge a complaint indicates the regulatory role of the Department and eliminates the need for providing a brief description of that role on the receipt.

COMMENT: The Public Advocate suggested that check cashers be required to include in their annual report the numbers, dollar amounts, and fees of checks issued by governmental authorities.

RESPONSE: The Department considers this suggestion to be beyond the scope of the current regulatory proposal. It will be reviewed and considered for possible proposal in the future.

COMMENT: The New Jersey Check Cashers Association expressed support for the receipt requirement, but suggested that the Department drop its proposed requirement that the receipts identify tellers by number since it would create labor and record keeping burdens without corresponding benefits.

RESPONSE: The Department rejects this suggestion because it has concluded that the burden imposed on licensees by the teller number requirement is small compared to the benefits to customers—and to licensees—of being able to determine the specific teller who completed the transaction in the event a controversy arises. No record keeping is required in connection with the receipts.

COMMENT: A licensee alleged that the Regulatory Flexibility Statement required by N.J.S.A. 52:14B-16 et seq. is deficient in that the statement fails to provide specific dollar costs to a licensee to comply with the receipt requirement.

RESPONSE: The Department disagrees with this comment because the cost to licensees of providing the receipts will be minimal. The rule allows licensees to produce the receipts manually; for example, they may have slips printed up with blanks where the figures from each transaction can be filled in. The costs of this method of compliance are negligible. Alternatively, licensees can acquire machines which can produce the receipt on a tape. Such machines are not much more expensive than the machines which check cashers currently use. Based on these considerations, the Department concluded that the benefits to the public far outweigh the nominal costs to licensees connected with the issuance of receipts.

COMMENT: A licensee expressed apprehension that allowing complaints to be lodged by way of the "800" telephone number may increase the numbers of frivolous complaints filed against licensees and deprive a licensee of due process in the investigation of such complaints.

RESPONSE: It is the position of the Department that the establishing of the 800 telephone number is necessary to effectively monitor the check cashing industry. A study by the Public Advocate uncovered systematic abuses in the industry which had not come to the attention of the Department through written complaints which the Department has heretofore required before investigating allegations against licensees. Because of these findings, it was concluded that the Department should facilitate access of complainants to its complaint resolution process. All complaints will be treated fairly and impartially. Indeed, this posture is fundamental to the investigatory process.

COMMENT: A licensee advises that his customers have always had the privilege of requesting a receipt for transactions and that such requests have always been honored. He opines that the mandatory receipt requirement is unnecessary and will only add to the waste paper problems of the municipalities where licensees are located.

RESPONSE: The Department acknowledges that some check cashers have been providing receipts upon request to their customers. However, the Department also recognizes that provision of these receipts has been discretionary. Licensees are under no requirement to present them to their customers. This discretionary element would allow licensees to refuse to give a receipt if they were engaged in wrongdoing or if they suspected that a customer might file a complaint, precisely the times when it is important that the receipt be granted. Under the present system, some customers who would like a receipt have surely been discouraged from getting it because they have had to ask. This amended rule is intended to overcome these problems by requiring that a receipt be provided with each transaction. The suggestion that the rule is not needed is rejected.

Full text of the adoption follows:

SUBCHAPTER 5. CONDUCT OF BUSINESS

3:24-5.1 Conduct of business

(a) Every licensee shall:

1. Post and at all times display in a conspicuous place on the premises the license and also the schedule of rates to be charged.

i. The Department of Banking shall provide signs to each licensed check casher which shall be posted in the licensed premises. The Department of Banking shall determine the number of signs which shall be posted and shall designate those areas in the check cashing facility where these signs shall be displayed. These signs shall be in both the English and Spanish languages. The contents of the signs shall be as follows, except that different language may be mandated by the Department as it deems necessary to accomplish the purpose of this chapter:

STATE LICENSED CHECK CASHER
MAXIMUM FEES YOU CAN BE CHARGED
NEW JERSEY CHECKS 1% OF YOUR CHECK

Example:

New Jersey check	$300.00	
Maximum fee	3.00	1%
Cash to you	$297.00	

OUT OF STATE CHECKS 1½% OF YOUR CHECK

Example:

Out of state check	$300.00	
Maximum fee	4.50	1½%
Cash to you	$295.50	

When you cash your check you must be given a RECEIPT which shows: the name of the check casher, the teller number, the amount of your check, the fee you paid, and the cash you received.

If you have a complaint or problem or were not given a receipt, call toll-free 1-800-421-0069.

Department of Banking
CN 040
Trenton, New Jersey 08625

Check Casher (__________)
Reference # __________

CASAS DE CAMBIO CON LICENSIA DEL ESTADO
TARIFAS MAXIMAS CUAL DEBE SER COBRADAS
CHEQUES DE NUEVA JERSEY
1% DEL TOTAL DE SU CHEQUE

Ejemplo:

Cheques de Nueva Jersey	$300.00	
Tarifa maxima	$ 3.00	1%
Restante de su cheque	$297.00	

CHEQUES FUETA DE NUEVA JERSEY
1½% DEL TOTAL DE SU CHEQUE

Ejemplo:

Cheques fuera de Nueva Jersey	$300.00	
Tarifa maxima	4.50	1½%
Restante de su cheque	$295.50	

Cuendo cambie su cheque debe recibir un RECIBO el cual diga: el nombre de la casa de cambio, mumbero de cajera, decuanto fue su cheque, la tarifa que usted pago, y cuanto recibio usted en efectivo.

Si usted tiene alguna queja o problema o si no recibio un recibo, llame gratis al 1-800-421-0069.

Departamento de Bancos
CN 040
Trenton, New Jersey 08625

Casa de Cambio (__________)
Numero de Referencia __________

ii. These signs are the property of the Department of Banking and shall not be displayed at any location other than that designated in each individual license as identified by the reference number indicated on the sign.

iii. If a licensee shall discontinue business, fail to renew its license or have its license suspended, revoked or not renewed, then such licensee shall deliver to the Department of Banking all signs which were posted by such licensee in the licensed premises. A failure by a licensee to surrender said signs under the conditions indicated in this paragraph shall subject the licensee to the penalties provided by N.J.S.A. 17:15A-23.

2. Pay to every customer tendering any check, draft, or money order to be cashed, the entire face amount of such instrument in cash less any charges permitted by law, on the same date upon which such instrument is presented;

i.-ii. (No change.)

iii. The licensed check casher shall give each person presenting a check, draft or money order for cashing upon the completion of each transaction an itemized receipt which shall indicate the name of the check casher, the teller number indicating which teller completed the transaction, the amount of the check cashed, the amount of the fee charged to cash the check, and the amount of cash given to the person cashing the check.

3. (No change.)

4. Maintain continuously for each licensed premises liquid assets of at least $5,000 if licensed prior to July 2, 1985, and $50,000 in liquid assets for each licensed location if licensed on or after July 2, 1985. In order to determine whether the said sum is continuously available for each licensed premises, each licensee shall compute and include the following in his or her business records.

i.-ii. (No change.)

5.-8. (No change.)

(b) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Financial Assurance for Closure and Post-Closure

Adopted Amendments: N.J.A.C. 7:14A-5.12 and 7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, 9 Appendix A, 12.3, and 12.5

Proposed: November 7, 1988 at 20 N.J.R. 2650(a).
Adopted: March 20, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: March 20, 1989 as R.1989 d.206, **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. 13:1E-1 et seq., particularly 13:1E-6, and N.J.S.A. 58:10A-1 et seq., particularly 58:10A-4.

DEP Docket Number: 040-88-10.
Effective Date: April 17, 1989.
Expiration Date: N.J.A.C. 7:14A, June 4, 1989. N.J.A.C. 7:26, November 4, 1990.

Summary of Public Comments and Agency Responses:

These amendments were proposed on November 7, 1988 at 20 N.J.R. 2650(a). One commenter submitted written comments during the public comment period which ended on December 7, 1988. No public hearing was held.

COMMENT: The Soil Erosion and Sediment Control Act (the Act), N.J.S.A. 4:24-39 et seq. (1976), requires that public agency approval of virtually all projects disturbing more than 5,000 square feet of land be conditioned upon certification by the local soil conservation district of a plan to control soil erosion and sedimentation. This requirement should be incorporated into the hazardous waste management rules. N.J.A.C. 7:26-9.8(c) should be amended to require that closure plans include a plan for soil erosion and sediment control certified by the local soil conservation district in accordance with the Act.

RESPONSE: The Department agrees in part and has amended N.J.A.C. 7:26-9.8(b) to incorporate a reference to the Act. This amendment does not impose new additional requirements on hazardous waste facility owners or operators, but provides notice that owners or operators must comply with the Act. The soil erosion control plan is not required to be included in the closure plan, but must be independently certified by the soil conservation district in accordance with the Act.

Editorial corrections have been made to the proposed amendments as necessary.

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

7:14A-5.12 Requirements for wells injecting hazardous waste

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

(d) When used in this section, "plugging and abandonment plan" shall mean the plan for plugging and abandonment prepared in accordance with the requirements of N.J.A.C. 7:14A-5.10(a)6.

(e) A cost estimate for plugging and abandonment shall be prepared as follows:

1. The owner or operator shall prepare a written cost estimate, in current dollars, of the cost of plugging the injection well in accordance with the plugging and abandonment plan as specified in N.J.A.C. 7:14A-5.10(a)6. The plugging and abandonment cost estimate shall equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would make plugging and abandonment the most expensive as indicated by the facility's plugging and abandonment plan.

2. The owner or operator shall adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment shall be made as specified in (e)2i and ii below, using an inflation factor derived from the annual Oil and Gas Field Equipment Cost Index, which appears in the Survey of Current Business, issued monthly by the United States Department of Commerce, Bureau of Economic Analysis. The inflation factor is the result of dividing the latest published annual Index by the Index for the previous year.

i. The first adjustment is made by multiplying the plugging and abandonment cost estimate by the current inflation factor. The result is the adjusted plugging and abandonment cost estimate.

ii. Subsequent adjustments are made by multiplying the latest adjusted plugging and abandonment cost estimate by the latest inflation factor.

3. The owner or operator shall revise the plugging and abandonment plan when the cost of plugging and abandonment increases as a result of inflation or because of other factors. If the increase is because of other factors, the revised plugging and abandonment cost estimate shall be adjusted for inflation as specified in (e)2 above.

4. During the operating life of the facility, the owner or operator shall keep at the facility the latest plugging and abandonment cost estimate prepared in accordance with (e)1 and 3 above, and, when this estimate has been adjusted in accordance with (e)2 above, the latest adjusted plugging and abandonment cost estimate.

7:26-1.4 Definitions

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

...

"Active life" of a hazardous waste facility means the period from the initial receipt of hazardous waste at the facility until the Department approves certification of final closure of the facility.

...

"Final closure" means the closure of all hazardous waste management units at a hazardous waste facility in accordance with all applicable closure requirements so that hazardous waste management activities subject to regulation under N.J.A.C. 7:26-10 and 7:26-11 are no longer conducted at the facility.

...

"Hazardous waste management unit" means an area of land on or in which hazardous waste is placed or the largest area in which there is a significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes the containers and the land or pad upon which they are placed.

...

"Partial closure" means the closure of a hazardous waste management unit or units in accordance with the applicable closure requirements of N.J.A.C. 7:26-9.1 through 9.13, 7:26-10, and 7:26-11 at a hazardous waste facility that contains other active hazardous waste management units. For example, partial closure of a hazardous waste facility may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, or other hazardous waste management unit, while other units of the same hazardous waste facility continue to operate.

...

7:26-9.8 General closure requirements

(a) (No change.)

(b) The owner or operator shall close the hazardous waste facility or management unit in a manner that minimizes the need for further maintenance and controls, minimizes or eliminates, to the extent necessary to protect human health and ***the*** environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or waste decomposition products to the groundwater, or surface waters, or to the atmosphere. In addition, the owner or operator shall comply with all other applicable closure requirements in this section and at N.J.A.C. 7:26-9.10, 7:26-9.12, 7:26-10, and 7:26-11 ***and, if applicable, the provisions of the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (1976)***.

(c) The owner or operator shall have a written closure plan. In addition, for surface impoundments at which the owner or operator intends to remove or decontaminate the hazardous waste at partial or final closure, the owner or operator shall submit a contingent closure plan at the same time as submission of the closure plan. The contingent closure plan shall establish procedures for closing the surface impoundment as a landfill in the event that not all hazardous wastes can be removed or decontaminated at closure. The owner or operator shall keep a copy of the closure plan and all revisions to the plan at the facility until closure is completed in accordance with (l) below.

(d) The closure ***plan*** shall be submitted with the permit application in accordance with N.J.A.C. 7:26-12 and approved by the Department as part of the permit issuance proceeding. The approved closure plan will become a condition of any permit issued under N.J.A.C. 7:26-12. For facilities with existing facility status under N.J.A.C. 7:26-12.3, the plan shall be submitted in accordance with (h)1 below. The Department's decision shall ensure that the approved closure plan is consistent with the provisions of this section as well as all applicable provisions of N.J.A.C. 7:26-10 or 7:26-11. Until final closure is completed to the Department's satisfaction and certified in accordance with (l) below, a copy of the approved plan and all approved revisions shall be furnished to the Department upon request, including request by mail.

(e) The closure plan shall identify the steps necessary to completely or partially close the facility at any point during the facility's active life. The closure plan shall include at least:

1. A description of:

i. How each hazardous waste management unit will be closed in accordance with (b) above;

ii. The maximum extent of the operation which will be unclosed during the active life of the facility; and

iii. How the requirements of (b) above for final closure and all other applicable closure requirements of this section and N.J.A.C. 7:26-10, or N.J.A.C. 7:26-11 for exisiting facilities prior to final desposition of a permit application, will be met;

2. An estimate of the maximum inventory of solid waste, including hazardous waste, ever on-site at any given time during the active life of the facility, a detailed description of the methods to be used during partial and final closure, including, but not limited to, methods for removing, transporting, treating, storing, or disposing of all hazardous wastes, and identification of the type(s) of off-site hazardous waste management units to be used, if applicable;

3. A detailed description of the steps needed to remove or decontaminate all hazardous waste and hazardous waste residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy the closure performance standard;

4. A schedule for closure of each hazardous waste management unit and for final closure of the facility which shall include, at a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, the total time required to close each hazardous waste management unit, and intervening milestone dates which will allow tracking of the progress of partial and final closure, for example, the expected date for completing treatment or disposal of waste inventory, the time to place final cover on a landfill, the planned dates for storage facilities and treatment processes, and an estimate of the expected year of final closure of the facility; and

5. A detailed description of other activities necessary during the closure period to ensure that all partial closures and final closures satisfy the closure performance standards, including, but not limited to, groundwater monitoring, leachate collection, and run-on and run-off control.

(f) The owner or operator may submit a written request for a permit modification in accordance with N.J.A.C. 7:26-12, or, for a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, a written request for a closure plan modification, to amend the approved closure plan at any time before the owner or operator notifies the Department of his or her intent to partially or finally close the facility. For existing facilities, a closure plan modification that is not minor according to the criteria at N.J.A.C. 7:26-12.8 shall be submitted and reviewed in accordance with procedures established at (h)3 below. The written request shall include a copy of the amended closure plan for approval by the Department.

1. The owner or operator shall submit a written request for a permit modification in accordance with N.J.A.C. 7:26.12, or for a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, a written request for a closure plan modification in accordance with paragraph (f) above, to amend the approved closure plan any time changes in operating plans or facility design affect the closure plan, whenever there is a change in the expected year of closure of the facility, or if unexpected events require a modification of the closure plan. The written request to modify the permit or to amend the closure plan shall be submitted at least 60 days prior to the proposed change in facility design or operation or no later than 60 days after the occurrence of an unexpected event which has affected the closure plan. If an unexpected event occurs during the partial or final closure period, the owner or operator shall request a permit modification or plan amendment no later than 30 days after the unexpected event.

2. For facilities operating under a permit issued pursuant to N.J.A.C. 7:26-12, when the owner or operator requests a permit modification to authorize a change in operating plans or facility design, the owner or operator shall request a modification of the closure plan at the same time. If a permit modification is not needed to authorize the change in operating plans or facility design because the change is a minor modification as defined at N.J.A.C. 7:26-12.8, the request for modification of the closure plan shall be made 60 days prior to the change in plans or design occurs.

3. The Department may request modifications to the plan if the owner or operator fails to comply with (f)1 or 2 above. The owner or operator shall submit the modified plan within 60 days of the Department's request, or within 30 days of the Department's request if the unexpected event or the change in facility conditions occurs during partial or final closure. Approval of modifications requested by the Department will be in accordance with the permit modification procedures at N.J.A.C. 7:26-12, or, for facilities with existing facility status under N.J.A.C. 7:26-12.3, if the modifications are not minor according to the criteria at N.J.A.C. 7:26-12.8, approval will be in accordance with h(3) below.

(g) The owner or operator shall notify the Department in writing at least 180 days prior to the date the owner or operator expects to begin partial or final closure, except in cases where the facility's permit or existing facility status is terminated or if the facility is otherwise ordered by judicial decree or administrative order to cease receiving wastes or to close. The date when the owner or operator "expects to begin closure" for the purposes of this notification shall be no later than 30 days after the date on which the hazardous waste facility or management unit receives the final volume of hazardous wastes, except as provided at g(2) below.

1. If the facility's permit or existing facility status is terminated, or if the facility is otherwise ordered by judicial decree or administrative order to cease receiving wastes or to close, then the facility shall be closed in accordance with the deadlines established at (i) and (j) below.

2. If the owner or operator demonstrates to the satisfaction of the Department that there is a reasonable probability that the hazardous waste management unit will receive additional hazardous waste, the date when the owner or operator "expects to begin closure" may be any date on or before one year after the date on which the unit last received hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the satisfaction of the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit or existing facility requirements, the Department may approve an extension of this one year limit.

(h) The owner or operator shall submit the closure plan according to the requirements of this subsection and the requirements of (d) above.

1. For a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, the owner or operator shall submit the closure plan to the Department at least 180 days before the date the owner or operator expects to begin partial or final closure. The Department may waive this requirement if the owner or operator had previously submitted the closure plan as part of a permit application and the Department finds that final disposition of the permit application is imminent and will result in an approved closure plan. Until final closure is completed and certified in accordance with this section, a copy of the most current plan shall be furnished to the Department upon request, including request by mail, and during site inspections, on the day of inspection, to any officer, employee, or representative of the Department upon the presentation of credentials.

2. For all hazardous waste facilities subject to this section, the owner or operator shall submit the closure plan to the Department no later than 15 days after:

i. (No change.)

ii. Issuance of a judicial decree or administrative order to cease receiving wastes or to close.

3. Upon submission of the closure plan by a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, the Department will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and to request modifications of the plan for 30 days after the date of the notice. The Department may also, in response to a request or at its own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The Department will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department disapproves the plan, it shall provide the owner or operator with a detailed written statement of reasons for the disapproval and the owner or operator shall modify the plan or submit a new plan for approval within 30 days of receiving the Department's statement of reasons for disapproval. The Department will approve, modify or disapprove this plan in writing within 60 days. If the Department modifies the original or resubmitted plan, this modified plan becomes the approved closure plan. The Department's decision shall assure that the approved closure plan is consistent with this section and all applicable requirements of N.J.A.C. 7:26-11. A copy of this modified plan and a statement of reasons for the modification shall be mailed to the owner or operator.

(i) Within 90 days after receiving the final volume of hazardous waste, or, for a facility with existing facility status under N.J.A.C.

7:26-12.3, within 90 days after the approval of the closure plan, if that is later, the owner or operator of a hazardous waste management unit or facility shall treat, remove from the unit or facility, or dispose of on-site all hazardous wastes in accordance with the approved closure plan. The Department may approve a longer period if the owner or operator complies with all the applicable requirements for modifying the closure plan and demonstrates, at least 30 days prior to the expiration of the time allowed to treat, remove, or dispose of all hazardous wastes on-site under this subsection, that:

1. (No change.)

2. The following requirements are met:

i. The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes;

ii. There is a reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within one year;

iii. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

3. The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment, including, but not limited to, compliance with all applicable permit conditions and existing facility requirements.

(j) The owner or operator shall complete partial or final closure activities in accordance with the approved closure plan within 180 days after receiving the final volume of wastes at the hazardous waste management unit or facility or, in the case of facilities operating prior to final disposition of a permit, 180 days after approval of the closure plan, whichever is later. The Department may approve a longer closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit or closure plan and demonstrates, at least 30 days prior to the expiration of the time allowed to complete closure under this subsection, that:

1. The partial or final closure activities will, of necessity, take longer than 180 days to complete; or

2. The following requirements are met:

i. The hazardous waste management unit or facility has the capacity to receive additional hazardous waste;

ii. There is reasonable likelihood that the owner or operator or another person will recommence operation of the hazardous waste management unit or facility within year;

iii. Closure of the hazardous waste management unit or facility would be incompatible with continued operation of the site; and

3. The owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed but not operating hazardous waste management unit or facility, including, but not limited to, compliance with all applicable permit or existing facility requirements.

(k) During the partial and final closure periods, all contaminated equipment, structures, and soils shall be properly disposed of or decontaminated. By removing any hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste. A generator of hazardous waste shall handle that waste in accordance with N.J.A.C. 7:26-7.4, 7:26-8, and 7:26-9.3.

(l) Within 60 days after the completion of partial or final closure, the owner or operator shall submit to the Department by registered mail a two-part certification by both the owner or operator and a certification by an independent registered professional engineer that the hazardous waste management unit or facility, whichever is applicable, has been closed in accordance with the specifications in the approved closure plan. Documentation supporting the independent registered professional engineer's certification shall be furnished to the Department upon request. If the owner and operator are not the same person, both parties shall separately submit two-part certifications. The owner's and/or operator's two-part certifications shall state and be signed as follows:

1. "I certify under penalty of law that the hazardous waste management unit/facility has been closed in accordance with the specifications in the closure plan approved by the Department on (date) and as subsequently amended (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (l)1 above shall be signed by the highest ranking corporate, partnership, proprietorship, or governmental official at the facility responsible for closure.

2. "I certify under penalty of law that I have personally examined and am familiar with the closure plan, and that based upon my inquiry of those individuals immediately responsible for drafting and implementing the plan, I believe that the hazardous waste management unit/facility has been closed in accordance with the specifications in the closure plan, approved by the Department on (date) and as subsequently amended, (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (l)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

(m) No later than the submission by the owner or operator to the Department of the certification of closure for each hazardous waste management unit, the owner or operator shall submit to the local zoning authority or other authority with jurisdiction over local land use and to the Department a survey plat indicating the location and dimensions of hazardous waste management units with respect to permanently surveyed bench-marks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the local zoning authority or other authority with jurisdiction over local land use shall contain a note, prominently displayed, stating the owner's or operator's obligation to restrict disturbance of the hazardous waste disposal unit in accordance with all applicable closure and post-closure requirements at N.J.A.C. 7:26-9.

(n) Nothing in this section shall preclude the owner or operator from removing hazardous waste and decontaminating or dismantling equipment in accordance with the approved partial or final closure plan at any time before or after notification of partial or final closure.

7:26-9.9 General post-closure care requirements

(a) Except as N.J.A.C. 7:26-9.1 or 9.9(g)2 provides otherwise, this section applies to all hazardous waste facilities where hazardous wastes will remain at the facility site after closure is completed.

(b) Post-closure care for each hazardous waste management unit or facility subject to this section shall begin immediately upon completion of closure of the unit or facility and continue for 30 years after the date of completing closure, and shall consist of at least the following:

1. Groundwater monitoring and reporting in compliance with N.J.A.C. 7:14A-6;

2. Maintenance of monitoring and waste containment systems as applicable; and

3. Compliance with all applicable hazardous waste facility requirements at N.J.A.C. 7:26-9, 10, and 11.

(c) The Department may amend the post-closure plan for a hazardous waste management unit or hazardous waste facility in accordance with N.J.A.C. 7:26-12 for a facility operating under a permit issued pursuant to that subchapter, or in accordance with N.J.A.C. 7:26-9.8 for a facility with existing facility status under N.J.A.C. 7:26-12.3, in order to:

1. Reduce the post-closure care period to less than 30 years for a hazardous waste management unit, at any time before that unit is closed, or a facility, at any time before all disposal units at the facility have been closed, if the Department finds that the reduced period is sufficient to protect human health and the environment (for example, if leachate or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate that the hazardous waste management unit or facility is secure); or

2. Extend the post-closure care period for a hazardous waste management unit or facility at any time during the active life or post-

closure period of that unit or facility if the Department finds that the extended period is necessary to protect human health and the environment (for example, leachate or groundwater monitoring results indicate a potential for migration of waste at levels which may be harmful to human health and the environment).

(d) The Department may require, at partial or final closure, continuation of any or all of the security requirements at N.J.A.C. 7:26-9.4(h) during all or part of the post-closure period when:

1. Solid waste, including hazardous waste, may remain exposed after completion of partial or final closure; or

2. (No change.)

(e) Post-closure use of property on or in which hazardous waste remains after partial or final closure shall not disturb the integrity of the final cover, liner(s), or any other components of any containment system, or the function of the facility's monitoring systems, unless the owner or operator can demonstrate to the Department, either in the post-closure plan or by petition, that the disturbance:

1.-2. (No change.)

(f) (No change.)

(g) The following plans are required:

1. Any hazardous waste facility or management unit subject to this section shall have a written post-closure plan.

2. Surface impoundments not otherwise subject to this section, as provided at (a) above, because the owner or operator intends to remove or decontaminate all hazardous wastes at partial or final closure, shall have a contingent post-closure plan submitted at the same time as submission of the closure plan. The contingent post-closure plan shall provide for compliance with this section in case not all hazardous waste or hazardous waste residues, including contaminated soil and groundwater, are removed at closure, and shall be approved and amended as necessary in accordance with procedures for approving and amending post-closure plans under this section.

(h) The post-closure plan shall be submitted with the permit application in accordance with N.J.A.C. 7:26-12 and approved by the Department as part of the permit issuance proceeding. The approved post-closure plan will become a condition of any permit issued under N.J.A.C. 7:26-12. For a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, the post-closure plan shall be submitted in accordance with (k) below. The Department's approval shall assure that the approved post-closure plan is consistent with the provisions of this section as well as all applicable provisions of N.J.A.C. 7:26-10.

(i) For each of the hazardous waste management units subject to the requirements of this section, the post-closure plan shall identify the activities which will be carried on after closure of each unit and the frequency of these activities and shall include at least:

1.-2. (No change.)

3. The name, address, and phone number of the person or office to contact about the hazardous waste facility or management unit during the post-closure period. This person or office shall keep an updated approved post-closure plan during the post-closure period. Until the end of the post-closure period, a copy of the current approved post-closure plan shall be furnished to the Department upon request, including request by mail. In addition, for facilities without approved plans, a copy of the plan most recently submitted to the Department for approval shall be provided during site inspections, on the day of inspection, to any officer, employee, or representative of the Department upon the presentation of credentials.

4. Requirements for compliance with all applicable hazardous waste facility requirements at N.J.A.C. 7:26-9, 10, and 11.

(j) The owner or operator may submit a written request to the Department for a permit modification to amend the approved post-closure plan in accordance with N.J.A.C. 7:26-12, for a facility operating under a permit pursuant to that subchapter, or, for a facility operating with existing facility status under N.J.A.C. 7:26-12.3, a written request for a plan modification, at any time during the active life or post-closure period of the hazardous waste facility or management unit included in the plan. The written request shall include a copy of the amended post-closure plan for approval by the Department.

1. The owner or operator shall submit a written request in accordance with paragraph (j) above to obtain Departmental authorization for a change in the approved post-closure plan whenever changes in operating plans or facility design or events which occur during the active life or post-closure period of the hazardous waste facility or management unit affect the post-closure plan or whenever there is a change in the expected year of final closure.

2. In the case of a facility owner's or operator's requesting a permit modification during the active life of the facility in order to obtain Departmental authorization for a change in operating plans or facility design, a written request for modification of the post-closure plan shall be submitted to the Department at the same time as submission of the request for the permit modification. For all facilities subject to this section, the request for modification of the post-closure plan under (j)1 above shall be made at least 60 days prior to the change in operating plans or facility design or no later than 60 days after an unforeseen event which affects the post-closure plan.

3. The Department may request modifications to a post-closure plan in accordance with *[the]* ***this*** subsection. The owner or operator shall submit the modified plan to the Department no later than 60 days after the Department's request.

