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MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 21, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT APRIL 18, 1994

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 18(1994)
Continuation of the Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities

Issued: May 2, 1994.
Effective: May 2, 1994.
Expiration: Indefinite.

WHEREAS, on May 24, 1984 Executive Order No. 72 of Governor Kean created the Governor's Council on the Prevention of Mental Retardation; and

WHEREAS, the Council is composed of commissioners of various State departments and of concerned citizens who have had distinguished records in the area of mental retardation and developmental disabilities; and

WHEREAS, Public Law 1987, Chapter 5 (N.J.S.A. 30:1AA-10 to 19) was enacted on January 20, 1987 establishing a permanent Office for Prevention of Mental Retardation and Developmental Disabilities in the Department of Human Services; and

WHEREAS, the Governor's Council on the Prevention of Mental Retardation was renamed the Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities by Executive Order No. 178 of Governor Kean on July 30, 1987; and

WHEREAS, the Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities was continued for one year by Executive Order No. 223 of Governor Kean and for three years by Executive Order No. 30 of Governor Florio; and

WHEREAS, under N.J.S.A 30:1AA-15, the Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities serves as an Advisory Council to the Office for Prevention of Mental Retardation and Developmental Disabilities and to the Commissioner of the Department of Human Services; and

WHEREAS, the Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities is an essential component of the Office for Prevention of Mental Retardation and Developmental Disabilities and should continue to serve as an Advisory Council; and

WHEREAS, The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities lapsed on December 31, 1993;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and Statutes of this State, do hereby ORDER and DIRECT:

1. The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities is hereby continued as of December 31, 1993 and shall remain in existence until December 31, 1996.

a. The Council shall consist of no more than 25 public members appointed by the Governor. The members shall be appointed from among persons representing people with disabilities, professionals in mental retardation and developmental disabilities, and persons from the business and health communities.

b. The Secretary of State and the Commissioners from the Departments of Human Services, Health, Education, Environmental Protection and Energy, Community Affairs, and/or their designees, shall serve on the Council.

c. The public members shall continue to serve for staggered three-year terms. Council vacancies among the public members shall be filled by appointment by the Governor for the remainder of the unexpired term.

d. The Governor shall designate the chairperson of the Council from among members of the Council. The chairperson of the Council shall serve at the pleasure of the Governor.

e. The Council may further organize itself in any manner it deems appropriate and may enact by-laws it deems necessary to carry forth its responsibilities.

2. The Governor's Council on the Prevention of Mental Retardation and Developmental Disabilities shall:

a. Advise the Secretary of State and the Commissioners of the Departments of Human Services, Health, Education, Environmental Protection and Energy, Community Affairs, and the Office for Prevention of Mental Retardation and Developmental Disabilities in the Department of Human Services, regarding the priorities for prevention in the State;

b. Mobilize citizens and community agencies to support prevention-related activities;

c. Develop mechanisms to facilitate early detection;

d. Foster cooperative working relationships among responsible agencies; and

e. Provide other information on prevention as the Governor may request.

3. The Council, in performing its duties, shall consult with existing agencies for planning, coordination and delivery of prevention services to families at the State, county and local levels.

4. The Departments of State, Human Services, Health, Education, Environmental Protection and Energy, and Community Affairs are authorized and directed, to the extent consistent with law, to cooperate with the Council and to furnish it with such staff, office space and supplies as necessary to carry out its purpose under this Order.

5. The Council shall be responsible for serving as the Advisory Board to the New Jersey Disabilities Prevention Program, as funded through a cooperative agreement with the Federal Centers for Disease Control and Prevention, and shall provide guidance to the Office for Prevention of Mental Retardation and Developmental Disabilities regarding the establishment, monitoring and evaluation of programs and surveillance systems for the prevention of disabilities.

6. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 19(1994)
Continuation of the Governor's Task Force on Child Abuse and Neglect

Issued: May 2, 1994.
Effective: May 2, 1994.
Expiration: Indefinite.

WHEREAS, Executive Order No. 51 of Governor Kean created the Governor's Task Force on Child Abuse on November 16, 1983; and

WHEREAS, the Governor's Task Force on Child Abuse was to conclude its work by January 1, 1985; and

WHEREAS, on July 19, 1985 the Governor's Task Force on Child Abuse was subsequently renamed the Governor's Task Force on Child Abuse and Neglect pursuant to Executive Order No. 110 by Governor Kean; and

WHEREAS, the Governor's Task Force on Child Abuse and Neglect was continued by Executive Order Nos. 110, 173 and 217 of Governor Kean and by Executive Order No. 53 of Governor Florio until it expired on December 31, 1993; and

WHEREAS, the members of the Task Force have continued to address with dedication the problem of child abuse and neglect within the State; and

WHEREAS, there is still a need for the Task Force to educate the community and make the public aware of this serious social problem, to prevent child abuse and neglect, to coordinate activities relating to child abuse and neglect, and to ensure community support for these child protection measures;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Governor's Task Force on Child Abuse and Neglect is hereby continued as of December 31, 1993 and shall remain in existence until December 31, 1996.

2. The Task Force shall consist of no more than 15 public members appointed by the Governor. The Governor shall appoint the public members from among persons representing prosecutors' offices, police

departments, physicians, hospitals, schools, civic groups, public housing authorities, child advocacy organizations, public service agencies, business and industry, and child or family social work organizations. The Governor may also appoint victims of child abuse or their families and county freeholders as public members.

The Commissioners of the Departments of Human Services, Education, Health, Corrections and Community Affairs; the Secretary of State; the Chief Justice of the New Jersey Supreme Court; the Attorney General and the Superintendent of the State Police; or their designees, shall also serve on the Task Force.

3. Task Force vacancies shall be filled by appointment by the Governor for the remainder of the unexpired term.

4. The Task Force may solicit, receive, disburse and monitor grants and other funds available from any governmental, public, private, not-for-profit or for-profit source, including, but not limited to, funding available under any federal or State law, regulation or program.

5. All departments, agencies and divisions are authorized and directed, to the extent not inconsistent with law, to continue to cooperate with the Task Force.

6. The Department of Human Services is authorized and directed to continue to furnish the Task Force with such staff, office space and supplies as are necessary to accomplish the purpose of this Order.

7. All other provisions of Executive Order Nos. 51, 110, 173 and 217 of Governor Kean and Executive Order No. 53 of Governor Florio shall remain in full force and effect without any modification.

8. This Order shall take effect immediately.

REORGANIZATION PLAN

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Reorganization Plan No. 001-1994
A Plan for the Reorganization of the Board of Regulatory Commissioners within the Department of Treasury, the Redesignation of the Board of Regulatory Commissioners as the Board of Public Utilities, the Redesignation of the Department of Environmental Protection and Energy as the Department of Environmental Protection, and the Reform of the Function of Rate Counsel

Please take notice that on May 5, 1994, Governor Christine Todd Whitman hereby issues this Reorganization Plan, No. 001-1994, (the "Plan"), to provide for more effective development and implementation of the State's utility, environmental and energy policies. The Plan accomplishes these objectives by: (1) redesignating the New Jersey Board of Regulatory Commissioners (the "BRC") as the Board of Public Utilities (the "BPU") and reconstituting the BPU in, but not of, the Department of Treasury; (2) transferring certain personnel and functions of the BRC and the Department of Environmental Protection and Energy (the "DEPE"), to be hereafter known as the Department of Environmental Protection (the "DEP"), to the BPU; and (3) creating a Division of the Ratepayer Advocate within the BPU and providing for the transfer of certain personnel of the Division of Rate Counsel in the Department of the Public Advocate to a newly created Division of the Ratepayer Advocate within the BPU.

GENERAL STATEMENT OF PURPOSE

The safe, efficient, and economical provision of utility services to the citizens of New Jersey has long been of paramount concern. To promote the coherent development of utility policy, then-Governor Woodrow Wilson established the Board of Public Utility Commissioners in 1911. Over the years, the Board has regulated such essential services as the provision of electricity, natural gas, telephone, water, sewerage, and, most recently, cable television.

Perhaps because the function it serves is sensitive to evolving technologies and the social concerns they raise, the Board has undergone numerous reorganizations. In 1977, reflecting public concerns over energy issues, the Board of Public Utility Commissioners was subsumed in, but not of, the newly formed Department of Energy. In 1987, the Department of Energy was abolished, and the Board was transferred to the Department of Treasury. Finally, in 1991, reflecting public concern over environmental issues, the Board was subsumed within the Department of Environmental Protection and Energy.

The proper mandate of the Board of Regulatory Commissioners, however, is far broader than its inclusion within the Department of Environmental Protection and Energy suggests. Pursuant to its statutory authority, it is the duty of the BRC to regulate the public utilities of the State for the provision of safe, adequate and proper service, including electric, gas, water and sewer, and telecommunications. In addition, the BRC has regulatory oversight of the cable television industry. Thus, the Board is charged with regulating in many contexts, not merely within the context of environmental protection. It is time that the historic and prospective importance of the regulation of the energy and other utilities be reflected within the structure of the agency.

The purpose of this Plan is to create a governmental structure that will promote the statutory aims of the BRC. Pursuant to its mandate, the BRC regularly considers matters regarding economic regulation and interacts with the Division of Rate Counsel, which has been within the Department of the Public Advocate. Beyond economic considerations, the BRC is also responsible for seeing that the energy needs of New Jersey's citizens and industry are met. Accordingly, the BRC is inextricably involved with the planning and implementation of the present and future energy policies of the State.

The Plan puts into place a structure that will coordinate energy planning and promote the efficient regulation of energy costs, thus enhancing the State's economic growth and prosperity. The Plan restores the BRC to its former status in, but not of, the Department of Treasury and renames the BRC the New Jersey Board of Public Utilities. It proposes the reinstatement of the President of the BPU to cabinet-level status, establishes within the BPU a Division of the Ratepayer Advocate, and realigns the BPU to better address the dynamic challenges facing the regulated community while remaining sensitive to the need to reduce the cost and size of government. In transferring certain functions of the DEPE to the BPU and relocating the BPU in, but not of, the Department of Treasury, this Plan recognizes the interdependent relationship between energy management planning and the provision of safe, adequate, and proper service by the State's public utilities and cable television operators. At the same time, those aspects of the Board's function most closely related to environmental concerns—the Board's regulation of solid waste—are vested in a redenominated Department of Environmental Protection.

This Plan speaks ultimately to a matter of vital concern: the Board's public interest in ensuring safe, adequate and proper service to all ratepayers, which includes cost-effective ratemaking and long-term energy policymaking. We recognize that the assurance of a consumer voice in the ratemaking process is essential to maintaining public trust. For too long, however, State government has been structured on the assumption that an advocate must be limited to an adversarial role. By formally reposing this essential consumer voice in a separately constituted Department of the Public Advocate, staffed with litigators who billed their adversaries by the hour and expressed the consumer voice in adversary proceedings, we have fostered litigation as a policymaking tool at the expense of reasoned consensus. Although the statutory charge of the Public Advocate has been the protection of the public interest, in recent years Rate Counsel has assumed a reflexively adversarial role in rate proceedings, while utilities have been encouraged to inflate their rate increase requests in anticipation of certain opposition and litigation expenses. To more effectively protect the consumer, this counterproductive cycle must be broken. There is no more wasteful institution than bureaucracy, and no more wasteful process than litigation. We have married the two, we have bureaucratized litigation, and we are all the poorer.

Recognizing that there are cases in which litigation may be necessary in order to protect the interest of the ratepayers, the Plan transfers certain personnel from the Office of Rate Counsel to a newly constituted Division of the Ratepayer Advocate within the BPU. However, the Plan recognizes that litigation must be the last resort where accommodation has failed.

Accordingly, the Plan authorizes the Director of the Division of the Ratepayer Advocate to negotiate with the utilities in advance of the filing of rate case proposals in order to seek an accommodation of views on rate issues so that the consumer's voice is accounted for prior to rate case filings. Further, the Plan envisions that the Director of the Division of the Ratepayer Advocate will participate after the rate proposal is filed in a pretransmittal conference to seek a further accommodation of views. The current system of funding, which provides every incentive to litigate and no motive to accommodate, shall be reformed. No longer will advocates on behalf of the consumer bill by the hour, and no longer will there be an incentive for rate proposals to be inflated because of the likelihood that rate proposals will be subject to protracted litigation. Only after negotiation has failed will litigation be considered.

The Division of the Ratepayer Advocate's role will not be limited to individual ratemaking cases; rather, the Director will play an active role in policymaking, sitting on the Advisory Council of Energy Planning and Conservation and on the Energy Master Plan Committee within the BPU. Additionally, the Director of the Division of the Ratepayer Advocate will assist, advise and cooperate with the BPU Commissioners in the exchange of information and ideas in the formulation of long-term energy policy and goals which impact all New Jersey ratepayers. This will afford the consumer a previously unheard voice in the long-range energy planning for this State. By assuring that the consumer's voice is heard at the outset of the ratemaking and policymaking processes, the Plan promotes the development of consensus and spares the State and its citizens the expense and inefficiency of a process that is reflexively adversarial rather than administratively inclusive. Moreover, although the Division of Rate Counsel was created to represent and protect the public interest in rate case proceedings, in practice Rate Counsel has, in the past, limited its representation to the interests of residential ratepayers.

Under this Plan, the Division of the Ratepayer Advocate will be empowered to represent, protect, and advance the interests of all consumers of utility services, including residential, small business, commercial, and industrial ratepayers, in an effort to protect and promote the economic interests of all New Jersey ratepayers.

Now, therefore, pursuant to the "Executive Reorganization Act of 1969," *L.* 1969, c.203 (C.52:14C-1 *et seq.*), I find, with respect to each aspect of the reorganization included in this Plan, that each aspect is necessary to accomplish the purposes set forth in Section 2 of the Act and that each aspect will:

1. Promote more effective management of the Executive Branch or its departments because it will group similar regulatory functions within agencies specifically focused on industries with similar regulatory concerns;

2. Promote the better and more efficient execution of the law by functionally regulating the State's utility, environmental and energy industries according to major purposes;

3. Group, coordinate, and streamline regulatory functions in a more consistent and practical way;

4. Reduce expenditures; and

5. Eliminate duplication and overlapping of effort that has resulted from the transfer of the BRC to the DEPE by consolidating certain functions which will result in a savings of State funds.

PROVISIONS OF THE REORGANIZATION PLAN

1. a. The Board of Regulatory Commissioners, including the functions, powers, and duties assigned to it pursuant to *L.* 1911, c.195, as amended (C.48:2-1), *et seq.* and *L.* 1987, c.365, §9 (C.52:18A-2.1), and allocated in, but not of, the Department of Environmental Protection and Energy pursuant to Reorganization Plan No. 002-1991 together with all of its functions, powers, and duties, is continued and is transferred to and constituted as the New Jersey Board of Public Utilities in, but not of, the Department of Treasury, except as hereinafter provided. The President of the BRC shall be the President of the BPU.

b. The BPU shall remain constituted as a three-member Board as now provided by law (C.48:2-1). The BPU's final agency decisions, consistent with applicable law, shall be appealable to the Appellate Division of the Superior Court. Further, the BPU shall exercise its substantive authority and powers independent of the supervision of any other department or agency.

c. Pursuant to the authority conferred by *N.J.S.A.* 52:14C-5, vacancies on the BPU shall be filled by the Governor on an *ad interim* basis by the filing of a letter evidencing the appointment with the Secretary of State, which appointment shall be effective for no more than 90 days and which shall then expire and may not be repeated, or until such time as a member is nominated, confirmed, appointed and qualified to serve, whichever is sooner.

d. Whenever any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise refers to the Board of Regulatory Commissioners and the chairperson thereof, the same shall mean and refer to the New Jersey Board of Public Utilities and the President thereof.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this reorganization will help to ensure that the State's public utility policy and energy policies, including energy conservation goals, are effectively developed and carried out. Further, continuing the Governor's limited authority to name an acting member to the BPU will ensure the BPU's ability to carry out its important regulatory functions without delay in the event of a vacancy on the Board.

2. a. The Division of Energy Planning and Conservation established in the Board of Public Utilities, pursuant to Reorganization Plan No. 002-1989, ¶I(1)(a), and created pursuant to *L.* 1977, c.146, as amended (C.52:27F-7), repealed by *L.* 1987, c.365, §17, and the functions, powers and duties of which were transferred to, and vested in, the Department of Environmental Protection and Energy and the Commissioner thereof pursuant to Reorganization Plan No. 002-1991, are hereby reinstituted and all of its functions, powers and duties are hereby transferred to, and vested in, the BPU and the President thereof.

b. The Office of Energy Planning established by Reorganization Plan No. 002-1991 and all of its functions, powers, and duties are hereby transferred to, and vested in, the Division of Energy Planning and Conservation in the BPU. All powers of implementation and enforcement relating to the Clean Air Act Amendments and the Safe Drinking Water Act, as currently being implemented and enforced by the DEPE, shall remain vested in the Department of Environmental Protection.

c. Whenever any law, rule, regulation, order, contract, document, judicial, or administrative proceeding or otherwise refers to the Office of Energy Planning, the same shall mean and refer to the Division of Energy Planning and Conservation in the BPU.

d. The responsibility and authority now vested in the Commissioner of the DEPE for the assessment of need and the issuance of a certificate of need for an electric facility under *L.* 1983, c.115, §1 (C.48:7-16 *et seq.*) and Reorganization Plan No. 002-1991 is hereby transferred to the BPU.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this reorganization will confer on the BPU the necessary authority to implement the important goals of coordinating and integrating the State's utility and energy policies. The reorganization also will promote the development and utilization of dynamic new energy conservation programs for residential, commercial, and industrial utility customers and will further provide a structure for promoting the economic interests of the State.

3. a. The Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation, which was transferred to the Department of Environmental Protection and Energy pursuant to Reorganization Plan No. 002-1991, ¶3a, and which was created by *L.* 1977, c.146, §10 (C.52:27F-12), together with all its functions, powers and duties as set forth in *L.* 1977, c.146, §11 (C.52:27F-13), is continued and transferred to, and constituted as, the Advisory Council on Energy Planning and Conservation in the Board of Public Utilities. The President of the BPU shall serve as Chairman of the Advisory Council and the Director of the Division of the Ratepayer Advocate shall serve as a member thereof.

b. Whenever any law, rule, regulation, order, contract, document, judicial, or administrative proceeding or otherwise refers to the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Department of Environmental Protection and Energy, the same shall mean and refer to the Advisory Council on Energy Planning and Conservation in the Board of Public Utilities.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this reorganization will provide the President and the Commissioners of the BPU with the necessary facilities to enable them to research, study, and implement the State's utility and energy policies.

4. The responsibility and authority vested in the Commissioner of the Department of Environmental Protection and Energy to act as Chairperson of the Energy Master Plan Committee, established by *L.* 1987, c.365, §14 (C.52:27F-14), pursuant to Reorganization Plan No. 002-1991, ¶4, is hereby vested in the President of the BPU; the responsibility and authority of the Commissioner of the Department of Environmental Protection and Energy to serve as a member of the Energy Master Plan Committee is continued.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this reorganization will help to ensure close coordination and integration of the State's energy and environmental policies with the proper emphasis on energy and the environment.

5. The responsibility and authority for requiring the periodic reporting by energy industries of energy information, and the analysis and reporting of same, set forth in *L.* 1977, c.146, §16 (C.52:27F-18), which was transferred to the Department of Environmental Protection and Energy and the Commissioner thereof, pursuant to Reorganization Plan No. 002-1991, is transferred to the President of the BPU.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this transfer is consistent with the centralization of energy policy decisions within the BPU.