4. Modifications of post-closure plans which are not minor according to the criteria at N.J.A.C. 7:26-12.8 shall be reviewed by the Department as follows:

i. For hazardous waste facilities operating under a permit pursuant to N.J.A.C. 7:26-12, according to the permit modification procedures in that subchapter; and

ii. For hazardous waste facilities with existing facility status under N.J.A.C. 7:26-12.3, according to plan approval procedures at (k)2 below.

(k) For a hazardous waste facility with existing facility status under N.J.A.C. 7:26-12.3, the owner or operator shall submit the post-closure plan to the Department at least 180 days before the owner or operator expects to begin partial or final closure of the first unit subject to the requirements of this section. The date that the owner or operator expects to begin closure shall be either within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous waste, or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste, no later than one year after the date on which the unit receives or received the last volume of hazardous waste. If the owner or operator of a hazardous waste management unit demonstrates to the Department that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, that he or she has taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable requirements under N.J.A.C. 7:26-11, and that there is in fact no possibility of a present or future release of hazardous waste or other threat to human health or the environment, then the Department may approve an extension to this one year limit.

1. The owner or operator shall submit the post-closure plan to the Department no later than 15 days after:

i. (No change.)

ii. Issuance of a judicial decree or administrative order to cease receiving wastes or to close.

2. The Department will provide the owner or operator and the public through a newspaper notice the opportunity to submit written comments on the post-closure plan and to request modifications of the plan, including modification of the 30 year post-closure period required in (b) above, for 30 days after the date of the notice. The Department may also, in response to a request or at its own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The Department will give the public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined. The Department will approve, modify, or disapprove the plan within 90 days of its receipt. If the Department disapproves the plan, the Department will provide the owner or operator with a detailed written statement of reasons for the modification or disapproval and the owner or operator shall modify the

plan or submit a new plan for approval within 30 days of receiving the Department's statement of reasons for disapproval. The Department will approve or modify this plan in writing within 60 days. If the Department modifies the original or resubmitted plan, this modified plan becomes the approved post-closure plan. The Department bases its decision upon the criteria required of petitions under (l) below. The Department's decision will ensure that the approved post-closure plan is consistent with this section. A copy of the modified plan and a statement of reasons for the modification will be mailed to the owner or operator.

(l) If an owner or operator has closed a facility prior to final disposition of a permit application pursuant to N.J.A.C. 7:26-12, the post-closure plan (or period) may be modified during the post-closure care period or at the end of the post-closure care period in either of the following ways:

1. The owner or operator or any member of the public may petition the Department to extend or reduce the post-closure care period for the hazardous waste facility or management unit based on cause, or to alter the requirements of the post-closure plan based on cause.

i. The petition shall include evidence demonstrating that:

(1) The secure nature of the hazardous waste management unit or facility makes the post-closure care requirement(s) unnecessary or supports reduction of the post-closure care period specified in the current post-closure plan (for example, leachage or groundwater monitoring results, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques indicate the facility is secure); or

(2) (No change.)

ii.-iii. (No change.)

2. The Department may tentatively decide to modify the post-closure plan if the Department deems the modification necessary to prevent threats to human health and the environment. The Department may propose to extend the post-closure care period applicable to a hazardous waste management unit or facility or alter the requirements of the post-closure plan based on cause.

i.-ii. (No change.)

(m) No later than 60 days after certification of closure of each hazardous waste management unit, the owner or operator shall submit to the local zoning authority or other authority with jurisdiction over local land use and to the Department a survey plat indicating the location and dimensions of each certified landfill cell or other hazardous waste management unit with respect to permanently surveyed benchmarks. This plat shall be prepared and certified by a professional land surveyor.

1. (No change.)

2. In addition, within the timeframes and for the units specified in paragraph (m) above, the owner or operator shall submit to the Department and to the local zoning authority or other authority with jurisdiction over local land use a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste management unit of the facility.

i. (No change.)

3. Any changes in the type, location, or quantity of hazardous wastes disposed of within each cell or other hazardous waste management units of the facility that occur after the survey plat and record of wastes have been filed shall be reported to the local zoning authority or other authority with jurisdiction over local land use, and to the Department.

(n) Requirements for notice in deed to property are as follows:

1. Within 60 days after certification of closure of the first hazardous waste management unit and within 60 days after certification of closure of the last hazardous waste management unit, the owner of the property on which a hazardous waste facility is located shall record, in accordance with State law, a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

i.-ii. (No change.)

iii. The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste management unit of the facility required in (m) above have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Department.

2. If at any time prior to certification of completed post-closure care under (p) below, the owner or operator or any subsequent owner of land upon which a hazardous waste facility is located wishes to remove the hazardous waste and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soil, the owner or operator shall request a modification to the post-closure plan in accordance with this section. The owner or operator shall demonstrate that the removal of hazardous wastes will satisfy the requirements at (e) above. By removing hazardous wastes, the owner or operator may become a generator of hazardous waste and shall manage it in accordance with N.J.A.C. 7:26-7.4, 8 and 9.3. If the owner or operator or subsequent owner of the land is granted a permit modification or is otherwise granted approval to conduct such removal activities, and does in fact remove the hazardous waste, hazardous waste residues, liner, and all contaminated structures, equipment, and soil, the owner or operator or subsequent owner may, upon approval by the Department, add a notation to the deed or instrument indicating the removal of the hazardous waste.

3. Within 60 days after certification of closure of the first and of the last hazardous waste management unit, the owner or operator shall in both cases submit to the Department a certification, signed by the owner or operator, that he or she has recorded the notation specified in (n)1 above. This certification shall include a copy of the document in which the notation has been placed.

(o) No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator shall submit to the Department by certified mail a certification that the post-closure care obligations for the hazardous waste disposal unit were performed in accordance with the specifications in the approved post-closure plan. The certification shall be signed by the owner or operator and an independent registered professional engineer. Documentation supporting the independent registered professional engineer's certification shall be furnished to the Department upon request until the Department releases the owner or operator from the financial assurance requirements for post-closure care. The certification shall be signed as follows:

1. "I certify under penalty of law that post-closure care of the hazardous waste management unit/facility has been performed in accordance with the specifications in the post-closure plan approved by the Department on (date) and as subsequently amended (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (o)1 above shall be signed by the highest ranking corporate, partnership, proprietorship, or governmental official at the facility responsible for closure.

2. "I certify under penalty of law that I have personally examined and am familiar with the post-closure plan, and that based upon my inquiry of those individuals immediately responsible for drafting and implementing the plan, I believe that post-closure care of the hazardous waste management unit/facility has been performed in accordance with the specifications in the closure plan, approved by the Department on (date) and as subsequently amended, (date and number). I am aware that there are significant civil and criminal penalties, including fines and imprisonment, for submitting false information."

i. The certification required by (o)2 above shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official.

7:26-9.10 Financial requirements for facility closure

(a) (No change.)

(b) When used in this section, the following terms have the meanings given below:

1.-6. (No change.)

7. "Current plugging and abandonment cost estimate" means the most recent estimate prepared in accordance with N.J.A.C. 7:14A-5.12(e).

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

(e) The owner or operator shall comply with the following provisions concerning the cost estimate for facility closure:

1. The owner or operator shall have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in N.J.A.C. 7:26-9.8 and applicable closure requirements in N.J.A.C. 7:26.10 and 11. The estimate must equal the cost of final closure at the point in the facility's active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan under N.J.A.C. 7:26-9.8. The cost estimate shall take the following into consideration:

i. The closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. (See definition of "parent corporation" and "subsidiary" at (b)5 above.) The owner or operator may use costs for on-site disposal if he or she can show that adequate on-site disposal capacity will exist at all times over the life of the facility.

(1) The closure cost estimate based on hiring a third party to close the facility shall reflect, but not be limited to:

(A) Labor costs that are calculated as specified by the New Jersey Department of Labor pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and rules adopted pursuant thereto;

(B) Contingency costs to cover any unanticipated discharges or adverse weather conditions; and

(C) Administrative costs including, but not limited to, the costs of bookkeeping and taxes.

ii. The closure cost estimate shall not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures, or equipment, land, or other assets associated with the facility at the time of partial or final closure.

iii. The owner or operator shall not incorporate a zero or negative cost for hazardous wastes that might have economic value.

2. During the active life of the facility, the owner or operator shall adjust the closure cost estimate for inflation within 30 days prior to each anniversary of the date on which the financial instrument(s) used to comply with (f) below were established. The adjustment shall be made, as specified in (e)2i and ii below, using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product, as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

i.-ii. (No change.)

3. During the active life of the facility, the owner or operator shall revise the closure cost estimate no later than 30 days after the Department has approved a request to modify the closure plan, or, for an unapproved plan, no later than 30 days after a revision in the plan, if the change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation, as specified in (e)2 above.

4. The owner or operator shall keep at the facility during the active life of the facility the latest closure cost estimate prepared in accordance with (e)1 and 3 above and, when this estimate has been adjusted in accordance with (e)2 above, the latest adjusted closure cost estimate.

(f) The owner or operator of each facility shall establish financial assurance for closure of the facility. The owner or operator shall choose from the options specified in (f)1 through 5 below, except that the option in (f)3 is not available to owners or operators of existing facilities until they have received a permit.

1. Closure trust fund requirements are as follows:

i.-ix. (No change.)

x. After beginning partial or final closure, an owner or operator or other person authorized to conduct partial or final closure may request reimbursement from the trust fund for partial or final closure expenditures by submitting itemized bills to the Department for approval by the Department. The owner or operator may request reimbursements for partial or final closure costs only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining active life.

(1) Within 60 days after receiving bills for partial or final closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan, or are otherwise justified.

(2) If the Department has reason to believe that the maximum cost of closure at any time during the remaining active life of the facility will be significantly greater than the value of the trust fund, the Department may withhold reimbursement of such amounts as the Department deems prudent until the Department determines, in accordance with (f)8 below, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the trustee to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons.

xi. (No change.)

2. Requirements for the surety bond guaranteeing payment into a closure trust fund are as follows:

i.-iii. (No change.)

iv. The bond shall guarantee that the owner or operator will:

(1) (No change.)

(2) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an administrative order to begin final closure issued by the Department becomes final, or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction; or

(3) (No change.)

v-ix. (No change.)

3. Requirements for the surety bond guaranteeing performance of closure requirements are as follows:

i.-iv. (No change.)

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination that the owner or operator has failed to perform final closure in accordance with the approved closure plan and other permit requirements when required to do so under the terms of the bond, or if, within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction, the owner or operator fails to begin closure in accordance with the order, the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

vi.-x. (No change.)

4. The closure letter of credit requirements are as follows:

i.-vii. (No change.)

viii. Following a determination that the owner or operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so or if the owner or operator has failed to begin closure in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction, the Department may draw on the letter of credit.

ix.-x. (No change.)

5. Closure insurance requirements are as follows:

i.-iv. (No change.)

v. After beginning partial or final closure, an owner or operator or other person authorized to conduct closure may request reimbursement from the insurer for closure expenditures by submitting itemized bills to the Department for approval by the Department. The owner or operator will receive reimbursement for partial closure only if the remaining value of the policy is sufficient to cover the maximum costs of closing the facility over its remaining active life.

(1) Within 60 days after receiving bills for closure activities, the Department will instruct the insurer to make the reimbursements in

such amounts as the Department specifies in writing, if the Department determines that the partial or final closure expenditures are in accordance with the approved closure plan or are otherwise justified.

(2) If the Department has reason to believe that the maximum cost of closure at any time during the remaining active life of the facility will be significantly greater than the face amount of the policy, the Department may withhold reimbursement of such amounts as the Department deems prudent until the Department determines, in accordance with (f)8 below, that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Department does not instruct the insurer to make such reimbursement, the Department will provide the owner or operator with a detailed written statement of reasons.

vi.-x. (No change.)

6.-7. (No change.)

8. Release of the owner or operator from the requirements of this subsection shall be governed by the following requirements:

i. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he or she is no longer required to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator with a detailed written statement of any such reason it has to believe that closure has not been in accordance with the approved closure plan.

7:26-9.11 Financial requirements for facility post-closure care

(a) The requirements of this section apply to owners and operators of facilities where hazardous wastes are intended to remain at the facility site after closure is completed, except as otherwise provided in this section or in N.J.A.C. 7:26-9.1, and to those facilities which are required by N.J.A.C. 7:26-9.9(g)2 to prepare contingent post-closure plans.

(b) (No change.)

(c) The owner or operator shall comply with the following provisions concerning the cost estimate for a hazardous waste facility or management unit post-closure care:

1. The owner or operator of a facility subject to post-closure monitoring or maintenance requirements shall have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure rules in N.J.A.C. 7:26-9.9, 7:26-10, and 7:26-11. The post-closure cost estimate shall be based on the costs to the owner or operator of hiring a third party to conduct post-closure activities. A third party is a party that is neither a parent nor a subsidiary of the owner or operator. The post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under N.J.A.C. 7:26-9.9.

2. During the active life of a facility, the owner or operator shall adjust the post-closure cost estimate for inflation within 60 days prior to each anniversary date of the establishment of the financial instrument(s) used to comply with N.J.A.C. 7:26-9.9. The adjustment shall be made as specified in (c)2i and ii below, using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product, as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor*[,]* is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

i.-ii. (No change.)

3. The owner or operator shall revise the post-closure cost estimate during the active life of the facility whenever a change in the post-closure plan increases the cost of post-closure care. The revised post-closure cost estimate shall be submitted within 30 days after the Department has approved the request to amend the post-closure plan, and shall be adjusted for inflation, as specified in (c)2 above. Facilities that have submitted a post-closure plan that has not yet been approved shall submit a revised post-closure cost estimate no later than 30 days after their post-closure plan has been revised. The plan shall be adjusted for inflation as specified in (c)2 above.

4. (No change.)

(d) The owner or operator of a hazardous waste management unit or facility subject to post-closure monitoring or maintenance requirements under N.J.A.C. 7:26-9.9 shall establish financial assurance for post-closure care in accordance with the post-closure plan for the facility 60 days prior to the initial receipt of hazardous waste or *[within 60 days of the effective date of these amendments]* ***by June 16, 1989***, whichever is later. The owner or operator shall choose from the following options except that the option in (d)3 is not available to owners or operators of existing facilities until they have received a permit.

1. Post-closure trust fund requirements are as follows:

i.-x. (No change.)

xi. An owner or operator or other person authorized to conduct post-closure care may request reimbursement from the trust fund for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure activities, the Department will instruct the trustee to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure plan or are otherwise justified. If the Department does not instruct the trustee to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons for its decision.

xii. (No change.)

2. Requirements for the surety bond guaranteeing payment into a post-closure trust fund are as follows:

i.-iii. (No change.)

iv. The bond shall guarantee that the owner or operator will:

(1) (No change.)

(2) Fund the standby trust fund in an amount equal to the penal sum if the owner or operator has not performed closure in accordance with the order within 15 days after an administrative order to begin partial or final closure issued by the Department becomes final or within 15 days after an order to begin partial or final closure is issued by a State or Federal court or other court of competent jurisdiction; or

(3) (No change.)

v.-ix. (No change.)

3. Requirements for the surety bond guaranteeing performance of post-closure care are as follows:

i.-iv. (No change.)

v. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination that the owner or operator has failed to perform post-closure care in accordance with the post-closure plan and other permit requirements under the terms of the bond, or if the owner or operator fails to begin post-closure care in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by State or Federal court or other court of competent jurisdiction, the surety will perform post-closure care in accordance with the post-closure plan and other permit requirements or will deposit the amount of the penal sum into the standby trust fund.

vi.-xi. (No change.)

4. Post-closure letter of credit requirements are as follows:

i.-viii. (No change.)

ix. Following a final administrative determination that the owner or operator has failed to perform post-closure care in accordance with the approved post-closure plan and other permit requirements, or if the owner or operator fails to perform post-closure care in accordance with the order within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction, the Department may draw on the letter of credit.

x.-xi. (No change.)

5. Post-closure insurance requirements are as follows:
i.-iv. (No change.)
v. An owner or operator or other person authorized to conduct post-closure care may request reimbursement for post-closure expenditures by submitting itemized bills to the Department. Within 60 days after receiving bills for post-closure care activities, the Department will instruct the insurer to make reimbursements in those amounts as the Department specifies in writing, if the Department determines that the post-closure expenditures are in accordance with the approved post-closure or are otherwise justified. If the Department does not instruct the insurer to make such reimbursements, the Department will provide the owner or operator with a detailed written statement of reasons for the decision.
vi.-xi. (No change.)
6.-7. (No change.)
8. Release of the owner or operator from the requirements of this subsection is governed by the following requirements:
i. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that the post-closure care period for a hazardous waste unit or facility has been completed to the satisfaction of the Department and in accordance with the approved post-closure plan, the Department will notify the owner or operator that he or she is no longer required to maintain financial assurance for post-closure care of that unit or facility, unless the Department has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Department shall provide the owner or operator with a detailed written statement of the Department's reasons for believing that post-closure care has not been in accordance with the approved post-closure plan.

7:26-9.13 Liability requirements
(a)-(d) (No change.)
(e) An owner or operator shall continuously provide liability coverage for a facility, as required by this section, until certifications of closure of the facility, as specified in N.J.A.C. 7:26-9.8(m), are approved by the Department. Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that the owner or operator is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.
(f) Requirements for the use of the financial test for liability coverage are as follows:
1. An owner or operator may satisfy the requirements of this section by demonstrating that he or she passes a financial test, as specified in this subsection. To pass this test the owner or operator must meet the criteria of (f)1i or ii below:
i. The owner or operator shall have:
(1) Net working capital and tangible net worth each at least six times the amount of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage to be demonstrated by this test; and
(2) (No change.)
(3) Assets in the United States amounting to either:
(A) At least 90 percent of the owner's or operator's total assets; or
(B) At least six times the amount of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage to be demonstrated by this test; or
ii. The owner or operator shall have:
(1)-(2) (No change.)
(3) Tangible net worth at least six times the amount of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage to be demonstrated by this test; and
(4) Assets in the United States amounting to either:
(A) At least 90 percent of the owner's or operator's total assets; or
(B) At least six times the amount of closure costs, post-closure costs, UIC plugging and abandonment costs, and liability coverage to be demonstrated by this test.
2. (No change.)
3. To demonstrate that this test is met, the owner or operator must submit the following three items to the Department:
i. A letter signed by the owner's or operator's chief financial officer worded as specified in N.J.A.C. 7:26-9 Appendix A, incorporated herein by reference.
ii.-iii. (No change.)
4.-7. (No change.)

Appendix A
Appendix A: Wording of the Instruments
(a) (No change.)
(b) A surety bond guaranteeing payment into a trust fund, as specified in this subchapter, shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Financial Guarantee Bond ____________

Date bond executed: ____________

Effective date: ____________

Principal: (legal name and business address of owner or operator)

Type of organization (Insert "individual*[",]**,"* "joint venture*[",]**,"* "partnership*[",]**,"* or "corporation")

State of incorporation: ____________

Surety(ies): (name(s) and business address(es)) ____________

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately):

Total penal sum of bond: ____________

Surety's bond number: ____________

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection (hereinafter called NJDEP), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.
Whereas said Principal is required, under the Solid Waste Management Act*,* to have a permit or existing facility status in order to own or operate each hazardous waste management facility identified above, and
Whereas said Principal is required to provide financial assurance for closure or closure and post-closure care, as a condition of the permit or existing facility status, and
Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;
Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,
Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an administrative order to begin closure issued by the NJDEP becomes final or within 15 days after an order to begin final closure is issued by a state or federal court or other court of competent jurisdiction,
Or, if the Principal shall provide alternate financial assurance under N.J.A.C. 7:26-9, and obtain the written approval of the

NJDEP of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the NJDEP from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP, provided*,* however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined in N.J.A.C. 7:26-9.10(b)2.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify ***that*** they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A) as such regulations were constituted on the date the bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

Corporate Surety(ies)

(Name and address)

State of incorporation: ______

Liability limit: ______

(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: ______

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in this subchapter, shall be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Performance Bond

Date bond executed: ______

Effective date: ______

Principal: (legal name and business address of owner or operator)

Type of organization: (insert "individual", "joint venture", "partnership", or "corporation") ______

State of incorporation: ______

Surety(ies): (name(s) and business address(es))

EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond (indicate closure and post-closure amounts separately):

Total penal sum of bond: ______

Surety's bond number: ______

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection (hereinafter called NJDEP), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of penal sum.

Whereas said Principal is required, under the New Jersey Solid Waste Management Act, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure and/or post-closure care as a condition of the permit or existing facility status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that, if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended,

And, if the Principal shall faithfully perform post-closure of each facility for which this bond guarantees post-closure care, in accordance with the post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules and regulations may be amended,

Or, if the Principal shall perform final closure as guaranteed by the bond, or shall deposit the amount of the penal sum into the standby trust fund within 15 days after an administrative order to begin final closure issued by the Department becomes final or within 15 days after an order to begin final closure is issued by a State or Federal court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance as specified in N.J.A.C. 7:26-9 and obtain the written approval of the NJDEP of such assurance within 90 days after the date notice of cancellation is received by both the Principal and the NJDEP for the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the NJDEP that the Principal has been found in violation of the closure requirements of N.J.A.C. 7:26-9 for a facility for which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure

plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the NJDEP.

Upon notification by the NJDEP that the Principal has been found in violation of the post-closure requirements of N.J.A.C. 7:26-9 for a facility for which this bond guarantees performance of post-closure, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund, as directed by the NJDEP.

Upon notification by the NJDEP that the Principal has failed to provide alternate financial assurance as specified in N.J.A.C. 7:26-9 and obtain written approval of such assurance from the NJDEP during the 90 days following receipt by both the Principal and the NJDEP of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the NJDEP.

The Surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules and regulations and agrees that no such amendment shall in any way alleviate its (their) obligations of this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the NJDEP, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP as evidenced by the return receipts, nor shall cancellation occur while a compliance procedure is pending, as defined at N.J.A.C. 7:26-9.10(b)2.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the NJDEP.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A) as such regulation was constituted on the date this bond was executed.

Principal

(Signature(s))

(Name(s))

(Title(s))

(Corporate Seal)

Corporate Surety(ies)

(Name and address)

State of incorporation: ____________________

Liability limit: ____________________

(Signature(s))

(Name(s) and title(s))

Corporate seal:

(For every co-surety, provide signature(s), corporate seal and other information in the same manner as for Surety above.)

Bond premium: ____________________

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

(f) A letter from the chief financial officer, as specified in N.J.A.C. 7:26-9.13, shall be worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

Letter from Chief Financial Officer (to demonstrate liability coverage).

(Address to the New Jersey Department of Environmental Protection.)

I am the chief financial officer of (firm's name and address). This letter is in support of ((firm's name) use of the financial test to demonstrate financial responsibility for liability coverage, as specified in N.J.A.C. 7:26-9.13.

(Fill out the following two paragraphs regarding facilities and liability coverage. If there is no facility that belongs in the paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, and address).

The firm identified above is the owner or operator of the following facilities for which liability coverage for (insert "sudden" or "non-sudden" or both "sudden and non-sudden") accidental occurrences is being demonstrated through the financial test specified in N.J.A.C. 7:26-9.13.

This firm is the owner or operator of the following Underground Injection Control facilities for which financial assurance for plugging and abandonment is required under N.J.A.C. 7:14A-5.10(a)7. The current closure cost estimates as required by N.J.A.C. 7:14A-5.12(d) are shown for each facility:

In states where New Jersey is not administering the financial requirements for closure or post-closure care, UIC plugging and abandonment costs, and liability coverage, this firm is demonstrating financial assurance responsibility for the following facilities through the use of a test equivalent to or substantially equivalent to the financial test specified in N.J.A.C. 7:26-9.13. The current closure or post-closure estimates, UIC plugging and abandonment costs, and liability coverage covered by such a test are shown for each facility.

The firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

ALTERNATIVE I

1. Amount of annual aggregate liability coverage to be demonstrated	$ ______
2. Amount of closure, post-closure, UIC plugging and abandonment costs	$ ______
*3. Current assets	$ ______
*4. Current liabilities	$ ______
5. Net working capital (line 3 minus line 4)	$ ______
*6. Tangible net worth	$ ______
*7. If less than 90% of assets are located in the U.S. give total U.S. assets	$ ______

	Yes	No
8. Is line 6 at least $10 million?	___	___
9. Is line 5 at least 6 times lines 1+2?	___	___
10. Is line 6 at least 6 times lines 1+2?	___	___
*11. Are at least 90% of assets located in the U.S.?	___	___
If not, complete line 12	___	___
12. Is line 7 at least 6 times lines 1+2?	___	___

ALTERNATIVE II

1. Amount of annual aggregate liability coverage to be demonstrated	$ ______
2. Amount of closure, post-closure, UIC plugging and abandonment costs	$ ______
3. Current bond rating of most recent issuance and name of rating service	$ ______
4. Date of issuance of bond	$ ______
5. Date of maturity of bond	$ ______
*6. Tangible net worth	$ ______
*7. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.)	$ ______

	Yes	No
8. Is line 6 at least $10 million?	___	___
9. Is line 6 at least 6 times lines 1+2?	___	___
*10. Are at least 90% of assets located in the U.S.? If not, complete line 11	___	___
11. Is line 7 at least 6 times lines 1+2?	___	___

I hereby certify that the wording of this letter is identical to the wording specified in N.J.A.C. 7:26-9 (Appendix A) as such regulations were constituted on the date shown immediately below:

(Signature)

(Name)

(Title)

(Date)

(g)-(h) (No change in text.)

7:26-12.3 Existing facilities

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

(c) Owners or operators making changes during operation prior to final disposition of a permit application shall comply with the requirements of this section.

1.-3. (No change.)

4. Changes in the ownership or operational control of a facility must be approved in advance by the Department.

i.-ii. (No change.)

iii. When a transfer of ownership or operational control of a facility occurs, the former owner or operator shall comply with the hazardous waste facility financial requirements of N.J.A.C. 7:26-9.10 through 9.14 until the new owner or operator has demonstrated to the Department that he or she is complying with those sections. All other duties are transferred effective immediately upon the date of approval by the Department of the change of ownership or operational control of the facility. The new owner or operator shall demonstrate compliance with N.J.A.C. 7:26-9.10 through 9.14 within six months of the date of change of ownership or operational control of the facility. Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26-9.10 through 9.14, the Department shall notify the former owner or operator in writing that the former owner or operator is no longer required to comply with those sections.

5. (No change.)

(d)-(i) (No change.)

7:26-12.5 Transfer of ownership or operational control

(a) (No change.)

(b) The permittee shall notify the Department at least 180 days in advance of any proposed change of ownership or operational control of a facility (90 days in the case of a prospective new permittee exempt from the requirement of a disclosure statement under N.J.A.C. 7:26-16.3(d)). The notice shall include:

1.-2. (No change.)

3. A demonstration that the financial responsibility requirements of N.J.A.C. 7:26-9.10 through 9.14 will be met by the proposed new permittee within six months of the date of change of ownership or operational control of the facility.

(c)-(e) (No change.)

(f) Upon demonstration to the Department by the new owner or operator of compliance with N.J.A.C. 7:26-9.10 through 9.14, the Department shall notify the former owner or operator in writing that the former owner or operator is no longer required to comply with those sections.

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Wildlife Management Areas

Adopted Amendment: N.J.A.C. 7:25-2.18

Proposed: February 6, 1989 at 21 N.J.R. 267(b).
Adopted: March 23, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: March 27, 1989 as R.1989 d.215, **without change.**
Authority: N.J.S.A. 13:1D-9 and 23:7-9.
DEP Docket Number: 001-89-01.
Effective Date: April 17, 1989.
Expiration Date: Februry 18, 1991.

Summary of Public Comments and Agency Responses:

This amendment was proposed on February 6, 1989. The comment period closed on March 8, 1989.

No comments were received.

Full text of the adoption follows.

7:25-2.18 Wildlife Management Areas

(a) This subchapter applies to the following designated Wildlife Management Areas:

1.-49. (No change.)

50. New Sweden

Renumber existing 50 and 51 as 51 and 52 (No change in text.)

53. Oyster Creek

Renumber existing 52 through 72 as 54 through 74 (No change in text.)

(b) Interested persons may obtain information on Wildlife Management Areas by contacting the Division at (609) 292-2965. A Guide to Wildlife Management Areas, containing maps of each area, is available from:

Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
CN 400
Trenton, New Jersey 08625

(b)

DIVISION OF SOLID WASTE MANAGEMENT

Solid Waste Fees and Registration Requirements

Adopted Repeals: N.J.A.C. 7:26-4.1, 4.2, 4.4, 4.7, 4.8 and 4.9

Adopted New Rules: N.J.A.C. 7:26-4.1, 4.2, 4.3, 4.4 and 4.5

Adopted Amendments: N.J.A.C. 7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 4.10, 16.2, 16.3 and 16.13

Proposed: November 7, 1989 at 20 N.J.R. 2668(a).
Adopted: March 21, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: March 27, 1989 as R.1989 d.216, **with substantive and technical changes** not requiring additional public comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1E et seq., particularly 13:1E-6 and 13:1E-18.
DEP Docket Number: 039-88-10.
Effective Date: April 17, 1989.
Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (Department) is adopting the amendments and new rules which were proposed on November 7, 1988 at 20 N.J.R. 2668(a). Legal notice of the public hearing to receive comment on the proposed rule which was held on December 9, 1988, was published in the Bergen Record, the Newark Star-Ledger, the Courier-Post, the Atlantic City Press and the Trenton Times on November 1, 1988.

Five individuals attended the December 9, 1988 public hearing to receive public comment on the Department of Environmental Protection's proposed adoption of rules on solid waste fees and registration requirements. Two individuals gave testimony that day and six written submissions concerning the rule were received during the written comment response period which ended December 22, 1988. These written and oral comments are summarized below:

COMMENT: The registration of all solid waste containers used in the transportation of solid waste will present a bureaucratic nightmare. The container definition includes lugger boxes and other types of containers that are used to pick up the materials and take them directly to the landfill. It is also important to realize that with the advent of mandatory recycling, many of the firms will be using the same roll-off boxes that they may have to register for solid waste activities and recycling and this could create additional problems with paperwork.

RESPONSE: The Department recognizes the existence of large numbers of solid waste containers which will require registration in accordance with the requirements of N.J.A.C. 7:26-3 and is prepared to register the containers.

The Solid Waste Management Act, at N.J.S.A. 13:1E-5a. states that "[U]nless exempted by the department, no person shall hereafter engage or continue to engage in the collection or disposal of solid waste in this State without first filing a registration statement and obtaining approval thereof from the department." Since solid waste containers are used for the collection or disposal of solid waste, the Department has determined that they must be registered. In the past, solid waste containers were not registered with the Department making it difficult for the Department to ascertain ownership of the containers and to track containers through the collection, haulage and disposal process. To fully and properly monitor solid waste collection, transportation and disposal for compliance with the Department's solid waste rules, the Department now requires that all containers, as well as any device used for the transportation of solid waste, be properly marked and registered. The Department does not impose separate registration requirements on containers used for recycling activities.

COMMENT: The solid waste fees should be re-proposed as a joint proposal by the Department and BPU which should include provisions for automatic pass through or expedited rate making.

RESPONSE: The Department and Board of Public Utilities (BPU) have previously cooperated in joint rulemaking in non-economic areas such as waste flow rules and amendments. However, the Department is independently authorized under N.J.S.A. 13:1E-18 to charge fees for any of the services it performs in connection with the Solid Waste Management Act (SWMA or Act), N.J.S.A. 13:1E-1 et seq. The Department is not required to act in concert with the BPU in order to adopt rules which set fees. In addition, the BPU, and not the Department, possesses the statutory jurisdiction to regulate pass through and rate making. Therefore, joint rulemaking by both agencies to set solid waste fees to be charged for the Department's services would be inappropriate. Note that the statutory provisions of N.J.S.A. 48:2-21 require the BPU to fix "just and reasonable" individual rates after public hearing for every charge made by any public utility for each service or product provided within New Jersey.

COMMENT: Solid waste fee revenue should be used by the Attorney General to fund A-901 activities because the program is insufficient and only a handful of companies have successfully completed the process. The result is that several thousand companies are left in a bureaucratic limbo.

RESPONSE: The amendment of N.J.A.C. 7:26-16.13 results in an increased fee charge that will be used by the Department to cover the cost of reviewing disclosure statements and securing confidential documents. Applicants must pay an additional fee to the Attorney General for enforcement of N.J.S.A. 13:1E-126 et seq., commonly referred to as A-901.

COMMENT: All of these proposed rules and amendments will cost the solid waste industry and taxpayers more money and time.

RESPONSE: Currently, most of the Department's costs in carrying out the activities required by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., are paid through the General State Fund which is funded by all New Jersey taxpayers. It is appropriate to shift the responsibility for support of the solid waste services provided by the Department pursuant to the Act from primary reliance on the general tax base, to those who produce, transport, handle, dispose and otherwise derive monetary benefit from solid waste activities. The services provided are detailed in the economic impact section of the rule proposal in the November 7, 1988 New Jersey Register at 20 N.J.R. 2668(a).

Most of these costs can be included in the individual tariffs approved by the BPU. Though increased tariffs will be passed through to the individual rate payer, the increased payment will be for the services that such individuals actually receive.

COMMENT: Facility compliance monitoring fees for transfer stations revenue should partially fund enforcement of waste flow orders because the Department stated that fees collected are required "to ascertain compliance with district solid waste plans."

RESPONSE: The Department stated in the economic impact section of the proposal of this rule found in the November 7, 1988 New Jersey Register at 20 N.J.R. 2668(a) that the fees for compliance monitoring at solid waste facilities, which include transfer stations, will be used to fund ". . . monitoring of solid waste processing, transfer, treatment, destruction, and disposal facilities to determine compliance with all laws, rules, and permit conditions." The Department's cost for waste flow compliance monitoring will be funded through the fees charged for transporter vehicle registrations in accordance with N.J.A.C. 7:26-4.4.

COMMENT: The proposed fees to be levied on solid waste transporters for registration fees for their vehicles and containers will be additional costs which will hinder the delivery of service by transporters.

RESPONSE: The costs resulting from the adoption of the proposed rules and amendments are costs for doing business and, thus, a BPU recognized expense for the regulated solid waste transporter industry which may be recoverable through tariffs approved by the BPU. The Department is not certain what is meant by the commenter's statement that additional costs will hinder delivery of service. It is the Department's position that overall transporter services should improve because the Department will be able to intensify waste flow compliance monitoring as a result of the increased fees.

COMMENT: The proposed compliance and monitoring fees contained in N.J.A.C. 7:26-4.3(b) are extremely excessive. The Department anticipated a specific number of site visits for each facility but the Department cannot guarantee that each facility will be visited as many times as expected or that the number of site visits will be consistent among facilities. Therefore, it is unlikely that the Department will be able to prebill facilities accurately. Under this same scenario, it is impossible for a company to plan or budget for these unknown expenses. Therefore, flat rate facility compliance and monitoring fees are preferable to a per visit charge.

RESPONSE: The Department does not believe that the fees are excessive. N.J.S.A. 13:1E-18 authorizes the Department to assess fees for any of the services it performs in connection with the SWMA. The fee for each type of facility was based on the number of full-time Department staff positions required for the various activities related to each of the fees and multiplying this figure by the average cost per full-time employee. For a more detailed description of how the fees were assessed, see the economic impact section of the rule proposal in the November 7, 1988 New Jersey Register at 20 N.J.R. 2668(a).

The Department can guarantee that if the scheduled compliance monitoring site-visits set forth in the work plan described in the economic summary of this rule proposal for any specific type of facility needs to be adjusted, this adjustment will be consistent for the specific type of facility to be monitored. Solid waste facilities are scheduled for compliance monitoring based on the volume of waste processed through the facility and the complexity of the particular technical process used there. Compliance monitoring is done to monitor disposal of solid waste throughout the State. A facility processing a larger amount of waste requires more monitoring, thereby demanding a greater expenditure of the Department's "service" capability. Establishing a per visit fee schedule is consistent with N.J.S.A. 13:1E-18 and is a far more equitable type of schedule than a flat fee, especially to operators of small facilities. Establishment of a flat fee would, in essence, require the small facility operators to subsidize the larger operators without regard to the varying levels of services required.

Facilities will be prebilled on a quarterly basis; however, the amount due will be regularly adjusted to reflect full credit to the facility for the costs of any compliance monitoring site-visits not performed. For budget

and planning purposes, facilities should anticipate receiving the full number of annual planned visits.

COMMENT: The commenters oppose the proposed annual registration fees for solid waste transporters as established in N.J.A.C. 7:26-4.4(a)-(e) because they are excessive. Individual registration requirements for solid waste cabs, single-unit vehicles, trailers and containers will also create a paper trail of unmanageable proportions.

RESPONSE: The Department has anticipated the work load resulting from the adoption of these rules and is fully prepared to process all required registrations. Further, the fees are not excessive because they are derived from the specific costs associated with such services as registration, roadside registration checks, and origin and destination checks at solid waste facilities. For a detailed analysis of the activities that transporter registration fees will fund, see the economic impact summary section of the proposal for these rules in the November 7, 1988 New Jersey Register at 20 N.J.R. 2668(a).

Registration of each device used in the transportation of solid waste will be a valuable resource for tracking illegal disposal of solid waste. In many cases, each component of a solid waste vehicle is owned by separate companies which makes it difficult for the Department to readily ascertain such information as who owns or operates the device, or where the waste originated. Requiring the registration and marking of each component of a solid waste vehicle ensures proper monitoring of the collection, transportation and disposal of solid waste at all times and the accountability of all owners or operators for the proper collection, transportation and disposal of solid waste in accordance with the SWMA and the rules adopted pursuant to the Act.

COMMENT: The proposed fee for each solid waste container has not been justified by the Department.

RESPONSE: The SWMA at N.J.S.A. 13:1E-5a states that "[U]nless exempted by the Department, no person shall hereafter engage or continue to engage in the collection or disposal of solid waste in this State without first filing a registration statement and obtaining approval thereof from the Department." Since solid waste containers are used for the collection or disposal of solid waste, the Department has determined that they must be registered. In the past, solid waste containers were not registered with the Department making it difficult for the Department to ascertain ownership of the containers and to track containers through the collection, transportation and disposal process. To fully and properly monitor solid waste collection, transportation and disposal for compliance with the Department's solid waste regulations, the Department now requires that all containers, as well as all devices used for the collection, transportation and disposal of solid waste, be properly marked and registered.

The Department has proposed a registration fee of $25.00 for each solid waste container. The fee is based on the Department's actual cost of preparing, issuing and maintaining the registration and for the cost of waste flow compliance monitoring. For a detailed description of the services the container fees support, see the economic impact section of this rule proposal in the November 7, 1988 New Jersey Register at 20 N.J.R. 2668(a).

COMMENT: In order to pass on to commenters' customers the increased costs incurred by these amendments and rules, it is necessary to file for a rate increase with the BPU. This process lasts up to nine months and legal expenses can exceed $100,000 for even a small company. If these amendments and rules are adopted, the commenters suggest and would support action by New Jersey toward the deregulation of the solid waste industry by the BPU. The Department and the BPU should authorize "preapproved" rate increases to avoid normal rate setting channels. Another commenter stated that a typical rate hearing takes more than a year to conclude and costs upwards of $20,000 in legal and accounting fees.

RESPONSE: Review of the rates charged by the solid waste industry for the solid waste services they provide is solely within the purview of the BPU. N.J.S.A. 48:2-21 precludes the BPU from "preapproving" rates without individual review of such rate increase applications after public hearings to determine if the requested rate increase would equal a just and reasonable rate for every charge made by a solid waste facility or solid waste transporter for each service or product provided by the transporter or the facility within the State.

Solid waste industry deregulation would have no impact on the Department's imposition of fees for the cost of services provided pursuant to the Solid Waste Management Act. The Department has not yet taken a position on the deregulation of the solid waste industry. The Department recognizes that the increased fees may necessitate a filing for a rate increase with the BPU; however, the costs to the Department in providing the specific services which these new fees address justify the increased fees. N.J.S.A. 13:1E-18 authorizes the Department, in accordance with an adopted fee schedule, to establish and charge fees for any of the services it performs in connection with the Solid Waste Management Act. While the time between filing a request for a rate increase with the BPU and a determination by the BPU may be lengthy, the BPU may allow a company to recoup the costs it incurred while awaiting the determination. The Department recommends that the BPU be consulted for advice regarding its rate making practices.

COMMENT: The rules should require all vehicles used for the transportation of solid waste to comply with weight and axle weight restrictions applicable to roadways and bridges they traverse.

RESPONSE: The Department agrees that every solid waste vehicle must comply with all weight and axle weight restrictions on the interstate roads they traverse. These restrictions are embodied in what is commonly referred to as the Federal Bridge Formula found at 23 U.S.C. §127, which applies to interstate highways in New Jersey pursuant to N.J.S.A. 39:3-84(b). However, an administrative hearing regarding mandatory truck routes to the Morris County Transfer Station, Inc. facility in Parsippany-Troy Hills Township led the Department and the Board of Public Utilities to conclude that certain solid waste vehicles have difficulty complying with the Federal axle weight limitations applicable to interstate highways. In a June 10, 1988 joint determination, the Department and the BPU required, among other things, that the BPU consider whether to require all new solid waste vehicles to be certified as capable of complying with the requirements of the Federal Bridge Formula, which is a method of determining maximum gross axle weight limits. Although this matter has not yet been investigated, it will be subject to public hearing, review and comment. The Department is currently addressing this issue through modifications to existing solid waste facility permits and through its solid waste plan certification review process to allow for alternative solid waste transporter routes in cases where a transporter use of a route may violate the Federal Bridge Formula.

COMMENT: At this time, we (the commenters) are only required to pay $20.00 per vehicle to register with the DEP. One hundred twenty dollars per vehicle per year, no pro rata and nontransferable is quite an increase.

RESPONSE: The transporter registration is not $120.00 per vehicle. The transporter fees, found at N.J.A.C. 7:26-4.4, are $120.00 for each solid waste cab, or for each solid waste single-unit vehicle, $120.00 for each solid waste trailer and $25.00 for each solid waste container. Any device used for the transportation of solid waste must be separately registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle. The definitions of solid waste cab, solid waste container, solid waste single-unit vehicle, solid waste trailer, and solid waste vehicle are found at N.J.A.C. 7:26-1.4. N.J.S.A. 13:1E-18 authorizes the Department to assess fees for any of the services it performs in connection with the SWMA. For a detailed explanation of the justification for increased fees, see the economic impact section of this proposal in the November 7, 1988 New Jersey Register at 20 N.J.R. 2668(a).

In addition, proration of fees is not justified because monitoring for compliance with the SWMA and its rules can occur at any time during the registration year. Monitoring for compliance is not more or less likely to occur in any given month of the registration year; therefore, the Department has no basis for which to prorate the transporter registration fees.

Transporter registrations have never been transferable and will continue to be nontransferable. The administrative cost for processing a registration is a fixed cost and therefore the cost is the same whether that registration is valid for an entire registration period or only part of it.

COMMENT: At this time, we (the commenters) are not required to register containers. At $25.00 each, this will be quite an expense for companies that do roll-off business. This also appears to single out those companies since other containers will not have to be registered. What benefit is there in registering containers?

RESPONSE: The new rules and amendments require, without exception, that every solid waste container used to transport solid waste offsite or to a disposal facility must be registered with the Department. In the past, solid waste containers were not registered with the Department, making it difficult for the Department to ascertain ownership of the containers and to track containers through the collection, haulage and disposal process. To fully and properly monitor solid waste collection, transportation and disposal for compliance with solid waste rules, the Department is requiring that all containers, as well as all devices used in the transportation of solid waste, be properly marked and registered.

Roll-off boxes, dumpsters, hoppers, lugger boxes and portable tanks are each an example of solid waste containers as defined at N.J.A.C. 7:26-1.4. The Department has not singled out those companies which do roll-off business, because other companies not solely involved in the roll-off business are also required to pay registration fees if they utilize solid waste containers as defined in N.J.A.C. 7:26-1.4. For registration purposes, it is the use of a solid waste container for containment and transportation off-site or to a disposal facility that is the most important criteria for determining if registration is required. If a container is stationary and is never used to transport solid waste off-site, it is not a solid waste container within the definitions of these rules.

COMMENT: These new rules and amendments will dramatically increase the current fee schedule for solid waste vehicle and facility registration. Registration for regular solid waste vehicles, solid waste cabs and solid waste trailers is proposed at $120.00 per unit. All solid waste containers are to be registered at $25.00 each. DEP's definition of a solid waste container appears to include roll-off boxes and other containers used to transport solid waste but not other regular front, side and rear load containers. The adoption of the increase and new fees are opposed because they will result in additional costs which will ultimately be borne by the taxpayers of the county and State who are already overburdened with skyrocketing waste disposal costs.

RESPONSE: The transporter registration is not $120.00 per unit. The transporter fees, found at N.J.A.C. 7:26-4.4, are $120.00 for each solid waste cab or for each solid waste single-unit vehicle, $120.00 for each solid waste trailer, and $25.00 for each solid waste container. Any device used for the transportation of solid waste must be separately registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle. See the definitions of solid waste cab, solid waste container, solid waste single-unit vehicle, solid waste trailer, and solid waste vehicle at N.J.A.C. 7:26-1.4.

Without exception, all types of solid waste containers used to transport solid waste off-site or to a disposal facility must be registered with the Department. While the definition of solid waste container found in the proposed amendment to N.J.A.C. 7:26-1.4 does list a number of examples of such containers, the list is not an exhaustive one and is so described in the rule. Other types of containers which meet the specific requirements of the definition but are not specifically listed are also covered by the rule. As stated in the previous response, for registration purposes, it is the use of a solid waste container to contain and transport solid waste off-site or to a disposal facility that is the most important criteria for determining that the container is a solid waste container. Solid waste containers which always remain on-site for use as temporary receptacles to hold solid waste before collection do not need to be registered, regardless of size or design.

Front, side and rear load containers are of limited capacity and not normally used for transporting solid waste off-site or to a disposal facility. However, if such containers are used for containing and transporting solid waste off-site or to a solid waste facility they are solid waste containers as defined at N.J.A.C. 7:26-1.4 and must be registered with the Department.

The Department recognizes that the adoption of these rules and amendments will increase the fees for transporter and facility registration. However, N.J.S.A. 13:1E-18 authorizes the Department, in accordance with a fee schedule, to establish and charge fees for any of the services it performs in connection with the SWMA. Currently, all New Jersey taxpayers pay, via the General State Fund, for the Department's costs in carrying out the activities required by the SWMA. It is appropriate to shift the responsibility for support of these services from primary reliance on the general tax base to those who produce, transport, handle, dispose and otherwise derive monetary benefit from solid waste activities or who benefit from provision of solid waste disposal services. Further, the costs resulting from the adoption of these rules are expenses which the solid waste industry may recover through tariffs approved by the BPU. Though the increased tariffs will be passed on to customers, it will be for services actually received by the customer.

COMMENT: We (the commenters) understand the NJDEP's need for increased funding and staff and we support stringent environmental regulations. What we oppose is the manner in which NJDEP proposes to acquire these additional funds for the solid waste management program. The responsibility of regulating the solid waste industry is not NJDEP's alone and these rules will increase confusion among the other agencies involved. In addition, these proposed fees are not in proportion to the solid waste management work conducted by the NJDEP.

RESPONSE: It is true that the New Jersey Department of Environmental Protection is not the only agency that has regulatory authority over the solid waste industry. The Board of Public Utilities also has an important role. It is not clear, however, what the commenter meant by "confusion among the agencies involved". The Department's regulatory authority is derived from the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. In particular, the Department's authority to assess fees for services it provides in accordance with the Act is set forth at N.J.S.A. 13:1E-18. The BPU oversees the economic aspects of the solid waste industry and its authority is derived from N.J.S.A. 48:1 et seq. The Department does not expect that any confusion will occur between it and its sister agency as a result of this fee rule adoption.

A detailed explanation of the methodology used to determine the Department's cost of providing services was contained in the economic impact summary portion of the rule proposal as published in the New Jersey Register at 20 N.J.R. 2668(a) on November 7, 1988. Each fee is based on the Department's actual cost of providing the specified services pursuant to the statutory provisions of N.J.S.A. 13:1E-18, which at the time of proposal imposed a $500.00 maximum fee limitation for any service provided.

The economic impact summary cited above details specific work activities related to each of the fees, the amount of staff time needed to complete each activity and the number of each type of activity expected annually.

COMMENT: If additional funding is needed by the NJDEP to operate its solid waste management program, this should be addressed in the Department's budgeting process rather than through the assessment of new and increased fees.

RESPONSE: The new fees are sought as part of a planned effort by the Department to reduce reliance on every New Jersey taxpayer for all program funds by requiring the regulated community to bear a reasonable share of the cost of required services provided to them. The regulated community may request a tariff increase from BPU to compensate for the new or increased fees and, if approved, these costs would ultimately be paid by the persons who receive the services.

The Division of Solid Waste Management will also continue to seek new funds via the budget process. However, it is also reasonable to expect the regulated community to contribute a fair share of the costs for the services provided to them pursuant to the requirements of N.J.S.A. 13:1E-1 et seq.

COMMENT: We (the commenters) are not opposed to the increased fee schedules if the increase will result in improved waste flow controls and a better monitoring of the solid waste industry in general. However, we disagree with how these moneys will be directed, specifically those fees increasing vehicle registration costs and imposing container fees for the purpose of monitoring and compliance activities. In matters of compliance, the Department of Law and Public Safety should have jurisdiction because it is the designated enforcement arm of the State.

RESPONSE: The new or increased fee schedule will enable the Department to allocate increased resources for district waste flow compliance monitoring and for those other services described in the economic impact section of the November 7, 1988 rule proposal at 20 N.J.R. 2668(a). The General State Funds will continue to be the major funding source for all other solid waste management program components.

The Department maintains that it is entirely appropriate for fees obtained from solid waste vehicle registration to be "directed", at least in part, for use in monitoring and compliance activities.

The Department's specific powers of enforcement are derived from N.J.S.A. 13:1E-9 and do not conflict with the enforcement powers of any other agency. N.J.S.A. 13:1E-9a. states that "[A]ll codes, rules and regulations adopted by the department related to solid waste collection and disposal shall have the force and effect of law. Such codes, rules and regulations shall be observed throughout the State and shall be enforced by the department and by every local board of health, or county health department, as the case may be." Therefore, the Department has the authority to monitor compliance with the statute and rules and also to enforce those rules.

The Department of Law and Public Safety's Division of Law represents the Department of Environmental Protection in all judicial and administrative litigation.

Department Initiated Changes

N.J.A.C. 7:26-3.2(a)

The Department has added a sentence to this section which states that "Any device used in the transportation of solid waste shall be registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle." This sentence was originally proposed at N.J.A.C. 7:26-4.4(a) but is now being deleted from

that section and placed in N.J.A.C. 7:26-3.2(a), a more appropriate placement since this section concerns registration.

The Department also added language to this subsection to make clear to transporters that "in addition to obtaining an approved registration statement from the Department . . ." the transporter must comply with all of the rules and regulations of the New Jersey Division of Motor Vehicles.

7:26-3.2(h)

The Department added the phrase "solid waste" to the term vehicle, so that the defined term set forth at N.J.A.C. 7:26-1.4 is used consistently throughout the rule and so that it is clear that N.J.A.C. 7:26-3.2(h) is only concerned with solid waste vehicles.

N.J.A.C. 7:26-3.3(a)1

This section exempts from the transporter requirements persons transporting only their own solid waste in vehicles bearing passenger license plates. However, the New Jersey Division of Motor Vehicles (NJDMV) does not issue passenger license plates to passenger vehicles but instead issues general registration plates to passenger vehicles. So that the rule is clear and uses the appropriate NJDMV terminology, the Department has deleted the reference to "passenger license plates" and replaced it with "passenger automobiles bearing general registration plates." This language more accurately describes the exemption for passenger vehicles that the Department contemplated.

N.J.A.C. 7:26-4.4(a)

The sentence stating that "[A]ny device used for the transportation of solid waste shall be registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle", was deleted and added to N.J.A.C. 7:26-3.2(a) since that is the more appropriate placement of this language concerning registration.

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

7:26-1.1 Scope of rules

(a) Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department of Environmental Protection which govern the registration, operation, and closure maintenance of sanitary landfills and other solid and hazardous waste facilities in the State of New Jersey as may be approved by the Department; registration, operation, and maintenance of solid waste transporting operations and facilities in the State of New Jersey; a fee schedule for services provided by the Department to solid and hazardous waste facilities, generators and transporters. These rules shall not apply to the following:

1.-6. (No change.)

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

7:26-1.4 Definitions

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

. . .

"Approved registration" means the registration of a solid waste disposal site, transporter, or other solid or hazardous waste facility issued by the Department after review and approval of the registration statement.

. . .

"Asbestos-containing waste" means any solid waste which contains friable asbestos material or any variety of asbestos which is produced by extracting asbestos from asbestos ore and is generated by a source subject to 40 CFR 61.144, 61.145, 61.148, 61.149, 61.150, and 61.153, as they may be subsequently amended or recodified.

. . .

"Collection or collecting" means the act of picking up solid waste at its point of generation or storage.

. . .

"Solid waste cab" means any powered device to which a solid waste trailer can be attached for transporting solid waste, excluding hazardous waste, off-site by roadway. Solid waste cab includes, but is not limited to, the tractor portion of an articulated vehicle.

"Solid waste container" means any non-powered, portable detachable device that is used to contain and transport solid waste off-site or to a solid waste facility by road, rail, water, or air and that is not normally disposed of with its cargo. A container is normally used in conjunction with a solid waste cab and trailer or a solid waste single-unit vehicle and includes, but is not limited to, roll-off boxes, dumpsters, hoppers, lugger boxes, portable tanks, or any similar appurtenance, except that it shall not include metal, fiber, or plastic containers with a capacity of less than 100 gallons.

. . .

"Solid waste single-unit vehicle" means any self-propelled, non-articulated device, with either a detachable or non-detachable cargo compartment, which is used to move solid waste off-site or to a solid waste facility by road. A solid waste single-unit vehicle includes, but is not limited to, front and rear loading compactor vehicles, straight roll-off vehicles, straight vans, dump trucks, pick-up, straight flat beds, and straight tank and vacuum trucks.

"Solid waste trailer" means any non-powered device that normally has a permanently attached receptacle or area for carrying a solid waste payload. A solid waste trailer is usually employed in conjunction with a solid waste cab and includes, but is not limited to, flat bed trailers, box trailers, vans, open top trailers, compactor trailers, dump trailers, tank trailers, vacuum trailers, roll-off trailers, rail cars, and barges.

"Solid waste vehicle" means any self-propelled device used to move solid waste off-site or to a solid waste facility by road. A solid waste vehicle includes, but is not limited to, a solid waste single-unit vehicle, solid waste cab and trailer, single-unit vehicle and container, or a cab, trailer, and container combination.

. . .

"Transfer station" means a facility at which solid waste is transferred from one solid waste vehicle to another solid waste vehicle for transportation to a solid waste facility.

"Transportation" or "transporting" means the act of collecting and/or moving solid waste off-site or to a solid or hazardous waste facility by road, rail, water, or air.

"Transporter" means a person engaged in the act of collecting and/or moving of solid waste off-site by road, rail, water, or air.

. . .

"Working face" means that portion of a sanitary landfill site where solid waste is discharged by a solid waste vehicle and is spread and compacted prior to placement of coverage material.

. . .

7:26-2.7 Duration of the permit; permit renewal requirements; continuation of an expiring permit and transfer of an existing permit

(a) (No change.)

(b) SWF permit renewal submission requirements and procedures shall be as follows:

1. (No change.)

2. The permittee, owner or operator shall submit all fees required by N.J.A.C. 7:26-4 and the following materials to the Department, if needed to update the facility's operations, as an application to renew the SWF permit for that facility:

i.-iv. (No change.)

v. An updated environmental and health impact statement, including a complete and detailed description of changes in environmental impacts resulting from the operation of the facility and additional mitigation measures being proposed to address such impacts.

3. The Department shall publish notice in the DEP Bulletin and shall notify all parties as specified in N.J.A.C. 7:26-2.4(g)6 and 7 of the SWF permit renewal application.

4.-8. (No change.)

(c)-(e) (No change.)

7:26-2.11 General operational requirements

(a) (No change.)

(b) The general operational requirements for all solid waste disposal facilities are as follows:

1.-8. (No change.)