6. All responsibility and authority now vested in the Commissioner of the Department of Environmental Protection and Energy for the regulation of solid waste under *L.* 1985, c.38, as amended, (C.13:1E-136 *et seq.*), and Reorganization Plan No. 002-1991, or under any other law or regulation, including, but not limited to, rate setting, is continued in the Commissioner of the Department of Environmental Protection, as is the responsibility and authority for implementation of the Clean Air Act Amendments and Safe Drinking Water Act.

I find that this continuation is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this reorganization will help ensure the close coordination and integration of the State's solid waste policies.

7. All responsibility for budget, fiscal, and personnel matters (including adoption of a Code of Ethics as required by the State Conflicts of Interests Law (C.52:13D-23) and acting as appointing authority with all of the rights thereunder) and day-to-day administration, including contracting and rulemaking authority in these areas, and such authority specifically conferred on the BPU by *N.J.S.A.* 48:2-2, -3 and -7 and under Reorganization Plan No. 002-1991, is hereby transferred from the Department of Environmental Protection and Energy and the Commissioner thereof, to the BPU and the President thereof.

Specifically, but not by way of limitation:

a. The BPU shall make annual budget recommendations to the Director of the Division of Budget and Accounting and the BPU budget shall be entirely funded by statutorily authorized assessments and, to the greatest extent legally permissible, and consistent with the BPU's historic practice, its budget shall be entirely separate and independent from the State budget process;

b. The BPU shall adopt the current Code of Ethics governing the BRC pursuant to the Conflicts of Interest Law for submission to, and approval by, the Executive Commission on Ethical Standards;

c. The BPU will be responsible for the allocation of its budget and the assignment of BPU personnel;

d. BPU employees for payroll, administrative and other personnel-related practices shall remain and continue to be categorized as BPU employees; and

e. Upon the request of the Commissioner of the Department of Environmental Protection, the BPU, to the extent reasonably feasible, shall make resources available to the DEPE to carry out an orderly transition of functions now provided to the DEPE by personnel transferred to the BPU.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, consolidation of the BPU's budget and administrative authority in the BPU will provide the required level of autonomy to the BPU in carrying out its mandate.

8. All Class 2 and Class 3 employees who serve the BRC and/or the DEPE shall be employees of the BPU and shall be transferred to the BPU pursuant to the "State Agency Transfer Act," *L.* 1971, c.375 (C.52:14D-1 *et seq.*). Additionally, all appropriations, other employees, and records transferred pursuant to this Plan shall be transferred to the BPU pursuant to the "State Agency Transfer Act" *L.* 1971, c.375 (C.52:14D-1 *et seq.*).

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this transfer will enable the BPU to be autonomous and will allow the BPU to manage more efficiently its affairs and carry out its mandate.

9. There shall be established within the BPU a Division of the Ratepayer Advocate. The Governor shall appoint the Director of the Division of the Ratepayer Advocate, who may not be removed except for good cause. The Director's term shall be two years, with eligibility for reappointment. The Division is authorized and directed to:

a. assist, advise and cooperate with the BRC Commissioners in the exchange of information and ideas in the formulation of long term energy policy and goals which impact all New Jersey ratepayers;

b. negotiate with the utilities on behalf of the ratepayers in an effort to reach an accommodation of views with respect to proposed rate increases;

c. appear before the BPU on behalf of ratepayers to the same extent that Rate Counsel is currently authorized to appear;

d. sit on the Advisory Council on Energy Planning and Conservation and on the Energy Master Plan Committee; and

e. appeal any determination, finding, or order of the BPU determined by the Director of the Division to be adverse to the ratepayer interest.

The Division shall be funded on an interim basis pursuant to statutorily authorized assessments currently dedicated to the Division of Rate Counsel in the Department of the Public Advocate, and to the greatest extent legally permissible and consistent with Rate Counsel's historic practice, its budget shall be entirely separate and independent from the State budget process. At the Director's discretion, such personnel of the Division of Rate Counsel as are deemed necessary to fulfill the mandate of the Division of the Ratepayer Advocate are hereby transferred to the Division of the Ratepayer Advocate. The Director, or a member of the Director's staff to be appointed by the Director, shall sit on the Advisory Council on Energy Planning and Conservation and on the Energy Master Plan Committee.

Notwithstanding the transfer of the Division of Rate Counsel staff to the BPU, the BPU's mission shall continue to be both to protect ratepayers on issues of rates and services and to remain concerned with the financial viability of the regulated entities. Accordingly, the Division of the Ratepayer Advocate will be located separately from the BPU staff, and shall be excluded from *all* BPU staff discussions of pending litigated rate cases. Neither the Director nor the technical or professional staff shall be subject to the supervision or control of the BPU. The President of the BPU shall exercise no supervisory control over the Division of the Ratepayer Advocate. All litigation and appeals functions shall be exercised independently.

I find this reorganization is necessary to accomplish the purpose set forth in Section 2 of *L.* 1969, c.203. In addition to the reasons set forth above, this transfer reduces the incentive for commencing or continuing unnecessary litigation and promotes a better and more efficient execution of the State's utility rate policies. Most importantly, this reorganization provides for a broader and more comprehensive role by the Division of the Ratepayer Advocate in both protecting consumers and shaping future energy policy.

10. The BPU shall organize itself, as nearly as practicable, along the following functional lines: There shall be nine divisions: a Division of Gas, Division of Electric, Division of Telecommunications, Office of Cable Television, Division of Water and Sewer, Division of the Ratepayer Advocate, Division of Audits, Office of the Economist, and Division of Energy Planning and Conservation.

11. a. The name of the Department of Environmental Protection and Energy is hereby changed to the Department of Environmental Protection. I find this name change, authorized by *N.J.S.A.* 52:14C-5, will better reflect the Department's responsibilities and better inform the public of the Department's role under this Plan.

b. Whenever any law, rule, regulation, order, contract, tariff, document, judicial, or administrative proceeding or otherwise refers to the Department of Environmental Protection and Energy or the Commissioner thereof, the same shall mean and refer to the Department of Environmental Protection or the Commissioner thereof.

All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies.

A copy of this Reorganization Plan was filed on May 5, 1994 with the Secretary of State and the Office of Administrative Law (for publication in the *New Jersey Register*). This Plan shall become effective in 60 days, on July 4, 1994, unless disapproved by each House of the Legislature by the passage of a Concurrent Resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than July 4, 1994, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

Please take notice that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the Public Laws and in the *New Jersey Register* under a heading of "Reorganization Plans."

RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW
LABOR
BOARD OF REVIEW
DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Special Hearing Rules
Department of Labor Hearings

Joint Proposed New Rules: N.J.A.C. 1:12 and 1:12A (and N.J.A.C. 12:20 and 12:18 Appendices)

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law and Peter J. Calderone, Commissioner, Department of Labor.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g); 34:1A-3(e), 43:21-6(d) through (f), 43:21-10 and 43:21-17; and 43:21-25 et seq.

Proposal Number: PRN 1994-359.

A **public hearing** on this proposal will be held on the following date at the following time and location:

Monday, June 27, 1994 at 10:00 A.M. to 12:00 noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey

Submit written comments by July 6, 1994 to both:

Patricia Prunty, Assistant Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9, CN 049
Quakerbridge Road
Trenton, New Jersey 08625

and

Deirdré L. Webster, Regulatory Officer
External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625

If you need a copy of this document in Braille, large print or audio cassette, contact the Department of Labor, Office of Work and Disability at (609) 777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The special hearing rules set forth the procedures governing temporary disability insurance cases and unemployment benefits cases. These contested cases are heard and determined by the Board of Review, appeal tribunal or hearing officer at the Department of Labor acting as agency heads. See *Unemployed—Employed Council of New Jersey Incorporated v. Horn*, 85 *N.J.* 646 (1981). While all of these cases are heard within the Department of Labor, the Office of Administrative Law and the Department of Labor have jointly determined that it is appropriate for these rules to appear in N.J.A.C. 1:12 and 1:12A as contested case hearing rules. N.J.A.C. 1:12 and 1:12A will also appear in Title 12 of the Code as appendices to N.J.A.C. 12:20 and 12:18, respectively.

The appeal tribunal conducts and renders decisions concerning employer and employee appeals about determinations for unemployment benefits made at the local office level pursuant to N.J.S.A. 43:21-6(d) and decisions for State plan temporary disability insurance made by the Division pursuant to N.J.S.A. 43:21-50(b). The Board of Review conducts reviews of employer and employee appeals, as well as Division appeals, of unemployment benefit decisions made by an appeal tribunal in accordance with N.J.S.A. 43:21-6(e) and State plan temporary disability insurance decisions made by an appeal tribunal in accordance with N.J.S.A. 43:21-50(b). Hearing officers conduct hearings concerning private plan temporary disability insurance cases pursuant to N.J.S.A. 43:21-50(a).

The proposed new rules were jointly developed by the Office of Administrative Law and the Department of Labor. The Department of Labor has rulemaking authority over the development of these rules pursuant to N.J.S.A. 43:21-1 et seq. The Office of Administrative Law has oversight authority over the development of these rules pursuant to N.J.S.A. 52:14F-1 et seq. While the proposed rules represent a recodification of the hearing provisions in N.J.A.C. 12:20 and 12:18 to correspond with the organizational structure of the Uniform and Special hearing rules in Code Title 1, the proposed rules do not significantly change the Department of Labor hearing procedures. The proposed new rules set forth the hearing procedure which is currently utilized by Department of Labor for these cases. As in the case of these proposed rules, any future amendment to the procedure for hearing and deciding temporary disability insurance cases and unemployment compensation cases will be jointly promulgated by the Department of Labor and the Office of Administrative Law.

A summary of the subchapters of N.J.A.C. 1:12 follows:

Subchapter 1 establishes the applicability of the rules, which is to govern unemployment benefit cases and State plan temporary disability hearings under N.J.S.A. 43:21-50(b) heard by the Board of Review or appeal tribunals of the Department of Labor pursuant to N.J.S.A. 43:21-1 et seq.

Subchapter 2 sets forth definitions of "appeal tribunal," "appellate body," "Board of Review" and "Division."

Subchapter 5 provides for representation pro se, by an attorney or by a non-attorney as required by N.J.S.A. 43:21-17. The rules also set forth the standards for determination of fees for representatives.

Subchapter 9 requires written notice of the hearing, by mail, to the parties in interest at least five days before the hearing. It also sets forth the procedure for requesting adjournments.

Subchapter 10 sets forth the process for requesting production or review of the records of the Division. Such requests must be in writing, clearly state the nature of the requested information and the reason it is needed; they may be granted to the extent necessary to permit proper presentation of the case. Disclosure of specifically identifiable information concerning workers, employers or other persons is generally prohibited. Copying and other costs for obtaining information may be assessed, and specific charges for transcripts and sound recordings are set forth.

Subchapter 11 sets forth the procedure for issuance of subpoenas and payment of witness fees. The witness mileage rate is increased from the current $.10 to $.25 per mile.

Subchapter 14 specifies the hearing procedure. It provides that hearings shall be open to the public and conducted in a fair and impartial manner. Hearings before the Board of Review may be upon the record made for the appeal tribunal or may include the taking of additional evidence. The rules also set forth the consequences of a failure to appear and the process for scheduling and conducting a telephone hearing. In addition, the rules provide for disqualification of members of appeal tribunals, and for the Board of Review, on its own motion, to remove an appeal tribunal decision to itself on appeal and to transfer a case from one appeal tribunal to another for hearing and decision.

Subchapter 15 sets forth the rules of evidence. It provides for the admissibility of hearsay evidence provided that the decision must be supported by sufficient, substantial, and legally competent evidence. It also sets forth a procedure for entering into stipulations.

Subchapter 18 sets forth the form and content for the decisions of the appeal tribunals and Board of Review. It also sets forth a mechanism for reopening Board of Review decisions, and for the revision of a statement of facts and order to correct clerical and typographical errors.

A summary of the subchapters in N.J.A.C. 1:12A follows:

Subchapter 1 establishes the applicability of the rules, which is to govern private plan temporary disability cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a).

Subchapter 2 sets forth definitions of "Act," "Division" and "hearing officer."

Subchapter 5 provides for representation pro se, by an attorney or by a non-attorney as required by N.J.S.A. 43:21-17.

Subchapter 9 requires written notice of the hearing, served personally or by certified or registered mail or by telegram, to the parties or their

duly authorized representatives at least five days before the hearing. It also sets forth the procedure for requesting adjournments. It also provides that, after the filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle the issues and, pending a disposition, a formal hearing shall not be scheduled.

Subchapter 10 sets forth the process for requesting production or inspection of the records of the Division. Such requests must be in writing, clearly state the nature of the requested information and the reason it is needed; they may be granted to the extent necessary for the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligation or safeguard his or her rights under the Act.

Subchapter 11 sets forth the procedure for issuance of subpoenas and payment of witness fees.

Subchapter 14 specifies the hearing procedure. It provides that hearings shall be conducted in a fair and impartial manner. The rules also set forth the consequences of a failure to appear and the procedure for withdrawal of a pending complaint. The hearing officer may consolidate any number of proceedings with similar facts and circumstances, when to do so would not be prejudicial to any party. In addition, the rules provide that the facts and issues involved may be stipulated by the parties, with the hearing officer's determination and order based thereon.

Subchapter 15 sets forth the form and contents of a hearing officer's decision, service thereof, the order's effect and appeal of an order. The hearing officer may revise a determination of facts and order to correct clerical or typographic errors.

Social Impact

The proposed new rules provide parties with procedures and standards to follow in unemployment compensation and State plan temporary disability insurance appeals before the Boards of Review and the appeal tribunals, and in private plan temporary disability insurance appeals before a hearing officer. The proposed appeal procedures, including in N.J.A.C. 1:12 new provisions concerning representation fee criteria; adjournments; information, transcript and recording costs; refusal to permit appearance; appeal from, remand to and transfer between appeal tribunals; application to reopen an appeal; telephone hearings; hearsay evidence; and reopening Board decisions, provide parties with an equitable, uniform and needed opportunity to pursue their cases as required by Federal and State unemployment and temporary disability laws.

Economic Impact

The proposed new rules continue to insure provision of a fair and efficient hearing process for unemployment compensation and temporary disability cases. An economic impact under N.J.A.C. 1:12 will arise through the provisions concerning information, transcript and sound recording costs. The rules also govern fees paid to witnesses appearing in answer to subpoenas, with N.J.A.C. 1:12-11.2 including a mileage rate increase to $.25 per mile. This provides uniformity with other program areas including private plan temporary disability insurance cases. The costs to parties are for providing various notices and copies, and for representation, if any. No claimant shall be charged any fee of any kind in any proceeding under the Unemployment Compensation Law by the Board of Review. The rules will act to eliminate confusion concerning hearing practice and procedure, and will result in greater efficiency in the hearings process.

Regulatory Flexibility Analysis

The proposed new rules do not impose any reporting or recordkeeping requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A small business party to a hearing would be subject to the deadlines for hearing adjournment requests and requests for reconsideration of the Board's decision. Regarding telephone hearings in unemployment compensation and State plan temporary disability insurance cases, parties are subject to time requirements for hearing requests and objections thereto, and must provide copies of documentary or physical evidence to be introduced. The requesting party is responsible for notice to other parties. Beyond costs for copying, obtaining information, transcripts and sound recordings, no costs result from the requirements imposed, and legal representation is not required. As these requirements are considered the minimum necessary to provide for a fair and efficient hearings process, no exceptions or differentiation in requirements based on business size is provided.

Full text of the proposed new rules follows:

(N.J.A.C. 12:20
APPENDIX)
CHAPTER 12
SPECIAL HEARING RULES
UNEMPLOYMENT BENEFIT AND STATE PLAN
TEMPORARY DISABILITY CASES

SUBCHAPTER 1. HEARING APPLICABILITY

1:12-1.1 Applicability

The rules in this chapter shall apply to unemployment benefit cases and State plan temporary disability hearings under N.J.S.A. 43:21-50(b) heard by the Board of Review or the appeal tribunals of the Department of Labor pursuant to N.J.S.A. 43:21-1 (see also N.J.A.C. 12:20). Private plan temporary disability cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) shall be conducted in accordance with N.J.A.C. 1:12A.

SUBCHAPTER 2. DEFINITIONS

1:12-2.1 Definitions

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

"Appeal tribunal" means the entity which conducts hearings and renders decisions concerning employer and employee appeals of decisions for unemployment benefits made at the local office level. In so doing, the appeal tribunal acts as agency head.

"Appellate body" means either the appeal tribunal, Board of Review or hearing officer which is conducting the proceeding.

"Board of Review" means the entity which conducts appeals of unemployment benefit determinations and State plan temporary disability claim determinations made by an appeal tribunal. In so doing, the Board of Review acts as agency head.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

SUBCHAPTERS 3 and 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12-5.1 Representation

(a) Any party may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21-17 provided that such representation shall be at the party's expense.

(b) In any unemployment benefits proceeding and on any State plan temporary disability claim proceeding on an appeal before an appeal tribunal or the Board of Review, all fees for persons representing claimants shall be approved by the Board of Review after it receives submission of an authorization form.

(c) The amount of fees approved for persons representing claimants shall be discretionary with the Board of Review. In determining the amount of fees, the Board of Review shall at least consider the following factors:

1. The amount of time spent on the case;
2. The complexity of the case;
3. The services performed as noted on the authorization form or any other documentation to the Board of Review; and
4. The results achieved (that is, favorable or unfavorable).

(d) The Board of Review or any appeal tribunal, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the rules and regulations of the division, or the rules of the Board of Review.

SUBCHAPTERS 6 through 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12-9.1 Notice of hearing

Written notices of the time and place of any hearing shall be mailed to the parties in interest at least five days before the date of hearing but a shorter notice may be given if not prejudicial to the parties.

1:12-9.2 Notice of telephone hearing

(a) The notice of telephone hearing shall at least contain the following:

1. That the parties have a right to object to a telephone hearing; and

2. Written instructions as to how the telephone hearing shall be conducted.

1:12-9.3 Adjournments

(a) Adjournments shall be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(b) Requests for adjournment of hearings scheduled before the appeal tribunal shall be made to the appeal tribunal which shall use its best judgment as to when adjournments of hearings shall be granted in order to secure all facts that are necessary and to be fair to the parties.

(c) Applications and requests for adjournment of hearings scheduled before the Board of Review shall be made at least 24 hours before the date of the scheduled hearing and shall be granted at the discretion of the Board of Review.

(d) All parties to an adjournment shall be responsible for giving prompt notice to their witnesses as to the adjournment.

SUBCHAPTER 10. DISCOVERY

1:12-10.1 Inspection of Division files

(a) In cases involving unemployment compensation benefits and State plan temporary disability claims, requests for the production or inspection of the records of the Division shall be addressed to the Board of Review.

(b) A request for the production or inspection of the Division's records shall be in writing and shall clearly state the nature of the information required and the reason therefor.

(c) Orders for the production or inspection of the records of the Division may be issued in any proceeding to the extent necessary for the proper presentation of the case.

(d) In all cases where an application to supply a party or his or her representative with information from the records of the Division is granted, the party shall be furnished with a copy of such information.

(e) Individuals may be assessed reasonable administrative costs for the copying of records and any other costs for obtaining information from the Board of Review.

(f) Following an appeal to the Appellate Division and upon direction of the Attorney General's office, the transcript of any proceeding which has been sound recorded shall be provided to all parties by the Board. Any request by an employer shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the Board or $300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the Board. The Board shall bill the employer for any amount due for the preparation of the transcript and any hard copies or shall reimburse the employer for any overpayment.

(g) To obtain a copy of a sound recording of any proceeding, the requesting party must file a request with the executive secretary of the Board. Such a request is subject to approval by the Board. The requesting party shall notify all other parties of such a request. The request shall be accompanied by a reasonable payment of costs in the amount of $15.00 for the initial copy of the sound recording and $10.00 for any subsequent copy.