9. Only solid waste vehicles properly registered, pursuant to N.J.A.C. 7:26-3, with the Division of Solid Waste Management, unless exempt from the registration requirement pursuant to N.J.A.C. 7:26-3.3, and displaying the appropriate registration number shall be admitted for loading or unloading of any solid waste

at the facility. Solid waste vehicles exempt from registration shall not be admitted to the tipping area when registered, commercial type solid waste vehicles including, but not limited to, compactor trucks, trailers or any solid waste vehicle that tilts or uses other mechanical means to discharge its solid waste are being unloaded, or when other heavy equipment is being operated in the tipping area. The facility shall be sufficiently staffed to ensure that this requirement is not violated;

10. The operator shall designate a secure area under the facility's control, located a safe distance from the tipping area, where solid waste may be unloaded from those solid waste vehicles which are exempt from the registration requirement of N.J.A.C. 7:26-3.3. Bulky items and recyclable materials may be provided for in this manner. The facility operator shall be responsible for the sanitary condition and orderly operation of the designated area. It shall be the operator's responsibility to remove the bulky items, recyclable materials or other waste from the designated area at a frequency so as not to exceed the storage capacity of the area. Scavenging is prohibited;

11.-18. (No change.)

7:26-2.12 Generator requirements for disposal of asbestos and asbestos-containing waste

(a) (No change.)

(b) The written notification required by (a) above shall include:

1.-2. (No change.)

3. Name, address, New Jersey Department of Environmental Protection registration number of the transporter;

4. Name and address of the sanitary landfill at which disposal will occur;

5. (No change.)

6. A copy of any written notification required by 40 CFR 61.145 to 61.155.

(c) The written notification required by (a) above shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid Waste Management
Enforcement Element
428 E. State Street, CN 414
Trenton, New Jersey 08625

(d) (No change.)

7:26-2.13 Solid waste facilities; records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The record shall include:

1.-2. (No change.)

3. The cubic yard, tonnage or gallon capacity of the solid waste vehicle or solid waste container for each of three categories of wastes as follows:

i. Solids: Wastes ID 10 through 27 received (in cubic yards or tons);

ii.-iii. (No change.)

4. (No change.)

5. The license plate number and State initials of the solid waste vehicle; and

6. (No change.)

7. In addition to the information required in (a)1 through 6 above, sanitary landfills which accept asbestos and asbestos-containing waste shall:

i. Maintain a separate daily record of the asbestos and asbestos-containing waste received, which shall include:

(1) (No change.)

(2) Identification of the transporter by name and by the New Jersey Department of Environmental Protection registration number assigned to the transporter;

(3) Quantity in cubic yards and/or tons of the waste;

(4)-(5) (No change.)

ii. By the 20th day of every month, submit a copy of the daily record required by (a)7i above, covering the asbestos disposal activity of the previous calendar month. The information shall be submitted to:

New Jersey Department of Environmental Protection
Division of Solid Waste Management
Bureau of Registration and Permits Administration
401 East State Street, CN 414
Trenton, New Jersey 08625

(b) (No change.)

(c) The information required to be recorded in the daily record, as set forth in (a) above, shall be supplied by the transporter to the facility operator on a waste origin/waste disposal (O and D) form (or duplication of same).

1.-4. (No change.)

5. If an O and D form is not completed and signed by a registered transporter for each solid waste vehicle, or if the waste disposal would not be in compliance with the waste flow rules or the facility's registration, as required in (c)3 above, the facility operator shall deny the transporter the right to dispose of the solid waste at the facility.

(d)-(i) (No change.)

7:26-2A.8 Sanitary landfill operational and maintenance requirements

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

(l) Rules concerning the disposal of asbestos and asbestos-containing waste in sanitary landfills follow:

1. The owner or operator of a sanitary landfill may only accept and dispose of asbestos and asbestos-containing waste which has been managed in the following manner:

i. Asbestos and asbestos-containing waste, including waste originating from sources subject to 40 CFR 61.144, 61.145, 61.148, 61.149 and 61.150, except, as provided otherwise below shall have been sufficiently mixed or coated with water or an aqueous solution and sealed into leak-tight containers (such as 6 mil. plastic bags) while wet. The container shall have been permanently sealed and labeled with a warning label that states:

CAUTION
Contains Asbestos
Avoid Opening or
Breaking Container
Breathing Asbestos is Hazardous
to Your Health

Alternatively, warning labels specified by Occupational Safety and Health Standards of the United States Department of Labor, Occupational Safety and Health Administration under 29 CFR 1910 may be used;

ii. Air pollution control device asbestos waste originating from sources subject to 40 CFR 61.144, 61.145, 61.148, 61.149 and 61.150 shall have been thoroughly mixed with water into a slurry and sealed into leak-tight containers (such as 6 mil. plastic bags) while wet. The containers shall have been permanently sealed and labeled in accordance with (l)1i above;

iii. (No change.)

iv. All asbestos and asbestos-containing waste from asbestos mills subject to 40 CFR 61.151, shall have been adequately mixed with a wetting agent recommended by the manufacturer of the wetting agent to effectively wet asbestos mill dust and asbestos mill tailings and sealed into leak tight containers (such as 6 mil. plastic bags) while wet. The containers shall be permanently sealed and labeled in accordance with (l)1i above;

2.-5. (No change.)

7:26-2B.4 Additional engineering design submission requirements for thermal destruction facilities

(a) The following engineering design submittal requirements are in addition to the submittal requirements of N.J.A.C. 7:26-2.10.

1.-10. (No change.)

11. A descriptive statement and detailed specification of the proposed on-site and off-site transportation system intended to service employee vehicles, solid waste vehicles transporting waste to the facility for processing, and other vehicles removing reclaimed materials and/or process residues from the facility. The number, type, capacity, and frequency of these vehicles shall be specified. On-site parking, access and exit points, and the mechanisms or features which

will be employed to provide for an even flow of traffic into, out of, and within the site, shall be identified;

12.-21. (No change.)

(b) Thermal destruction facility engineering design requirements are as follows:

1.-19. (No change.)

20. All facilities shall be designed in a manner that affords fluid vehicular movement on-site and prevents traffic backups and related traffic hazards on access roads servicing the facility site. The on-site roadway design configuration and layout shall provide sufficient roadway for unobstructed vehicular passage, with parking areas, maneuvering space in the loading and unloading areas, and traffic control measures (that is, lane delineations, signals, signs and barriers), in order to achieve this goal. All on-site roadways used by solid waste vehicles shall be constructed and surfaced in accordance with standards for heavy truck usage;

21. Off-site solid waste vehicle routes for the conveyance of solid waste to, and residues from, the facility shall be defined and delineated in a manner which will minimize impacts on surrounding residential development or similar sensitive receptors. The solid waste vehicle traffic to and from the proposed facility shall not result in a decrease in the existing level of service, as defined by the New Jersey Department of Transportation, of a major intersection;

22.-32. (No change.)

7:26-2B.8 Additional operational requirements for thermal destruction facilities

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

(e) A Department inspector may, at the option of the Department, be stationed at facilities operating at a capacity of 250 tons per day or greater, on a daily basis and during all facility operating hours. The owner or operator of such a facility shall allow entry to the inspector at any time during operating hours. The owner or operator shall make available office space for Department personnel to prepare inspection reports.

(f)-(v) (No change.)

SUBCHAPTER 3. TRANSPORTATION

7:26-3.1 Improper transportation prohibited

(a) The transportation of organic and/or combustible matter or other forms of solid waste on the roadways and highways in this State shall be made only through the use of:

1. Transportation systems established, operated and maintained in accordance with the rules set forth in this subchapter;

2. Other methods of transportation as may be approved by the Department.

7:26-3.2 Registration

(a) No person shall engage or continue to engage in the transportation of solid waste in this State without first obtaining an approved registration statement from the Department. ***Any device used for the transportation of solid waste shall be registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle.*** The registration statement shall be signed by the person engaged in or desiring to engage in the transportation of solid waste, shall be executed on forms prescribed by and furnished by the Department and shall state such information necessary and proper to enforcement of this subchapter, as the Department may require. ***In addition to obtaining an approved registration statement from the Department, the person engaged in or desiring to engage in the transportation of solid waste shall comply with all of the rules and regulations of the New Jersey Division of Motor Vehicles.***

(b) (No change.)

(c) No person shall engage in the transportation of solid waste in this State if such an operation does not meet the transporter requirements listed in this subchapter. In addition, the transporter shall comply with any other conditions or limitations which may be specified on the approved registration.

(d) Prior to May 1 of each calendar year, each registrant, other than a hazardous waste transporter, shall submit to the Department a statement updating the information contained in the original registration statement. This update shall be on forms furnished by the Department. In no case shall the submission of an updated registration statement alter the conditions under which the approved registration was granted. Hazardous waste transporters shall submit updated registration statements on or before October 1 of each calendar year, as more fully set forth at N.J.A.C. 7:26-7.5(c)5.

(e) (No change in text.)

(f) The failure to submit an updated registration statement and to submit all applicable fees (see N.J.A.C. 7:26-4) on or before June 1 in each calendar year, shall be sufficient cause to revoke the approved registration of a solid waste transporter or to declare it expired.

(g) (No change in text.)

(h) All ***solid waste*** vehicles registered with the Department for the transportation of solid waste must be owned or leased by the applicant, and, if leased, a copy of the lease shall be supplied when filing the registration statement.

7:26-3.3 Exceptions and conditions

(a) The provisions of this subchapter shall not be applicable to the following:

1. Persons transporting only their own household solid waste in *[vehicles bearing passenger license plates]* ***passenger automobiles bearing general registration plates***;

2. Persons transporting only their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds.

(b) No provision of these rules shall be interpreted as permitting the transportation of domestic sewage in any manner other than that prescribed by law.

(c) Vehicles not registered with the Department as solid waste vehicles are not permitted to discharge solid waste at or near areas where commercial type solid waste vehicles are unloading or where heavy equipment is operating.

7:26-3.4 Transporter requirements (General)

(a) Length of service routes shall be kept consistent with the proper operation of solid waste vehicles and/or equipment in order that the area or route services can be completed during a normal operating day.

(b) (No change.)

(c) Unless an emergency, such as inclement weather, equipment breakdown or accident warrant, no solid waste shall be allowed to remain or be stored in any solid waste vehicles in excess of 24 hours.

(d) No solid waste vehicle shall be used for transportation if the design of the solid waste vehicle is such that any solid waste material will spill onto the roadways and highways of this State.

(e) No solid waste vehicle used for transportation shall be used beyond its design capabilities or in such a manner that littering and spillage of solid waste onto the roadways and highways of this State will occur.

(f) All solid waste vehicles used for the transportation of solid waste shall be maintained in good working condition to protect the health and safety of the workers and citizens of this State and to provide prompt and efficient service. The registered operator of any transportation system shall provide a means of continuous service in the event an emergency arises.

(g) All workers or collection crews operating solid waste transportation systems shall take reasonable care to protect the property of customers being served. Any damage or spillage of solid waste as a result of the transporter's actions shall be his or her responsibility.

(h) Each registered unit of a solid waste vehicle, except those exempted from fee payment under N.J.A.C. 7:26-3.3, used in the transportation of solid waste shall properly, permanently, and conspicuously display the New Jersey Department of Environmental Protection (N.J.D.E.P.) registration number in letters and numbers at least three inches in height, and shall carry the current N.J.D.E.P. registration certificate in the solid waste vehicle. In addition, in letters and numbers at least three inches in height, the capacity of the solid waste container in cubic yards, in tons or in gallons, with the appropriate unit designated, shall be permanently affixed on both sides of the solid waste vehicle so as to be visible to the operator of the solid waste facility.

(i) (No change.)

(j) All solid waste vehicles used for transportation of solid waste shall, except for operations of their collection service routes, access and exit solid waste facilities in accordance with designated solid waste vehicle routes as specified in either the appropriate district solid waste management plan or the permit for the particular solid waste facility.

7:26-3.5 Transporter requirements (Specific)

(a) Rules concerning sewage sludge and other fecal material include:

1. All solid waste vehicles used for the transportation of such wastes shall be of such a design as to preclude any spillage or leakage onto the roadways and highways of the State.

2. Sewage sludge and other fecal material shall not be intermixed with other wastes of a chemical or industrial nature for transportation to a disposal operation.

(b) All solid wastes vehicles used for transportation of bulky wastes shall be of such a design so as to preclude any spillage onto the roadways and highways of the State.

(c) (No change.)

(d) Rules concerning transportation of asbestos and asbestos-containing waste follow:

1. All solid waste vehicles used for the transportation of asbestos and asbestos-containing waste shall be of such a design so as to prevent any spillage or leakage or emissions therefrom.

2. No transporter shall transport asbestos and/or asbestos-containing waste unless such waste is properly packaged in accordance with 40 CFR 61.152 and N.J.A.C. 7:26-2A.8(1). In no case shall loose asbestos or asbestos-containing waste be transported.

3.-6. (No change.)

7:26-3.7 Smoking, smoldering or burning solid waste in solid waste vehicles.

(a) No transporter shall provide service where waste materials to be collected and transported show evidence of smoking, smoldering or burning.

(b) All wastes in transit that must be dumped in an emergency due to smoking, smoldering or burning shall be the responsibility of the transporter. The operator of the solid waste vehicle shall immediately notify the police and fire departments having jurisdiction. The transporter shall be responsible for cleanup of all materials dumped in an emergency.

SUBCHAPTER 4. FEES FOR SOLID WASTE, EXCLUDING HAZARDOUS WASTE FEES

7:26-4.1 General provisions

(a) The fee schedule set forth in this subchapter shall apply to all sanitary landfill operations, incinerators, transfer stations, processing facilities, resource recovery facilities, or any other methods of transportation or disposal, excluding hazardous waste, requiring registration with the Department.

(b) Persons transporting only their own household refuse in vehicles bearing passenger license plates or persons transporting their own solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 8,000 pounds, need not pay any solid waste fee to the Department.

7:26-4.2 Payment of fees

(a) Fees for activities related to solid waste transporters and facilities shall be paid by certified check or money order and made payable to "Treasurer, State of New Jersey" at the following address:

New Jersey Department of Environmental Protection
Licenses and Collections—Solid Waste
401 E. State Street CN 414
Trenton, N.J. 08625

(b) Engineering design fees and transporter registrations may be paid in person at the Bureau of Registration and Permits Administration, at the address set forth in (a) above.

7:26-4.3 Fee schedule for solid waste facilities

(a) The fee schedule for solid waste facilities is as follows:

1. A facility monitoring fee from all facilities that are required to submit to the Department monthly summaries of waste received shall be paid when submitting the annual registration update. The fee is $500.00 per year.

2. A facility initial registration fee shall be paid before a solid waste facility permit is issued. The fee is $500.00.

3. A facility annual registration update fee shall be paid when submitting the update. The fee is $175.00.

4. A fee for review of a solid waste facility application for administrative completeness shall be paid when submitting the application which is due prior to May 1 of each calendar year. The fee is $500.00.

5. A fee for determination of facility application compliance with a district solid waste management plan shall be paid when submitting the application. The fee is $270.00.

6. A fee for technical review of engineering design shall be paid when submitting the design or updated design if applying for a renewal permit, and when additional information is required as a result of the Department issuing a notice of deficiency. The fee is $500.00 for each submittal.

7. A fee for technical review of the environmental and health impact statement shall be paid when submitting the statement or updated statement if applying for renewal permit, and when additional information is required as a result of the Department issuing a notice of deficiency. The fee is $500.00 for each submittal.

8. A fee for technical review of facility closure and post-closure plan shall be paid when submitting the plan. The fee is $500.00.

9. A fee for technical review of a sanitary landfill topographic survey shall be paid when submitting the survey. The fee is $500.00.

10. A fee for preparation and issuance of a solid waste facility permit or renewal shall be paid before the permit is issued. The fee is $500.00.

11. A fee for engineering review of solid waste collection or disposal facilities or operations submitted pursuant to N.J.A.C. 7:26-1.7(e) shall be paid when submitting the application. The fee is $500.00.

(b) Fees for compliance monitoring of solid waste facilities shall be pre-billed on a quarterly basis and shall be paid within 30 days of the date on the bill issued by the Department. Fees shall be in accordance with the following table:

Type of Facility	Compliance Monitoring Fees
Sanitary Landfill—operating at 31,200 tons per year (tpy) or more	$405.00 per site-visit
Sanitary Landfill—operating at less than 31,200 tpy	$270.00 per site-visit
Sanitary Landfills under construction or expansion	$405.00 per site-visit
Incinerators—operating at 9.6 tons per day or more	$340.00 per site-visit
Incinerators—operating at less than 9.6 tons per day	$205.00 per site-visit
Transfer Stations—operating at 31,200 tpy or more	$270.00 per site-visit
Transfer Stations—operating at less than 31,200 tpy	$205.00 per site-visit
Resource Recovery—operating at 9.6 tons per day or more	$500.00 per day that an inspector is on the premises
Resource Recovery—operating at less than 9.6 tons per day	$270.00 per site-visit
Resource Recovery under construction or expansion	$270.00 per day that an inspector is on the premises

7:26-4.4 Fee schedule for transporters

(a) For solid waste transporters, excluding those solely transporting hazardous waste, an annual registration and inspection fee

shall be paid. *[Any device used for the transportation of solid waste shall be registered with the Department as either a solid waste cab, solid waste trailer, solid waste container, or solid waste single-unit vehicle.]*

(b) The registration year shall extend from May 1 through April 30. Fees shall be payable prior to May 1 of each calendar year. No pro rata adjustment of fees shall be made by the Department.

(c) All transporters shall pay a fee of $120.00 for each solid waste cab or for each solid waste single unit-vehicle.

(d) All transporters shall pay a fee of $120.00 for each solid waste trailer.

(e) All transporters shall pay a fee of $25.00 for each solid waste container.

(f) The registration of a single-unit solid waste vehicle, solid waste trailer, solid waste cab, and solid waste container is non-transferable.

(g) A transporter registering a vehicle for both solid waste and hazardous waste transportation shall not pay more than $500.00 in combined registration fees.

7:26-4.5 (No change in text.)

7:26-16.2 Definitions

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

...

"License" means the initial approval and first renewal of any registration statement or engineering design pursuant to N.J.S.A. 13:1E-1 et seq. and/or N.J.S.A. 13:1E-49 et seq. for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste in this state, except that "license" shall not include any registration statement or engineering design approved for any of the persons listed in N.J.A.C. 7:26-16.3(d). "License" includes any authorization equivalent to an approved registration, including any temporary operating authorization, hazardous waste transporter license, or hazardous waste facility permit.

...

7:26-16.3 Filing of disclosure statement

(a) (No change.)

(b) Disclosure statements shall be filed by submitting an original and one conformed copy of all papers, including Personal History Disclosure Forms, to the Department at the following address:

Department of Environmental Protection
Division of Solid Waste Management
Bureau of Registration and Permits Administration
CN 414
Trenton, New Jersey 08625

1.-3. (No change.)

(c)-(e) (No change.)

7:26-16.13 Fees charged by the Attorney General and the Department

Note: The fee for the Attorney General is adopted pursuant to Section 3.d of P.L. 1983, c.392, N.J.S.A. 13:1E-128d. The fee for the Department is adopted pursuant to N.J.S.A. 13:1E-18.

(a) Every applicant or licensee who files a disclosure statement shall submit a fee to the Attorney General to cover the cost of enforcing P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.) and a fee to the Department to cover the cost of reviewing disclosure statements and securing confidential documents. Except as provided in (e) below, the fee for the Attorney General shall be $100.00 per each individual and the fee for the Department shall be $500.00 per each individual required to be listed in the disclosure statement (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9 or shown to have a beneficial interest in the business of the applicant or licensee other than an equity interest or debt liability interest.

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

(d) If an applicant or licensee files a change of information pursuant to N.J.A.C. 7:26-16.6, and discloses thereon an individual not listed in the disclosure statement information (including any amendments) currently on file with the Department, the applicant or licensee shall pay additional separate fees of $100.00 to the Attorney General and $500.00 to the Department per each individual so disclosed (other than a non-supervisory employee required to be listed pursuant to N.J.A.C. 7:26-16.4(a)9.).

(e) In the case of an applicant or licensee that is small, family owned and operated business, the Department will reduce its fee as follows:

1. Where there are three or fewer names listed on the disclosure statement as owners, officers, directors, partners and/or key employees, and two or all three of these individuals are related as spouses or as parent and child, then the Department fee shall be $500.00 per principal residence of the individuals listed.

2. (No change.)

(f) (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT
Standards Applicable to All Permits
Adopted Amendment: N.J.A.C. 7:26-12.4

Proposed: January 17, 1989 at 21 N.J.R. 108(a).
Adopted: March 23, 1989 by Christopher J. Daggett, Commissioner, Department of Environmental Protection.
Filed: March 27, 1989 as R.1989 d.217, **without change.**
Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.
DEP Docket Number: 050-88-12.
Effective Date: April 17, 1989.
Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

The comment period closed February 16, 1989. One written comment was received. No public hearings were held.

COMMENT: The commenter was in favor of the proposed amendment and commended the Department for providing greater protection to the public's health by requiring permittees not in compliance with their permits to take all necessary measures to prevent adverse impacts from permit non-compliance.

RESPONSE: The Department appreciates this show of support for this regulatory change.

Full text of the adoption follows:

7:26-12.4 Standards applicable to all permits

(a) The conditions in this section shall apply to all permits issued pursuant to this chapter. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. If incorporated by reference, a specific citation to this subchapter shall be given in the permit.

1.-3. (No change.)

4. The permittee shall take all steps to minimize or correct any adverse impact on human health and the environment and shall carry out all measures to prevent any adverse impacts on human health and the environment resulting from noncompliance with this permit.

5.-17. (No change.)

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

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Residential Alcoholism Treatment Bed Standards

Readoption: N.J.A.C. 8:33K

Proposed: January 17, 1989 at 21 N.J.R. 150(a).
Adopted: March 23, 1989 by Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: March 27, 1989 as R.1989 d.218, **without change.**
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:H-5.
Effective Date: April 17, 1989.
Expiration Date: March 27, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33K-1.1–1.17.

HIGHER EDUCATION

(b)

BOARD OF HIGHER EDUCATION

State College Personnel System Annual Salary Increases for Managerial Employees

Adopted Amendment: N.J.A.C. 9:6A-4.3

Proposed: December 19, 1988 at 20 N.J.R. 3079(a).
Adopted: March 27, 1989 by the Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: March 27, 1989 as R.1989 d.220, **without change.**
Authority: N.J.S.A. 18A:3-14h and 18A:64-6h.
Effective Date: April 17, 1989.
Expiration Date: January 4, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

9:6A-4.3 Annual salary increases for managerial employees

(a) The anniversary date of all managerial employees shall be July 1 of each fiscal year commencing on July 1, 1988.

(b) All managerial employees hired subsequent to the effective date of this section shall be assigned an anniversary date of July 1. The college may adjust the starting salary to reflect the difference in the period of time before the next salary increase.

(c) A managerial employee shall not be eligible for an annual salary increase unless he or she has been in active pay status in his or her current salary range for more than six months within the preceding fiscal year. Exceptions to this requirement may be made by the president of the college.

(d) Each year, the Board of Higher Education shall establish the percentage increase applicable to managerial employees' salaries and notify the colleges of that amount.

(e) By June 30 of each fiscal year, each college shall report to the Chancellor the total salary figure for all managerial employees at the college.

(c)

EDUCATIONAL OPPORTUNITY FUND

Verification of Financial Eligibility; Duration of Student Eligibility; Non-Funded Students; Application Procedures for EOF Graduate and Undergraduate Grants; Refunds and Repayments of Disbursements Made to Students

Adopted Amendments: N.J.A.C. 9:11-1.6, 1.8, 1.9, 1.20; 9:12-2.6 and 2.9

Proposed: August 1, 1988 at 20 N.J.R. 1769(a).
Adopted: March 27, 1989 by the Board of Directors of the Educational Opportunity Fund, T. Edward Hollander, Chairman.
Filed: March 27, 1989 as R.1989 d.221, **without change.**
Authority: N.J.S.A. 19A:71-33 and 18A:71-36.
Effective Date: April 17, 1989.
Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

9:11-1.6 Verification of financial eligibility

(a) (No change.)

(b) It is required that all recipients of undergraduate EOF grants apply for the Federal Pell Grant and the New Jersey Tuition Aid Grant and all students' files shall contain information from a financial aid form approved by the EOF Board and Student Assistance Board indicating application for the above.

(c) Students who have been found eligible to receive student assistance must provide an authorization to the Department of Higher Education, Office of Student Assistance, which permits the release of Internal Revenue Service and/or State income tax returns for verification purposes. Financial data provided on a financial aid form approved by the EOF Board and Student Assistance Board will be verified through the comparison of information reported on income tax returns. Discrepancies will require the reevaluation of the student's eligibility. Students as well as institutions will be notified if an adjustment in the value of aid is required.

(d) (No change.)

(e) In order to receive an EOF grant, students must demonstrate eligibility through submission of a financial aid form approved by the Educational Opportunity Fund Board of Directors in accordance with established deadline dates. This information must be in the student's file prior to granting an award.

(f) (No change.)

9:11-1.8 Duration of student eligibility

(a) Students deemed eligible at the time of initial enrollment shall retain eligibility for program support services throughout the duration of the initial degree study as long as he or she maintains full-time enrollment or has been approved in writing for a part-time E.O.F. grant by the campus E.O.F. Program Director. Part-time grant eligibility will be available only at those institutions approved to award part-time EOF grants by the EOF Board of Directors. In addition, students shall retain eligibility for an E.O.F. grant as long as the student has demonstrated financial need as determined by the institution through submission of a financial aid form approved by the Educational Opportunity Fund Board of Directors in accordance with annually established deadline dates.

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

9:11-1.9 Non-funded students

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

(d) To retain eligibility for program services non-funded students must continue to file the financial aid form approved by the Educational Opportunity Fund Board of Directors and have been de-

termined eligible and received Article III academic year funds during initial enrollment into the program.

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

9:11-1.20 Application procedures for EOF graduate and undergraduate grants

(a) (No change.)

(b) Applicants for undergraduate EOF must complete a financial aid form in accordance with N.J.A.C. 9:11-1.6(e). Students must apply for the Pell Grant and State student assistance programs by authorizing release of information to the New Jersey Department of Higher Education.

(c) (No change.)

(d) Applicants for graduate EOF must complete a financial aid form approved by the Educational Opportunity Fund Board of Directors in accordance with established deadline dates and procedures.

9:12-2.6 Verification of financial eligibility

(a) Entering students participating in the summer program must have filed a financial aid form approved by the Educational Opportunity Fund Board of Directors prior to summer program enrollment or as part of summer program enrollment procedures (to be established prior to the summer program).

(b) (No change.)

9:12-2.9 Refunds and repayments of disbursements made to students

(a) (No change.)

(b) Payment period as used in (a) above shall mean the time between the first day of classes for a summer term and the end of that term according to the institutional calendar.

(c) If a cash disbursement has been made by an institution for non-institutional costs from a State assistance program, and it is determined by application of the institution's refund policy and the above formula that a refund should be paid to the State, the institution shall endeavor to collect the overpayment from the student and return it to the State. If this effort is unsuccessful, the institution shall notify the Office of Student Assistance of the amount owed for each State assistance program. Non-institutional costs may include, but are not limited to, room and board, books and supplies, transportation, and miscellaneous expenses.

(a)

EDUCATIONAL OPPORTUNITY FUND

Administrative Policies and Procedures Program Support

Adopted New Rules: N.J.A.C. 9:11 and 9:12

Proposed: October 17, 1988 at 29 N.J.R. 2506(a).

Adopted: March 27, 1989 by the Board of Directors of the Educational Opportunity Fund, T. Edward Hollander, Chairman.

Filed: March 27, 1989 as R.1989 d.222, **without change.**

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Effective Date: April 17, 1989.

Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

N.J.A.C. 9:11 and 9:12 expired on January 19, 1989, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), these expired rules with proposed amendments are adopted as new rules.

Full text of the adopted new rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 9:11 and 9:12.

Full text of the adopted amendments to the rules proposed for readoption follows:

9:11-1.5 Financial eligibility for undergraduate grants

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

1.-3. (No change)

(b) A dependent student who comes from a family with both parent(s) or guardian(s) working and whose combined income exceed the applicable amount set forth in the E.O.F. Income Eligibility Scale above, may be eligible for E.O.F., only if:

1.-2. (No change)

(c) An independent student is financially eligible for an E.O.F. grant if the gross income of his or her parent(s) or guardian(s) does not exceed income limits set forth for dependant students.

1.-3. (No change)

4. Notwithstanding any other provisions herein, an independent student shall, in lieu of specific financial information concerning his or her parent(s) or guardian(s) income, provide upon entry into the program, evidence that he or she is from a background of historical poverty by meeting one of the criteria set forth in N.J.A.C. 9:11-1.5(e)1 through 5.

5. (No change)

(d)-(g) (No change)

9:11-1.17 Grant awarding cycle

(a) An E.O.F. grant is available for an academic year which usually includes two terms.

1. (No change)

2. In no case will an initial E.O.F. award be given for the student's last two terms of study.

9:12-2.3 Student eligibility

(a) Any student deemed eligible for admission and matriculation to the E.O.F. program by the institution in the academic year (pursuant to N.J.A.C. 9:11-1) is qualified to receive additional grants funds to support enrollment and full participation in the summer program in accordance with the following procedures:

1. (No change)

2. Depending on the availability of funds, renewal students may be permitted to attend summer programs as long as they meet one of the following priority funding categories:

i.-ii. (No change)

iii. Are able to graduate by the end of the summer session;

iv. Need to stay in academic sequence;

v. Need to remove academic probation standing; or

vi. Need to repeat courses not successfully completed (F, Incomplete, etc.).

(b)

EDUCATIONAL OPPORTUNITY FUND

Student Eligibility

Adopted Amendment: N.J.A.C. 9:11-1.1

Proposed: August 1, 1988 at 20 N.J.R. 1768(b).

Adopted: March 27, 1989 by the Board of Directors of the Educational Opportunity Fund, T. Edward Hollander, Chairman.

Filed: March 27, 1989 as R.1989 d.224, **without change.**

Authority: N.J.S.A. 19A:71-33 and 81A:71-36.

Effective Date: April 17, 1989.

Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

9:11-1.1 Student eligibility
(a)-(b) (No change.)
(c) To be initially eligible for an Educational Opportunity Fund grant, a student must have demonstrated that he or she:
1.-5. (No change.)
(d) Students may not receive assistance under the programs administered by the Educational Opportunity Fund Board if they owe a refund on a grant or scholarship previously received from a State or Federal program through any institution, or are in default on any loan made under any State or Federal student financial assistance program at any institution. Students owing a refund on a grant or scholarship or who are in default on a loan may receive State financial assistance if they make arrangements with the appropriate office to repay the debt.
(e) (No change.)

(a)

EDUCATIONAL OPPORTUNITY FUND

Grant Amounts

Adopted Amendment: N.J.A.C. 9:11-1.7

Proposed: August 1, 1988 at 20 N.J.R. 1770(a).
Adopted: March 27, 1989 by the Board of Directors of the Educational Opportunity Fund, T. Edward Hollander, Chairman.
Filed: March 27, 1989 as R.1989 d.223, **without change.**
Authority: N.J.S.A. 19A:71-33 through 18A:71-36.
Effective Date: April 17, 1989.
Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

9:11-1.7 Grant amounts
(a) (No change.)
(b) The exact amount of the E.O.F. award shall be determined by the institution's E.O.F. and financial aid directors. Priority for determining need and awarding E.O.F. grants shall be given first to students who meet the educational and income criteria in accordance with N.J.A.C. 9:11-1.1(a) and (c) and 9:11-1.5(a) through (d), followed by those students admitted using N.J.A.C. 9:11-1.5(e) through (g).
(c) Once it is determined that a student is eligible, he or she shall not receive less than the minimum grant nor more than the maximum grant. Under no circumstance shall an E.O.F. award be granted which, in combination with other aid, exceeds the cost of attendance as determined by the institution.
(d)-(f) (No change.)

HUMAN SERVICES

(b)

DIVISION OF PUBLIC WELFARE

Public Assistance Manual

Voluntary Restricted Payments

Adopted Amendment: N.J.A.C. 10:81-4.5

Proposed: January 3, 1989 at 21 N.J.R. 7(b).
Adopted: March 16, 1989 by Drew Altman, Commissioner, Department of Human Services.
Filed: March 16, 1989 as R.1989 d.205, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 44:7-6 and 44:10-3; 45 CFR 234.60.
Effective Date: April 17, 1989.
Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:
COMMENT: The Monmouth County Welfare Agency expressed approval of the proposed amendment inasmuch as the measure would "be very helpful in maintaining clients in current housing through the issuance of either vendor or two party checks for rent, mortgage, or utility payments."
COMMENT: The Department of the Public Advocate's comments were limited to concerns for additional regulatory provisions to ensure that recipients who request the two-party payment restriction retain complete control of their funds at all times, and to ensure that recipients are not coerced, directly or indirectly, into selecting two-party payments against their will. In support of the comments presented, the Department of the Public Advocate states that there are a number of instances which should give the client the discretion to immediately terminate the restrictive payment procedure when providers do not adhere to previously agreed upon terms in the delivery of services. That Department further refers to reported cases of county welfare agencies having conditioned the provision of certain benefits on the client's "nonvoluntary agreement" to have grants directed to the provider of services. In conclusion, it is urged that the proposed amendment be revised in light of the comments submitted.
RESPONSE: In response, the Department agrees that recipients who request the issuance of voluntarily restricted payments shall have the option to terminate such restriction. The removal of the restriction should not, however, be predicated on a sudden or capricious request on the part of the recipient. The Department has, therefore, added a provision at N.J.A.C. 10:81-4.5(c)3 (proposed (c)2) to indicate that the county welfare agency will have satisfied the criterion of promptness if it removes the restriction as soon as administratively feasible but no later than the next regular payment period. The Department does not agree that the proposed amendment should be altered to provide regulatory language that addresses implicit or explicit coercion factors. The Department believes that the term "voluntary" is sufficiently descriptive of the client's option in this area and does not require further definition. The Department is of the view that clients served by the county welfare agencies are able to purchase any goods or services through the normal channels of trade and thus are subject to the manner of payment dictated by the market; in other words, the Department does not subscribe to the argument that making certain goods or services available to the client under conditions prescribed by the provider of such goods or services imposes an unreasonable and coercive condition on the client's election of a restrictive payment. The Department further believes that abuses by local agencies can be kept to a minimum through practice compliance reviews of agency activity. In light of the foregoing, the proposed amendment will not be revised with respect to this area.
COMMENT: At the outset, Legal Services of New Jersey in its comments observes that it does not object to the general provision for two-party payments inasmuch as such is a purely voluntary payment scheme. However, Legal Services urges that county welfare agencies should be required to explain to the client the implications of restricted payments. Although the proposed amendment provides for "prompt" discontinuance of restricted payments upon the client's request, the term "prompt" needs to be clarified to ensure that the change to unrestricted payments is done expeditiously. Moreover, provisions should be added to ensure that the next check issued to client, after a request for discontinuance, is drawn in an unrestricted manner. The Legal Services agency also cites reputed instances of county welfare agencies having predicated the granting of certain benefits on the client's nonvoluntary agreement, that is, coerced consent, to enable the direct forwarding of grant to the provider of services.
RESPONSE: The Department takes cognizance of a number of the suggestions and has, therefore, made revisions to the proposed amendment. Language has been added at N.J.A.C. 10:81-4.5(c) to indicate that county welfare agencies must explain to the client the advantages and disadvantages of restricted payments and his or her right to discontinuance of such payments. N.J.A.C. 10:85-4.5(c)3 (proposed (c)2) has been modified to stipulate that the county welfare agency will have satisfied the criterion of promptness by removal of the restriction as soon as administratively feasible but no later than the next regular payment period. This change will also respond to the legal services agency's concern that the next check, issued after a request for discontinuance, is to be unrestricted. As to the issue of recipients being coerced into selecting two-party payments, the proposed amendment will not be revised for the same reasons given above in response to observations made by the Department of the Public Advocate which also commented on the same issue.

COMMENT: The Warren County Welfare Agency in its comments urged that the proposed amendment be withdrawn since the measure intervenes "in the process of rent or utility payment" and fosters "a sense of dependency which is contrary to the basic tenants (sic) of the program." It observed, additionally, that the proposed amendment is not administratively cost-effective, is error prone, and may eventually lead to initiation of rules mandating the restrictive use of public assistance payments.

RESPONSE: The Department does not agree with the assertion that the proposed amendment would foster "a sense of dependency" in those public assistance families who voluntarily take advantage of the possibility of having a portion of their monthly benefit allotment directed to a provider of service. The basic tenet undergirding the unrestricted nature of the public assistance payment is neither abridged nor changed. The voluntary designation by the client of any portion of the payment to a provider of services is a mechanism specifically authorized by Federal regulations at 45 CFR 234.60 and can be initiated or withdrawn at the option of the client. The essential purpose of the amendment is to provide more flexibility in the client's use of assistance funds to meet obligations in the purchase of goods and services. Situations where threats of eviction exist may be lessened by helping the client to direct a portion of the public assistance grant to pay rent, mortgage or utility expenses. This may prove to be advantageous to clients in situations where housing would not otherwise be available unless the lessor and/or utility supplier has assurance of payment other than the oral commitment of the recipient. Although a small increase in administrative expenses may occur incident to the amendment, such increase is certainly cost beneficial when viewed as an essential adjunct to measures that decrease the incidence of homelessness and provide viable alternative methods to ensure that housing and other essential services are available to public assistance clients to the same degree they are secured by other segments of the population.

The commenter has not presented any evidence to support the observation that the proposed amendment is "error prone" nor can the Department agree with the statement to the effect that the adoption of the amendment will lead to a mandate prescribing the restrictive use of public assistance grants. For the foregoing reasons, the Department is not persuaded to alter or withdraw its proposed amendment.

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

10:81-4.5 Payees in AFDC

(a) (No change.)

(b) Payments may be made to a person or facility as compensation for providing goods and services to or for the client. Payments may be in the form of vendor payments or two-party payments, that is, checks which are drawn jointly to the order of the recipient and the provider of the services. Payments are limited to the following situations only:

1. Emergency assistance. See N.J.A.C. 10:82-5.10 for policy and procedures relative to authorization and issuance of vendor payments in emergency assistance.

2. Payments for the following services are subject to the provisions of (c) below:

i. Child care;

ii. Transportation expense; and

iii. Rent, mortgage or utility payments.

(c) Voluntary restricted payments may be made in the form of a vendor or two party payment. Vendor payments or two-party payments shall not be extended to any other providers of goods or services and shall only be made at the request of the recipient.

1. At the time of the recipient's request of voluntary restricted payments, the CWA must explain to the recipient the advantages and disadvantages of restricted payments and his or her right to the prompt discontinuation of such payments.

*[1.]***2.*** (No change.)

*[2.]***3.*** The restricted payment will be discontinued *[promptly]* ***as soon as administratively feasible but no later than the next regular payment period,*** upon completion and submittal of Form PA-59B, Request to Discontinue Voluntary Restricted Payment, by the recipient who initiated such payment. The request must be retained in the case file.

*[3.]***4.*** Recipients who request a voluntary vendor or two-party payment for shelter or utility costs, shall designate the portion of the assistance payment for rental, mortgage or utility expenses and set the terms and conditions under which such restricted payment is made, in consultation with the county welfare agency.

(a)

DIVISION OF WELFARE

Notice of Correction
Emergency Fair Hearings
N.J.A.C. 10:81-6.17

Take notice that N.J.A.C. 10:81-6.17, Emergency fair hearings, was repealed, effective October 15, 1984. (See 16 N.J.R. 2051(b) and 16 N.J.R. 2816(a).) Through an error in the Filing Instructions for Supplement 10-15-84 to Title 10 of the Administrative Code, pages 81-113 through 81-114, which contain the rule, were not listed for removal. These pages will be removed by Supplement 4-17-89 to Title 10.

CORRECTIONS

(b)

THE COMMISSIONER

Mail, Visits and Telephone
Inspection of Outgoing Correspondence
Adopted Amendment: N.J.A.C. 10A:18-2.7

Proposed: February 6, 1989 at 21 N.J.R. 277(a).

Adopted: March 15, 1989 by William H. Fauver, Commissoner, Department of Corrections.

Filed: March 15, 1989 as R.1989 d.204, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: April 17, 1989.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10A:18-2.7 Inspection of outgoing correspondence

(a) (No change.)

(b) Outgoing mail shall not be opened, read or censored if it is considered legal correspondence or if it is addressed to:

1. The President of the United States;
2. The Vice-President of the United States;
3. Members of Congress;
4. Members of the Federal Parole Board;
5. The Director of the Federal Bureau of Prisons;
6. The Governor;
7. Members of the State Legislature;
8. Members of the State Parole Board; or
9. The Commissioner.

(c)-(e) (No change.)

(c)

THE COMMISSIONER

Mail, Visits and Telephone
Inspection and Identification of Outgoing Publications
Adopted Amendment: N.J.A.C. 10A:18-4.7

Proposed: February 6, 1989 at 21 N.J.R. 277(b).

Adopted: March 15, 1989 by William H. Fauver, Commissioner, Department of Corrections.

Filed: March 15, 1989 as R.1989 d.203, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: April 17, 1989.

Expiration Date: July 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment which is addressed below.

COMMENT: One commenter opposed the proposed amendment deleting the prohibition against opening, reading or censoring publications addressed by inmates to State officials listed in the rule because the change would permit the censoring of outgoing publications addressed to various public officials.

RESPONSE: The intent of the Department of Corrections is not to censor outgoing publications addressed to various public officials. The intent is to permit the Department of Corrections to have the opportunity to review such publications when there is reason to believe that the publication contains disapproved content.

Full text of the adoption follows:

10A:18-4.7 Inspection and identification of outgoing publications

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

(d) Outgoing publications shall not be opened, read or censored unless there is reason to believe that the publication contains disapproved content (see N.J.A.C. 10A:18-4.9) and then only with the prior approval of the Superintendent or his or her designee.

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

LABOR

(a)

OFFICE OF THE CONTROLLER

Contributions, Records and Reports

Adopted Repeals: N.J.A.C. 12:16-10

Adopted Amendments: N.J.A.C. 12:16-4.7, 13.4 and 13.7

Adopted New Rules: N.J.A.C. 12:16-22

Proposed: February 6, 1989 at 21 N.J.R. 281(a).

Adopted: March 27, 1989 by Charles Serraino, Commissioner, Department of Labor.

Filed: March 27, 1989 as R.1989 d.208, **without change.**

Authority: N.J.S.A. 34:1-20; 34:1A-3(e) and 43:21-1 et seq., specifically 43:21-7, 43:21-11 and 43:21-14.

Effective Date: April 17, 1989.

Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:

The Department received one comment during the comment period on N.J.A.C. 12:16-4.7, 13.4 and 13.7 concerning contributions, records and reports.

COMMENT: The Department should provide a detailed, itemized notice of the error committed by the employer.

RESPONSE: At the present time the Department does not have computer capabilities to provide employers with this type of information. However, the notice does include a category of error and a hotline number that the employer can use to receive further information concerning his or her penalty assessment.

COMMENT: An employer who discovers an error is penalized when the Department is notified. When an employer discovers an error and seeks to correct it before any claim might be filed, no penalty should be imposed.

REPONSE: The Department is in the process of promulgating a new rule which will address this situation.

Full text of the adoption follows:

12:16-4.7 Back pay, residuals, non-resident aliens

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

(c) All wages paid to aliens are taxable and reportable under a valid Social Security number.

12:16-13.4 Penalty abatement

(a) The Controller may remit or abate unpaid penalties in whole or in part for good cause if the employer fulfills the following requirements:

1. The employer makes a written request for penalty abatement consideration within one year of the date of initial notification that a penalty has been assessed;

2. The employer submits an affidavit together with documentation providing a reason(s) why the report(s) for the period(s) in question were not filed completely, accurately or by the due date(s), and that there was no fraud or intentional disregard of the reporting requirements of the Department;

3. All quarterly contribution reports and employer reports of wages paid have been filed;

4. All liability, other than the penalty for which abatement is being requested, has been paid.

(b) All decisions made by the Controller concerning penalty abatement shall be the final administrative decision of the Department. An appeal of a final decision shall be made to the Appellate Division of the New Jersey Superior Court.

12:16-13.7 Wage Reporting

(a) For the calendar quarter commencing July 1, 1984 and each quarter thereafter, each employer shall file a report with the Controller within 30 days after the end of each quarter in a form and manner prescribed by the Controller listing the name, social security number and wages paid to each employee and the number of base weeks worked by the employee during the calendar quarter. If wages or base weeks are -0-, then the employer must enter -0- in the appropriate columns rather than leave the column blank.

(b) (No change.)

SUBCHAPTER 22. HEARINGS

12:16-22.1 Scope

All hearings involving any question of coverage, status, liability for contributions, reporting, refunds, or rates of contribution shall be conducted according to the procedure outlined in this subchapter.

12:16-22.2 Application

(a) Any written notice of determination by a representative of the Department as to any question of coverage, status, liability for contributions, reporting, refunds, or rates of contributions shall be deemed final, unless any party with an interest in the matter shall make written request for a hearing on the prescribed form within 15 days after the date of the notice.

(b) The form to be used for application for hearing is entitled "Request for Hearing" and is normally supplied with the written confirmation letter sent by the Controller's Chief Auditor at the conclusion of the Audit. If the purpose for requesting the hearing did not start from an investigation conducted by a representative of the Chief Auditor, the "Request for Hearing" form may be secured by making a written request for the form to the Chief Auditor.

(c) All completed requests shall be returned to the Chief Auditor within the required 15 days.

12:16-22.3 Informal conference

(a) All "Request for Hearing" forms will be reviewed in the Chief Auditor's Office to determine if the reason for dispute could be resolvable at a conference with a representative of the Chief Auditor.

(b) If the review of the form indicates that an informal conference is necessary, then a representative of the Chief Auditor will be assigned to contact the responsible individual to schedule the informal conference. If the informal conference proves unsuccessful, the case will be forwarded to the Office of Administrative Law.

(c) If the review of the form indicates that an informal conference would not be productive, then the employer will be notified that the case will be transmitted to the Office of Administrative Law.

12:16-22.4 Formal hearing

All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

12:16-22.5 Decision

(a) The Commissioner shall make the final decision of the Department.

(b) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.

LAW AND PUBLIC SAFETY

(a)

DIVISION ON CIVIL RIGHTS
Multiple Dwelling Reports
Readoption: N.J.A.C. 13:10

Proposed: January 3, 1989 at 21 N.J.R. 11(b).
Adopted: March 9, 1989 by Ollie H. Hawkins, Director, Division on Civil Rights.
Filed: March 27, 1989 as R.1989 d.211, **without change.**
Authority: N.J.S.A. 10:5-6, N.J.S.A. 10:5-8(g), (h); N.J.S.A. 10:5-12(g), (h), (k).
Effective Date: March 27, 1989.
Expiration Date: March 27, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:10.

(b)

DIVISION OF CONSUMER AFFAIRS
State Board of Architects
Adopted New Rules: N.J.A.C. 13:27-8.16 and 9.5

Proposed: January 17, 1989 at 21 N.J.R. 114(b).
Adopted: March 9, 1989 by the New Jersey State Board of Architects, George C. Waters, R.A., President.
Filed: March 14, 1989 as R.1989 d.202, **without change.**
Authority: N.J.S.A. 45:3-3.
Effective Date: April 17, 1989.
Expiration Date: April 1, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

13:27-8.16 Notification of change of address; service of process

(a) Landscape architects shall notify the Board in writing of any change from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, no later than 30 days following the change of address. Failure to notify the Board of any change of address may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h).

(b) Service of an administrative complaint or other Board-initiated action at a licensee's address currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

13:27-9.5 Notification of change of address; service of process

(a) Licensed architects shall notify the Board in writing of any change from the address currently registered with the Board and shown on the most recently issued certificate. Such notice shall be sent to the Board by certified mail, return receipt requested, no later than 30 days following the change of address. Failure to notify the Board of any change of address may result in disciplinary action in accordance with N.J.S.A. 45:1-21(h).

(b) Service of an administrative complaint or other Board-initiated action at a licensee's address which is currently on file with the Board shall be deemed adequate notice for the purposes of N.J.A.C. 1:1-7.1 and the commencement of any disciplinary proceedings.

(c)

DIVISION OF CONSUMER AFFAIRS
PRIVATE EMPLOYMENT AGENCY SECTION
Booking Agencies
Adopted New Rules: N.J.A.C. 13:45B-5

Proposed: November 7, 1988 at 20 N.J.R. 2684(a).
Adopted: March 17, 1989 by James J. Barry, Jr., Director, Division of Consumer Affairs.
Filed: March 27, 1989 as R.1989 d.209, **without change, but with N.J.A.C. 13:45B-4 not adopted at this time.**
Authority: N.J.S.A. 56:8-1.1, N.J.S.A. 34:8-36.
Effective Date: April 17, 1989.
Expiration Date: April 17, 1994.

The Division of Consumer Affairs, Private Employment Agency Section afforded all interested parties an opportunity to comment on proposed new rules N.J.A.C. 13:45B-5, relating to booking agencies. The official comment period ended on December 7, 1988. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 7, 1988 at 20 N.J.R. 2684(a). This announcement also included a Notice of Public Hearing which was held on November 22, 1988. Announcements were also forwarded to the Star Ledger and Trenton Times, newspapers of general circulation, as well as the Bergen Record, the Camden Courier Post, the Daily Record and to approximately 2200 licensees.

A full record of this opportunity to be heard can be inspected by contacting Private Employment Agency Section, Room 516, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

No written comments were received during the official comment period, nor were there are any comments made at the public hearing, relating to N.J.A.C. 13:45B-5, Booking Agencies, which is being adopted at this time.

The Division is not adopting N.J.A.C. 13:45B-4, Temporary Help Service Firms, at this time. Until such time as the subchapter is adopted or reproposed, subchapter 4 shall be reserved.

Full text of the adoption follows:

SUBCHAPTER 4. (RESERVED)

SUBCHAPTER 5. BOOKING AGENCIES

13:45B-5.1 Purpose and scope

(a) The rules contained in this subchapter implement section N.J.S.A. 34:8-36 of the Private Employment Agency Act, and regulate the operation of booking agents.

(b) This subchapter shall apply to all persons, as defined in N.J.S.A. 56:8-1(d), operating booking agencies as defined in N.J.S.A. 34:8-24.

13:45B-5.2 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Booking agency" means a business which procures, offers, promises or attempts to procure employment for performing artists and which collects a fee for providing such employment.

"Booking agent" means any person, as defined in N.J.S.A. 56:8-1(d), who performs any solicitation or recruiting function for or on the behalf of any booking agency.

"Division" means the Division of Consumer Affairs, Department of Law and Public Safety, 1100 Raymond Boulevard, Room 504, Newark, New Jersey 07102.

"Performing artists" means musical, theatrical, vaudeville, film, television, or radio performers, as well as models, employed or engaged individually or as a group.

13:45B-5.3 Booking agency licenses

(a) Each booking agency shall post its license and all licenses held by its agents. If the agent's employment is terminated, the license shall be returned to the Division.

(b) A booking agent shall carry a registration card while performing the functions of a booking agent.

13:45B-5.4 Booking agency contracts

(a) Each performing artist shall be supplied with a copy of any contract with the booking agency signed by the artist.

(b) Each booking agency shall file a representative sample of the contracts currently used by the agency with the Division's Private Employment Agency Section, 1100 Raymond Boulevard, Room 516, Newark, New Jersey 07102.

(c) Copies of all contracts between the agency and performing artists shall be maintained by the agency in a form suitable for inspection by the Division. These copies shall be made available for inspection by representatives of the Division.

13:45B-5.5 Booking agency advertising

(a) All advertisements shall contain the name, address, and license number of the booking agency.

(b) Copies of all agency advertisements shall be maintained by the agency in a form suitable for inspection by the Division, and made available for inspection by representatives of the Division.

13:45B-5.6 Information required

(a) Information required by N.J.S.A. 34:8-24 et seq. and this subchapter shall be provided to the Division's Private Employment Agency Section, 1100 Raymond Boulevard, Room 516, Newark, New Jersey 07102, on January 1 of each year. Where the booking agency begins operation after January 1, the information required by N.J.S.A. 34:8-24 et seq. and this subchapter shall be provided with the agency's application. Application forms shall be supplied by the Private Employment Agency Section.

(b) Completed forms shall be accompanied by the fee required by N.J.S.A. 34:8-31 and the bond required by N.J.S.A. 34:8-30.

13:45B-5.7 Separation from private employment agency

(a) Any booking agency which is operated by a person, firm or entity which also operates a private employment agency shall conduct its business operation separately from the operations of the private employment agency as follows:

1. The true name and any trade name used by the booking agency shall not be the same as or similar to the true name and any trade name used by the private employment agency so as to cause confusion to the consumers who use the booking agency;
2. The recruiting and business advertising of the booking agency shall not be contained in the same advertising used by the private employment agency;
3. The business and personnel records of the booking agency shall be maintained separately from those records of the private employment agency; and
4. The telephone numbers used by the booking agency shall not be the same as those used by the private employment agency.

13:45B-5.8 Violations

A violation of any of the provisions of this subchapter shall be deemed to be a violation of the Private Employment Agency Act, N.J.S.A. 34:8-24 et seq. and shall be subject to the penalties and sanctions provided for thereunder. Nothing in this subchapter, however, shall be interpreted to prohibit prosecution of any practices which may be unlawful under any other State or Federal law.

TREASURY-GENERAL

(a)

OFFICE OF THE STATE TREASURER

Catastrophic Illness in Children Relief Fund

Adopted New Rules: N.J.A.C. 17:33

Proposed: January 17, 1989 at 21 N.J.R. 121(a).
Adopted: March 27, 1989 by Feather O'Connor, State Treasurer.
Filed: March 27, 1989 as R.1989 d.212, **without change.**

Authority: N.J.S.A. 26:2-148 et seq., specifically 26:2-158.

Effective Date: April 17, 1989.
Expiration Date: April 17, 1994.

Summary of Public Comments and Agency Responses:

The Department received two letters suggesting changes in the assessment procedure to reduce the cost to employers with high turnover.

COMMENT: The New Jersey Food Council recommended that the definition of "surcharge" be changed from "an annual $1.00 fee per employee for all employers who are subject to the New Jersey Unemployment Compensation Law" to "an annual $1 fee for each employee who is employed full time or 30 hours per week." The recommendation is intended to eliminate the $1.00 fee on part-time workers.

Kelly Services, Inc., which expressed support for the program to be funded through the assessment, also sought alteration of the $1.00 per employee assessment. Kelly Services suggested that the fee be levied on a $1.00 per full-time equivalent basis and that the Department recommend amendments to the statute.

RESPONSE: The Department understands the concerns expressed by the New Jersey Food Council and Kelly Services, Inc. It has no authority to alter the $1.00 surcharge per employee, as the act does not provide for any exception for employers who utilize employees on a temporary basis. The Department believes that it is the Legislature's prerogative to determine how the program should be funded. Moreover, the Department believes there is a rational nexus between the surcharge and organizations that employ large numbers of part-time individuals who receive no health benefits and are thus more likely to draw on the Catastrophic Illness in Children Relief Fund.

Full text of the adoption follows:

CHAPTER 33
CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND; SURCHARGE COLLECTION

SUBCHAPTER 1. CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND; SURCHARGE COLLECTION

17:33-1.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures for the collection of an annual surcharge used to fund the Catastrophic Illness in Children Relief Fund.

(b) The procedures established shall be followed by the Controller for the New Jersey Unemployment Compensation Fund, and the surcharge shall be applicable to every employer subject to the New Jersey Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq.

17:33-1.2 Definitions

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

"Assessment Base Year" means the immediately preceding calendar year.

"Controller" means the Assistant Commissioner of Finance and Controller of the New Jersey Department of Labor.

"Department" means the New Jersey Department of Labor.

"Fund" means the Catastrophic Illness in Children Relief Fund.

"Surcharge" means an annual $1.00 fee per employee for all employers who are subject to the New Jersey Unemployment Compensation Law.

17:33-1.3 Determination of Fund assessment

(a) The Labor Department shall review all employer information as contained in the Wage Reporting System database to determine which employers are subject to the annual surcharge.

(b) For each employer subject to the Unemployment Compensation Law for one or more quarters during the assessment base year, the Department will record:

1. The employer's New Jersey employer registration number;
2. The number of active quarters;
3. The number of active quarters for which required reports were filed during the assessment year; and

4. The number of unique Social Security numbers, representing individual employees, reported by that employer during all reported quarters.

(c) The Department will send an annual notice of assessment to each employer who is subject to this subchapter.

(d) The Department shall compute the exact amount due to the Fund according to one of the following methods:

1. If the employer has an equal number of active and reported quarters, the Fund assessment amount due is equal to $1.00 multiplied by the number of unique Social Security numbers reported by that employer;

2. If the employer's number of active quarters is greater than the number of reported quarters, but the employer has at least one reported quarter:

i. Divide the number of reported quarters by the number of active quarters;

ii. Divide the number of unique social security numbers by the result in (d)2i above, rounding up to the nearest whole number; and

iii. Record the Fund assessment amount due as equal to $1.00 multiplied by the result in (d)2ii above; or

3. If the employer has no reported quarters, record the Fund assessment amount due as equal to $100.00.

17:33-1.4 Method of payment

(a) Each employer shall forward the amount due to the Controller on or before the due date specified in the assessment notice.