(h) No claimant shall be charged any fee of any kind in any proceeding under the Unemployment Compensation Law by the Board of Review.

(i) No disclosure of information, obtained at any time from, and identifiable to, specific workers, employers or other persons for the proper administration of an appeal, shall be made directly or indirectly except as authorized by the Board of Review in accordance with N.J.A.C. 12:17-7.

SUBCHAPTER 11. SUBPOENAS

1:12-11.1 Subpoenas

Subpoenas to compel the attendance of witnesses and the production of records for any hearing on an appeal may be directed to be issued by a member of the Board of Review in cases appealed to the Board of Review, or by the appeal tribunal, in cases appealed to an appeal tribunal, only upon the showing of the necessity therefor by the party applying for the issuance for such subpoena.

1:12-11.2 Witness fees

(a) Witness fees at the rate of $1.00 for each day of attendance upon a hearing in response to a subpoena ad testificandum and mileage at the rate of $0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

(b) Witness fees at the rate of $2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of $0.25 per mile from the residence of the witness to the place of hearing and return, shall be allowed and paid upon the presentation of a voucher signed by the witness and properly certified by a member of the appellate body before whom the witness appeared.

SUBCHAPTERS 12 and 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12-14.1 Public hearings

Hearings shall, in the absence of a showing of sufficient cause for a closed hearing, be open to the public.

1:12-14.2 Conduct of hearing

(a) The proceedings shall be fair and impartial and shall be conducted in such manner as may be best suited to determine the parties' rights.

(b) The appellate body shall open the hearing by ascertaining and summarizing the issue or issues involved in the appeal. The parties, their attorneys or representatives may examine or cross-examine witnesses, inspect documents, and explain or rebut any evidence. An opportunity to present argument shall be afforded the parties, which argument shall be made part of the record. Where a party is not represented, the appellate body shall give every assistance that does not interfere with the impartial discharge of its official duties. The appellate body may examine each party or witness to such extent as it deems necessary. All oral testimony shall be under oath or affirmation and shall be recorded.

(c) The appellate body may take such additional evidence as it deems necessary; provided, that in case such further evidence is taken, the parties shall be given proper notice of the time and place of such further hearing.

(d) The appellate body, in its discretion, may refuse to allow to appear before it any person who engages in misconduct at a hearing or who intentionally or repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey or the rules and regulations of the Division.

1:12-14.3 Appeals hearings

(a) All appeals to the Board of Review may be heard upon the evidence in the record made before the appeal tribunal, or the Board of Review may direct the taking of additional evidence before it.

(b) In the hearing of an appeal on the record, the Board of Review may limit the parties to oral argument or the filing of written argument, or both. If, in the discretion of the Board of Review, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Board of Review of the time and place such evidence will be taken. Any party to any proceeding

in which testimony is taken may present such evidence as may be pertinent to the issue.

(c) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the appeal tribunal in the manner prescribed for the conduct of hearings on appeals before appeal tribunals. Upon the completion of the taking of evidence by an appeal tribunal pursuant to the direction of the Board of Review, the claim or the issue involved in such claim shall be returned to the Board of Review for its decision upon the entire record, including the evidence before the appeal tribunal and such additional evidence and such oral argument as the Board of Review may permit before it.

(d) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an appeal tribunal for the taking of additional evidence and a decision or may remand for a new decision only.

1:12-14.4 Failure to appear

(a) If the appellant fails to appear for a hearing before an appeal tribunal, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for adjournment.

(b) If an appeal tribunal issued an order of dismissal for nonappearance of the appellant, the chief appeals examiner shall, upon application made by such appellant, within six months after the making of such order of dismissal, and for good cause shown, set aside the order of dismissal and shall reschedule such appeal for hearing in the usual manner. An application to reopen an appeal made more than six months after the making of such order of dismissal may be granted at the discretion of the chief appeals examiner.

1:12-14.5 Scheduling of telephone hearings

(a) A telephone hearing which means a hearing at which all parties, witnesses, representatives and attorneys appear via telephone may be conducted at the initiation of the Board of Review or the appeal tribunal or upon the request of any party with the consent of the Board of Review or appeal tribunal. Telephone hearings shall be subject to the rules governing hearings and appeals in this chapter, as well as the rules governing telephone hearings.

(b) The Board of Review or appeal tribunal, in its discretion, may initiate or schedule a telephone hearing:

1. When it appears from the record that a party or necessary witness is located more than 50 miles from the location from which the Board of Review or appeal tribunal will conduct the hearing;

2. When a party or witness cannot appear in person because of a physical, medical or other compelling reason; or

3. For good cause shown on a case by case basis with the approval of the Board of Review.

(c) Any party to an appeal may request a telephone hearing by contacting, immediately upon receipt of the notice of the scheduled in-person hearing, the Board of Review or appeal tribunal with reasons for the request to have a telephone hearing. Prior to the hearing, the requesting party shall provide written notice to all other interested parties of the request for the telephone hearing.

(d) The Board of Review or appeal tribunal shall exercise its discretion in granting or denying such requests and immediately notify the parties of its decision.

(e) Any party may object to a telephone hearing. Objections shall be made immediately upon receipt of the notice or request for a telephone hearing and shall:

1. Be in writing and received by the Board of Review or appeal tribunal reasonably in advance of the time scheduled for a telephone hearing; and

2. Set forth the reasons supporting the objections.

(f) The Board of Review or appeal tribunal may deny a party's objection to a telephone hearing if the Board of Review or appeal tribunal determines at least any of the following:

1. That the objecting party's intent is to purposely inconvenience the other party or delay the proceeding;

2. That a party or witness is more than 50 miles away; or

3. That a person is unable to appear in person because of physical, medical or other compelling reason.

(g) If the Board of Review or appeal tribunal accepts a party's objections to a telephone hearing, an in-person hearing shall be scheduled by the Board of Review or appeal tribunal.

1:12-14.6 Conduct of telephone hearing

(a) The Board of Review or appeal tribunal, at the inception of the hearing, shall advise all participants that the proceedings are being recorded.

(b) Any party who fails to appear at the scheduled telephone hearing shall meet the requirements of N.J.A.C. 1:12-18.4 before any reopening of the hearing shall be granted.

(c) The Board of Review or appeal tribunal shall permit the parties, attorneys or other representatives a reasonable opportunity to question any witness testifying via telephone for the purpose of verifying the identity of such witness.

(d) Any party that intends to offer documentary or physical evidence at the telephone hearing shall submit a copy of that evidence to the Board of Review or appeal tribunal immediately upon receipt of notice of the scheduled telephone hearing. Also, the requesting party shall provide timely notice of this request to offer evidence to all other interested parties.

1. Any evidence not submitted as required in this subsection may be admitted at the discretion of the Board of Review or the appeal tribunal provided that such evidence is submitted to the Board of Review or appeal tribunal and all other parties within 24 hours of the telephone hearing.

2. The other parties shall have 24 hours from the time of receipt of the evidence to properly respond to its admission and use.

3. Upon review of the evidence, the Board of Review or the appeal tribunal shall determine if the telephone hearing shall be continued.

(e) When the Board of Review or the appeal tribunal determines that a crucial document exists which is essential to the determination of the appeal, it shall make every effort to provide such document to the parties prior to the scheduled telephone hearing. If the document cannot be provided prior to the telephone hearing, the hearing may be postponed. If a document is disputed during the hearing, a continuance shall be granted to allow all parties an opportunity to review the document in question.

1:12-14.7 Disqualification of members of appeal tribunals

(a) No member of an appeal tribunal shall participate in the hearing of any appeal in which the member has an interest.

(b) Challenges to the interest of any member of an appeal tribunal may be heard and decided by the chief appeals examiner of the appeal tribunal, or, in the chief appeals examiner's discretion, referred to the Board of Review.

1:12-14.8 Hearing appeals on own motion

(a) Within the legal time limit for appeal following a decision by an appeal tribunal and in the absence of the filing by any of the parties to the decision of the appeal tribunal of a notice of appeal, the Board of Review, on its own motion, may remove such decision to itself and may either decide the case on the record below or may remand the decision to the appeal tribunal or may schedule a hearing before the Board of Review or order the parties to appear before it for a hearing on the claim or any issue involved therein.

(b) Such hearings shall be held only after five days' prior notice to the parties to the decision of the appeal tribunal, and shall be heard in the manner prescribed for the conduct of hearings before the Board of Review.

1:12-14.9 Case transfer on own motion

The Board of Review may, on its own motion, transfer any case pending before an appeal tribunal to another tribunal for hearing and decision.

SUBCHAPTER 15. EVIDENCE

1:12-15.1 General rules

(a) All exhibits admitted into evidence shall be properly identified, appropriately marked and retained as part of the record.

(b) Hearsay evidence shall be admissible and accorded whatever weight the examiner deems relevant, appropriate, and reasonable under the circumstances. Notwithstanding the admissibility of hearsay evidence, the decision as rendered must be supported by sufficiently substantial and legally competent evidence to provide assurance of reliability and to avoid the fact or appearance of arbitrariness.

1:12-15.2 Stipulations

The parties to an appeal, with the consent of the appellate body, may stipulate in writing the facts involved. The appellate body may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence as it deems necessary to enable it to determine the appeal.

SUBCHAPTERS 16 and 17. (RESERVED)

SUBCHAPTER 18. DECISIONS

1:12-18.1 Decisions of appeal tribunals

(a) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability claims and the reasons therefore shall be mailed to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

(b) The decision shall be in the following form:

1. The first section shall indicate the party appealing, the determination appealed from, the date of the decision, and the date of the initiation of the appeal. The appearances shall be noted.

2. The second section shall be a recital of the facts upon which the decision is based and shall be entitled "Findings of Fact." It shall include among all the pertinent facts the date the claim was filed.

3. The third section shall be entitled "Opinion" and shall contain the reasons for the decision.

4. The fourth section shall contain the "Decision." This shall be followed by the signature of the examiner. Each decision shall also indicate the date of hearing and mailing.

(c) Every decision of an appeal tribunal shall, immediately upon issuance, be transmitted to the executive secretary of the Board of Review for consideration. The Board shall forthwith determine whether or not the decision shall be allowed to stand.

1:12-18.2 Decisions of Board of Review

(a) Following the conclusion of proceedings on an appeal, the Board of Review shall forthwith announce its decision with respect to the appeal. The decision shall be in writing and signed by at least a majority of the Board of Review. It shall set forth the findings of fact of the Board of Review with respect to the matters appealed, its opinion and decision. A quorum of the Board of Review must be present when any decision is voted.

(b) If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision, which shall set forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions concerning unemployment compensation benefits and State plan temporary disability claims shall be mailed by the Board of Review to the claimant and to all other parties to the appeal and shall include or be accompanied by a notice specifying the appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for taking an appeal from the decision and the period within which an appeal may be taken.

1:12-18.3 Correction of determination

On application duly made or on its own motion, the appellate body may revise a determination of facts and the order, for the purpose of correcting clerical or typographical errors.

1:12-18.4 Reopening Board of Review decisions

(a) A party to a benefit claim may file a request for reopening of a Board of Review decision within 10 days after the day of mailing of such decision. The requesting party shall notify all other parties of such a request for reopening. Such request shall not act as a stay of proceedings in the case and shall not suspend the payment of benefits. Failure of the Board of Review to act upon a request for reopening within 20 days of the date on which it is filed shall constitute a denial thereof as of the expiration of that period. Additional time may be granted where fraud, newly discovered evidence, or other good cause is shown.

(b) Any party, including the appellant whose appeal resulted in any affirmation of the appeal tribunal decision on the record made by the appeal tribunal, may apply for reopening of the Board's decision. If such application is granted all parties will be notified if a new hearing is scheduled.

(N.J.A.C. 12:18
APPENDIX)
CHAPTER 12A
SPECIAL HEARING RULES
PRIVATE PLAN TEMPORARY DISABILITY
INSURANCE CASES

SUBCHAPTER 1. HEARING APPLICABILITY

1:12A-1.1 Applicability

The rules in this chapter shall apply to private plan temporary disability insurance cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) (see also N.J.A.C. 12:18). State plan temporary disability cases shall be heard by the Board of Review pursuant to N.J.S.A. 43:21-50(b), in accordance with N.J.A.C. 1:12.

SUBCHAPTER 2. DEFINITIONS

1:12A-2.1 Definitions

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

"Act" means the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.

"Division" means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

"Hearing officer" means the individual assigned to hear and decide appeals concerning private plan temporary disability benefits. In so doing, the hearing officer acts as agency head.

SUBCHAPTERS 3. and 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12A-5.1 Representation

Any claimant or employer may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21-17.

SUBCHAPTERS 6. through 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12A-9.1 Informal hearing

After the filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle the issues and, pending a disposition, a formal hearing shall not be scheduled.

1:12A-9.2 Notice of formal hearing

(a) If the issues raised by the complaint are not otherwise settled, they shall be referred to a hearing officer, who shall afford the interested parties thereto a reasonable opportunity for a full, fair and impartial hearing, in accordance with the procedure required under this chapter.

(b) Written notices of the time and place of any hearing shall be given to the claimant and employer, or their authorized represen-

tatives, insurer or organization paying benefits, and all other parties in interest at least five days before the date of hearing, but a shorter notice may be given if not prejudicial to the parties.

(c) A party to whom a notice of appeal has been sent shall be ready and present with all evidence and necessary witnesses at the time and place specified and shall be prepared to dispose of all issues and questions involved in the proceeding.

(d) A notice of hearing may be served personally or by certified or registered mail or by telegram upon a party or his or her duly authorized representative.

SUBCHAPTER 10. DISCOVERY

1:12A-10.1 Inspection of records

(a) Orders for the production or inspection of records of the Division may be issued in any proceeding before the hearing officer, but only to the extent necessary for the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligation or safeguard his or her rights under the Act.

(b) A request for the production or inspection of records shall be addressed to the hearing officer, and shall state clearly the nature of the information desired and the reason therefor. The hearing officer may determine whether or not the request shall be granted and, if granted, inspection of the records may be allowed or a copy of the records furnished.

SUBCHAPTER 11. SUBPOENAS

1:12A-11.1 Issuance of subpoenas

(a) The hearing officer shall have the power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records.

(b) Subpoenas to compel the attendance of witnesses or production of records shall be issued by the hearing officer only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

1:12A-11.2 Witness fees

(a) Witness fees at the rate of $1.00 for each day of attendance upon a hearing in response to a subpoena to testify and mileage at the rate of $0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon presentation of a voucher signed by the individual entitled thereto and properly certified by a member of the hearing officer before whom the individual appeared as a witness.

(b) Witness fees at the rate of $2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of $0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon the presentation of a voucher signed by the individual entitled thereto and properly certified by the hearing officer before whom the individual appeared as a witness.

SUBCHAPTERS 12 and 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12A-14.1 Conduct of hearings

(a) The hearing before the hearing officer shall be conducted in such order and manner as may provide a fair and impartial hearing to ascertain the facts and determine the rights of parties.

(b) At such hearing, evidence exclusive of ex parte affidavits may be produced by any party, but the hearing officer shall not be bound by the rules of evidence.

(c) The hearing officer shall open the hearing by ascertaining the facts and summarizing the issues involved on the record.

(d) Any individual who is a party, or an attorney or non-attorney representing a party, may examine or cross-examine witnesses, inspect documents and explain or rebut any evidence. The hearing officer may examine each party or witness to such extent as he or she deems necessary.

(e) Any number of proceedings before the hearing officer may be consolidated for the purpose of hearing when the facts and circumstances are similar in nature and the rights of any party will not be prejudiced thereby. Notice of such consolidation shall be given to the parties or their representatives.

(f) All testimony at a hearing shall be under oath or affirmation and recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed.

(g) The hearing officer may take additional evidence as he or she deems necessary, provided the parties shall be given proper notice of the time and place of hearing.

(h) The parties may stipulate the facts and issues involved and based thereon the hearing officer may make a determination and an order disposing of the issues which shall be final and binding.

1:12A-14.2 Dismissal of complaint

(a) After due notice of the time and place of hearing or an adjourned hearing, if any party fails or neglects to appear, the issues may be decided upon the basis of the evidence available, the complaint may be dismissed or evidence may be taken from the parties and witnesses appearing and the case disposed of in accordance with such evidence. A complaint may be dismissed for failure to prosecute without good cause within a reasonable time. All parties shall be notified of the dismissal and the reasons therefor.

(b) Any complaint dismissed by reason of the failure to appear at a scheduled hearing or failure to prosecute may be reconsidered by the hearing officer provided good cause is shown for such failure and an application for reopening the proceeding is made within 10 days after mailing or notification of the order of dismissal.

(c) A pending complaint, with the approval of the hearing officer, may be withdrawn by the complainant, in writing, or orally at the time of hearing. All parties to the proceeding shall be notified of the withdrawal.

SUBCHAPTER 15. DECISIONS

1:12A-15.1 Rendition of decision

(a) Upon the completion of any hearing, the hearing officer shall promptly make a determination of facts, and a signed written order disposing of the issues presented, which shall be final and binding on the claimant, the employer, the insurer, the organization paying benefits and all other parties. The decision shall set forth a statement of the facts involved, the reasons and the order.

(b) A copy of such order shall be served upon each of the parties or their duly authorized representatives by registered mail, addressed to his or her last known address.

(c) The order of the hearing officer shall be final and benefits paid or denied in accordance with the order.

(d) Any appeal of the order shall be in accordance with the Rules of Court.

1:12A-15.2 Correction of determination

On application duly made or on his or her own motion, the hearing officer may revise a determination of facts and the order, for the purpose of correcting clerical or typographic errors.

PERSONNEL

(a)

COMMISSIONER OF PERSONNEL

Voluntary Furlough Program

Proposed Amendments: N.J.A.C. 4A:3-4.6; 4A:4-2.15 and 5.2; 4A:6-1.2, 1.3, 1.5, and 2.4; and 4A:8-2.4

Proposed New Rule: N.J.A.C. 4A:6-1.23

Authorized By: Linda M. Anselmini, Commissioner, Department of Personnel.

Authority: P.L. 1993, c.297.

Proposal Number: PRN 1994-347.

A **public hearing** concerning the proposed amendments and new rule will be held on:

Thursday, June 23, 1994 at 3:00 P.M.
Merit System Board Room
3 Station Plaza, 44 South Clinton Avenue
Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by July 6, 1994 to:

Janet Share Zatz, Director
Division of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

P.L. 1993, c.297 requires the Commissioner of Personnel to establish a voluntary furlough program for State employees. The law provides that the Commissioner is to promulgate rules and regulations to effectuate the purpose of the legislation, which is to lessen the need for reductions in force in State service by permitting employees to take days off from work without pay, but without losing their seniority or health benefits.

The proposed new rule at N.J.A.C. 4A:6-1.23 would provide that employees in the career, senior executive and unclassified services be permitted to take unpaid days off, up to 30 days in a calendar year, while continuing to accrue leave time and seniority. Although consideration was given to setting a longer time limit or allowing extensions, it was determined that a 30-day limit is necessary in order to avoid inequitable treatment regarding health benefits. In particular, employees taking voluntary furloughs longer than 30 days would essentially become part-time employees with health benefits, while other part-time employees are precluded by current regulations from receiving health benefits.

In local service, the Commissioner of Personnel would approve the establishment of a voluntary furlough program consistent with the proposed rules. To obtain approval from the Commissioner of its proposed voluntary furlough program, a local appointing authority would have to specify the departments and employees to be affected, provide a summary of consultations with negotiations representatives and designate a voluntary furlough program administrator. N.J.A.C. 4A:6-1.23 would also include procedures for the suspension or termination of a voluntary furlough program by a local appointing authority.