(b) The Controller shall pay the amount received to the State Treasurer for deposit in the Fund as provided by the Catastrophic Relief Fund Commission.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Alcoholic Beverage Tax
State Licensees

Adopted Readoption with Amendments: N.J.A.C. 18:3

Proposed: January 17, 1989 at 21 N.J.R. 122(a).

Adopted: March 13, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: March 14, 1989 as R.1989 d.200, **without change.**

Authority: N.J.S.A. 54:42-1 and 54:50-1.

Effective Date: March 14, 1989, Readoption.
April 17, 1989, Amendments.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:3.

Full text of the adopted amendment follows:

18:3-1.2 Definitions

. . .

18:3-2.1 Tax rates on alcoholic beverages

(a) (No change.)

(b)

DIVISION OF TAXATION

Cigarette Tax

Readoption with Amendments: N.J.A.C. 18:5

Proposed: January 17, 1989 at 21 N.J.R. 123(a).

Adopted: March 13, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: March 14, 1989 as R.1989 d.197, **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. 54:40A-20.

Effective Date: March 14, 1989, Readoption.
April 17, 1989, Amendments.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

The Department has made technical changes to N.J.A.C. 18:5-8.8 and has added the Director's ability to waive interest in addition to penalty. In N.J.A.C. 18:5-8.15(a), the reference to "property security" has been changed to "proper security".

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:5.

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

18:5-8.4 Penalties

(a) Any taxpayer which shall fail to file its return when due or fail to pay any tax when due shall be subject to penalties and interest as provided for in the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1, et seq., and N.J.A.C. 18:2-2.

18:5-8.7 Interest and penalties as tax

All penalties and interest imposed under the provisions of the Act as well as the fee imposed for the cost of collection under N.J.S.A. 54:49-13 are payable to and recoverable by the Director in the same manner as if they were a part of the tax imposed.

18:5-8.8 Waiver of penalty and interest

If the failure by any taxpayer to pay any tax when due is explained to the satisfaction of the Director, he *[or she]* may remit or waive in whole or part the payment of any penalty*[,]* ***or interest*** in accordance with the terms of the State Tax Uniform Procedure Law ***(see also N.J.A.C. 18:2-2.7)***.

18:5-8.15 Appeals; Tax Court

[(a)] Any person aggrieved by any action, determination, decision, order, finding or assessment of the Director of the Division of Taxation or by a certification of debt to the Clerk of a Court, may appeal therefrom, within 90 days after the date of the action sought to be reviewed, by filing a complaint with the New Jersey Tax Court in accordance with the terms of N.J.S.A. 54:51A-13 et seq., and with the applicable rules of court, R. 8:1 et seq. including the furnishing of *[property]* ***proper*** security for the tax to the Director.

18:5-8.16 (Reserved)

18:5-9.2 Release of property from lien

(a) The Director, upon the written application of a taxpayer and the payment of an amount equal to the cost of collection, may release any property from the lien of any tax, interest, fee, penalty, certificate, judgment or levy imposed in accordance with the Act, provided, either:

1.-5. (No change.)

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

(a)

DIVISION OF TAXATION

Unfair Cigarette Sales Act

Readoption with Amendments: N.J.A.C. 18:6

Proposed: January 17, 1989 at 21 N.J.R. 124(a).
Adopted: March 13, 1989 by John R. Baldwin, Director, Division of Taxation.
Filed: March 14, 1989 as R.1989 d.199, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 56:7-31.

Effective Date: March 14, 1989, Readoption.
April 17, 1989, Amendments.
Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

A comment was received pointing out that the normal discount in the "basic cost of cigarettes" definition should be changed from 3¼ to two percent. That revision was made in accordance with P.L. 1983, c.441, which changed the statutory definition of "basic cost of cigarettes".

Accordingly, in the readoption that correction has been incorporated.

Summary of Agency-Initiated Changes

In addition, the readoption takes into account amendments to N.J.S.A. 56:7-20c made by P.L. 1987, c.37, section 4, in changing the N.J.A.C. 18:6-6.1 fine maximum and statutory citation, and to N.J.S.A. 56:7-33a made by P.L. 1987, c.37, section 5, in changing the particulars of suspension periods at N.J.A.C. 18:6-6.7(a).

Full text of the readoption can be found in the New Jersey Administrative code at N.J.A.C. 18:6.

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

18:6-1.1 Definitions

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

"Basic cost of cigarettes" means the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower, less all trade discounts and the normal discount for cash, afforded for prompt payment, but excluding any special, extraordinary, or anticipatory discounts for payment within a shorter period of time than the prompt payment date required for eligibility for the normal discount for cash, plus the total face value of any stamps required by the New Jersey Cigarette Tax Act and by any municipal ordinance now in effect or hereafter enacted, if not already included in the invoice or replacement cost. The trade discount and normal discount for cash is deemed to be *[3¼]* ***two*** percent of the invoice cost or replacement cost of cigarettes.

. . .

18:6-6.1 Penalty; disorderly person

Any person who violates any provision of the New Jersey Unfair Cigarette Sales Act or these regulations is deemed a disorderly person and may be prosecuted and punished by a fine of not more than *[100.00]* ***$1,000.00*** for each offense in accordance with the provisions of *[Subtitle 12 of Title 2A]* ***Title 2C*** of the New Jersey Statutes.

18:6-6.6 Hearing of suspension or revocation of license

(a) Any person who has received a Notice of Hearing to suspend or revoke any license for a violation of the New Jersey Unfair Cigarette Sales Act, has the right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

18:6-6.7 Period of suspension

(a) After a hearing as provided in *[Section 6.6 (Hearing of suspension) of this Chapter]* ***N.J.A.C. 18:6-6.6***, the Director, upon a finding that the licensee has failed to comply with any provision of the New Jersey Unfair Cigarette Sales Act or *[these regulations]* ***this chapter***, may, in the case of the first offender, suspend the license or licenses of such licensee for a period of not less than *[five]* ***10*** nor more than 20 consecutive business days, *[and]* in the case of a second or plural offender, may suspend *[said]* ***the*** license or licenses for a period of not less than *[20]* ***30*** consecutive business days nor more than 12 months***, and in the case of a third offender, shall suspend the license or licenses for a period of 12 months***.

(b) (No change.)

(b)

DIVISION OF TAXATION

Corporation Business Tax

Readoption with Amendments: N.J.A.C. 18:7

Proposed: January 3, 1989 at 21 N.J.R. 14(a).
Adopted: February 28, 1989 by John R. Baldwin, Director, Division of Taxation.
Filed: March 14, 1989 as R.1989 d.196, **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. 54:10A-27.

Effective Date: March 14, 1989, Readoption.
April 17, 1989, Amendments.
Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes

The changes to N.J.A.C. 18:7-13.7 advise the taxpayer of the manner in which interest is computed and clarifies the post-amnesty rules (R.1988, d.407) stimulated by P.L. 1987, c.76, the amnesty legislation.

The changes made to N.J.A.C. 18:7-14.18 and 14.19 include in the rules cross references to applicable statutes in order that the reader of the rule receive convenient and accurate notice as to the law relating to tax clearance certificates contained in a separate statutory title.

The changes are not so substantive as to require reproposal because in the one case they are cross references to controlling statutes and in the other case a technical codification of practice of the Division not detrimental to the taxpayers' interest. These changes are in keeping with the purpose underlying the requirement of periodic readoption of rules on a five-year basis.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:7.

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

*[18:11-7]****18:7-11.7*** Time for filing returns.

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

*[18:11.8]****18:7-11.8*** Time to report change or correction in Federal net income

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

18:7-13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commissioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the

taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment or December 8, 1987, whichever is earlier, and on or after December 9, 1987 at the annual rate of *[five]* ***three*** percentage points above the prime rate to be compounded daily from the date such tax was originally due to date of actual payment.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within the time required by the Act and its provision, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above ***(except that on or after December 9, 1987 interest shall be computed at the annual rate of five percentage points above the prime rate to be compounded daily)***, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

(c) (No change.)

18:7-14.18 Actions not requiring the prior issuance of a Tax Clearance Certificate

(a) A corporation may merge under the laws of New Jersey or any other jurisdiction without applying for a Tax Clearance Certificate only where the survivor is a domestic corporation or an authorized foreign corporation.

(b) A corporate dissolution before commencing business may be made without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12-2(3).

(c) A dissolution of a corporation without assets may be made without applying for a Tax Clearance Certificate pursuant to N.J.S.A. 14A:12-4.1(3).

18:7-14.19 Actions and transactions requiring the prior issuance of a Tax Clearance Certificate in order to avoid a personal liability to certain officers and directors

No corporation may either distribute any of its assets in dissolution or in partial or complete liquidation, or consolidate with another corporation to form a new corporation or merge into a foreign corporation which is an unauthorized foreign corporation, and no domestic corporation may dissolve ***(except as may be provided by law),*** and no authorized foreign corporation may withdraw its authority to do business in New Jersey, unless it shall have applied for and received a Tax Clearance Certificate from the Director.

(a)

DIVISION OF TAXATION

Motor Fuels Tax

Readoption with Amendment: N.J.A.C. 18:18

Proposed: January 17, 1989 at 21 N.J.R. 125(b).

Adopted: March 13, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: March 14, 1989 as R.1989 d.198, **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. 54:39-10 and 54:50-1.

Effective Date: March 14, 1989, Readoption.
April 17, 1989, Amendments.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes

The recent Tax Court case, *New York Fuel Terminal Corp. v. New Jersey Department of Treasury, Division of Taxation*, 10 N.J. Tax 26 (1988) held that the Director may not cancel plaintiff's distributor's licenses for failure to comply with the rule providing that only companies which import 50 percent or more of the total motor fuels handled by them in New Jersey calculated on a calendar year basis qualified as motor fuel distributors. The rule was found to burden unreasonably interstate commerce. Accordingly, the "50 percent rule" is being deleted from the Code in this readoption.

In addition, references to the appeal procedure have been updated in the readoption in accordance with statute by deleting references to the Division of Tax Appeals and replacing them with references to the Tax Court

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:18.

Full text of the changes upon adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

18:18-1.1 Words and phrases defined

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

...

"Distributor" means and includes every person, wherever resident or located, who imports into this State fuels for use, distribution, storage or sale in this State after the same shall reach this State; and also every person who produces, refines, manufactures, blends or compounds fuels and sells, uses, stores or distributes the same within this State.

*[1. A person applying for a New Jersey Distributor's License or presently holding a Distributor's License on the basis of the importation of motor fuels into this State, must import 50 per cent or more of the total amount of motor fuels handled by him in this State calculated on a calendar year basis;

2. No person who has had a Distributor's License cancelled for failure to import 50 percent or more of the fuel handled, will be eligible for a Distributor's License until six months have elapsed from the time of cancellation;

3. A New Jersey Licensed Distributor who acquires motor fuels in another State for eventual distribution by him within this State and who must temporarily relinquish title to such fuels for the sole purpose of availing himself of a pipeline facility to move those fuels into this State, shall be considered the importer of that fuel in computing his ratio of imports to meet the Distributor's License requirement established by the Division of Taxation.]*

...

18:18-10.2 Appeals

Any person who is aggrieved by any order of the Director or any assessment fixing the amount of any tax to be paid by *[a]* ***such*** person, may appeal from the action of the Director in making such order or assessment to the *[Division of Tax Appeals by filing a petition of appeal with said Division in the manner and form as said Division prescribes, but no such appeal may be taken later than one year from the date of such order and assessment, and no such appeal will stay the collection of any tax or the enforcement of the same by entry as a judgment, unless provided by order of such Division, after giving security approved by the Director or the said Division]* ***Tax Court within 90 days after the date of the action sought to be reviewed in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq. (see N.J.S.A. 54:51A-13 et seq.)***

(b)

DIVISION OF TAXATION

Motor Fuels Retail Sales

Readoption: N.J.A.C. 18:19

Proposed: January 17, 1989 at 21 N.J.R. 126(a).

Adopted: March 13, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: March 14, 1989 as R.1989 d.201, **without change.**

Authority: N.J.S.A. 56:6-6.

Effective Date: March 14, 1989.

Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:

One comment was received concerning this readoption. The comment drew attention to the 1988 session of the National Conference on Weights and Measures (NCWM) and a proposal to prohibit the current practice of using a single unit price computing dispenser for both cash and credit sales. The comment recommended that a specific expiration date be included for the use of inappropriate equipment in New Jersey.

Supporting documentation stated that 58 percent of the dispensers in the United States are mechanical devices that cannot be modified to compute multi-tier prices, and another 12 percent are electronic computing that cannot be retrofitted to be made capable of multi-tier calculation. Enforcement of standards for suitability of equipment would require large capital investments by very small businesses. The supporting documentation did not include data related to the New Jersey experience or detailing the severity of the problem in New Jersey.

The Division of Taxation's response observed that such data would be helpful to demonstrate the necessity of the rule change for this State and whether, for example, a solution involving performance rather than design standards could be used as an alternative. This is a concern particularly under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and rules, N.J.A.C. 1:30-3.1, as amended (effective January 17, 1989), in view of the economic impact such a proposal would have on small businesses.

The readoption of N.J.A.C. 18:19 with the inclusion of a specific expiration date for single price computing dispensers for the sale of motor fuels at multiple unit prices might be considered a substantial change to the rules and, therefore, require public comment from interested parties including retail dealers and oil companies prior to adoption.

In addition, such a change at this time would put New Jersey out in front of the NCWM which apparently will not vote on whether or not to formalize this change until late in 1989. This potentially could lead to a situation where New Jersey requires phasing out of equipment but other states and the NCWM do not.

In summary, while the idea was considered a constructive one from the point of view of the consumer, the Division of Taxation believes that such a change should not be made as part of the periodic readoption of rules and without further supporting information or without input from the affected industry.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:19.

(a)

DIVISION OF TAXATION

Transfer Inheritance and Estate Tax

Adopted Amendments: N.J.A.C. 18:26-3.2, 11.1 and 12.11

Proposed: February 6, 1989 at 21 N.J.R. 285(a).

Adopted: March 27, 1989 by John R. Baldwin, Director, Division of Taxation.

Filed: March 27, 1989 as R.1989 d.210, **without change.**

Authority: N.J.S.A. 54:50-1.

Effective Date: April 17, 1989.

Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

18:26-3.2 Amount and nature of tax

(a) The New Jersey estate tax is that amount representing the difference between the gross amount of the inheritance, legacy and succession taxes actually paid this State and any other states, territories, possessions, or the District of Columbia and the amount of the credit allowable against the Federal estate tax due the United States.

Example (1):

Mr. "A", a New Jersey resident, died on July 16, 1988, having a net taxable estate of $700,000 for Federal estate tax purposes. The credit allowed for state taxes under the Federal estate tax law was $10,000, the amount actually paid to New Jersey for inheritance taxes was $6,000. The New Jersey estate tax due is $4,000.

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

18:26-11.1 Consent to transfer; generally

(a) (No change.)

(b) No waivers are required in estates of nonresident decedents, except for real property located in the State of New Jersey.

1.-3. (No change.)

(c) (No change.)

(d) No waivers are required to be issued by the Director in case of certain transfers to the following Class "A" transferees in the estate of New Jersey domiciled decedent who died on or after July 1, 1988: a father, mother, grandparent, grandchild, a child or children of a decedent, including any stepchild of a decedent or child or children adopted by a decedent or the issue of any child or legally adopted child of a decedent. In order to satisfy a corporation (its transfer agent) including any banking institution, trust company organized under the laws of New Jersey, national bank operating in this State, building and loan or savings and loan association in New Jersey, or credit union chartered by the United States operating in this State that intangible assets may be released to the Class "A" transferee, an affidavit of waiver can be executed by the Class "A" transferee or the personal representative of the decedent's estate.

1. Letters testamentary or of administration must be attached and made a part of the affidavit when executed by an executor or administrator; or in any case where intangible assets are transferred to the Class "A" transferee under a will or the law of intestate distribution. If two or more executors or administrators qualify, the affidavit may be executed by one of them.

2. The Class "A" transferee can execute an affidavit in all cases where under the terms of the account or instrument and applicable State law the Class "A" transferee has the right of survivorship or is the named beneficiary. Letters testamentary or of administration are not required to be attached as part of the affidavit when executed by the Class "A" transferee, except as provided in (d)3 below.

3. Where the Class "A" transferee has qualified as executor or administrator of the decedent's estate, intangible assets which pass to the Class "A" transferee under a will or law of intestate distribution can be released by the affidavit together with assets described in (d)2 above, provided that the Class "A" transferee's letters testamentary or of administration are attached and made a part of the affidavit as provided in (d)1 above. Where the Class "A" transferee has not qualified as an executor or administrator of the decedent's estate, only intangible assets may be released by the affidavit in accordance with (d)2 above.

4. A separate affidavit is required for each institution, organization or corporation releasing assets to a Class "A" transferee.

5. The affidavit or waiver by the Class "A" transferee can not be used for real property and tangible personal property transfers from a decedent to a Class "A" transferee.

(e) (No change in text.)

18:26-12.11 (Reserved)

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Notice of Administrative Correction

Contributions Eligible for Match; Generally Repayment of Public or Other Funds

N.J.A.C. 19:25-15.14 and 15.46

Take notice that the Election Law Enforcement Commission has requested, pursuant to N.J.A.C. 1:30-2.7(a)2, and the Office of Administrative Law has agreed to, the correction of an incomplete citation at N.J.A.C. 19:25-15.14(a), and the replacement of an inappropriate word at N.J.A.C. 19:25-15.46(a), in accordance with N.J.A.C. 1:30-2.7(a)3.

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

19:25-15.14 Contributions eligible for match; generally

(a) To be eligible for matching with public funds for a gubernatorial general election, a contribution must have been received by a candidate at a time when that candidate was seeking or had sought election for the office of Governor, except that a contribution received and deposited pursuant to N.J.A.C. 19:25-15.7, Separately maintained primary and general bank accounts, or pursuant to N.J.A.C. 19:25-15.5, Pre-candidacy activity, for the purpose of determining whether an individual should become a candidate for election for the office of Governor shall be eligible. Any funds received prior to the inception of such a candidacy, or prior to the inception of fund raising activity to determine whether an individual should become a candidate for election for the office of Governor and not deposited pursuant to N.J.A.C. 19:25-15.5 or pursuant to N.J.A.C. 19:25-7.**1**(a) shall not be eligible for match.

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

19:25-15.46 Repayment of public or other funds

(a) All public moneys received by a qualified candidate remaining after liquidation of all lawful obligations with respect to [their] **that** election shall be repaid to the Commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election. All moneys other than public moneys, remaining available to any qualified candidate after the liquidation of all obligations, shall also be repaid to the Commission (for return to the Treasurer of the State of New Jersey) not later than six months after the date of such general election; provided, however, that nothing herein contained shall require any candidate to pay to the State Treasurer, a total amount of moneys in excess of the total amount of public moneys received by such qualified candidate from the public fund.

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

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Disqualification of Applicants and Debarment of Contractors

Conflict of Interest

Adopted Amendment: N.J.A.C. 19:30-5.2

Proposed: January 17, 1989 at 21 N.J.R. 129(a).

Adopted: March 21, 1989 by the New Jersey Economic Development Authority, James J. Hughes, Jr., Executive Director.

Filed: March 23, 1989 as R.1989 d.207, **without change.**

Authority: N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5.1, and Executive Order No. 189(1988).

Effective Date: April 17, 1989.

Expiration Date: October 7, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

19:30-5.2 Causes for disqualification/debarment of persons

(a) The Authority may decline to give financial assistance to any person or may debar a person from contracting with the Authority or may debar a person from Authority project contracting for the following causes:

1.-10. (No change.)

11. Violation of any of the following prohibitions on vendor activities representing a conflict of interest:

i. No person shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13b and e, with which such person transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

ii. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any Authority officer or employee or special Authority officer or employee from any person shall be reported in writing by the person to the Attorney General and the Executive Commission on Ethical Standards.

iii. No person may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such person to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this subsection shall be reported in writing to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

iv. No person shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of the officer or employee.

v. No person shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the person or any other person.

(b) The provisions in (a)11 above shall not be construed to prohibit an Authority officer or employee or special Authority officer or employee from receiving gifts from or contracting with persons under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

EMERGENCY ADOPTION

TRANSPORTATION

(a)

THE COMMISSIONER
CONSTRUCTION SERVICES

Classification of Prospective Bidders

Adopted Emergency Amendment and Concurrent Proposed Amendments: N.J.A.C. 16:44-1.2 and 1.4

Emergency Amendments Adopted: March 28, 1989 by Hazel Frank Gluck, Commissioner, Department of Transportation.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): March 29, 1989.

Emergency Amendment Filed: March 30, 1989 as R.1989 d.226.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A-1, 14:15-2 and 52:14B-1 et seq.

Emergency Amendment Effective Date: March 30, 1989.

Emergency Amendment Expiration Date: May 29, 1989.

Concurrent Proposal Number: PRN 1989-203.

Submit comments by May 17, 1989 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.5(b)). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rule making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The proposed amendments will extend the time frame required for prequalified firms to renew their prequalification before expiration. Currently, classifications are allowed to remain in effect for a period of 15 months from the date shown upon the firms' classification questionnaire.

The Department requires audited financial statements for firms seeking prequalification over $2,000,000. Information available from the industry indicates that an audited statement takes approximately three to five months in preparation from the date financial records are closed. This period of time affects the firms' ability to renew the prequalification before the expiration date established.

An internal review and analysis indicates that providing an 18 month period of time from the date of financial records closing would afford firms doing business with the Department adequate time to renew their prequalification without a lapse in time. Firms currently prequalified by the Department will receive this extension automatically.

The Department, therefore, proposes to amend N.J.A.C. 16:44-1.2 and 1.4 to provide the assistance necessary for firms to retain prequalification classification status.

Social Impact

The proposed amendments will afford firms doing business with the Department adequate time to retain classification status for a period of 18 months instead of 15 months, thus precluding any lapse of time in prequalification. The industry would be pleased in that the Department is willing to assist in ameliorating conditions by providing the added time required. Firms currently prequalified by the Department will receive this extension automatically.

Economic Impact

The proposed amendment will not have any economic impact on the firms doing business with the Department or the Department in the prequalification classification process.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., other than the requirements of law. The rule effects a change in administrative procedure.

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

16:44-1.2 Classification of prospective bidders

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

(i) When a prospective bidder has been assigned a classification, he shall be entitled to bid on any proposal within his class for a period not exceeding [15] **18** months from the date shown upon his classification questionnaire. However, no bid will be received from any prospective bidder on any given date unless such prospective bidder shall have filed with the department at least 15 days before such date a classification questionnaire which will not be more than [15] **18** months old on the date such prospective bidder submits his bid. Prospective bidders shall submit classification questionnaires as provided herein, annually, or on such other intermediate occasions as may be deemed necessary by the Commissioner of Transportation.

(j)-(q) (No change.)

16:44-1.4 Effective date of classification

The effective date of the classification shall be 15 days after it is received in the Bureau of Contract Administration or 15 days after receipt of any additional information requested. The expiration date is [15] **18** months after the date of the financial information supplied.

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Public Hearing
State-Sponsored Code Change Proposals

Take notice that the Division of Housing and Development of the Department of Community Affairs, pursuant to N.J.S.A. 52:27D-123c, is accepting recommendations for changes to the model codes which have been adopted as subcodes of the State Uniform Construction Code. All recommendations must be supported by appropriate technical justification.

A public hearing for the presentation of such recommendations will take place on May 19, 1989 at 9:30 A.M. at the offices of the Construction Code Element, 3131 Princeton Pike, Lawrenceville, New Jersey, in the first floor conference room of Building 3. Persons wishing to give notice of their intention to appear or requiring more information may call (609) 530-8789.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF FISH, GAME AND WILDLIFE
DIVISION OF SCIENCE AND RESEARCH

Public Notice
Channel Catfish Consumption Advisory

Take notice that, pursuant to N.J.S.A. 13:1D-9 and 13:1B-23 et seq., the Department of Environmental Protection hereby issues this advisory against the consumption of channel catfish (*Ictalurus punctatus*) taken from the Delaware River between the Interstate 276 Highway Bridge in Burlington Township, Burlington County, and Birch Creek, which flows into the Delaware River at Logan Township, Gloucester County. This advisory applies only to the consumption of channel catfish. This advisory does not apply to the catch and release of channel catfish by recreational anglers, nor does it apply to the consumption of other fish species taken from the above described area.

As part of its Toxics in Biota Monitoring Program, the Department of Environmental Protection has been collecting and analyzing edible tissues from fish taken from various locations on the Delaware River. Since 1986, fish have been collected from the river between Easton, Pennsylvania and Deepwater, New Jersey. In addition, as part of the Delaware Estuary Use Attainability Project, the Delaware River Basin Commission conducted sampling and analysis in 1987 on a stretch of the river between Burlington Island and the mouth of the Schuylkill River. Sampling was also conducted downstream of that area by the Pennsylvania Department of Environmental Resources. Analysis of these samples revealed the existence of elevated concentrations of polychlorinated biphenyls (PCBs) and/or chlordane in the edible tissue of channel catfish. Concentrations of PCBs in channel catfish taken from the stretch of river from Burlington Island to the Schuylkill River ranged from 2.34 to 4.20 parts per million (ppm) and averaged 3.25 ppm, which exceeds the tolerance of 2.0 ppm established by the United States Food and Drug Administration (FDA) on August 20, 1984. The average concentration of chlordane in channel catfish in the vicinity of Chester, Pennsylvania was 1.0 ppm, which exceeds the action level of 0.3 ppm set by the United States Environmental Protection Agency (EPA) in the late 1960s. (The FDA uses tolerances and action levels to determine the suitability of fish for human consumption.) Consequently, it is advised that there be no consumption of channel catfish from these portions of the river, as specified in the first paragraph of this notice.

PCBs were commonly utilized in transformer oils and various electrical products prior to 1977, when a ban was imposed on the manufacture of PCBs by EPA. PCBs are a suspected human carcinogen. Birth defects and a wide range of acute and chronic health effects have been associated with PCBs, which accumulate in the human body. Chlordane is a pesticide that was widely used in agriculture and lawn care until EPA restricted its use to termite control in 1976. EPA banned the use of chlordane completely in 1988. Among the possible effects of exposure to chlordane is the potential for nervous system disorders.

The Pennsylvania Departments of Environmental Resources and Health and the Pennsylvania Fish Commission have issued a notice that includes a consumption advisory for channel catfish taken from the waters between Burlington Island and the City of Chester, Pennsylvania. In order to take into account the possible movement of fish and to provide for easily identifiable boundaries, this advisory includes additional lengths of the river beyond the area where elevated levels of these contaminants were actually found in the tissue of channel catfish.

In addition to this advisory and as a result of the findings described herein, the Department of Environmental Protection has requested, and the Department of Health has agreed to proceed with, the promulgation of rules to ban the sale of channel catfish taken from this area of the Delaware River.

(c)

DIVISION OF COASTAL RESOURCES

Public Notice
Routine Program Implementation

Take notice that, pursuant to the Coastal Zone Management Act, 16 U.S.C. §451 et seq., and to Federal regulations promulgated pursuant thereto, 15 C.F.R. §923.84, the Department has taken rulemaking actions which constitute "Routine Program Implementation" of the New Jersey Coastal Management Program. The term, "Routine Program Implementation" is, by Federal regulation, a program change which does not involve substantial changes to enforceable policies related to:

1. Boundaries;
2. Uses subject to the management program;
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
4. Consideration of the practical interest involved in the planning for and in the siting of facilities.

The following rulemaking actions relevant to the State Coastal Program have been taken by the Department or the Hackensack Meadowlands Development Commission during the period from April, 1984 until June, 1988. The adoption of these amendments involved a comprehensive review of the coastal policies and represents a minor refinement of the policies to make them more responsive to present coastal issues.