The proposed new rule at N.J.A.C. 4A:6-1.23 would set forth the procedures for participation in the program and the manner in which a voluntary furlough could be taken. For example, a voluntary furlough could consist of shorter work days, intermittent days off or consecutive days off. The rule stipulates purposes for which a voluntary furlough could not be taken, including sick leave, leave without pay due to disability, and for the purpose of seeking or engaging in other employment. The proposed rule also states that when the voluntary furlough is used for a purpose covered by the State Family Leave Act (FLA) or Federal Family and Medical Leave Act (FMLA), and the employee is eligible for coverage under those laws, the furlough will be recorded as FLA and/or FMLA leave.

The proposed new rule at N.J.A.C. 4A:6-1.23 would further provide for an extension of the working test period, if applicable, for the period of time equal to the voluntary furlough. In addition, in State service, an employee's anniversary date would not be affected by participation in the program and the employee would receive pay for a holiday as long as he or she is in pay status during the pay period in which the holiday falls. A cross reference is included to N.J.A.C. 17:9-10, which provides that State health benefits are to be maintained during a voluntary furlough, as required by the new law.

The new rule notes that a voluntary furlough would be differentiated from a leave of absence without pay. If the employee needs more time off from work beyond the 30-day maximum, he or she would have to request a leave of absence without pay and N.J.A.C. 4A:6-1.10 would apply.

Amendments are also proposed to N.J.A.C. 4A:3-4.6 (anniversary dates), 4A:4-2.15 (rating of examinations), 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave), 4A:6-1.5 (vacation and sick leave adjustments), 4A:6-2.4 (holidays) and 4A:8-2.4 (seniority in layoffs) to indicate that participation in the voluntary furlough program would not affect these areas. An amendment to N.J.A.C. 4A:4-5.2 would provide that a working test period would be extended for the period of time equal to the voluntary furlough.

Social Impact

The proposed new rule at N.J.A.C. 4A:6-1.23, and accompanying amendments to other related rules, would enable appointing authorities to avoid the disrupting effects of a layoff while providing merit system employees with a unique opportunity to take days off from work without the concern of losing seniority. Furthermore, employees participating in the program would be allowed greater flexibility in adjusting their workweek.

Economic Impact

Appointing authorities in both State and local service would enjoy a beneficial economic impact without necessarily resorting to reductions in force, because of budgetary savings resulting from employees' participation in the voluntary furlough program. In addition, a reduction in the likelihood of layoffs would further all employees' economic well-being.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rule and amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rule and amendments will regulate employment in the public sector.

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

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) (No change.)

(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1.-5. (No change.)

6. Leave without pay while receiving workers' compensation benefits; [and]

7. Leave without pay under a voluntary alternative to layoff program**; and**

8. Voluntary furlough.

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

4A:4-2.15 Rating of examinations

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

(d) In calculating seniority for promotional examinations, **voluntary furloughs and** the following types of leaves shall not be deducted from seniority:

1.-3. (No change.)

(e)-(h) (No change.)

4A:4-5.2 Duration

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

(e) An approved leave of absence **or a voluntary furlough** shall extend the completion of the working test period for a period of time equal to that leave **or voluntary furlough.**

1. (No change.)

4A:6-1.2 Vacation leave

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

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction without actual interruption due to resignation, retirement or removal.

1. (No change.)

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave **and voluntary furlough**, shall not be included in calculating years of continuous service.

3. (No change.)

(d)-(i) (No change.)

4A:6-1.3 Sick leave

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

(c) Paid sick days shall not accrue during a leave of absence without pay or suspension **but shall continue to accrue during a voluntary furlough.**

(d)-(i) (No change.)

4A:6-1.5 Vacation and sick leave adjustments: State service

(a) (No change.)

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, **except that the leave of an employee on a voluntary furlough shall not be affected.** An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month.

1.-2. (No change.)

(c) In State service, intermittent days off without pay **other than voluntary furlough days** shall be aggregated and considered as a continuous leave without pay for calculation of reduced vacation and sick leave credits. When intermittent days off without pay **other than voluntary furlough days** equal 11 working days, the employee's vacation and sick leave credits shall be reduced by one-half of one month's entitlement. Union leave days pursuant to a negotiated agreement shall not be included in such calculations.

(d)-(g) (No change.)

4A:6-1.23 Voluntary furlough program

(a) The purpose of a voluntary furlough program is to lessen the need for reductions in force by allowing employees in the career, senior executive or unclassified services to take up to 30 days off from work without pay in a calendar year, with accrual of leave time, anniversary dates and seniority treated as if the employee is in pay status.

(b) In local service, an appointing authority may establish a voluntary furlough program consistent with these rules, with approval of the Commissioner.

1. The appointing authority shall submit to the Commissioner, through the appropriate regional office, a voluntary furlough program proposal no later than 30 days before the planned implementation of the program. The proposal shall specify departments to be affected, employees or titles to be affected, include a summary of consultations with affected negotiations representatives concerning the program and name the voluntary furlough program administrator for the appointing authority.

2. The appointing authority shall not implement a voluntary furlough program unless the program has been approved by the Commissioner.

3. The appointing authority shall retain all records concerning implementation of an approved voluntary furlough program subject to Department of Personnel audit.

4. The appointing authority may suspend or terminate the voluntary furlough program at any time upon 30 days written notice of such suspension or termination to the Commissioner, all affected employees and labor negotiations representatives.

(c) An employee who wishes to participate in the program shall request, in writing, approval for such participation from the appointing authority.

1. The employee shall not be permitted to take the voluntary furlough until the employee has received approval by the appointing authority.

2. The manner in which the employee proposes to use the voluntary furlough shall be contained in the request, may be the equivalent of no more than 30 work days in a calendar year, and may consist of one or more of the following:

i. Shorter work days;

ii. Intermittent days off; or

iii. Consecutive days off.

3. An appointing authority may deny an employee the opportunity to participate in the program if it determines that such participation would be detrimental to the public health, safety or welfare or would result in increased costs to the appointing authority due to increased overtime, the need to appoint additional employees or the loss to that appointing authority of anticipated revenue.

4. An employee shall not be permitted to use a voluntary furlough for any of the following purposes:

i. As sick leave;

ii. As a leave without pay due to disability; or

iii. To seek or engage in alternate employment.

5. When an employee uses voluntary furlough for a purpose covered by the New Jersey Family Leave Act (FLA) or the Federal Family and Medical Leave Act (FMLA) and the employee is eligible for coverage under the FLA or FMLA, the voluntary furlough shall be recorded as FLA leave, FMLA leave, or both, as appropriate.

(d) An employee on a voluntary furlough shall continue to accrue leave time as if the employee is in pay status. See N.J.A.C. 4A:6-1.2 (vacation leave), 4A:6-1.3 (sick leave) and 4A:6-1.5 (vacation and sick leave adjustments).

(e) In State service, the anniversary date of an employee on a voluntary furlough shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:3-4.6 (anniversary dates).

(f) The seniority of an employee on a voluntary furlough shall be unaffected by the employee's participation in the program. See N.J.A.C. 4A:4-2.15 (seniority in rating of examinations) and N.J.A.C. 4A:8-2.4 (seniority in layoffs).

(g) An employee serving in a working test period who is participating in the program shall have the working test period extended for the period of time equal to that voluntary furlough. See N.J.A.C. 4A:4-5 on working test periods.

(h) In State service, an employee on a voluntary furlough on the day before a holiday shall receive pay for the holiday as long as he or she is in pay status during the pay period in which the holiday falls. See N.J.A.C. 4A:6-2.4.

(i) See N.J.A.C. 17:9-10 for State health benefits coverage during a voluntary furlough.

(j) A voluntary furlough shall not be considered a leave without pay. Once an employee has used the equivalent of 30 days for a voluntary furlough in a calendar year, the employee shall not be permitted to take a leave without pay unless it is approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10.

1. For any leave without pay approved by the appointing authority in accordance with N.J.A.C. 4A:6-1.10 after the employee has taken a voluntary furlough, the rules on leave time, anniversary dates and seniority with respect to leaves without pay shall apply. See N.J.A.C. 4A:6-1.2 (vacation leave); 1.3 (sick leave); 1.5 (vacation and sick leave adjustments); 4A:3-4.6 (anniversary dates); 4A:4-2.15 (seniority in rating of examinations); and 4A:8-2.4 (seniority in layoffs).

4A:6-2.4 Holidays: State service

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

(d) Employees who are in pay status on the day immediately before an authorized holiday shall receive pay for the holiday. **An employee on a voluntary furlough on the day before a holiday shall receive pay for the holiday as long as the employee is in pay status during the pay period in which the holiday falls.**

4A:8-2.4 Seniority

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

(c) [The] **Voluntary furloughs and the** following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, family and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

(d)-(g) (No change.)

(a)

MERIT SYSTEM BOARD

Layoffs

Proposed Amendments: N.J.A.C. 4A:8-2.1

Authorized By: Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-6(d) and 11A:8-1.
Proposal Number: PRN 1994-327.

A **public hearing** concerning the proposed amendments will be held on:

Thursday, June 23, 1994 at 3 P.M.
Merit System Board Room
3 Station Plaza, 44 South Clinton Avenue
Trenton, New Jersey

Please call the Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments by July 6, 1994 to:

Janet Share Zatz
Director of Appellate Practices and Labor Relations
Department of Personnel
CN 312
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Following the layoffs in State service in 1991 and 1992, numerous appeals and disputes arose concerning lateral and demotional title rights. Employees claimed that they were improperly denied lateral or demotional rights to titles with similar duties and responsibilities. However, the Department of Personnel determined that lateral and demotional rights should be narrowly applied, citing changes in the applicable rules. In particular, prior layoff rules for State service provided for lateral and demotional rights to those titles with "similar" duties and responsibilities (see N.J.A.C. 4:2-16.2 (repealed)). The current rule at N.J.A.C. 4A:8-2.1(a)1 provides for lateral rights to titles with "substantially comparable" duties and responsibilities, and demotional rights, at N.J.A.C. 4A:8-2.1(b)1, to titles with "substantially related" duties and responsibilities.

Further Departmental review has indicated that lateral and demotional title rights should be broadened in certain cases. Accordingly, the Board proposes amending N.J.A.C. 4A:8-2.1(a)1 to substitute the word "similar" for "comparable" in describing the criteria for granting lateral title rights, and amending N.J.A.C. 4A:8-2.1(b)1 to substitute the word "similar" for "related" in describing the criteria for demotional title rights.

Social Impact

The proposed amendments would have an impact upon certain State and local employees who are affected by a layoff. Some employees in titles targeted for layoff will have additional lateral and demotional title rights, and therefore additional opportunity to obtain other jobs in lieu of layoff. Additionally, some employees in non-targeted titles would be subject to displacement because of additional lateral and demotional rights available to employees in targeted titles. However, it is anticipated that very few titles will have additional lateral and demotional options as a result of the proposed amendments. Thus, only a slight overall increase in the "bumping" resulting from a layoff is anticipated.

Economic Impact

The proposed amendments would have a positive economic impact on those employees with additional lateral and demotional title rights, since they would have a greater chance of obtaining other jobs in the event of layoff. As noted above, the increase in "bumping" would be minimal, and therefore the economic impact on State and local appointing authorities would be negligible.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will regulate employment in the public sector.

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

4A:8-2.1 Types of layoff rights

(a) A lateral title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be the same or comparable to the affected title of the employee. For a probationary employee, a lateral title right means the right to fill a vacant position or displace a provisional or probationary employee in the same title. Title comparability shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have substantially [comparable] **similar** duties and responsibilities and, in State service, the same class code;
2. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements shall not exceed those of the affected title;
3. There shall be no special skills, licenses, certification or registration requirements which are not also mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(b) A demotional title right means the right of a permanent employee to displace the least senior employee at a selected job location in the layoff unit holding a title determined to be lower than but related to the affected title of the employee. Demotional title rights shall be determined by the Department of Personnel based on the following criteria:

1. The title(s) shall have lower but substantially [related] **similar** duties and responsibilities and, in State service, where applicable, a lower class code;
2. The education and experience requirements for the title(s) shall be similar and the mandatory requirements shall not exceed those of the affected title;
3. Special skills, licenses, certification or registration requirements shall be similar and not exceed those which are mandatory for the affected title; and
4. Any employee in the affected title with minimal training and orientation could perform the duties of the designated title by virtue of having qualified for the affected title.

(c)-(e) (No change.)

COMMUNITY AFFAIRS

(b)

DIVISION OF FIRE SAFETY

Uniform Fire Code

Cigarette Lighters

Proposed New Rule: N.J.A.C. 5:18-2.21

Proposed Amendment: N.J.A.C. 5:18-2.12 and Appendix 3-A

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-198 and 51:13-3.
Proposal Number: PRN 1994-317.

Submit written comments by July 6, 1994 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

P.L. 1991, c.487 requires the Department of Community Affairs to promulgate rules dealing with the design and construction of child-resistant lighters. Subsequent to the signing of this legislation on January

18, 1992, the Federal Consumer Product Safety Commission (CPSC) adopted regulations addressing the same issue. 15 U.S.C. Sec. 2075(a) state that CPSC regulations supersede any State laws or regulations that are designed for the same purpose, unless the laws or regulations are identical to the CPSC requirements. Accordingly, the proposed new rule at N.J.A.C. 5:18-2.21 adopts the CPSC regulations in their entirety. The proposed amendment at N.J.A.C. 5:18-2.12 prohibits the sale of non-compliant lighters, which is not in conflict with the Federal regulations, and is taken from the State law. The amendment to Appendix 3A adds the CPSC regulations as a standard referenced in this chapter.

Social Impact

Enforcement by local enforcing agencies of this safety standard on cigarette lighters will reduce the risk of death and injury from fires started by young children playing with lighters. The proposed new rule primarily addresses the risk of fire started by children under age five. Nationwide, for the period from 1988 through 1990, such fires caused an annual average of 150 deaths, approximately 1,100 injuries, and nearly $70 million in property damage.

Economic Impact

Nationwide, the approximate cost to the public of these child-play fires is $385 million annually. By providing for enforcement of the Federal standards by local enforcing agencies, the proposed new rule should substantially reduce New Jersey's share of this annual cost.

Persons selling lighters that are in violation of these rules will be subject to civil penalties of $100.00 per lighter as proposed by the amendment to N.J.A.C. 5:18-2.12(e)14.

Regulatory Flexibility Analysis

This proposed new rule requires sellers of cigarette lighters to sell only lighters conforming to the Federal standards, and the penalty for not doing so is specified in the proposed amendment. This is a public safety matter in which no differential treatment can be allowed for those sellers that qualify as "small businesses" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., by reason of size and form of organization.

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

5:18-2.12 Penalties

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

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

1.-13. (No change.)

14. Selling, offering for sale, giving, transferring or otherwise assigning, furnishing or making available a lighter that does not conform to N.J.A.C. 5:18-2.21—$100.00 for each lighter not conforming to those standards that is so sold, offered for sale, given, transferred or otherwise assigned, furnished or made available.

[14.]**15.** (No change in text.)

(f)-(g) (No change.)

5:18-2.21 Child resistant cigarette lighters

(a) Cigarette lighters shall comply with the provisions of 16 CFR Part 1210 listed in Appendix 3-A of N.J.A.C. 5:18-3, incorporated herein by reference. This standard is a consumer product safety standard that prescribes requirements for disposable and novelty lighters, as defined below, that are manufactured or imported after July 12, 1994. These requirements are intended to make these lighters resistant to successful operation by children younger than five years of age.

(b) As used in this section, the following terms shall have the meanings indicated:

1. "Cigarette lighter" or "lighter" means a flame-producing product commonly used by consumers to ignite cigarettes, cigars, and pipes; such product may also be used to ignite other materials. This term does not include matches or any lighting device intended primarily for igniting materials other than smoking materials, such as fuel for fireplaces or for charcoal or gas-fired grills. When used in this section, the term "lighter" includes only the disposable and novelty lighters to which this regulation applies.

2. "Disposable lighter" means a lighter that is either:

i. Not refillable with fuel; or

ii. Both:

(1) Fueled with butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees Fahrenheit exceeds a gauge pressure of 15 psi; and

(2) Priced (Customs Valuation or ex-factory price) under $2.00, as adjusted every five years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from June 1993.

3. "Novelty lighter" means a lighter that has entertaining audio or visual effects, or that depicts (logos, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children under five years of age. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel.

(c) On and after the effective date of this rule, no lighter shall be sold, offered for sale, given, transferred or otherwise assigned, furnished or made available in this State unless it is designed and constructed in accordance with this section.

(d) Any person violating any provision of this section shall be subject to penalties in accordance with N.J.A.C. 5:18-2.12.

APPENDIX 3-A

The following is a list of the standards referenced in this Code, the effective date of the standard, the promulgating agency of the standard and the section(s) of this Code that refer to the standard.

...

CPSC	**Consumer Products Safety Commission Washington, DC 20207**	
Standard reference number	**Title**	**Referenced in Code Section number**
16 CFR Part 1210	**Safety Standard for Cigarette Lighters**	**2.21**

...

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code

Asbestos Hazard Abatement Subcode; Asbestos Safety Technician

Proposed Amendment: N.J.A.C. 5:23-8.10

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

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

Proposal Number: PRN 1994-318.

Submit written comments by July 6, 1994 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

The proposed amendment at N.J.A.C. 5:23-8.10 deletes a phrase providing for the New Jersey Department of Health (DOH) to approve courses and examinations taken by applicants for Asbestos Safety Technician (AST) testing and licensing. In the Spring of 1993, the DOH notified this Department that due to financial constraints and reduced staff, they would no longer be able to conduct, along with this Department, a course

for AST applicants, mandated by N.J.A.C. 5:23-8.10. For the past approximately 10 months, the Department has undertaken to teach and administer this course itself, with what residual support the DOH could provide. During this period, the requirement for DOH review has become a duplicative anachronism which no longer serves any regulatory purpose. In the future, the Department plans for a State institution of higher education to administer and teach the course as part of its established curriculum in occupational safety and health. At N.J.A.C. 5:23-8.10(a)5, the requirement for DOH approval of AST examinations is replaced by reference to an examination administered by the National Assessment Institute, in cooperation with the National Asbestos Council, or an equivalent examination approved by the Department.

Social Impact

Deletion of this phrase will not affect the general public. It will merely correct the rule regarding an outdated, duplicative review which is no longer actually performed.

Economic Impact

The proposed amendment will have no economic impact. They are necessary to correct the rule to reflect actual procedure.

Regulatory Flexibility Statement

The proposed amendments will have no differential impact on large and small businesses. The amendments clarify that AST courses and examinations are no longer approved by the DOH; that course approval will now be by DCA; and that an examination administered by the National Assessment Institute in cooperation with the National Asbestos Council, or an equivalent examination approval by the Department, would be acceptable. As the rule and amendments pertain to licensure of individuals as ASTs, a regulatory flexibility analyses is not required.

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

5:23-8.10 Asbestos safety technician

(a) Any candidate for certification as an asbestos safety technician shall submit an application to the Department accompanied by the required application fee established in (c) below. The requirements for certification as an asbestos safety technician are as follows:

1.-3. (No change.)

4. Successful completion of a course for asbestos safety technicians approved by the New Jersey State Department of [Health] **Community Affairs**;

5. Successful passing of an examination for asbestos safety technicians [approved by the New Jersey Department of Health (pursuant to N.J.A.C. 12:120-6.12 and 8:60-6.12)] **administered by the National Assessment Institute in cooperation with the National Asbestos Council, or any equivalent examination approved by the Department.**

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

EDUCATION

(a)

STATE BOARD OF EDUCATION

Adult Education Programs

Proposed Amendment: N.J.A.C. 6:30-2.1

Authorized By: State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7C-1 et seq., 18A:27-2, 18A:48-1, 18A:49-1 through 8, 18A:50-12, 13 and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq.

Proposal Number: PRN 1994-348.

Submit written comments by July 6, 1994 to:
Elease E. Greene-Smith
Administrative Practice Officer
New Jersey Department of Education
225 East State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 6:30-2.1(a) is the result of comments received during the February 22, 1994 to March 24, 1994 public comment period for the readoption of N.J.A.C. 6:30. At adoption, on May 4, 1994, the Department determined that it was necessary to amend N.J.A.C. 6:30-2.1(a) to correct an inadvertent error. The required amendment is of a substantive nature, which pursuant to N.J.A.C. 1:30-4.3 requires additional public notice and comment and must, therefore, be republished in the New Jersey Register. The notice of adoption for new rules N.J.A.C. 6:30 is published elsewhere in this issue of the New Jersey Register.

N.J.A.C. 6:30-2 sets forth the general requirements and program descriptions for Adult Basic Skills and General Educational Development (GED) Programs. The requirements in N.J.A.C. 6:30-2.1(a) are being amended to include a new N.J.A.C. 6:30-2.1(a)8. This new paragraph requires that all professional staff members possess valid New Jersey teaching certificates and are supervised by personnel possessing supervisory certification. The requirement does not apply to unpaid volunteers who are utilized in adult education programs.

Social Impact

The proposed amendment would protect the public interest by assuring that all public school employees who instruct and/or supervise adult education programs are appropriately trained and certified.

Economic Impact

The proposed amendment would not have any significant economic impact on local districts since the cost of certification is funded by candidate fees. The proposed amendment is not a new requirement; individuals who currently instruct and/or supervise adult education programs must already possess appropriate New Jersey certifications. These certification requirements are being proposed at this time to correct their omission from the Department's recent adult education rule proposal.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined by the Regulatory Flexibility Act; N.J.S.A. 52:14B-1 et seq., but impact solely upon New Jersey school districts and schools operated by the New Jersey Department of Education.

Certification rules apply, by statute, exclusively to all teaching staff members employed by public schools of the State of New Jersey. They do not apply to nonpublic institutions. However, certain individuals employed by nonpublic schools frequently elect to obtain certificates in order to satisfy requirements of their employers or Federal agencies, or other rules of the State Board of Education.

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

6:30-2.1 Purpose and program descriptions

(a) Adult basic skills programs shall offer instruction designed to enable students to acquire the skills necessary to function independently as parents, workers, consumers and citizens.

1.-7. (No change from proposal.)

8. All professional staff members shall possess valid New Jersey teaching certificates and shall be supervised and evaluated annually by personnel possessing supervisory certification. This requirement shall not apply to persons providing services as unpaid volunteers.

(b)

STATE BOARD OF EDUCATION

Library Network Services

Proposed Readoption with Amendments: N.J.A.C. 6:70

Authorized By: State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:4-14, 18A:74-3.3, 18A:74-6, 18A:74-10 and 18A:74-14.

Proposal Number: PRN 1994-349.

Submit written comments by July 6, 1994 to:
Elease E. Greene-Smith
Administrative Practice Officer
New Jersey Department of Education
225 East State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

Under the provisions of Executive Order No. 66(1978), N.J.A.C. 6:70, Library Network Services, will expire on October 17, 1994. These rules provide for the establishment of a library network for sharing the resources of New Jersey's academic, institutional, public, school and special libraries using Statewide and regional services vehicles as appropriate.

These rules were first promulgated on February 19, 1985, following the January 17, 1984 enactment of the Library Network Law (P.L. 1983, c.486). The rules at N.J.A.C. 6:70 were readopted and amended on October 17, 1989 to provide for the establishment and operation of Statewide services to maximize the ability of network members to receive and participate in regional and Statewide services. The 1989 amendments were made pursuant to P.L. 1986, c.174.

The State Board of Education has reviewed the rules and, with the exception of the amendments described below, has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated, and is, therefore, proposing them for readoption at this time.

A summary of the sections of N.J.A.C. 6:70 follows:

N.J.A.C. 6:70-1.1 describes the purpose and scope of the rules, which is to provide a network for sharing the resources of New Jersey's academic, institutuional, public school and special libraries using Statewide and regional services vehicles. No changes are being proposed for N.J.A.C. 6:70-1.1 at this time.

N.J.A.C. 6:70-1.2 defines the terms which apply throughout the subchapter. The definition of "resident" has been amended to clarify existing language and include persons owning property in the library region. No additional changes are being proposed for N.J.A.C. 6:70-1.2.

N.J.A.C. 6:70-1.3 lists the considerations for designation of library regions as well as review and transfer procedures. N.J.A.C. 6:70-1.3(c) is amended to remove unnecessary language and to clarify transfer procedures by deleting the first review by the State Librarian. No additional changes are being proposed for N.J.A.C. 6:70-1.3.

N.J.A.C. 6:70-1.4 describes procedures for the creation of regional library cooperatives, funding and incorporation requirements. N.J.A.C. 6:70-1.4(a) is amended to permit flexibility in awarding of funds for first year operational costs of regional library cooperatives by deleting the existing $50,000 cap to fund first year operations. No additional changes are being proposed for N.J.A.C. 6:70-1.4.

N.J.A.C. 6:70-1.5 describes the organization and eligibility requirements for membership in a regional library cooperative. No changes are being proposed for N.J.A.C. 6:70-1.5 at this time.

N.J.A.C. 6:70-1.6 describes voting member eligibility for academic, institutional, public, school and special librarians. No changes are being proposed for N.J.A.C. 6:70-1.6 at this time.

N.J.A.C. 6:70-1.7 lists the duties of regional library cooperative council members. N.J.A.C. 6:70-1.7(a) is being amended to clarify reporting requirements. No additional changes are being proposed for N.J.A.C. 6:70-1.7.

N.J.A.C. 6:70-1.8 describes the composition and responsibilities of regional library cooperative executive boards. N.J.A.C. 6:70-1.8(a) is being amended to more accurately reflect the availability of types of librarians for executive board membership by the inclusion of an at-large representative in the event an institutional representative is not available. No additional changes are being proposed for N.J.A.C. 6:70-1.8.

N.J.A.C. 6:70-1.9 prescribes requirements for executive board terms of office and vacancies. No changes are being proposed for N.J.A.C. 6:70-1.9 at this time.

N.J.A.C. 6:70-1.10 lists requirements and responsibilities of regional library cooperative executive directors. No changes are being proposed for N.J.A.C. 6:70-1.10 at this time.

N.J.A.C. 6:70-1.11 describes the responsibilities and services of regional library cooperatives. N.J.A.C. 6:70-1.11(a) is being amended to clarify the awarding of funds for first year operational costs of regional library cooperatives. N.J.A.C. 6:70-1.11(d) is being amended to expand the services of regional library cooperatives to include information services, document delivery, surface and electronic delivery, technology initiatives, technical support services, and continuing education for local library staff. No additional changes are being proposed for N.J.A.C. 6:70-1.11.

N.J.A.C. 6:70-1.12 describes the procedure for membership withdrawal from a regional library cooperative. No changes are being proposed for N.J.A.C. 6:70-1.12 at this time.

N.J.A.C. 6:70-1.13 describes the procedure for dissolving a regional library cooperative. No changes are being proposed for N.J.A.C. 6:70-1.13 at this time.

N.J.A.C. 6:70-1.14 allows any group of libraries to form a local library cooperative. The section is being amended to permit local library cooperative membership in a regional library cooperative. No additional changes are being proposed for N.J.A.C. 6:70-1.14.

N.J.A.C. 6:70-1.15 assures Statewide library services to all State residents. No changes are being proposed for N.J.A.C. 6:70-1.15 at this time.

N.J.A.C. 6:70-1.16 describes the formation, duties and membership of a library network review board to advise the State Librarian. N.J.A.C. 6:70-1.16(a) is being amended to expand the responsibilities of the library network review board to include advising the State Librarian with respect to Statewide programs or services. N.J.A.C. 6:70-1.16(b) is being amended to expand the number of members of the library network review board from 17 to 18 (through election by the four regional library cooperatives of three members instead of two and by the State Librarian of six members instead of five) and representation by the State Librarian's appointees to include libraries providing a Statewide service. The expanded membership figure takes into account the reduction in regional library cooperatives from six to four. No additional changes are being proposed for N.J.A.C. 6:70-1.16.

N.J.A.C. 6:70-1.17 describes the allocation of funding for Statewide and regional library services. N.J.A.C. 6:70-1.17(c) is being amended to maintain equitable allocation of funding within a downsized regional structure by establishing a formula for those serving over two million and for those serving under two million. No additional changes are being proposed for N.J.A.C. 6:70-1.17.

N.J.A.C. 6:70-1.18 describes the appeals and hearing procedure in administering the rules of this subchapter. No changes are being proposed for N.J.A.C. 6:70-1.18 at this time.

Social Impact

The regional library network provides New Jersey residents with access to nearly all the resources of all the libraries in the State. Since no library can supply all its users' needs within its walls, the goal of the network has been that all have full and equal access to library materials and programs whether or not they are currently available within one's local library. Because the network provides a means for sharing resources, libraries can control costs of developing and maintaining collections. It continues to meet the increasingly diverse and specific informational needs of library users. The proposed amendments will help to streamline the process for delivering services. Amendments which pertain to regional library cooperative responsibilities are designed to assure that new technology used in library service is compatible Statewide and reflects current cooperative directions. It is widely recognized that shared use of new technology will improve regional and Statewide delivery systems. As technology becomes more ubiquitous, social benefits will grow. Research for education, commerce, and government, as well as personal information needs of citizens, are all accommodated through the movement of material through the New Jersey Library Network. Readoption with amendments of these rules will have a positive impact upon New Jersey residents.

Economic Impact

The regional library network benefits all New Jersey residents through over 4,000 local libraries, be they school, public, academic or corporate. The network puts citizens in touch with millions of information resources. This saves local libraries the costs of duplicating collections and expertise. A direct benefit to the economy is that over 300 corporate and special libraries are members of the regional library network. These libraries receive and share research and development through access to the major research collections in New Jersey.

Funding from FY 1987 has been as follows:

FY 1987	$4,160,978
FY 1988	$4,934,457
FY 1989	$5,689,000
FY 1990	$5,684,000
FY 1991	$4,769,216
FY 1992	$4,775,000
FY 1993	$4,775,000

Readoption of the rules is necessary for its continued economic viability. If the rule is not readopted, the cost savings and benefit to the economy will be lost.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments will impose no reporting, recordkeeping or other compliance requirements on small business, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. All requirements of the rules impact only upon New Jersey libraries and State-funded regional cooperatives.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:70.

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

6:70-1.2 Definitions

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

...

"Residents" means persons residing, employed, [or] attending school, **or who own property** in the library region.

...

6:70-1.3 Designation of library regions

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

(c) [After the first review by the State Librarian,] **Voting** members of a regional library cooperative located within the same county may request that the county be transferred to a different library region when a majority of the members in that county vote for such a transfer.

(d) (No change.)

6:70-1.4 Regional library cooperative; formation

(a) Upon approval by the State Librarian of the plan for service and the plan and budget for the first year of operation of the regional library cooperative, the State Librarian shall establish and designate the regional library cooperative.

1. Each duly established and designated regional library cooperative shall be eligible for [a grant not to exceed $50,000] **an initial appropriation** to fund the first year of operation of the regional library cooperative, in accordance with a plan and budget submitted to, and approved by the State Librarian.

2. Applicants whose request to be designated as a regional library cooperative has been denied may proceed with the appeals and hearing process described in N.J.A.C. 6:70-1.18.

(b) (No change.)

6:70-1.7 Duties of council of members

(a) The duties of the council of members of the regional library cooperative shall include, but not be limited to, the following:

1.-2. (No change.)

3. Approve the five-year plan and its annual [updates] **operating program**;

4. (No change.)

6:70-1.8 Executive board; organization and duties

(a) The executive board shall be composed of a minimum of nine and a maximum of 15 members to include at least:

1. Five members elected by the council of members of the regional library cooperative: one each from an academic library, an institutional library, a public library, a school library and a special library. **If an institutional representative is not available, that position may be filled by an at-large representative**;

2.-4. (No change.)

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

6:70-1.11 Regional library cooperative; responsibilities and services

(a) Within one year following establishment and designation as a regional library cooperative and receipt of an [establishment grant] **initial appropriation**, each regional library cooperative shall submit for approval by the State Librarian a five-year plan for regional library cooperative services and annual program and operating budget in support of the plan.

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

(d) In order to provide to every resident of New Jersey full and equal access to the collective library resources of the State, the State Library shall assure that the following services are provided in each region:

1. [Reference] **Information/reference** services to supplement those provided by each local library, including interlibrary reference and referral services to residents of the library region;

2. Interlibrary loan/**document delivery** services on behalf of residents of the library region;

3. Delivery services for library materials **including surface and electronic delivery**; [and]

4. [Citation and location services for library materials.] **Technology initiatives designed to maximize interconnectivity of the State's information resources and those seeking to access them;**

5. Technical support services for local library staff to maximize effective use of regional services; and

6. Continuing education for local library staff, particularly in areas that will maximize residents' access to information resources.

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

6:70-1.14 Local library cooperatives

Any group of academic, institutional, public, school, or special libraries or library-related agencies, or any combination thereof, may organize as a nonprofit organization pursuant to the New Jersey Nonprofit Corporation Act, N.J.S.A. 15A:1-1 et seq., and apply for designation to one or more regional library cooperatives as a local library cooperative for the provision of cooperative or reciprocal library services among themselves on behalf of their collective library patrons. The local library cooperative may include members from more than one regional library cooperative and may receive regional or Statewide contracts for services. [Local library cooperatives are not eligible for membership in a regional library cooperative.]

6:70-1.16 Library network review board

(a) A library network review board shall be appointed to advise the State Librarian with respect to:

1.-3. (No change.)

4. Necessary or desirable **Statewide and** inter-regional programs or services;

5.-7. (No change.)

(b) Membership of the library network review board shall be established as follows:

1. Each regional library cooperative shall elect [two] **three** members from its council of members in accordance with the bylaws adopted by the regional library cooperative; and

2. The State Librarian shall appoint [five] **six** members, **two of which shall represent a library providing a statewide service,** including library users.

(c) (No change.)

6:70-1.17 Allocation of library network funds

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

(c) Each year the State Librarian shall determine the amount required to provide base funds to each regional library cooperative according to the following formula:

1. [Forty] **Ten** percent of the amount allocated shall be distributed equally among the regional library cooperatives;

2. [Fifty] **Eighty** percent of the amount allocated shall be distributed among the regional library cooperatives based on the population of the region as shown by the latest Federal census effective in New Jersey; provided that upon application by a municipality or county to the Commissioner of Education, any special census of population taken by the United States Census Bureau subsequent to its latest effective census shall determine such number of inhabitants;

3. (No change.)

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

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Standards for Licensure of Assisted Living Residences and Comprehensive Personal Care Homes

Qualifications of Personal Care Assistants; Administration of Medications

Proposed Amendments: N.J.A.C. 8:36-1.8 and 9.3

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

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1994-329.

Submit comments by July 6, 1994 to:

John A. Calabria, Program Manager
Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

Standards for Licensure of Assisted Living Residences and Comprehensive Personal Care Homes were adopted on December 20, 1993. These two types of assisted living facilities are intended to promote "aging in place" in a homelike setting for frail elderly and disabled individuals, including those who may require formal long term care services as they age. Such facilities will offer supportive personal care and health services to enable residents to maintain independence, individuality, privacy, and dignity in an apartment-like setting. This kind of living environment is being developed to enhance resident self direction and personal decisionmaking while assuring residents' rights, safety and health. It is anticipated that these facilities will serve as an attractive alternate to licensed long-term care facilities.

N.J.A.C. 8:36-1.8 specifies the qualifications required of personal care assistants in assisted living residences and comprehensive personal care homes. According to the adopted rule, each personal care assistant shall have completed a nurse aide training course approved by the Department and shall have passed the New Jersey Nurse Aide Certification examination, or have completed a homemaker-home health aide training program approved by the New Jersey Board of Nursing, or have completed an "other equivalent training program approved by the Department." The amendment proposed at N.J.A.C. 8:36-1.8(a)3 is intended to clarify that, for a new training program to be approved by the Department, it must emphasize assisted living concepts. Additionally, the amendment requires successful completion of a competency examination. Following publication of the rules, the Department and the assisted living industry have recognized that the concepts of care and hospitality are sufficiently unique that a fresh approach to training of personal care assistants may be required. For example, personal care assistants may need to be cross-trained to serve in a diversity of roles, such as providing assistance with activities of daily living, waiting tables in dining rooms, housekeeping, working with families, or assisting with recreational activities. Such roles are not currently covered in nurse aide or homemaker-home health aide training programs. The Department, with the assistance of an advisory committee, is developing a personal care assistant training program.

Proposed new N.J.A.C. 8:36-1.8(d) specifies requirements for personal care assistants who may administer medications under the registered nurse's delegation, including current certification as a nurse aide or a homemaker-home health aide and completion of the medication training course approved by the Department and the Board of Nursing and successful completion of an approved examination.

The current N.J.A.C. 8:36-9.3(c) indicates that, although the registered professional nurse (RN) is ultimately responsible for the administration of medications, the RN may choose to delegate the task of administering medications to personal care assistants who have completed a medication administration course approved by the State Board of Nursing and the Department. The rule delineates specific limits within which administration of medications may be delegated. For example, the rule allows delegation of administration of injectable (subcutaneous) medications. Based on ongoing discussion with the Board of Nursing since publication and further consideration by staff, the Department is proposing to amend this section to limit such subcutaneous injections to pre-drawn insulin only. A need for subcutaneous injections other than pre-drawn insulin would generally indicate that the resident's condition is so deteriorated, complex, or unstable as to require the registered professional nurse's assessment, intervention and monitoring.

Additional amendments to N.J.A.C. 8:36-9.3(c)1 are proposed. The current rule allows delegation for those residents who are receiving short term scheduled medications (II-IV) for analgesia, with reassessment by the registered nurse every 72 hours in order to determine if the medication is still required. One amendment eliminates the limitations on administration of schedule III and IV drugs. On further consideration of the issue, the Department has determined that some drugs on these schedules are commonly taken by potential assisted living residents in order to manage a number of prevalent chronic illnesses (for example, phenobarbitol and anti-anxiety drugs). It is unreasonable to restrict access to assisted living for persons who can safely be maintained on such medications with regular monitoring by the registered professional nurse. A further amendment changes the requirement for delegation of Scheduled II drugs. It is true that Schedule II drugs may have more serious consequences than others (that is, potential for addiction and/or abuse). Nonetheless, assisted living is an excellent setting for hospice and terminal illness care. People who are on a regular timetable to receive Schedule II drugs can be safely maintained with the nurse delegating medication administration and reassessing the resident every 72 hours. The proposed amendment, therefore, would allow the delegation of the administration of Schedule II medications only when they are ordered on a regular timetable for continuous pain control or certain neurological conditions. The administration of Schedule II drugs on an "as needed" basis would not be permitted according to the proposed amendment. Another proposed amendment, N.J.A.C. 8:36-9.3(c)5, would require the registered nurse to review and sign off on any modifications or additions to the medication record which have been made by the personal care assistant, under the nurse's delegation.

In the amendment at N.J.A.C. 8:36-9.3(c)3, the language "adverse effects, side effects," is deleted and the more accurate and intended terminology "potentially significant adverse drug reactions" is substituted.