1. Amendments to the Coastal Resource and Development Policies (N.J.A.C. 7:7E) and the Coastal Permit Program Rules (N.J.A.C. 7:7)

a. Coastal Permit Program Regulations: Consolidation of several rules into one comprehensive rule. Repeals: N.J.A.C. 7:7-2, 7:7A-1, 7:7D-1 and 7:7D-2; Adopted New Rules: N.J.A.C. 7:7.
Proposed: December 19, 1983 at 15 N.J.R. 2090(a)
Adopted: April 5, 1984 at 16 N.J.R. 1073(a)
Effective Date: May 7, 1984
Operative Date: June 1, 1984

b. Coastal Resource and Development Policies: Readoption without change: N.J.A.C. 7:7E.
Proposed: June 17, 1985 at 17 N.J.R. 1465(a)
Adopted: July 23, 1985 at 17 N.J.R. 2021(a)
Effective Date: July 24, 1985

c. Coastal Resource and Development: Adopted Amendments: N.J.A.C. 7:7E.
Proposed: June 17, 1985 at 17 N.J.R. 1466(a)
Adopted: December 26, 1985 at 18 N.J.R. 314(a)
Effective Date: February 3, 1986

d. Wetlands Maps in Ocean County: Adopted Amendment: N.J.A.C. 7:7-2.2.
Proposed: July 15, 1985 at 17 N.J.R. 1710(a)
Adopted: June 16, 1986 at 18 N.J.R. 1374(a)
Effective Date: July 17, 1986

e. Wetlands Maps in Atlantic County: Adopted Amendments: N.J.A.C. 7:7-2.2.
Proposed: May 19, 1986 at 18 N.J.R. 1026(a)
Adopted: July 28, 1986 at 18 N.J.R. 1700(a)
Effective Date: August 18, 1986

f. Rules concerning CAFRA Facilities: Adopted Amendments: N.J.A.C. 7:7-2.1.
Proposed: September 8, 1986 at 18 N.J.R. 1772(a)
Adopted: October 21, 1986 at 18 N.J.R. 2326(a)
Effective Date: November 17, 1986

g. Coastal Permit Program Rules: Adopted Amendments: N.J.A.C. 17:7-1, 2, 3, 4 and 6.
Proposed: November 3, 1986 at 18 N.J.R. 2156(a)
Adopted: April 16, 1987 at 19 N.J.R. 861(b)
Effective Date: May 18, 1987

h. Wetlands Maps in Monmouth County: Adopted Amendments: N.J.A.C. 7:7-2.2.
Proposed: November 3, 1986 at 18 N.J.R. 2162(a)
Adopted: October 6, 1987 at 19 N.J.R. 1999(a)
Effective Date: November 2, 1987

i. Coastal Permit Program Rules: Adopted Amendments: N.J.A.C. 7:7-2.1.
Proposed: May 18, 1987 at 19 N.J.R. 807(a)
Adopted: February 26, 1988 at 20 N.J.R. 643(a)
Effective Date: March 21, 1988

2. Amendments to the Hackensack Meadowlands District Regulations and Official Zoning Map (N.J.A.C. 19:3 and 19:4)

a. Official Zoning Map: Adopted Amendment: N.J.A.C. 19:4-6.28.
Proposed: December 17, 1984 at 16 N.J.R. 3423(b)
Adopted: April 18, 1985 at 17 N.J.R. 1138(b)
Effective Date: May 6, 1985

b. Waterfront Recreation: Zone Adopted Amendments: N.J.A.C. 19:4-4.33, 4.35, 4.36, 4.37, 4.39, 4.40, 4.42 and 6.28.
Proposed: December 17, 1984 at 16 N.J.R. 3423(b)
Adopted: July 12, 1985 at 17 N.J.R. 1916(a)
Effective Date: August 5, 1985

c. Official Zoning Map—Commercial Park Zone: Adopted New Rules: N.J.A.C. 19:4-4.146 through 19:4-4.156. Adopted Amendment: N.J.A.C. 19:4-6.28.
Proposed: October 21, 1985 at 17 N.J.R. 2530(a)
Adopted: January 8, 1986 at 18 N.J.R. 311(a)
Effective Date: February 3, 1986

d. District Zoning Regulations—Official Zoning Map: Adopted Amendments: N.J.A.C. 19:4-4.152, 4.154, 4.155 and 6.28.
Proposed: January 5, 1987 at 19 N.J.R. 53(a) and 54(a)
Adopted: March 25, 1987 at 19 N.J.R. 774(a) and 774(b)
Effective Date: May 4, 1987

e. District Zoning Regulations—District Zoning Map: Adopted Amendment: N.J.A.C. 19:4-6.28.
Proposed: March 16, 1987 at 19 N.J.R. 448(a)
Adopted: June 4, 1987 at 19 N.J.R. 1236(a)
Effective Date: July 6, 1987
District Zoning Regulations—District Zoning Map: Adopted Amendment: N.J.A.C. 19:4-6.28.
Proposed: April 6, 1987 at 19 N.J.R. 512(a)
Adopted: June 9, 1987 at 19 N.J.R. 1236(b)
Effective Date: July 6, 1987

f. District Zoning Regulations: Adopted Amendments: N.J.A.C. 19:4-4.35, 4.39 and 4.41.
Proposed: December 21, 1987 at 19 N.J.R. 2386(b)
Adopted: March 8, 1988 at 20 N.J.R. 813(a)
Effective Date: April 4, 1988

g. Hackensack Meadowlands Development Commission Rules: Readoption with Amendments: N.J.A.C. 19:3 and 4. Adopted New Rules: N.J.A.C. 19:4A.
Proposed: April 4, 1988 at 20 N.J.R. 743(a)
Adopted: May 25, 1988 at 20 N.J.R. 1467(a)
Effective Date: N.J.A.C. 19:3 readoption, May 26, 1988; N.J.A.C. 19:3 amendments, June 20, 1988. N.J.A.C. 19:4 readoption, May 26, 1988; N.J.A.C. 19:4 amendments, June 20, 1988; N.J.A.C. 19:4A new rule, June 20, 1988.

The Division has requested the concurrence of the Office of Coastal Zone Management in the National Oceanic and Atmospheric Administration (NOAA) in the determination that these rule-making actions constitute routine program implementation. Comments concerning these actions and their designation as routine program implementation should be sent to:

Kathryn Cousins
North Atlantic Region Manager
Office of Coastal Zone Management
National Oceanic and Atmospheric Administration
3300 Whitehaven Road
Washington, D.C. 20235

All comments must be submitted by May 17, 1989. **Additional information** may be obtained from:

Steven C. Whitney, Assistant Director
Division of Coastal Resources
CN 401
Trenton, New Jersey 08625
(609) 292-0060

(a)

PINELANDS COMMISSION

Extension for Review of Petition for Rulemaking Pinelands Land Capability Map

N.J.A.C. 7:50-5.3(a)24

Petitioners: Anatole Kalinuk, et al.
Authority: N.J.S.A. 13:18A-65.

Take notice that on March 14, 1989, Anatole Kalinuk, et al. filed a request for the Pinelands Commission to delay its action on a pending petition for rulemaking.

A petition for rulemaking was filed with the Pinelands Commission on December 7, 1988. A notice of the petition was published on February 6, 1989 at 21 N.J.R. 345(a). The Pinelands Commission was originally scheduled to receive a report on the petition from the Commission's Executive Director and decide whether the petition warranted a formal rulemaking proposal at its meeting on April 7, 1989. Because the petitioners wish to review comments received by the Pinelands Commission from the public and governmental agencies and submit additional information in response to those comments, the Pinelands Commission has been requested not to take action for an additional 30 days.

Take further notice that the Executive Director of the Pinelands Commission has agreed to the 30 day extension. The Pinelands Commission is now scheduled to consider the petition at its meeting of May 5, 1989.

HEALTH

(b)

DIVISION OF EPIDEMIOLOGY

Availability of Grants

Day Care Services for Victims of Alzheimer's Disease and Related Disorders

Take notice that, in compliance with N.J.S.A. 52:14B-34.4 et seq., the Department of Health hereby published notice of the availability of the following grant:

NAME OF GRANT PROGRAM: Day Care Services for Victims of Alzheimer's Disease and Related Disorders, Grant Program No. 90-69-GER.

PURPOSE FOR WHICH THE GRANT PROGRAM FUNDS WILL BE USED: To continue to provide adult day care services Statewide for victims of Alzheimer's disease and Related disorders.

AMOUNT OF MONEY IN THE GRANT PROGRAM: The availability of funds for this program is contingent on appropriation of funds

to the department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

GROUP OR ENTITIES WHICH MAY APPLY FOR THE GRANT PROGRAM: Medical and social day care programs.

QUALIFICATIONS NEEDED BY AN APPLICANT TO BE CONSIDERED FOR THE GRANT: Medical and social non-profit agencies currently providing adult day care services for victims of Alzheimer's disease under Letters of Agreement with the Department of Health will be given first consideration. Applications from adult day care centers in underserved areas of the State which offer specialized services for persons affected by dementing illnesses will be considered.

PROCEDURES FOR ELIGIBLE ENTITIES TO APPLY FOR GRANT FUNDS: Completion of the New Jersey Department of Health application for Health Services Grant and referenced requirements.

FOR INFORMATION CONTACT:

Chief
Gerontology Program,
Division of Epidemiology & Disease Control
New Jersey Department of Health
CN 369
Trenton, NJ 08625

DEADLINE BY WHICH APPLICATIONS MUST BE SUBMITTED: May 1, 1989.

DATE BY WHICH APPLICANT SHALL BE NOTIFIED WHETHER THEY WILL RECEIVE FUNDS: June 15, 1989.

(a)

DIVISION OF EPIDEMIOLOGY

Availability of Grants

Family Caregiver Education and Support Program

Take notice that, in compliance with N.J.S.A. 52:14B-34.4 et seq., the Department of Health hereby publishes notice of the availability of the following grant:

NAME OF GRANT PROGRAM: Family Caregiver Education and Support Program, Grant Program No. 90-70-GER.

PURPOSE FOR WHICH THE GRANT PROGRAM FUNDS WILL BE USED: To provide education and support for informal caregivers of the elderly through a series of six two-hour group discussions utilizing a curriculum developed by the Institute of Gerontology at the University of Michigan.

AMOUNT OF MONEY IN THE GRANT PROGRAM: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

GROUP OR ENTITIES WHICH MAY APPLY FOR THE GRANT PROGRAM: Hospitals, home care agencies, social service agencies, Offices on Aging, adult schools, local health departments.

QUALIFICATIONS NEEDED BY AN APPLICANT TO BE CONSIDERED FOR THE GRANT: Agencies which apply must engage two facilitators to conduct the six week program whose qualifications will include combined expertise in group process, gerontology, health care, and social service for the elderly. Masters level preparation in social work and nursing is required.

PROCEDURES FOR ELIGIBLE ENTITIES TO APPLY FOR GRANT FUNDS: Completion of application for funds and submission of the resumes of the two proposed facilitators.

FOR INFORMATION CONTACT:

Chief
Gerontology Program
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

DEADLINE BY WHICH APPLICATIONS MUST BE SUBMITTED: No deadline; processing will continue as long as funds are available.

DATE BY WHICH APPLICANT SHALL BE NOTIFIED WHETHER THEY WILL RECEIVE FUNDS: Within two weeks following receipt of application.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLE SERVICES

Notice of Contract Carrier and Common Carrier Applicants

Take notice that Glenn R. Paulsen, Director, Motor Vehicle Services, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the names and addresses of applicants who have filed an application for a common carrier's Certificate of Public Convenience and Necessity and/or a contract carrier permit to engage in the business of transporting bulk commodities in intrastate commerce.

CONTRACT CARRIER (NON-GRANDFATHER)
Vernon Transport, Inc.
2 Altamont Road
Edison, NJ

Stephen J. Laclair, Inc.
225 Water Street
Belvidere, NJ 07823

Kuhnle Brothers, Inc.
14900 Cross Creek
P.O. Box 375
Newbury, OH 44065

COMMON CARRIER (NON-GRANDFATHER)
Carbon Express, Inc.
382 Route 15 South
P.O. Box 403
Wharton, NJ 07885

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicle Services, 25 South Montgomery Street, Trenton, New Jersey 08666 within 20 days (May 7, 1989) following the publication date of an application.

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 March 6, 1989 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

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 FEBRUARY 21, 1989

NEXT UPDATE: SUPPLEMENT MARCH 20, 1989

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
20 N.J.R. 843 and 950	April 18, 1988	20 N.J.R. 2611 and 2842	November 7, 1988
20 N.J.R. 951 and 1018	May 2, 1988	20 N.J.R. 2843 and 2948	November 21, 1988
20 N.J.R. 1019 and 1126	May 16, 1988	20 N.J.R. 2949 and 3046	December 5, 1988
20 N.J.R. 1127 and 1316	June 6, 1988	20 N.J.R. 3047 and 3182	December 19, 1988
20 N.J.R. 1317 and 1500	June 20, 1988	21 N.J.R. 1 and 88	January 3, 1989
20 N.J.R. 1501 and 1594	July 5, 1988	21 N.J.R. 89 and 224	January 17, 1989
20 N.J.R. 1595 and 1758	July 18, 1988	21 N.J.R. 225 and 364	February 6, 1989
20 N.J.R. 1759 and 1976	August 1, 1988	21 N.J.R. 365 and 588	February 21, 1989
20 N.J.R. 1977 and 2122	August 15, 1988	21 N.J.R. 589 and 658	March 6, 1989
20 N.J.R. 2123 and 2350	September 6, 1988	21 N.J.R. 659 and 810	March 20, 1989
20 N.J.R. 2351 and 2416	September 19, 1988	21 N.J.R. 811 and 954	April 3, 1989
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-5.5	Non-lawyer representatives: consent orders and stipulations	20 N.J.R. 2845(a)	R.1989 d.158	21 N.J.R. 749(a)
1:1-10.4	Discovery: requests for admissions	20 N.J.R. 2845(b)	R.1989 d.190	21 N.J.R. 889(a)
1:1-14.3	Interpreters for hearing impaired	20 N.J.R. 2845(c)	R.1989 d.159	21 N.J.R. 749(b)
1:10-12.2	Emergency fair hearings concerning AFDC and General Assistance: transmittal of notices and initial decisions	20 N.J.R. 3049(a)	R.1989 d.160	21 N.J.R. 749(c)
1:13A	Lemon Law hearings	21 N.J.R. 91(a)	R.1989 d.189	21 N.J.R. 889(b)
	Most recent update to Title 1: TRANSMITTAL 1989-1 (supplement January 17, 1989)			
AGRICULTURE—TITLE 2				
2:5-2.1, 2.3, 2.5, 2.6, 2.8	Equine infectious anemia	21 N.J.R. 92(a)		
2:24-2, 3	Registration and transportation of bees	20 N.J.R. 2951(a)	R.1989 d.128	21 N.J.R. 633(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:33	Agricultural fairs	20 N.J.R. 2954(a)	R.1989 d.129	21 N.J.R. 633(b)
2:52-1.6	Reporting by small milk dealers	20 N.J.R. 2955(a)	R.1989 d.127	21 N.J.R. 634(a)
2:69-1.11	Commercial values of primary plant nutrients	21 N.J.R. 813(a)		
2:71-2.2, 2.4	"Jersey Fresh" logo program	21 N.J.R. 591(a)		
2:71-2.4, 2.5, 2.6	"Jersey Fresh" logo program	21 N.J.R. 227(a)		
2:76-5.3	Soil and water conservation projects: cost sharing	21 N.J.R. 230(a)	R.1989 d.213	21 N.J.R. 981(a)
2:76-9.1, 9.2	Emergency acquisition of development easements on farmland	21 N.J.R. 231(a)	R.1989 d.214	21 N.J.R. 981(b)
	Most recent update to Title 2: TRANSMITTAL 1989-2 (supplement February 21, 1989)			
BANKING—TITLE 3				
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)	R.1989 d.191	21 N.J.R. 981(c)
3:11	Lending and investments by State banks	21 N.J.R. 367(a)		
3:22-1	Insurance premium finance agreements	21 N.J.R. 661(a)		
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)	R.1989 d.219	21 N.J.R. 990(a)
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)		
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)	R.1989 d.191	21 N.J.R. 981(c)
	Most recent update to Title 3: TRANSMITTAL 1988-7 (supplement November 21, 1988)			
CIVIL SERVICE—TITLE 4				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
	Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)			
PERSONNEL—TITLE 4A				
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
	Most recent update to Title 4A: TRANSMITTAL 1989-1 (supplement January 17, 1989)			
COMMUNITY AFFAIRS—TITLE 5				
5:11	Relocation assistance and eviction	21 N.J.R. 231(b)	R.1989 d.188	21 N.J.R. 891(a)
5:11	Relocation Assistance and Eviction rules: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 592(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:14-1.2	Neighborhood Preservation Balanced Housing Program: eligibility	21 N.J.R. 3(a)	R.1989 d.143	21 N.J.R. 750(a)
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:50	Administration of funds received under Higher Education Act of 1965	21 N.J.R. 367(b)		
5:70-6.3	Congregate Housing Services Program: service subsidies formula	21 N.J.R. 816(a)		
5:80-3.3	Housing and Mortgage Finance Agency: return on housing sponsors' equity	21 N.J.R. 94(a)		
5:91-5.2, 6.2, 7.1, 7.3	Council on Affordable Housing: mediation process	20 N.J.R. 3050(a)		
5:92-1.3, 11.2, 14.3	Council on Affordable Housing: alternative living arrangements	21 N.J.R. 595(a)		
5:92-1.3, 12	Council on Affordable Housing: controls on affordability	21 N.J.R. 592(b)		
5:92-12.4	Council on Affordable Housing: initial pricing of units	20 N.J.R. 3051(a)	R.1989 d.125	21 N.J.R. 635(a)
5:92-14.4	Council on Affordable Housing: rental unit credit	21 N.J.R. 234(a)		
5:100	Ombudsman for the institutionalized elderly	21 N.J.R. 368(a)		

Most recent update to Title 5: TRANSMITTAL 1989-2 (supplement February 21, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

6:3-5	Reporting of allegations of child abuse	21 N.J.R. 3(b)	R.1989 d.193	21 N.J.R. 892(a)
6:3-6	Enforcement of drug free school zones	21 N.J.R. 817(a)		
6:8-1.1, 4.3, 7.1	High school core proficiencies	21 N.J.R. 235(a)		
6:11-3	Bilingual/ESL certification; basic communication skills certification	21 N.J.R. 95(a)		
6:20-5.7	Reimbursement to nonpublic schools for asbestos removal and encapsulation	20 N.J.R. 2505(a)	R.1989 d.93	21 N.J.R. 635(b)
6:28	Special education	21 N.J.R. 239(a)		
6:39	High school core proficiencies	21 N.J.R. 235(a)		
6:46-4.1, 4.4-4.20, 5.2	Private vocational schools and correspondence schools	21 N.J.R. 262(a)		

Most recent update to Title 6: TRANSMITTAL 1989-2 (supplement February 21, 1989)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)		
7:1C-1.2-1.5, 1.7-1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)		
7:7	Coastal Permit Program	21 N.J.R. 369(a)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)	R.1989 d.137	21 N.J.R. 750(b)
7:7-2.3	Waterfront development	21 N.J.R. 4(a)		
7:7-2.3	Waterfront development: extension of comment period	21 N.J.R. 267(a)		
7:7A-1.4, 2.5, 6, 7	Freshwater wetlands transition areas	21 N.J.R. 596(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
7:9-4	Surface water quality standards: public hearings	20 N.J.R. 1865(a)		
7:9-4	Surface water quality standards: extension of comment period	20 N.J.R. 2427(a)		
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)		
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)		
7:9A	Individual subsurface sewage disposal systems: extension of comment period	20 N.J.R. 2427(b)		
7:10-13.2, 13.10, 13.13	Industrial wastewater treatment systems: licensing of operators	20 N.J.R. 1141(b)	R.1989 d.170	21 N.J.R. 750(c)
7:11-2.1-2.5, 2.8-2.14	Sale of water from Delaware and Raritan Canal, Spruce Run/Round Valley system	21 N.J.R. 103(a)		
7:13	Flood hazard area control	21 N.J.R. 371(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)		
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)		
7:14	Water pollution control	21 N.J.R. 373(a)		
7:14A	New Jersey Pollutant Discharge Elimination System (NJPDES)	21 N.J.R. 707(a)		
7:14A-5.12	Closure of hazardous waste facilities	20 N.J.R. 2650(a)	R.1989 d.206	21 N.J.R. 991(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)		
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)		
7:25-2.18	New Sweden and Oyster Creek wildlife management areas	21 N.J.R. 267(b)	R.1989 d.215	21 N.J.R. 1002(a)
7:25-7.13	Taking of blue crabs	21 N.J.R. 268(a)		
7:25-15.1	Relay of hard clams: correction to text	________	________	21 N.J.R. 751(a)
7:25-22.1-22.4	Harvesting Atlantic menhaden	21 N.J.R. 107(a)		
7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13	Solid waste facility and transporter registration fees	20 N.J.R. 2668(a)	R.1989 d.216	21 N.J.R. 1002(b)
7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5	Closure of hazardous waste facilities	20 N.J.R. 2650(a)	R.1989 d.206	21 N.J.R. 991(a)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Essex County	20 N.J.R. 1048(a)		
7:26-7.3, 7.4, 7.5, 7.6	Hazardous waste management	20 N.J.R. 867(a)	R.1989 d.173	21 N.J.R. 893(a)
7:26-7.4, 9.1, 12.1	Hazardous waste stored for reuse	20 N.J.R. 1329(a)	R.1989 d.141	21 N.J.R. 752(a)
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)		
7:26-12.4	Hazardous waste management: permit standards	21 N.J.R. 108(a)	R.1989 d.217	21 N.J.R. 1010(a)
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)		
7:27-16.1, 16.2, 16.5, 16.6	Volatile organic substance emissions and ozone concentrations	20 N.J.R. 3052(a)		
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)		
7:28-25	Radiation laboratory fee schedule	21 N.J.R. 826(a)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)		

Most recent update to Title 7: TRANSMITTAL 1989-2 (supplement February 21, 1989)

HEALTH—TITLE 8

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:8	Collection, processing, storage and distribution of blood	21 N.J.R. 407(a)		
8:31B-2.2, 2.4	Hospital reimbursement: DRG classification of newborns	20 N.J.R. 3057(a)	R.1989 d.154	21 N.J.R. 752(a)
8:31B-3.16	Hospital reimbursement: labor cost component	21 N.J.R. 661(b)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.51-3.55, 3.58, 3.59, 3.73, App. II, IX, 5.1-5.3	Hospital reimbursement: extension of comment period for proposed changes published January 17, 1989	21 N.J.R. 606(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	Hospital reimbursement: 1989 rate setting	21 N.J.R. 135(a)		
8:31B-3.16, 3.22, 3.24, 3.26, 3.38, 3.73, App. II, IX	1989 hospital rate setting: correction to Summary statement	21 N.J.R. 413(a)		
8:31B-3.19, 3.38, 3.45	Hospital reimbursement: newborn DRGs; outlier categories	20 N.J.R. 3057(b)	R.1989 d.153	21 N.J.R. 753(a)
8:31B-3.51-3.55, 3.58, 3.59	Hospital reimbursement: appeals	21 N.J.R. 131(a)		
8:31B-4.41	Hospital reimbursement: uncompensated care audit functions	20 N.J.R. 2959(a)	R.1989 d.152	21 N.J.R. 754(a)
8:31B-5.1, 5.2, 5.3	Hospital reimbursement: Diagnosis Related Groups	21 N.J.R. 138(a)		
8:31C	Residential alcoholism treatment: facility rate setting	20 N.J.R. 2960(a)		
8:33-1.5, 2.8	Applications to convert licensed acute care beds to non-acute categories	21 N.J.R. 272(a)		
8:33J	Nuclear magnetic resonance services	21 N.J.R. 416(a)		
8:33J-1.1-1.2	Magnetic resonance imaging services	21 N.J.R. 413(b)		
8:33K	Residential alcoholism treatment facilities: bed standards	21 N.J.R. 150(a)	R.1989 d.218	21 N.J.R. 1011(a)
8:33N	Advanced life support programs: mobile intensive care units and critical care transport units	21 N.J.R. 268(a)		
8:38-1.1, 1.4	HMOs and vision care services	21 N.J.R. 6(a)	R.1989 d.180	21 N.J.R. 895(a)
8:39-19.7	Hot water temperature in long-term care facilities	21 N.J.R. 417(a)		
8:42A	Licensure of alcoholism treatment facilities	20 N.J.R. 3059(a)		
8:42A	Licensure of alcoholism treatment facilities: correction to proposal	21 N.J.R. 833(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:61-2.4	Retrovir reimbursement program	21 N.J.R. 606(b)		
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)		
8:71	Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d), 2768(b); 21 N.J.R. 63(a))	20 N.J.R. 871(a)	R.1989 d.166	21 N.J.R. 757(a)
8:71	Interchangeable drug products (see 20 N.J.R. 2769(a); 21 N.J.R. 63(b))	20 N.J.R. 1766(a)	R.1989 d.165	21 N.J.R. 756(b)
8:71	Interchangeable drug products (see 21 N.J.R. 63(c))	20 N.J.R. 2356(a)	R.1989 d.164	21 N.J.R. 756(a)
8:71	Interchangeable drug products	20 N.J.R. 3078(a)	R.1989 d.163	21 N.J.R. 755(b)
8:71	List of Interchangeable Drug Products	21 N.J.R. 7(a)	R.1989 d.142	21 N.J.R. 755(a)
8:71	Interchangeable drug products	21 N.J.R. 662(a)		

Most recent update to Title 8: TRANSMITTAL 1989-2 (supplement February 21, 1989)

HIGHER EDUCATION—TITLE 9

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
9:6A-4.3	Managerial employees at State colleges: annual salary increases	20 N.J.R. 3079(a)	R.1989 d.220	21 N.J.R. 1011(b)
9:7-3.2	1989-90 Tuition Aid Grant Award Table	21 N.J.R. 109(a)	R.1989 d.185	21 N.J.R. 897(a)
9:7-4.4	Garden State Scholarships supplemental awards eligibility	21 N.J.R. 110(a)	R.1989 d.186	21 N.J.R. 898(a)
9:7-6.4	Garden State Graduate Fellowships: approved programs	20 N.J.R. 2624(a)	R.1989 d.184	21 N.J.R. 898(b)
9:7-8.1	Vietnam Veterans Tuition Aid: eligibility	20 N.J.R. 2625(a)	R.1989 d.183	21 N.J.R. 899(a)
9:11	Educational Opportunity Fund Program	20 N.J.R. 2506(a)	R.1989 d.222	21 N.J.R. 1012(a)
9:11-1.1	Educational Opportunity Fund grants: student eligibility	20 N.J.R. 1768(b)	R.1989 d.224	21 N.J.R. 1012(b)
9:11-1.6, 1.8, 1.9, 1.20	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)	R.1989 d.221	21 N.J.R. 1011(c)
9:11-1.7	EOF grants: award amounts	20 N.J.R. 1770(a)	R.1989 d.223	21 N.J.R. 1013(a)
9:12	Educational Opportunity Fund Program	20 N.J.R. 2506(a)	R.1989 d.222	21 N.J.R. 1012(a)
9:12-2.6, 2.9	EOF grants: eligibility procedure; refunds	20 N.J.R. 1769(a)	R.1989 d.221	21 N.J.R. 1011(c)

Most recent update to Title 9: TRANSMITTAL 1989-1 (supplement February 21, 1989)

HUMAN SERVICES—TITLE 10

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:3-1.14	Contract administration: prohibited vendor activity	20 N.J.R. 2849(a)		
10:31	Mental illness screening and screening outreach programs	20 N.J.R. 2427(d)		
10:37-5.6–5.11, 5.16–5.24	Repeal (see 10:31)	21 N.J.R. 273(a)		
10:41-2	Services to developmentally disabled: confidentiality of client records	20 N.J.R. 2435(a)	R.1989 d.134	21 N.J.R. 757(b)
10:41-4	Human rights committees for developmentally disabled persons	20 N.J.R. 2552(a)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:46	Services for developmentally disabled: determination of eligibility	20 N.J.R. 2008(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)		
10:48-3	Lead toxicity control among developmentally disabled	20 N.J.R. 2555(a)		
10:48-3	Lead Toxicity Control Program: comment period	20 N.J.R. 2688(a)		
10:49-1.1, 1.7–1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)		
10:54-4	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R.1989 d.162	21 N.J.R. 761(a)
10:54-4.5	Medicaid reimbursement for physician's services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:56-3.7, 3.10	Medicaid reimbursement for dental services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:58-1.2, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R.1989 d.162	21 N.J.R. 761(a)
10:61-3.2	Medicaid reimbursement for independent laboratory services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:63-3.9–3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:66-1.6, 3	Medicaid coverage for postpartum services	20 N.J.R. 1052(a)	R.1989 d.162	21 N.J.R. 761(a)
10:66-3.2	Medicaid reimbursement for independent clinic services	20 N.J.R. 2558(a)	R.1989 d.135	21 N.J.R. 760(a)
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only: eligibility computation amounts	21 N.J.R. 207(a)	R.1989 d.174	21 N.J.R. 763(a)
10:81-4.5	AFDC program: voluntary restricted payments	21 N.J.R. 7(b)	R.1989 d.205	21 N.J.R. 1013(b)
10:81-6.17	Emergency fair hearings: repealed text	————	————	21 N.J.R. 1014(a)
10:81-11.4	Direct child support payments to AFDC clients	21 N.J.R. 423(a)		
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:82-5.10	Emergency Assistance in AFDC: temporary shelter allowances	20 N.J.R. 1147(a)		
10:85-3.2	General Assistance: residency in therapeutic care facility	20 N.J.R. 2968(b)	R.1989 d.161	21 N.J.R. 764(b)
10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)		
10:85-3.3	Medically Needy eligibility	20 N.J.R. 2688(b)	R.1989 d.138	21 N.J.R. 765(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:97	Vending Facility Program for blind and visually impaired	21 N.J.R. 424(a)		
10:100-App. A	Supplemental Security Income (SSI) payment levels (Recodified to 10:83-1.11)	21 N.J.R. 208(a)	R.1989 d.172	21 N.J.R. 764(a)
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)		
10:121-1.1	Approval of adoption agencies: correction to text	————	————	21 N.J.R. 765(b)
10:122	Requirements for child care centers	20 N.J.R. 3079(b)		
10:123-3.2	Residential health care facilities/boarding homes: personal needs allowance	Emergency (expires 4-29-89)	R.1989 d.171	21 N.J.R. 788(a)
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 8(a)	R.1989 d.132	21 N.J.R. 636(a)
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)		