The Department acknowledges the assistance and consultation of the State Board of Nursing in the development of these proposed amendments.

Social Impact

The development of assisted living residences and comprehensive personal care homes are intended to enable residents to "age in place" without the necessity to undergo a transfer to another facility as frailties and most health care needs increase. The proposed amendments will benefit residents in assisted living settings by ensuring that personal care assistants have received training which emphasizes the unique concepts of care provided in these facilities, and are, therefore, able to provide the diversity of services residents may need in order to avoid transfer to a more restrictive environment.

The proposed amendment which clarifies requirements for personal care assistants who may administer medications will also benefit residents by further ensuring that such delegation is appropriate and safe. Providers of assisted living services and nursing staff will benefit by this clear delineation of the required training of personal care assistants who will be delegated responsibility for medication administration. The registered nurse will be assured that the personal care assistant has completed an approved training course and standardized examination in addition to being sufficiently competent, according to the registered nurse's judgement, to be delegated this responsibility.

The proposed amendments to limit delegation of administration of subcutaneous injection to predrawn insulin, to delete restrictions to the delegation of Schedule III and IV drugs, and to modify the conditions under which administration of Schedule II drugs may be delegated are expected to benefit residents, staff and providers of assisted living. The proposed amendments would, for example, allow assisted living residents who require hospice and terminal illness care to remain in the facility while receiving scheduled drugs. Residents with chronic illnesses who require scheduled drugs could also age in place. Delegation of administration of Schedule II drugs would allow flexibility in staffing, since trained personal care assistants who are on site could administer these medications. Transfer of the resident might otherwise be necessary.

Economic Impact

Assisted living residences and comprehensive personal care homes provide a means by which health care costs may be contained. They are intended to serve as an alternative to institutional long term care services which are organized and staffed along a "medical model." The proposed amendments regarding training in assisted living concepts for personal care assistants, the required additional training for personal care assistants who will administer medications, and changes to the delegation of the administration of injections and scheduled drugs are intended to provide further means of health care cost containment. Residents, staff, and providers of assisted living will benefit. Adoption of the proposed amendments is expected to prevent expenditures which would otherwise be needed for transfer of residents to facilities providing a more intense and costly level of care. Assisted living providers may contain costs by utilizing personal care assistants who are cross-trained in assisted living concepts to serve in diversified roles in the facility.

Regulatory Flexibility Analysis

The amendments to this chapter will apply to two new licensed entities: assisted living residences and comprehensive personal care homes. It is not possible to accurately estimate how many new assisted living residences will be constructed or how many currently existing facilities will convert to comprehensive personal care homes. However, it is expected that most, if not all, of these kinds of facilities will be considered small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The current rules, N.J.A.C. 8:36, were written with the intention of simultaneously enhancing resident independence and quality of life, while safeguarding resident health and safety without imposing unnecessary requirements on the facilities. The proposed amendments will help facilities to contain costs by utilization of personal care assistants who are trained to provide a diversity of services in accordance with assisted living concepts. Amendments to the requirements for delegation of medication administration to trained personal care assistants will result in savings of health care dollars which would be required for transfer of residents or for additional registered nurse staffing.

The Department maintains the general appropriateness and necessity of the proposed amendments to the rules for all assisted living residences and comprehensive personal care homes, regardless of size.

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

8:36-1.8 Qualifications of personal care assistants

(a) Each personal care assistant shall have completed:

1.-2. (No change.)

3. [Other] **Another** equivalent training program approved by the Department **which emphasizes the concepts of assisted living and successful completion of a Department-approved competency examination.**

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

(d) Personal care assistants who administer medications shall meet the following requirements:

1. Current certification in good standing as a nurse aide, homemaker home health aide, or completion of other Department approved course, as described at (a)1, 2 and 3 above;

2. Successful completion of the medication administration training course approved by the Department of Health and Board of Nursing, in accordance with N.J.A.C. 8:36-9.3(c); and

3. Successful completion of a Department of Health approved, standardized examination regarding medication administration for personal care assistants. An oral examination shall not substitute for the written component of this examination.

8:36-9.3 Administration of medications

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

(c) The administration of medications is within the scope of practice and remains the responsibility of the registered professional nurse. The registered professional nurse may choose to delegate the task of administering medications in accordance with N.J.A.C. 13:37-6.2 to personal care assistants who have completed a medication administration course approved by the State Board of Nursing and the Department. When the registered nurse delegates the task of administering medications to personal care assistants this delegation is based upon individual residents' needs and circumstances, within specific limits. These limits shall include, but not be limited to, the following:

1. The administration of oral, ophthalmic, otic, inhalant, nasal, rectal, vaginal, **and** topical [and injectable (subcutaneous)] medications **and predrawn insulin injections** may be delegated. [Residents receiving short term Scheduled medications (II-IV) for analgesia, and injections other than predrawn insulin, must be reassessed by the registered nurse at least 72 hours, in order to determine if the medication is still required;] **Medications requiring any other route of administration and injections other than predrawn insulin shall not be delegated. The administration of Schedule II medications shall not be delegated, except when they are ordered on a regular timetable (that is, for continuous pain control or certain neurologic conditions in accordance with N.J.A.C. 13:35-6.7(a)); in these cases, the registered nurse shall reassess the resident at least every 72 hours. The administration of Schedule II medications on a "PRN" or "as needed" basis shall not be delegated;**

2. A [Statewide] **Department of Health and Board of Nursing approved** training program regarding medication administration shall be completed by each personal care assistant who will administer medications;

3. The delegating nurse shall review with the personal care assistant medication actions and untoward effects for each drug to be administered. Pertinent information about medications' [adverse effects, side effects] **potentially significant adverse drug reactions,** and potential interactions shall be incorporated into the care plan for each resident, with interventions to be implemented by the personal care assistant and other caregiving staff; [and]

4. A unit of use drug distribution system shall be developed and implemented[.]; **and**

5. At least weekly, a registered nurse shall review and sign off on any modifications or additions to the medication administration record which were made by the personal care assistant under the nurse's delegation.

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Legal Services

Legal Services

Proposed Amendments: N.J.A.C. 10A:6-2.2 and 2.7

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1994-330.

Submit comments by July 6, 1994 to:

William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

It has been the practice of the Department of Corrections to provide typewriters when operable and available for inmate use. However, the references to the provision of typewriters at N.J.A.C. 10A:6-2.2(a)4 and 2.7(c) need to be clarified. The specific provision of typewriters for inmate use is not required by law, and it has never been the intent of the Department of Corrections to mandate the availability of typewriters. Therefore, the reference to typewriters will be deleted at N.J.A.C. 10A:6-2.2(a)4 and a new N.J.A.C. 10A:6-2.2(a)5 will be added which states that inmate legal services will include the "use of typewriters to the extent that they are available and/or operable." Also, to reflect the Department's intent to provide typewriters when they are available and operable, the word "shall" when used in N.J.A.C. 10A:6-2.7(c) has been deleted and replaced with the word "may."

Social Impact

The provision of typewriters for inmates' use is a privilege that depends upon security considerations, availability and operability. The proposed amendments reflect the actual correctional facility practice of providing the convenience of typewriter use to inmates. There may be a negative social reaction from inmates who believe the provision of typewriters is a right. However, this specific provision is not required by law and does not deprive an inmate access to court.

Economic Impact

Typewriters are pieces of machinery that often need servicing and repair, especially when large numbers of individuals use them. The maintenance of typewriters is established through the State budgetary process. Hence, the addition of language that indicates typewriters will be provided to the extent they are available and/or operable is reasonable and represents the current correctional facility practice that enables the Department to stay within the established budget.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

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

10A:6-2.2 Inmate legal services

(a) Inmate legal services which permit inmates access to the courts shall include the following:

1.-3. (No change.)

4. Provision of supplies, such as pens[,] **and** paper [and typewriters], when needed;

5. Use of typewriters to the extent that they are available and/or operable;

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

10A:6-2.7 Legal services

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

(c) Typewriters to the extent that they are available and/**or** operable [shall] **may** be provided for inmate use in the inmate law library area and in Close Custody Units.

(a)

STATE PAROLE BOARD

Parole Board Rules

Parole Hearings

Proposed Amendments: N.J.A.C. 10A:71-3.15 and 3.16

Authorized By: New Jersey State Parole Board, Mary Keating DiSabato, Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Proposal Number: PRN 1994-345.

Submit comments by July 6, 1994 to:

Robert M. Egles
Executive Director
New Jersey State Parole Board
CN 862
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10A:71-3.15 require that a hearing officer, upon the completion of an initial parole hearing, refer the inmate's case for a hearing before the appropriate Board panel if the inmate is serving a term for the commission of one of the specified offenses. The offenses specified are either first or second degree crimes and involve physical injury or threat of physical injury to a person. The amendments to N.J.A.C. 10A:71-3.16 eliminate the provisions for a Board Member's administrative review of a hearing officer's recommendation for parole release of an offender serving a term for the crime of murder. The provisions for such a review would not be necessary due to the proposed amendment to N.J.A.C. 10A:71-3.15 which would require the hearing officer to refer such a case for Board panel hearing.

Social Impact

The proposed amendments impact on those inmates who are serving sentences for the commission of one of the specified offenses. A decision to release such an inmate on parole would not be based on an administrative review of a hearing officer's recommendation and the inmate's case. Such inmates would be required to appear in-person before a Board panel for parole consideration and a decision to grant parole could only be rendered upon completion of the in-person hearing. (Note: pursuant to statutory provision, an inmate serving a term for the offense of murder may only be released on parole upon review by the **full** Board).

The proposed amendments will impact on the case load of the Board panels. However, it appears that the cases of most inmates serving terms for one of the specified offenses are presently being referred for Board panel hearings. Therefore, it is believed that directing such cases to be referred for Board panel hearings will not substantially impact on the case load of the Board panels.

Economic Impact

The economic impact of the proposed amendments is not readily identifiable. The increase in the case load of the Board panels may result in some Board panel hearings being conducted after the inmate's parole eligibility date. If an inmate is found to be a suitable candidate for parole release and parole is granted, the Department of Corrections will incur the expense of housing the inmate for the additional time frame from the date of parole eligibility to the date of parole release. Inmates who are released on parole beyond their respective parole eligibility dates potentially may suffer the loss of income that could have been earned if release from confinement and employment occurred on an earlier date. There are numerous other factors which result in inmates being past eligible for parole consideration and at the direction of the Board the scheduling of hearings by staff in the case of past eligible inmates is given first priority. The Board will continue to direct its efforts to resolve the cases of past eligible cases to minimize the economic impact on the Department of Corrections and inmates.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The amendments pertain to the conducting of Board panel hearings in certain cases. A regulatory flexibility analysis is, therefore, not required.

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

10A:71-3.15 Initial hearing notice of decision; adult inmates

(a) At the conclusion of the parole hearing, the hearing officer shall:

1. Recommend, **except as provided in (b) below,** to a member of the appropriate Board panel that the inmate be released on parole; or

2.-3. (No change.)

(b) In the case of an offender serving a term for the crime of murder, aggravated manslaughter, manslaughter, aggravated assault second degree, kidnapping, aggravated sexual assault, sexual assault, robbery, aggravated arson, burglary second degree, endangering the welfare of a child second degree or causing or risking widespread injury or damage second degree, the hearing officer shall refer the case for a hearing before the appropriate Board panel.

Recodify existing (b) to (d) as (c) to (e) (No change in text.)

10A:71-3.16 Board member review; adult inmates

(a) (No change.)

(b) [Except as provided in (c) below, if such] **If the assigned** Board member(s) concurs with the recommendation of the hearing officer, the member(s) shall certify parole release as soon as practicable after the parole eligibility date by:

1.-5. (No change.)

[(c) Pursuant to N.J.S.A. 30:4-123.55(f), in the case of an offender serving a term for the crime of murder, if such Board members concur with the recommendation of the hearing officer, the Board members shall:

1. Not certify parole release;
2. Automatically refer the case for a hearing before the Board; and
3. Notify in writing the inmate, the Department and the Chairperson within seven days that the case has been referred for a hearing before the Board. The provisions of this subsection shall not apply to an inmate who has his parole revoked and is returned to custody pursuant to N.J.S.A. 30:4-123.63.]

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

INSURANCE

(a)

UNSATISFIED CLAIM AND JUDGMENT FUND

Uninsured Motorist's Case Assignment Standards and Procedures

Proposed New Rules: N.J.A.C. 11:3-28.14 through 28.17

Proposed Amendment: N.J.A.C. 11:3-28.2 and 11:3-28 Appendix B

Authorized By: Andrew J. Karpinski, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1C-6(e) and 39:6-64.1.
Proposal Number: PRN 1994-321.

Submit comments by July 6, 1994 to:
Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

The agency proposal follows:

Summary

These proposed new rules establish procedures to be utilized by New Jersey private passenger automobile insurers ("insurers") when handling cases which have been assigned to them by the Unsatisfied Claim and Judgment Fund ("Fund") pursuant to N.J.S.A. 39:6-66. Many of these proposed rules codify procedures which are already used by insurers to whom cases have been assigned. These procedures are also to be utilized by any person retained by insurers for the purpose of handling such claims, including, but not limited to, claims adjusters and attorneys.

N.J.A.C. 11:3-28.2 is amended to include definitions of the terms "Board" and "uninsured motorist claims."

N.J.A.C. 11:3-28.14 requires insurers to acknowledge receipt of a claim assignment and instruction sheet and to provide the Fund with the names of the individuals responsible for the case. Any reference to insurer in these proposed new rules also includes any person who has been retained to handle any aspect of the claim on behalf of the insurer. These individuals shall comply with the requirements and standards set forth in this subchapter.

N.J.A.C. 11:3-28.15 establishes the forms to be used when reporting informaton to the Fund, the type of information which must be provided, and the intervals at which the information must be supplied.

N.J.A.C. 11:3-28.16 requires insurers to pursue personal injury protection benefits from responsible tortfeasors.

N.J.A.C. 11:3-28.17 provides for the imposition of civil penalties for failure to comply with these rules.

Finally, an Appendix B has been added to the subchapter. It sets forth sample forms to be used in connection with these new rules.

Social Impact

These proposed rules codify procedures, many of which are already standard practice, to be utilized by insurers and others in handling claims assigned by the Fund. The implementation of these new rules will have a positive social impact by ensuring that assigned claims are handled uniformly by all insurers; by timely providing the Fund with relevant information on these claims; by requiring insurers and others to be up-to-date on the claims through required filings with the Fund; and by requiring insurers to consult with the Fund and obtain prior approval from the Unsatisfied Claim and Judgment Fund Board in matters pending before the courts.

Economic Impact

These proposed rules impose an affirmative obligation on insurers and their employees or representatives to comply with reporting procedures, to review information and to consult with the Fund. Most of these requirements are already standard practice for insurers which receive these claims assignments. Therefore, additional costs, if any, which may be associated with the measures imposed by these rules, should not be significant. Nevertheless, the rules are necessary to establish uniform procedures and to provide the Fund with proper control over its resources and management of the claims which its assigns.

Regulatory Flexibility Analysis

Few if any insurers affected by these proposed new rules and amendments are "small businesses" as defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-17. These rules set forth procedures which must be employed by all insurers regardless of size in order to establish insurers' responsibilities to investigate and pursue claims assigned by the Fund. While these rules may impose extra recordkeeping and reporting requirements (see the Summary above), the associated costs are offset by the overriding benefit of providing uniformity in claims management and by preserving the Fund's resources by involving the Fund in pre and post judgment decisions. It is not anticipated that the employment of outside professional services will be necessary for compliance.

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

11:3-28.2 Definitions

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

"Board" means the Unsatisfied Claim and Judgment Fund Board created in accordance with N.J.S.A. 39:6-64.

. . .

"Uninsured motorist claims" means claims submitted against operators of uninsured vehicles and hit and run claims submitted pursuant to N.J.S.A. 39:6-61.

11:3-28.14 Insurer's responsibility upon assignment of an uninsured motorist claim

(a) An insurer shall, within 10 business days of receipt of a claim assignment and accompanying instruction sheet (see Appendix B, Item 1, incorporated herein by reference) from the Fund, submit a letter to the Fund which:

1. Acknowledges receipt of the assignment and the accompanying instruction sheet; and

2. Provides the names and telephone numbers of the case handler or manager, the claim investigator and the claim adjuster.

(b) An insurer shall, within 10 business days from the date it assigns the claim to defense counsel, provide the Fund with the name, address and telephone number of defense counsel.

(c) An insurer shall, within 10 business days, provide written notice to the Fund of any changes, substitutions or replacements which occur with respect to any of the persons identified pursuant to (a)2 or (b) above.

11:3-28.15 Procedures for handling an assigned uninsured motorist claim

(a) Each insurer shall:

1. Perform an investigation in accordance with the procedures set forth in the instruction sheet and obtain the following:

i. Confirmation that there is no insurance available for the claim;

ii. Confirmation of the claimant's eligibility based on N.J.S.A. 39:6-70 or 39:6-78.

iii. A police report;

iv. Witness statements;

v. Copies of medical reports, bills and hospital records; and

vi. A central index bureau ("C.I.B.") report;

2. Forward to assigned defense counsel a copy of the instruction sheet for reference; and

3. Forward to the Fund's claim adjuster for certification responses to interrogatories propounded upon the Commissioner in hit and run cases.

(b) An insurer or assigned defense counsel shall obtain and file with the Fund, within two business days of receipt, all documents which relate to the claim including, but not limited to:

1. Documents relating to the discovery of information including, but not limited to:

i. Interrogatories propounded by the claimant and any responses thereto;

ii. Responses to interrogatories propounded by the insurer;

iii. Deposition notices; and

iv. Deposition transcripts;

2. Documents filed with the court including, but not limited to:

i. Motion papers;

ii. Briefs; and

iii. Settlement or consent agreements; and

iv. Orders entered by the Court; and

3. Scheduling notices, notices of arbitration and any results thereof; other correspondence from the courts; and any judgments or court decisions which affect the claim in whole or in part and copies of trial or hearing transcripts upon the request of the Fund.

(c) Within 60 days of receipt of a claim assignment, an insurer shall file with the Fund a completed 60-day Report as set forth in Appendix B, Item 2, incorporated herein by reference, and the following information:

1. The results of the investigation conducted in accordance with (a)1 above;

2. An estimate of the amount of damages involved;

3. A brief synopsis of the status of the case;

4. All answers to interrogatories not previously filed, which have been propounded on the Fund, the Commissioner or any known defendants;

5. Answers to interrogatories propounded by the insurer; and

6. Any other pertinent documents filed with the court in connection with the matter which were not previously forwarded to the Fund.

(d) At six-month intervals, following the initial receipt of a case assignment, an insurer shall file with the Fund an updated, detailed Six-Month Summary Report as set forth at Appendix B, Item 3, incorporated herein by reference, and the following information:

1. An update of the information set forth in (b) and (c) above;

2. A brief summary which describes the status of the case, outlines the action taken to date, sets forth anticipated future action and/or strategy; and the anticipated outcome;

3. The discovery of any evidence of a fraudulent claim. Such information shall be referred to an insurer's special investigation unit. The unit shall, thereafter, forward its findings to the Department's Fraud Unit with a copy to the Fund; and

4. All other relevant information discovered during the pendency of the claim.

(e) An insurer shall provide notice to the Fund of any and all hearings, motions, arbitration and trial dates in a manner which provides sufficient notice to facilitate the Fund's review of the file prior thereto. An insurer shall provide notice to the Fund's claim adjuster either by telephone and confirming letter, facsimile transmission or mail.

(f) An insurer shall consult with the Fund and obtain prior approval from the Board before:

1. Entering into a settlement or judgment by consent in accordance with N.J.S.A. 39:6-72 or 6-82;

2. Proceeding to trial; or

3. Filing a motion for reconsideration.

(g) An insurer shall consult with the Fund and obtain prior approval from the Board before filing an appeal from an order or judgment adverse to the Fund.

(h) Prior approval from the Board shall be obtained by telephoning the Fund at (609) 292-3100 or by writing to:

Fund Adjuster
Unsatisfied Claim and Judgment Fund
CN 325
Trenton, NJ 08625

(i) For each assigned claim, an insurer shall review all medical bills submitted by claimants to ensure compliance with the medical fee schedule set forth at N.J.A.C. 11:3-29. Where a medical bill is not in compliance with N.J.A.C. 11:3-29, the insurer shall immediately notify the Fund of the discrepancy.

11:3-28.16 Insurer's obligation to obtain recovery of payments for paid personal injury protection benefits

(a) An insurer shall pursue any and all responsible tortfeasors within the time prescribed by law at N.J.S.A. 39:6A-13.1.

1. An insurer's failure to diligently pursue its right of recovery of paid PIP benefits shall, as determined by the Board, result in a denial of PIP reimbursement by the Fund, or if already reimbursed by the Fund, in a penalty to the insurer not to exceed the amount of PIP benefits reimbursed on the claim.

2. An insurer shall obtain prior approval from the Fund before settling or compromising a claim against a tortfeasor.

(b) Any and all expenses and fees incurred by the insurer as a result of its pursuit of a right of recovery against a tortfeasor shall be borne by the insurer.

11:3-28.17 Penalties

Failure of an assigned insurer to comply with these rules shall result in the imposition of penalties prescribed by law.

Appendix B

Item 1

UNSATISFIED CLAIM AND JUDGMENT FUND

INSTRUCTION SHEET

UCJF FILE NUMBER:_____

_____ Enter appearance for _____

_____

_____ OBTAIN PROOF OF SERVICE ON ALL NAMED DEFENDANTS.

_____ Proceed with immediate discovery. Serve SPECIAL UCJF ELIGIBILITY INTERROGATORIES.

_____ Schedule depositions and/or IME if indicated.

_____ Obtain conformed copy of cancellation notice.

_____ Move to dismiss improper defendants:

_____ Commissioner of Insurance
_____ Director of Motor Vehicles
_____ UCJF

_____ PIP not payable:
_____ LATE NOTICE
_____ OUT OF STATE VEHICLE
_____ COMMERCIAL VEHICLE
_____ OTHER

_____ Claimant ineligible, not a resident of New Jersey.

_____ Determine if carrier notified Taxi Commission of cancellation of policy

_____ NOTICE OF INTENTION not sufficiently complete to qualify as a timely filing.

_____ File CIB. _____ Obtain Police Report _____ Obtain Medical Reports

_____ Obtain signed statement of uninsured.

_____ Obtain settlement agreement. _____ Contract witness(es)

_____ Contact claimant's employer for possible health insurance coverage and Temporary Disability Benefits.

_____ Rule out vehicle ownership in household.

_____ Obtain the names, dates of birth and driver's license numbers of all household residents.

_____ Other: _____

_____

Appendix B
Item 2

THIS FORM IS A FORMAT AND NOT TO BE USED IN SUBMITTING REPORTS TO THE FUND

60 DAY REPORT

UCJ #_____ DATE_____

CLAIMANT: SS#_____ AGE_____

CLAIMANT'S ATTORNEY:

ELIGIBILITY OF CLAIMANT:

UNINSURED:

ASSIGNED ATTORNEY:

ASSIGNED ATTORNEY'S ACTIVITY:

DATE OF ACCIDENT: PLACE OF ACCIDENT:

ACCIDENT DESCRIPTION:

LIABILITY:

WITNESSES:

POLICE INVOLVEMENT:

INJURIES:

EXPENSES:

ADJUSTER'S RECOMMENDATION:

WORK TO BE DONE:

COMPANY/CARRIER_____

ADJUSTER _____

CLAIM # _____

PHONE # _____

Appendix B
Item 3

THIS FORM IS A FORMAT AND NOT TO BE USED IN SUBMITTING REPORTS TO THE FUND

6 MONTH SUMMARY REPORT

UCJ #_____ DATE_____

SS#_____ AGE_____

CLAIMANT(S):

CLAIMANT'(S) ATTORNEY:

UNINSURED:

ATTORNEY ASSIGNED:

COMPANY ASSIGNED: CLAIM #_____

D/A: TIME: PLACE OF ACCIDENT:

SUIT: COURT: COUNTY:

ELIGIBILITY OF CLAIMANT(S):

DESCRIPTION OF ACCIDENT:

LIABILITY:

WITNESSES DESCRIPTION:

POLICE DESCRIPTION:

DESCRIPTION OF INJURIES:

UP TO DATE LIST OF MEDICAL EXPENSES:

CARRIER'S RECOMMENDATION:

ASSIGNED ATTORNEY'S RECOMMENDATION:

WORK TO BE DONE:

ADJUSTER_____

PHONE #_____

(a)

DIVISION OF ADMINISTRATION

New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge

Proposed Readoption: N.J.A.C. 11:18

Authorized By: Andrew J. Karpinski, Acting Commissioner, Department of Insurance.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6 and 17:30D-1 et seq.
Proposal Number: PRN 1994-355.

Submit comments by July 6, 1994 to:
Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), the New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge (N.J.A.C. 11:18) expires on December 18, 1994. The Division of Administration of the New Jersey Department of Insurance ("Department") has reviewed these rules and determined them to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The readoption of this chapter is necessary in order for the New Jersey Medical Malpractice Reinsurance Recovery Fund ("Fund") to continue financing the New Jersey Medical Malpractice Reinsurance Association's ("Association") deficit.

N.J.S.A. 17:30D-1 et seq., the Medical Malpractice Liability Insurance Act ("Act"), was enacted to ensure that medical malpractice liability insurance is readily available to licensed medical practitioners and health care facilities. The Act established the Association, which is required to reinsure certain medical malpractice liability insurance policies. The Association is also permitted to write such policies on a direct basis in the absence of a qualified provider willing to issue the needed class of coverage. The Act also established the Fund, which reimburses the Association for any deficit sustained in its operation.

The Association, although deactivated by 1982, remains obligated on claims presented under the coverage it reinsured or wrote directly during its years of operation. Actuarial studies conducted on behalf of the Association for year end 1982 indicated that the Association would experience substantial deficits and an eventual inability to pay claims for which it was responsible. The year-end actuarial report for 1983 confirmed the existence of a deficit, and the Association has continued to report a deficit to the Department each year to the present.

In reviewing the need to fund the Association's deficit, the Department proposed new rules (N.J.A.C. 11:18) in the August 15, 1988 New Jersey Register (see 20 N.J.R. 2010(a)) for the purpose of imposing a surcharge upon certain classes of health care providers in this State. A public hearing was held on October 24, 1988. According to the Hearing Officer's Report submitted to the Commissioner of the Department of Insurance ("Commissioner") on January 17, 1989 following the hearing on the proposed rules, the surcharge was expected to generate sufficient revenues to pay the losses and expenses of the Association when due and discharge the deficit within a period of approximately seven years. The new rules were twice reproposed and appeared in the New Jersey Register on June 19, 1989 (see 21 N.J.R. 1642(a)) and on September 5, 1989 (see 21 N.J.R. 2698(a)). A second public hearing was held September 22, 1989, and the rules were finally adopted on December 18, 1989 to remain effective for a five-year period until December 18, 1994. Since promulgation, the rules at N.J.A.C. 11:18 have allowed the Association to remain a viable and stabilizing market influence, and to continue to service and pay the claims for which it remains liable.

In order for the surcharge to continue to be collected, the rules at N.J.A.C. 11:18 are required to be readopted prior to their December 18, 1994 expiration date. Although the surcharge during the previous four years has led to a significant reduction in the Association deficit, the revenue derived has not been sufficient to completely retire the deficit. Moreover, recent Association auditor and actuarial reports indicate that the annual surcharge receipts to date have been less than originally projected. Additionally, the decline in interest rates since 1989 has reduced the expected interest income on the receipts held in reserve prior to disbursement. Finally, numerous malpractice claims were filed in 1993 due to the Food and Drug Administration's (FDA) ban on certain breast implants, which may cause a further reduction in Association funds depending on the outcome of those claims.

Accordingly, based on the pattern of surcharge receipts, the investment income generated by the receipts, the inadequacy of the Association's assets to meet its total liabilities and Association auditor and actuarial reports, the Association's Board of Directors has recommended to the Commissioner that N.J.A.C. 11:18 be readopted. This chapter is not being amended on readoption. The Department believes the current text of the chapter is sufficient for purposes of the continuing imposition, collection and remittance of Fund surcharges.

Social Impact

This chapter has allowed the Association to remain a viable and stabilizing market influence, and to continue to service and pay the claims for which it remains liable.

This chapter affects a great number of health care providers licensed in this State who are subject to the surcharge but are also beneficiaries of a stable market.

Economic Impact

This chapter has not resulted in a significant adverse economic impact on insurers, although insurers have experienced a minimal increase in costs related to their remitting collected surcharges to the State Treasurer and biannually filing certain information with the Department as required by the rules.

Health care providers included within the scope of the rules have been adversely affected because they are responsible for payment of the surcharge established by the rules.

Health care consumers within the State may have experienced increased medical costs attributable to increased medical malpractice insurance premiums paid by providers.

The Department has not incurred any additional expenses resulting from these rules.

Regulatory Flexibility Analysis

Some insurers which have been affected by these rules may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the rules' requirements do not differentiate based on insurer size. The rules require all insurers to collect and remit the surcharges imposed upon insured providers and to biannually file with the Department certain information regarding the surcharges. These requirements have not resulted in small business insurers experiencing a significant adverse economic impact, nor necessitated their employment of professional services.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 11:18.

LABOR

(b)

UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

Temporary Disability Benefits Hearings

Proposed Repeals: N.J.A.C. 12:18-2.41 through 2.48
Proposed Amendments: N.J.A.C. 12:18-2.6 and 2.38

Authorized By: Peter J. Calderone, Acting Commissioner, Department of Labor.
Authority: N.J.S.A. 43:21-25 et seq.
Proposal Number: PRN 1994-360.

A **public hearing** on this proposal will be held on the following date at the following location:

Monday, June 27, 1994
10:00 A.M. to 12:00 noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of External and Regulatory Affairs at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by July 6, 1994 to:

Deirdré L. Webster, Regulatory Officer
External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

On May 16, 1994, at 26 N.J.R. 2131(a), the Department of Labor readopted with amendments N.J.A.C. 12:18, the rules governing the Temporary Disability Benefits Program. At the time the readoption with amendments was proposed, it was determined that the hearing rules would be reviewed with the Office of Administrative Law and could be the subject of a future proposal. Upon reviewing the hearing rules, the Department of Labor and the Office of Administrative Law jointly determined that it is appropriate for these rules to appear in N.J.A.C. 1:12A as jointly adopted special contested case hearing rules. As a result, the hearing rules in N.J.A.C. 12:18 are being proposed for repeal and amendment. However, the hearing rules are being proposed for adoption in N.J.A.C. 1:12A elsewhere in this issue of the New Jersey Register and will continue to appear in Title 12 as an appendix to N.J.A.C. 12:18. In addition, although the rules will be recodified to correspond with the organizational structure of the Uniform and Special hearing rules N.J.A.C. 1:1, the Department of Labor's current hearing procedures will not change significantly.

N.J.A.C. 12:18 sets forth the rules governing the administration of the Temporary Disability Benefits Program, including definitions, the procedure for the application for exemption, the service of papers and the standards governing the reimbursement of funds; the administration of Private Plan Disability Benefits; and the administration of State Plan Disability Benefits. The proposed amendments and repeals remove the rules governing the procedures and standards for private plan hearings before a hearing officer. It should be noted that State plan hearings before appeal tribunals and the Board of Review will continue to be conducted in accordance with the Board of Review hearing rules which are also being proposed for adoption elsewhere in this issue of the New Jersey Register as special hearing rules in N.J.A.C. 1:12.

A summary of the rules proposed for amendment or repeal follows.

N.J.A.C. 12:18-2.6(c), which provides an employee covered by a private temporary disability plan with the right to a full, fair and impartial hearing to appeal the denial of benefits, is being deleted for inclusion in N.J.A.C. 1:12A.

N.J.A.C. 12:18-2.38(a) and (b) are deleted for inclusion in N.J.A.C. 1:12A.

N.J.A.C. 12:18-2.41 through 2.48 provide the rules governing the procedure for conduct of hearings, dismissal of complaints, the issuance of decisions, judicial review of decisions, the inspection of records and the issuance of subpoenas.

Social Impact

The rules proposed for amendment and repeal provide parties with procedures and standards for the appeal of private plan temporary disability decisions before hearing officers of the Department of Labor. While these proposed amendments and repeals delete these procedures and standards in N.J.A.C. 12:18, they are being proposed for adoption in N.J.A.C. 1:12A as special hearing rules and will continue to appear Title 12 as an appendix to N.J.A.C. 12:18. As a result, no significant social impact will result from their repeal. Although the rules will be recodified to correspond with the organizational structure of the Uniform and Special hearing rules N.J.A.C. 1:1, the Department of Labor's current hearing procedures will not be significantly changed. The rules will continue to provide an equitable, uniform and needed opportunity for private plan claimants to pursue their cases as required by Federal and State temporary disability laws and consistent with the requirements of the Administrative Procedure Act.

Economic Impact

The rules proposed for repeal and deleted provisions will be adopted in N.J.A.C. 1:12A as special hearing rules and will continue to appear in Title 12 as an appendix to N.J.A.C. 12:18. As a result, employees covered by private temporary disability insurance plans will continue to be afforded a fair and efficient hearing process. Accordingly, no significant economic impact should result from the repeal of these rules.

Regulatory Flexibility Statement

The proposed amendments and repeals do not impose any reporting, recordkeeping or compliance requirements on small business. As a result, a regulatory flexibility analysis as defined by N.J.S.A. 52:14B-16 is not required. The rules proposed for repeal set forth the procedures governing private plan temporary disability insurance cases. Although they are being proposed for repeal in N.J.A.C. 12:18 they are being proposed for adoption in N.J.A.C. 1:12A and will continue to appear in Title 12 as an appendix to N.J.A.C. 12:18.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:18-2.41 through 2.48.

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

12:18-2.6 Appeals

(a) If the claim of any employee under a private plan is denied, in whole or in part, by an employer, insurer or organization paying benefits or, if he or she shall be unable to agree with the employer, insurer or organization paying benefits as to benefits thereunder, such claimant may appeal from such determination or denial.

(b) A complaint, which shall constitute an appeal, shall be filed by the claimant, in person or by mail, with the Division, within one year after the beginning of the period for which benefits are claimed. Upon receipt thereof, the Division shall conduct an investigation and such informal hearings as it may deem necessary to determine the facts and settle the issues.

[(c) If the issues raised are not settled, they shall be referred to a hearing officer, who shall afford the interested parties thereto to a reasonable opportunity for a full, fair and impartial hearing, in accordance with procedure relating thereto required under Section 2.38 through 2.48 of this Chapter.]

12:18-2.38 [Scope and application of hearing provisions] **Appeal process**

[(a) The filing of a complaint by a person claiming benefits under a private plan, and proceedings relating thereto, shall be governed in accordance with Sections 2.38 through 2.48 of this chapter.

(b) The hearing officer shall be the individual designated to conduct a hearing pursuant to N.J.S.A. 43:21-50.]

(a) The appeal procedures for private plan temporary disability cases are found at N.J.A.C. 1:12A and are appendixed at the end of this chapter.

[(c)]**(b)** A complaint, which shall constitute an appeal, shall be filed by a person claiming benefits under an approved private plan, on a form and in a manner prescribed setting forth the information required.

(a)

BOARD OF REVIEW

Board of Review Rules

Reproposed Readoption: N.J.A.C. 12:20

Proposed Amendments: N.J.A.C. 12:20-1.2, 3.1, 4.3 and 5.5

Proposed Repeals: N.J.A.C. 12:20-2.3, 3.3, 3.4, 4.1, 4.4 through 4.7, 5.1 through 5.4, and 6.1 through 6.8

Proposed Repeals and New Rules: N.J.A.C. 12:20-3.2 and 4.2

Authorized By: Peter J. Calderone, Acting Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1A-3(e), 43:21-6(d) through (f), 43:21-10 and 43:21-17.

Proposal Number: PRN 1994-361.

A **public hearing** on these proposed amendments and repeals will be held on the following date at the following location:

Monday, June 27, 1994
10:00 A.M. to 12:00 noon
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of External and Regulatory Affairs at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by July 6, 1994 to:

Deirdré L. Webster, Esq.
Regulatory Officer
Office of the Commissioner
External and Regulatory Affairs
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, please contact the Office of Work and Disability at (609) 777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

N.J.A.C. 12:20 became effective on August 14, 1989, for a period of five years. Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:20, Board of Review, expires on August 14, 1994. For the sake of clarity and uniformity, the New Jersey Department of Labor (the Department) and the Office of Administrative Law have jointly determined that specific rules appear in Title 1 of the New Jersey Administrative Code as contested case hearing rules. As a result, the hearing rules in N.J.A.C. 12:20 are being proposed for repeal and, elsewhere in this issue of the New Jersey Register, adoption in N.J.A.C. 1:12. However, these rules will continue to appear in Title 12 as an appendix to N.J.A.C. 12:20. Additionally, the rules regarding the purpose, scope and organizational structure of the appeal tribunals and the Board of Review that are necessary, reasonable and proper for the purposes for which they were originally promulgated are hereby being proposed for readoption at this time. Notwithstanding, the contested case hearing rules being recodified to clearly correspond with the format and organization of rules in the Uniform and Special Hearing Rules at N.J.A.C. 1:12, the current hearing procedures, responsibilities and duties of the appeal tribunals and the Board of Review will continue and not change significantly to ensure proper service to the general public and clients. This proposed readoption of N.J.A.C. 12:20 supersedes that published in the May 16, 1994 New Jersey Register at 26 N.J.R. 1941(a).

The Board of Review and appeal tribunal were established as required by the Unemployment Compensation Law, N.J.S.A. 43:21-1 et seq. The Board of Review conducts reviews of employer and employee appeals, as well as Division appeals, of unemployment benefit determinations made by an appeal tribunal in accordance with N.J.S.A. 43:21-6(e). An appeal tribunal conducts hearings and renders determinations concerning employer and employee appeals about decisions for unemployment benefits made at the local office level pursuant to N.J.S.A. 43:21-6(d) through (f).

A summary of the hearing rules proposed for repeal follows. The proposed repeal is for rules at N.J.A.C. 12:20-2.3, Disqualification of members of appeal tribunals, N.J.A.C. 12:20-3, Appeals to Appeal Tribunals, N.J.A.C. 12:20-4, Appeals to Board of Review, N.J.A.C. 12:20-5 General Rules for Both Appeal Stages, and N.J.A.C. 12:20-6, Telephone Hearings.

Below is a summary of the subchapters of N.J.A.C. 12:20 proposed for readoption with amendments.

Specifically, N.J.A.C. 12:20-1 describes the organizational structure of the Board of Review. N.J.A.C. 12:20-2 describes the organization of the Appeal Tribunals. N.J.A.C. 12:20-3.1 clarifies what type of item shall be filed and held to be an appropriate appeal statement. Proposed subsections N.J.A.C. 12:20-3.1(h) and (i) dealing with appeal tribunals and subsections N.J.A.C. 12:20-4.1(g) and (h) concerning the Board of Review establish when an appeal shall be considered timely filed. N.J.A.C. 12:20-3.1(i) and 4.1(h) explicitly provides a good cause exception to the filing of a late appeal in compliance with the New Jersey Supreme Court mandate in *Rivera v. Board of Review,* 127 *N.J.* 578 (1992).