Most recent update to Title 10: TRANSMITTAL 1989-2 (supplement February 21, 1989)

CORRECTIONS—TITLE 10A

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:3-5.10	Collection of urine samples from inmates	21 N.J.R. 10(a)	R.1989 d.140	21 N.J.R. 765(c)
10A:4-6.1, 6.3, 6.4	Chronic violator units	21 N.J.R. 10(b)	R.1989 d.136	21 N.J.R. 766(a)
10A:4-11.9, 12	Inmate appeals to Office of Administrative Law: public hearing	20 N.J.R. 880(b)		
10A:6-3.2	Notification of inmate's change of name	21 N.J.R. 11(a)	R.1989 d.139	21 N.J.R. 766(a)
10A:9-1.3, 5.2	Application of time credits to mandatory minimum term	21 N.J.R. 664(a)		
10A:9-4.6	Open charges and reduced custody status	20 N.J.R. 880(a)		
10A:16-2.9	Infirmary care	20 N.J.R. 2969(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)		
10A:18-2.5, 4.4	Correspondence between inmates at different facilities; exchange of publications	21 N.J.R. 837(a)		
10A:18-2.6, 2.19, 2.20, 2.22	Inmate correspondence	20 N.J.R. 2854(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 277(a)	R.1989 d.204	21 N.J.R. 1014(b)
10A:18-4.7	Inspection of outgoing publications	21 N.J.R. 277(b)	R.1989 d.203	21 N.J.R. 1014(c)
10A:33	Juvenile Detention Commitment Programs	21 N.J.R. 667(a)		
10A:71-2.1, 3.4, 3.28	Parole Board rules	20 N.J.R. 2129(a)	R.1989 d.151	21 N.J.R. 767(a)
10A:71-3.21, 6.4	State Parole Board: juvenile inmates; conditions of parole	20 N.J.R. 2747(b)	R.1989 d.145	21 N.J.R. 768(a)

Most recent update to Title 10A: TRANSMITTAL 1989-2 (supplement February 21, 1989)

INSURANCE—TITLE 11

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:1-5.1	FAIR plan surcharge: repeal rule	20 N.J.R. 2507(a)		
11:1-10	Foreign and alien property and casualty insurers: admission requirements	21 N.J.R. 426(a)		
11:2-1, 19	Repeal (see 11:17-3, 5.7)	20 N.J.R. 1152(a)	R.1989 d.192	21 N.J.R. 899(b)
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-24	High-risk investments by insurers	21 N.J.R. 838(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 611(a)		
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-20	Private passenger automobile insurers: financial disclosure and excess profits reporting	21 N.J.R. 667(b)		
11:3-20A	Private passenger automobile insurers: computation of excess profits	21 N.J.R. 842(a)		
11:3-22.1, 22.3, Forms A, B	Automobile coverage option survey: PIP and tort threshold	21 N.J.R. 619(a)		
11:3-24	Automobile coverage: policy constants	20 N.J.R. 3104(a)		
11:3-25	Automobile coverage: residual market equalization charges	21 N.J.R. 278(a)		
11:3-26, 27, 28	Unsatisfied Claim and Judgment Fund rules	21 N.J.R. 688(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:4-30	Hospital preadmission certification programs (HPCPs)	20 N.J.R. 880(c)		
11:4-30	Hospital preadmission certification programs: withdrawal of proposal	21 N.J.R. 689(a)		
11:5-1.16	Real estate listing agreements	20 N.J.R. 2185(a)		
11:5-1.18	Supervision of real estate offices	20 N.J.R. 1160(a)		
11:5-1.23	Real estate offers and broker's obligations	20 N.J.R. 2186(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:5-1.34	Discriminatory commission—split policies	20 N.J.R. 1163(a)		
11:14	Auto body repair facilities: licensure rules	21 N.J.R. 280(a)	R.1989 d.195	21 N.J.R. 908(a)
11:17-2.1	Term of insurance producer license: administrative correction	————	————	21 N.J.R. 637(a)
11:17-3, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 1152(a)	R.1989 d.192	21 N.J.R. 899(b)
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge	20 N.J.R. 2010(a)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: correction	20 N.J.R. 2186(b)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing	20 N.J.R. 2478(d)		
11:18	Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record	20 N.J.R. 2855(a)		

Most recent update to Title 11: TRANSMITTAL 1989-2 (supplement February 21, 1989)

LABOR—TITLE 12

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:16-4.7, 10, 13.4, 13.7, 22	Employer wage reporting, penalty abatement requests, hearings	21 N.J.R. 281(a)	R.1989 d.208	21 N.J.R. 1015(a)
12:16-4.8	Employee remuneration for lodging and meals, room and board	21 N.J.R. 689(b)		
12:17-1.6	Unemployment insurance benefits: temporary separation from work	20 N.J.R. 1333(a)		
12:17-2.4, 2.5	Requalification for unemployment insurance benefits	20 N.J.R. 1522(a)		
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-2	Transportation for employees of sheltered workshops	21 N.J.R. 690(a)		
12:46–12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:56-2.1	Wage and hour compliance: trainees in company programs	21 N.J.R. 692(a)		
12:100-4.2, 5.2, 6.2, 7	Public employee safety and health: toxic and hazardous substances	20 N.J.R. 2013(a)		
12:100-11	Public employee safety and health: control of hazardous energy sources	21 N.J.R. 620(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined	20 N.J.R. 1049(a)		
12:120-2.1 (8:60-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		

Most recent update to Title 12: TRANSMITTAL 1989-2 (supplement February 21, 1989)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12A:12-3.9	Tourism matching grants: purchases by grantee	21 N.J.R. 114(a)	R.1989 d.175	21 N.J.R. 908(b)
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:100-1.2, 1.3, 1.4	Commission on Science and Technology: Innovation/Partnership program	21 N.J.R. 433(a)		
12A:120-2	Urban Enterprise Zone Program: certification for zone business benefits	21 N.J.R. 693(a)		

Most recent update to Title 12A: TRANSMITTAL 1989-2 (supplement February 21, 1989)

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:1-1.1, 4.6, 5.1	Police Training Commission: training of corrections and juvenile detention officers	21 N.J.R. 695(a)		
13:10	Multiple dwelling reports concerning racial composition	21 N.J.R. 11(b)	R.1989 d.211	21 N.J.R. 1016(a)
13:21-22	Certificates of title for salvage motor vehicles	20 N.J.R. 2675(a)	R.1989 d.157	21 N.J.R. 768(a)
13:27-4.5, 4.6, 4.7, 4.8, 4.10, 4.12, 4.13	Architectural practice and responsibility	21 N.J.R. 433(b)		
13:27-8.16, 9.5	Architects and certified landscape architects: change of address; service of process	21 N.J.R. 114(b)	R.1989 d.202	21 N.J.R. 1016(b)
13:29-6	Practice of accountancy: continuing education	20 N.J.R. 2532(a)	R.1989 d.194	21 N.J.R. 908(c)
13:29-6	Continuing professional education for accountants: public hearing and comment period	20 N.J.R. 3114(a)		
13:30-8.5	Board of Dentistry: access to complaint history of licensees	20 N.J.R. 2680(a)	R.1989 d.63	21 N.J.R. 338(a)
13:35-6.10	Advertising and solicitation by physicians	21 N.J.R. 696(a)		
13:35-1A	Board of Medical Examiners: pre-proposed repeal	21 N.J.R. 697(a)		
13:35-1A	Board of Medical Examiners: withdrawal of pre-proposal	21 N.J.R. 937(a)		
13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1	Practice of optometry: advertising; access to optometrist; patient records	20 N.J.R. 2361(b)		
13:38-2.11	Practice of optometry: delegation of duties to ancillary personnel	20 N.J.R. 2363(a)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	20 N.J.R. 2995(b)		
13:38-2.11	Practice of optometry: public hearing on delegation of duties to ancillary personnel	21 N.J.R. 284(a)		
13:38-2.11	Practice of optometry: withdrawal of proposal on delegation of duties to ancillary personnel	21 N.J.R. 881(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:39	Board of Pharmacy rules	20 N.J.R. 1648(a)		
13:39A-3.2	Unlawful practices and arrangements by physical therapists: preproposal	20 N.J.R. 2242(a)		
13:39A-5.1	Educational requirements for licensure as physical therapist	20 N.J.R. 2243(a)		
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)		
13:44D	Public movers and warehousemen: public hearing and extension of comment period	20 N.J.R. 2681(a)		
13:45A-2	Motor vehicle advertising practices	21 N.J.R. 115(a)		
13:45A-11.1	Advertising and sale of new merchandise	20 N.J.R. 2247(a)		
13:45B-4, 5	Temporary help service firms; booking agencies	20 N.J.R. 2684(a)	R.1989 d.209	21 N.J.R. 1016(c)
13:47-2.8	Legalized games of chance: organization ID numbers	21 N.J.R. 698(a)		
13:47-7.1	Bingo games	21 N.J.R. 698(b)		
13:47A-2.10	Investment advisory contracts: performance fee compensation	21 N.J.R. 12(a)		
13:70-14.5	Thoroughbred racing: testing for illegal devices	20 N.J.R. 3114(b)	R.1989 d.155	21 N.J.R. 774(a)
13:75	Practice and procedure before Violent Crimes Compensation Board	21 N.J.R. 881(b)		
13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)	Expired	
13:78	Advocacy fund for crime victims and witnesses	20 N.J.R. 2997(b)	R.1989 d.156	21 N.J.R. 774(b)

Most recent update to Title 13: TRANSMITTAL 1989-2 (supplement February 21, 1989)

PUBLIC UTILITIES—TITLE 14

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:3-7.14	Discontinuance of residential service to tenants	20 N.J.R. 1668(a)		
14:3-9.6	Solid waste: filing contracts for service (preproposal)	20 N.J.R. 1669(a)		
14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.15	Annual filing of customer lists by solid waste collectors; annual reports	20 N.J.R. 2629(a)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
14:9-4.3	Solid waste: decals for vehicles (preproposal)	20 N.J.R. 1671(a)		
14:9-4.4	Solid waste: container identification (preproposal)	20 N.J.R. 1671(b)		
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)		
14:17	Office of Cable Television: practice and procedure	21 N.J.R. 440(a)		
14:18-14.6	Alteration of channel allocation: correction to text	————	————	21 N.J.R. 775(a)
14:18-15.1	Preproposal: Statewide cable TV access channel for educational and public affairs programming	20 N.J.R. 1063(a)		

Most recent update to Title 14: TRANSMITTAL 1988-2 (supplement December 19, 1988)

ENERGY—TITLE 14A

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14A:14-2.1	Definition of electric facility	21 N.J.R. 882(a)		

Most recent update to Title 14A: TRANSMITTAL 1989-1 (supplement February 21, 1989)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)

TRANSPORTATION—TITLE 16

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:5-2.2, 3.1	Property acquisitions: appraisal; payments	21 N.J.R. 13(a)	R.1989 d.130	21 N.J.R. 637(b)
16:7-1.3	Auctions of buildings and excess land parcels	21 N.J.R. 13(b)	R.1989 d.131	21 N.J.R. 638(a)
16:20A-1.1, 1.3–1.5, 2.1, 2.2, 2.4, 3.1, 4.1–4.4, App. I, II	New Jersey Transportation Trust Fund: county and municipal aid	21 N.J.R. 623(a)		
16:20B-1.1–1.4, 2.1, 3.1, 3.2, 4.1–4.3, 5.1, App. I, II	New Jersey Transportation Trust Fund: municipal aid	21 N.J.R. 626(a)		
16:26-3	Reimbursed highway safety lighting	21 N.J.R. 628(a)		
16:28-1.17	Speed limit zones along Route 147 in Cape May County	21 N.J.R. 119(a)	R.1989 d.178	21 N.J.R. 913(a)
16:28-1.25	Speed limit zones along Route 23 in Sussex County	21 N.J.R. 119(b)	R.1989 d.177	21 N.J.R. 913(b)
16:28-1.49	Speed limits on Route 35 in Monmouth County	21 N.J.R. 698(c)		
16:28-1.72, 1.75	Speed limit zones along U.S. 206 in Atlantic and Burlington counties, and Route 36 in Monmouth County	21 N.J.R. 435(a)		
16:28-1.76	Speed limit zones along Route 15 in Sussex County	21 N.J.R. 699(a)		
16:28A-1.6	Handicapped parking space on Route 7 in Belleville	21 N.J.R. 883(a)		
16:28A-1.13, 1.25, 1.46, 1.110	Restricted parking and standing along U.S. 22 in Lopatcong, Route 35 in Eatontown, U.S. 130 in Westville, and Route 91 in North Brunswick	21 N.J.R. 883(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:28A-1.18	No parking zones along Route 27 in South Brunswick and Franklin Township	21 N.J.R. 700(a)		
16:28A-1.19, 1.109	Restricted parking along Route 28 in Elizabeth, and no stopping or standing zones along Route 324 in Logan Township	21 N.J.R. 701(a)		
16:28A-1.31, 1.46	Bus stop zones along Route 45 in Mannington Township and U.S. 130 in Delran Township	21 N.J.R. 701(b)		
16:28A-1.55	Time limit parking zones along U.S. 202 in Bernardsville	21 N.J.R. 436(a)		
16:28A-1.105	Bus stop zones along Route 54 in Atlantic County	21 N.J.R. 120(a)	R.1989 d.176	21 N.J.R. 914(a)
16:30-3.6	Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan	20 N.J.R. 737(b)	Expired	
16:30-9.1	Use of Route 35 bridge over Manasquan River in Point Pleasant and Brielle	21 N.J.R. 437(a)		
16:31-1.26	No left turn from Route 27 in Metuchen	21 N.J.R. 702(a)		
16:31-1.27	Prohibited turns along Route 17 in Rutherford	21 N.J.R. 884(a)		
16:41-2.4	Permits for highway access: correction to text	————	————	21 N.J.R. 775(b)
16:44-1.2, 1.4	Classification of prospective bidders	Emergency (expires 5-29-89)	R.1989 d.226	21 N.J.R. 1023(a)
16:51-1.3, 1.4, 1.6, 3.1, 4.3–4.7	Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services	20 N.J.R. 2635(b)	R.1989 d.144	21 N.J.R. 776(a)
16:53D	Bus carrier zone of rate freedom	21 N.J.R. 703(a)		
16:62-1.1, 1.2, 3.2, 3.5, 5.1, 9.1, 10.1	Land use within airport hazard areas	20 N.J.R. 3007(a)		
16:62-5.1, 9.1	Land uses within airport hazard areas: preproposal	20 N.J.R. 1534(a)		
16:77-1.1, 1.4, 1.5	NJ TRANSIT: fees charged to municipalities	21 N.J.R. 13(c)	R.1989 d.133	21 N.J.R. 688(b)
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)		

Most recent update to Title 16: TRANSMITTAL 1989-2 (supplement February 21, 1989)

TREASURY-GENERAL—TITLE 17

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:2-2.3	Public Employees' Retirement System: eligibility	21 N.J.R. 437(b)		
17:2-6.4	Public Employees' Retirement System: outstanding loans at retirement	21 N.J.R. 629(a)		
17:4-6.4	Police and Firemen's Retirement System: outstanding loans at retirement	21 N.J.R. 630(a)		
17:6-1.4	Consolidated Police and Firemen's Pension Fund: candidates for commission membership	21 N.J.R. 438(a)		
17:9-1.8	State Health Benefits Program: enrollment policy	20 N.J.R. 2863(a)	R.1989 d.126	21 N.J.R. 638(c)
17:9-2.4, 5.11	State Health Benefits Program: enrollment of dependents of 10-month employees	21 N.J.R. 886(a)		
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)		
7:9-7.2	State Health Benefits Program: reenrollment after termination of covered public employment	21 N.J.R. 886(b)		
7:20-8.1	Lottery vendors' code of ethics	21 N.J.R. 631(a)		
7:25	Collection of educational loan debts owed by public employees	21 N.J.R. 887(a)		
7:33	Catastrophic Illness in Children Relief Fund: surcharge collection	21 N.J.R. 121(a)	R.1989 d.212	21 N.J.R. 1017(a)

Most recent update to Title 17: TRANSMITTAL 1989-2 (supplement February 21, 1989)

TREASURY-TAXATION—TITLE 18

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:3	Alcoholic Beverage Tax	21 N.J.R. 122(a)	R.1989 d.200	21 N.J.R. 1018(a)
8:3-2.1	Alcoholic Beverage Tax rates: correction to text	————	————	21 N.J.R. 778(a)
8:5	Cigarette Tax	21 N.J.R. 123(a)	R.1989 d.197	21 N.J.R. 1018(b)
8:6	Unfair Cigarette Sales Act rules	21 N.J.R. 124(a)	R.1989 d.199	21 N.J.R. 1019(a)
8:7	Corporation Business Tax	21 N.J.R. 14(a)	R.1989 d.196	21 N.J.R. 1019(b)
8:7-8.8	Corporation Business Tax: allocable receipts	21 N.J.R. 438(b)		
8:8	Financial Business Tax	21 N.J.R. 16(a)	R.1989 d.149	21 N.J.R. 778(b)
8:12-7.1, 7.12	Homestead tax rebate: extension of filing time	21 N.J.R. 16(b)	R.1989 d.146	21 N.J.R. 778(c)
8:15-2.15	Farmland assessment of woodland: filing of applications	21 N.J.R. 125(a)	R.1989 d.150	21 N.J.R. 779(a)
8:18	Motor Fuels Tax	21 N.J.R. 125(b)	R.1989 d.198	21 N.J.R. 1020(a)
8:19	Motor fuels retail sales	21 N.J.R. 126(a)	R.1989 d.201	21 N.J.R. 1020(b)
8:22	Public utility taxes	21 N.J.R. 17(a)	R.1989 d.148	21 N.J.R. 779(b)
8:23	Railroad Property Tax	21 N.J.R. 18(a)	R.1989 d.147	21 N.J.R. 779(c)
8:24-5.11	Fabricator/contractor sales and use tax liability	21 N.J.R. 439(a)		
8:26-3.2, 11.1, 12.11	Transfer inheritance and estate tax	21 N.J.R. 285(a)	R.1989 d.210	21 N.J.R. 1021(a)

Most recent update to Title 18: TRANSMITTAL 1989-1 (supplement February 21, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19—OTHER AGENCIES				
19:8-1.1, 3.1	Tolls on Garden State Parkway	21 N.J.R. 127(a)	R.1989 d.182	21 N.J.R. 914(b)
19:8-1.1, 3.1	Tolls on Garden State Parkway: extension of comment period	21 N.J.R. 287(a)		
19:20-2	Use of authority facilities	21 N.J.R. 887(b)		
19:25-11.10, 11.11, 16.34	Political communications and reporting of expenditures	21 N.J.R. 703(b)		
19:25-11.10, 11.11, 16.34	Political communications and reporting of expenditures: correction to public hearings time	21 N.J.R. 938(c)		
19:25-15.14, 15.46	Campaign funding: administrative corrections	———	———	21 N.J.R. 1021(b)
19:25-16.3, 16.6–16.12, 16.14, 16.18, 16.22, 16.30, 16.32, 16.34, 16.37–16.47	Public financing of gubernatorial primary; political communications of all candidates	Emergency (expires 5-5-89)	R.1989 d.181	21 N.J.R. 788(b)
19:25-16.30	Communication expenditures by non-gubernatorial candidates	21 N.J.R. 704(a)		
19:30-5.2	Vendor activities representing conflict of interest	21 N.J.R. 129(a)	R.1989 d.207	21 N.J.R. 1022(a)

Most recent update to Title 19: TRANSMITTAL 1989-2 (supplement February 21, 1989)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-1.2	Junket activities and representatives	20 N.J.R. 2644(a)	R.1989 d.187	21 N.J.R. 933(b)
19:40-2	Access to information maintained by casino licensees	20 N.J.R. 1068(a)		
19:40-2	Access to information maintained by casino licensees: public hearing	20 N.J.R. 2049(b)		
19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:43	Casino service industries: qualification and licensure	21 N.J.R. 705(a)		
19:45-1.1, 1.15, 1.24, 1.24A, 1.24B	Wire transfers of funds	20 N.J.R. 3012(a)		
19:45-1.9	Junket activities and representatives	20 N.J.R. 2644(a)	R.1989 d.187	21 N.J.R. 933(b)
19:45-1.11A, 1.12	Jobs compendium information; assistant casino manager position	20 N.J.R. 3120(b)	R.1989 d.169	21 N.J.R. 780(a)
19:45-1.25	Verification of cash equivalents	20 N.J.R. 1789(a)		
19:45-1.37	Slot machines and bill changers: administrative correction	———	———	21 N.J.R. 933(a)
19:47-2.8	Late surrender blackjack wagers: 90-day experiment	———	———	21 N.J.R. 640(a)
19:47-2.15	Blackjack irregularities	20 N.J.R. 3014(a)		
19:47-5.6	Big Six: spin of wheel and wagers	21 N.J.R. 131(a)		
19:49-1.1, 1.2, 1.3, 2.1, 2.4, 3.1, 3.2, 3.3, 3.5, 3.6	Junket activities and representatives	20 N.J.R. 2644(a)	R.1989 d.187	21 N.J.R. 933(b)
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-1.16	Repeal procedural rule concerning affirmative action	21 N.J.R. 18(b)	R.1989 d.168	21 N.J.R. 781(a)
19:53-2	Set-aside goals for minority and women's business enterprises	20 N.J.R. 2446(a)	R.1989 d.167	21 N.J.R. 781(b)

Most recent update to Title 19K: TRANSMITTAL 1989-2 (supplement February 21, 1989)

OAL CUSTOMER INFORMATION

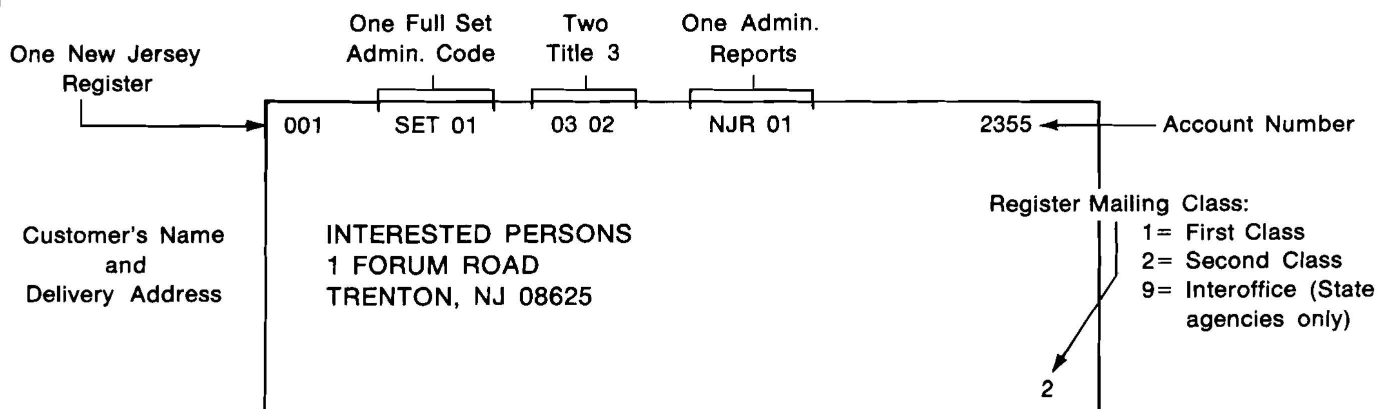
How to Read Your Register Mailing Label

Your customer address label for the New Jersey Register contains a thumbnail sketch of your account at the Office of Administrative Law. Knowing how to read your mailing label enables you to verify the information in your personal records, and should a problem arise, allows us to help you quickly and efficiently.

Printed on the label are the number and kinds of subscriptions you have purchased, and your account number. This master number enables us to retrieve your account record from the thousands on file at the OAL.

The diagram below represents a typical customer address label and shows subscription codes for the New Jersey Register, the New Jersey Administrative Code, and New Jersey Administrative Reports. If, after reviewing your own customer label, you have any questions about your account, please telephone or write to Customer Service, OAL Publications.

Publication and Number of Subscriptions:



OAL Customer Service: 609-588-6606, or write to OAL Publications, CN 301, Trenton, NJ 08625. Inquiries about payments, only: 609-588-6517.

OFFICE OF ADMINISTRATIVE LAW PUBLICATIONS

NEW JERSEY ADMINISTRATIVE CODE

[ ] **FULL SET (INCLUDES ALL TITLES BELOW)** $1200

INDIVIDUAL TITLES (CIRCLE TITLES DESIRED)*

Title	Price
1. Administrative Law	$ 55
2. Agriculture	$ 55
3. Banking	$ 55
4A. Personnel (formerly Civil Service)	$ 55
5. Community Affairs (two volumes)	$110
5A. Military and Veterans' Affairs	$ 55
6. Education (two volumes)	$110
7. Environmental Protection (five volumes)	$275
8. Health (four volumes)	$220
9. Higher Education	$ 55
10. Human Services (four volumes)	$220
10A. Corrections	$ 55
11. Insurance	$ 55
12. Labor (two volumes)	$110
12A. Commerce, Energy and Economic Development	$ 55
13. Law and Public Safety (four volumes)	$220
Volume C (Alcoholic Beverage Control and Amusement Games Rules) only	$ 55
14/14A. Public Utilities/Energy	$ 55
15. State	$ 55
15A. Public Advocate	$ 55
16. Transportation (two volumes)	$110
17. Treasury-General	$ 55
18. Treasury-Taxation (two volumes)	$110
19. Other Agencies: Expressway Authority, Hackensack Meadowlands Commission, Highway Authority, Turnpike Authority, Public Employment Relations Commission, Sports and Exposition Authority, Election Law Enforcement Commission, Economic Development Authority, Public Broadcasting Authority, Executive Commission on Ethical Standards, Atlantic County Transportation Authority (two volumes)	$110
19K. Casino Control Commission	$ 55

(Prices are in U.S. dollars and include first year of updated replacement pages.)

New Jersey Register (one year, 24 issues)
By second class mail, $75 [ ]
By first class mail, $150 [ ]

NEW JERSEY ADMINISTRATIVE REPORTS

I. Full Set of NJAR. Ten hardbound volumes and quarterly update service for one year. Hardbound volumes include a table of contents for the volume. Quarterly looseleaf update service includes a cumulative listing of statutes cited; cumulative listing of rules cited; cumulative topical index, and cumulative listing of cases reported .... $400 ☐

II. Looseleaf Update Service Only: Quarterly update service and bound volume(s) of decisions issued in quarterly service for one year. Cumulative indices .... $195/year ☐

III. Individual Hardbound Volumes (1-10) can be purchased separately. Each volume has a table of contents ...... $45/volume (specify volume or volumes desired) ☐

Prepayment is required for all subscriptions.

Please return form with your payment to:

OAL Publications
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

*If you want multiple copies of a Title, please specify on the "Amount Enclosed" line. Example: $110 (two copies, Title 1).

Name and Delivery Address:

____

____

____

Billing Address, if different:

____

____

____

Telephone Number ______________________

Amount Enclosed ______________________

3/89