N.J.A.C. 12:20-4.3 is repealed and recodified as N.J.A.C. 12:20-4.1. Subsections N.J.A.C. 12:20-4.1(a) through (e) in this new rule govern the presentation of appeals to the Board of Review. N.J.A.C. 12:20-4.3(g) is recodified as N.J.A.C. 12:20-4.1(f) and clarifies when notice of hearing on an appeal shall constitute notice that the appeal has been filed. N.J.A.C. 12:20-4.3(f) and (h) are deleted for inclusion in N.J.A.C. 1:12. N.J.A.C. 12:20-4.8 is repealed and recodified as N.J.A.C. 12:20-4.3. This rule specifies the conditions for the temporary appointment of the Executive Secretary to the Board of Review.

N.J.A.C. 12:20-5.5 is recodified as N.J.A.C. 12:20-5.1, and provides when the decisions of the Appeal Tribunals and the Board of Review shall be open for inspection. Each of the rules in N.J.A.C. 12:20-6, Telephone Hearings, are now found in N.J.A.C. 1:12 and are also appendixed at the end of this chapter.

Social Impact

The proposed readoption with amendments benefits employers and claimants in that they provide organization and efficiency for the Board of Review and appeal tribunal. Also, they ensure that employers and claimants are provided with an equitable, uniform and needed opportunity to pursue their cases as required under Federal and State unemployment laws.

Additionally, the proposed amendments realign the resources of the Board of Review and Appeal Tribunal to meet the required case processing demands that exist. A positive social impact is established for each party by having greater clarification of the operating procedures, noting fixed responsibilities, and by removing ambiguity as to what steps must be taken to obtain any approval of the Board of Review or appeal tribunal concerning various requests that may be made by a party. The amendments pinpoint responsibility for all parties and establish standards which continue to ensure the proper and efficient handling of claims submitted by claimants.

The specific rules proposed for repeal provide parties with steps and procedures to follow for making appeals before the Board of Review and the appeal tribunals. Accordingly, these proposed rules for repeal in N.J.A.C. 12:20 are being proposed for adoption in N.J.A.C. 1:12 as Special Hearing Rules and will continue to appear in Title 12 as an appendix to N.J.A.C. 12:20. As a result, no significant social impact will occur because these rules simply clarify the existing requirements that operate to ensure that appeals are properly handled in accordance with all existing laws and regulations.

Economic Impact

The proposed readoption with amendments will benefit the State of New Jersey, employers and claimants as they point out the duties and responsibilities which are handled by the Appeal Tribunal and the Board of Review. Overall, compliance with these rules as amended should be accomplished within existing financial resources. As required by law, these amendments do not assess fees, charges or other expenses to a claimant who is requesting material to actively pursue an appeal.

The rules proposed for repeal will be adopted in N.J.A.C. 1:12 as Special Hearing Rules and will continue to appear in N.J.A.C. 12:20 as an appendix to N.J.A.C. 12:20. Accordingly, parties and claimants filing unemployment benefit appeals will continue to be afforded a fair and efficient hearing process. No significant economic impact should result from the repeal of these rules.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments and those proposed for repeal do not require a regulatory flexibility analysis as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. since they do not impose any requirements on small businesses. The rules proposed for readoption set forth standards and criteria on the Appeal Tribunals and the Board of Review. The rules proposed for repeal set forth the procedure governing contested case hearings, and although they are being proposed for repeal in N.J.A.C. 12:20, they are being proposed for adoption in N.J.A.C. 1:12 and will continue to appear in Title 12 as an appendix to N.J.A.C. 12:20.

Full text of the rules reproposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:20.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:20-2.3, 3.2, 3.3, 3.4, 4.1, 4.2, 4.4 through 4.7, 5.1 through 5.4, and 6.1 through 6.8.

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

SUBCHAPTER 1. ORGANIZATION OF BOARD OF REVIEW

12:20-1.1 Membership

The Board of Review shall consist of three members appointed by the [Director] **Assistant Commissioner who is responsible for the administration of the Unemployment Compensation Law and** subject to the provisions of N.J.S.A., Title 11A, and the supplements and amendments thereto, from Department of Personnel eligible lists.

12:20-1.2 Officers

(a) The Board of Review shall elect one of its members as [Chairman] **chairperson** and one as [vice-chairman] **vice-chairperson** to serve at the pleasure of the Board.

(b) The Board of Review may [elect] **appoint** a secretary to serve at the pleasure of the Board.

12:20-1.3 Duties

(a) (No change.)

(b) The [chairman] **chairperson** of the Board of Review shall convoke and preside at all meetings of the Board of Review.

(c) The [vice-chairman] **vice-chairperson** shall perform the duties of the [chairman] **chairperson** during any period of the latter's absence or incapacity.

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

SUBCHAPTER 2. ORGANIZATION OF APPEAL TRIBUNALS

12:20-2.1 Membership

Appeal tribunals shall consist [either] of a single member who shall be a salaried examiner appointed by the Director subject to the provisions of N.J.S.A., Title 11A, and supplements and amendments thereto, from Department of Personnel lists.

12:20-2.2 Duties

It shall be the duty of the appeal tribunals to hear and decide disputed benefit claims, including appeals from determinations with respect to demands for refunds of benefits under N.J.S.A. [42:21-16(d)] **43:21-16(d)** of the Unemployment Compensation Law of New Jersey.

SUBCHAPTER 3. APPEALS TO APPEAL TRIBUNALS

12:20-3.1 Presentation of appealed claims

(a) Any written statement, **including a facsimile,** filed within the time for appeals allowed by law, which sets forth the fact that a party to a determination made by the division [of Employment Security] is aggrieved thereby or dissatisfied therewith shall be deemed to be an appeal.

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

(h) An appeal shall be considered on its merits if it is filed within seven days of delivery. Delivery of notification of an initial determination means actual receipt of the determination by the claimant or any interested party to the appeal.

(i) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or

2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

12:20-3.2 Appeal process

The appeal procedures for cases before the Appeal Tribunals are now be found at N.J.A.C. 1:12 and are also appendixed at the end of this chapter.

SUBCHAPTER 4. APPEALS TO BOARD OF REVIEW

12:20-[4.3]**4.1 Presentation of appeals**

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

[(f) A party to a benefit claim may file a request for reopening of a Board of Review decision within ten days after the day of mailing of such decision. Such request shall not act as a stay of proceedings in the case and shall not suspend the payment of benefits. Failure of the Board of Review to act upon such request within 20 days of the date on which it is filed shall constitute a denial thereof as of the expiration of that period. Additional time may be granted where fraud or newly discovered evidence is alleged by affidavit.]

(g) An appeal shall be considered on its merits if it is filed within 10 days of notification or mailing. Notification of a decision means actual receipt of a decision by the claimant or any interested party to the appeal.

(h) A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or

2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

[(g)](**f**) (No change in text.)

[(h) Any party, including the appellant whose appeal resulted in any affirmation of the appeal tribunal decision on the record made by the appeal tribunal, may apply for reopening of the Board's decision. If such application is granted all parties will be notified if a new hearing is scheduled.]

12:20-4.2 Appeal process

The appeal procedures for cases before the Board of Review are found at N.J.A.C. 1:12 and are also appendixed at the end of this chapter.

12:20-[4.8]**4.3** (No change in text.)

SUBCHAPTER 5. GENERAL RULES FOR BOTH APPEAL STAGES

12:20-[5.5]**5.1** (No change in text.)

(a)

DIVISION OF PROGRAMS

Application and Review Process for Additional Unemployment Benefits under the Workforce Development Partnership Act Overpayments

Proposed Amendment: N.J.A.C. 12:23-5.9

Authorized By: Peter J. Calderone, Acting Commissioner, Department of Labor.

Authority: P.L. 1992, chapters 43 through 49 (N.J.S.A. 34:15D-1 et seq.).

Proposal Number: PRN 1994-346.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Monday, June 20, 1994
10:00 A.M. to 12:00 P.M.
New Jersey Department of Labor
John Fitch Plaza
13th Floor Auditorium
Trenton, New Jersey 08625

Please call the Office of External and Regulatory Affairs at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by July 6, 1994 to:

Deirdre L. Webster, Regulatory Officer
External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 12:23-5.9 is the result of comments received during the March 1, 1993 through March 31, 1993 public comment period for the proposed new rules at N.J.A.C. 12:23-5 (see 25 N.J.R. 887(a)). At adoption on March 1, 1994 (see 26 N.J.R. 1515(a)), the Department determined that one amendment of a substantive nature required proposal in the New Jersey Register pursuant to N.J.A.C. 1:30-4.3.

N.J.A.C. 12:23-5.9 is proposed for amendment to provide consistency throughout the Unemployment Insurance Benefit Progam for the recovery of overpayment for benefits under N.J.S.A. 43:21-16(d), by providing that overpayments of additional unemployment benefits during training improperly paid for any reason shall be recovered by the Department in accordance with N.J.S.A. 43:21-16.

Social Impact

The additional unemployment benefits during training made available under the Workforce Development Partnership Program provide financial security for unemployed and displaced workers while they receive training. The availability of additional unemployment benefits to individuals in training enables greater numbers of eligible unemployed workers to take advantage of the services afforded under the Workforce Development Partnership Program. These program services enhance an eligible individual's ability to retain or obtain employment, thus generating both tax revenues and contributions rather than depleting the Unemployment Insurance Trust Fund. By providing for the recovery of overpayments of additional unemployment benefits during training, the proposed amendment protects the integrity and stability of the Unemployment Trust Fund in that it ensures that such benefits are paid only to those individuals eligible to receive them.

Economic Impact

The additional unemployment benefits during training made available under the Workforce Development Partnership Program provide the financial security necessary for eligible workers to obtain new or improved job skills in order to enhance their employability. The availability of additional unemployment benefits also permits a greater number of individuals to participate in training. Since these benefits are paid out of the Unemployment Insurance Trust Fund, there is a negative impact on the fund. The additional benefits under the Workforce Development Partnership Program are capped at an amount equal to 1.5 percent of the trust fund balance. As a result, it is important to ensure that the fund is not improperly depleted by the payment of additional benefits to ineligible individuals. The proposed amendment accomplishes this task by providing for the recovery of overpayments to these persons.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. since it does not impose any requirements on small businesses. The rule proposed for amendment sets forth a procedure the Department can utilize to recover overpayments of additional unemployment benefits during training. In so doing, it ensures that the monies employees and employers pay into the Unemployment Insurance Trust Fund are protected from improper distribution.

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

12:23-5.9 Overpayments

Overpayments of additional unemployment benefits during training improperly paid [due to false or fraudulent representations] **for any reason** shall be recovered by the Department in accordance with N.J.S.A. 43:21-16.

(b)

UNINSURED EMPLOYER'S FUND

Attorney Fees

Proposed Amendment: N.J.A.C. 12:235-14.7

Authorized By: Peter J. Calderone, Acting Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c) and 34:15-120.7.

Proposal Number: PRN 1994-342.

A **public hearing** on the proposed amendment will be held on the following date at the following location:

Friday, July 1, 1994
10:00 A.M. to 4:00 P.M.
New Jersey Department of Labor
John Fitch Plaza—CN 110
13th Floor Auditorium
Trenton, New Jersey 08625-0110

Please call the Office of External and Regulatory Affairs at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by July 6, 1994 to:

Mark E. Litowitz
Director and Chief Judge
Division of Workers' Compensation
Department of Labor
CN 381
Trenton, New Jersey 08625-0381
and
Deirdre L. Webster
Regulatory Officer
Office of External and Regulatory Affairs
Department of Labor
13th Floor Suite G—CN 110
Trenton, New Jersey 08625-0110

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or NJ Relay (TTY) 1-800-852-7899.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 12:235-14.7(a)1 is designed to further the provisions of N.J.S.A. 34:15-120.4(b), which provides in pertinent part, "The Commissioner of Labor is charged with the conservation of the assets of the Uninsured Employer's Fund. Notwithstanding the provisions of any other section of this act, no payments shall be made from the Fund except upon application to and approval by the Commissioner."

Upon review of the expenditures made from the Uninsured Employer's Fund (Fund), it has been determined by the Department of Labor that the amount of counsel fees paid to attorneys by the Fund should be limited to no more than $750.00 of the respondent's share of the counsel fee allowed in order to conserve the assets of the Fund. As N.J.S.A. 34:15-120.1 et seq. does not expressly provide for the payment of any counsel fee at all, the Department feels that it is appropriate to limit the counsel fee in order to maintain an adequate source of funds to pay medical and temporary benefits to injured workers. Any additional fee could, of course, be ordered against the respondent.

Additionally, the proposed amendment deletes the requirement at N.J.A.C. 12:235-14.7(b)1, that attorneys file an Affidavit of Services.

Social Impact

The proposed amendment will have a minimal social impact as it is designed only to limit expenditures from the Fund and to delete the Affidavit of Service requirement. It will assure employers and the business community, who do provide workers' compensation coverage, that payment from the Fund is being closely monitored and that the Department of Labor recognizes that the Fund is a trust fund which receives its capital from surcharges on those employers who abide by the law and provide coverage for their employees. These employers, therefore, should be encouraged by the proposed amendment, as it promotes fiscal responsibility and conservation of trust fund assets.

Economic Impact

The proposed amendment will have a positive economic impact on those employers who are surcharged for contribution to the Fund, as a reduction of expenditures from the Fund minimizes the amount of the surcharge to be paid by each employer.

Some attorneys representing injured workers who apply to the Fund for benefits may experience a limited economic impact in that all of the counsel fees awarded by the Judge of Compensation may not be paid by the Fund. However, the attorneys may be able to collect the balance of the awarded counsel fee from the respondent employer as the Fund will docket, in Superior Court, the full amount of counsel fee due from the respondent.

Attorneys may also experience a positive economic impact, as they will no longer have to expend time preparing an Affidavit of Services.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment merely limits the amount of counsel fees payable to attorneys from the Fund, and, in fact, reduces the amount of paperwork required by attorneys by eliminating the need for an Affidavit of Services.

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

12:235-14.7 Attorney fees

(a) An attorney fee may be payable from the Fund to the petitioner's attorney when the petitioner is found eligible for Fund benefits by the Commissioner.

1. In no event shall the Fund pay more than $750.00 of the respondent's share of the counsel fee allowed in each case for obtaining Fund benefits.

(b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation **up to limit in (a)1 above,** for obtaining the medical and/or temporary benefits assessed against the respondent.

[1. The application shall be supported by an affidavit of services in a form and manner as prescribed by the Director.]

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route U.S. 206
Mount Olive Township, Morris County

Proposed Amendment: N.J.A.C. 16:28A-1.57

Authorized By: Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-198 and 39:4-199.

Proposal Number: PRN 1994-328.

Submit comments by July 6, 1994 to:

William E. Anderson
Manager
New Jersey Department of Transportation
Bureau of Traffic Engineering and Safety Programs
1035 Parkway Avenue
CN 613
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Transportation proposes to amend N.J.A.C. 16:28A-1.57 to delete a duplication of no stopping or standing on Route U.S. 206. The provisions of this amendment will improve the flow of traffic and enhance safety along the highway system.

This amendment is being proposed as part of the Department's ongoing review of current conditions and at the request of the local government of the Township of Mount Olive, Morris County, which submitted a resolution adopted on March 8, 1994 requesting that a no stopping or standing zone be established for both sides of Route U.S. 206, within the entire corporate limits of Mount Olive Township in Morris County. The traffic investigations conducted by the Department's Bureau of Traffic Engineering and Safety Programs concluded that the establishment of no stopping or standing along Route U.S. 206 in Mount Olive Township was warranted. However, a cursory check of N.J.A.C. 16:28A-1.57 revealed that the request for the rule amendment was already promulgated at N.J.A.C. 16:28A-1.57(a)15i(1). The proposed amendment shall delete subparagraph (a)15ii, which is redundant. Signs are required to notify motorists of the restrictions proposed herein.

Social Impact

Since the same no stopping or standing zone restrictions still apply on Route U.S. 206 in Mount Olive Township, Morris County, and the purpose of the proposed amendment is to delete duplicative text, the motoring public will continue to benefit from the safe and efficient flow of traffic along the roadway. Appropriate signs will be erected to advise the motoring public.

Economic Impact

As the proposed amendment only deletes a redundant provision, no economic impact is anticipated. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

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

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

16:28A-1.57 Route U.S. 206

(a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no stopping or standing" zones. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs must be erected:

1.-14. (No change.)

15. No stopping or standing in Mount Olive Township, Morris County:

i. Along both sides:

(1) Within the corporate limits of the Township of Mount Olive.

[ii. Along both sides:

(1) Between the interesection of Flanders-Barley Road and the intersection of Main Street-Flanders Road.]

16.-21. (No change.)

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

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS AND BENEFITS

Lost Pension Checks

Proposed Repeal and New Rule: N.J.A.C. 17:1-1.16

Authorized By: Margaret M. McMahon, Director, Division of Pensions and Benefits

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1994-341.

Submit comments by July 6, 1994 to:

Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeal and new rule at N.J.A.C. 17:1-1.16 changes the procedures for processing matters of lost pension checks. Presently, an indemnity bond is required if a person claims that a pension check is lost. This new rule changes that procedure to only require an affidavit of non-receipt.

Social Impact

The proposed repeal and new rule may affect present and future members of the State-administered retirement systems who may be

involved with lost pension checks. The replacement of the current indemnity bond requirement with an affidavit of non-receipt should facilitate the lost check procedure.

Economic Impact

The proposed new rule will not have any significant, adverse economic effect upon the persons who may be affected by the proposal or the taxpayers who ultimately pay for the administration of the retirement systems. In fact, the persons involved with such lost checks will most likely experience an economic benefit but not be required to pay for an indemnity bond while the system will still be protected by the member's execution of an affidavit that the check involved was not received by the member.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed repeal and new rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule concerns the processing of lost check claims made by retirees or other payees on the Division of Pensions and Benefits.

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

17:1-1.16 Lost pension checks

[(a) On receiving notification that a retirant or other payee has not received a particular check for whatever reason, the Division of Pensions will send the payee an indemnity bond for completion:

1. On receipt of this advice, the Division will, 14 days after the check date, send a stop payment order to the bank on which the check was drawn; however, if theft is alleged, a stop payment order will be sent to the bank immediately.

2. Upon receipt of the completed bond and the receipt of an acknowledgement from the bank of the "Stop Payment Notice", the Division will issue a replacement check.

3. If the payee refuses to execute the bond, the procedure set forth in this subsection will be followed but a replacement will not be issued until 90 days after the check date.

(b) The Division of Pensions, upon being notified that the retirant has not received a particular check, will review its cancelled check file:

1. If the check has been paid, it is examined for signature.

2. A copy of the check together with a forged check affidavit (if signature on the Division's record does not properly compare with the signature on check) is to be sent to the retirant.

3. Upon receipt from the retirant of the properly executed affidavit and issuance of a credit by the bank to the account, a replacement check will be issued.]

(a) Upon receiving notification that a retirant or other payee has not received a particular check for whatever reason, the Division of Pensions and Benefits shall send the payee an affidavit of non-receipt for completion.

1. Upon receipt of the affidavit of non-receipt, the Division shall send a stop payment order to the bank upon which the check was drawn. However, if theft is alleged, a stop payment order shall be sent to the bank immediately upon notification of the alleged theft.

2. Upon receipt of an acknowledgment from the bank of the stop payment notice, the Division shall issue a replacement check.

3. If the payee refuses to execute the affidavit, the procedure set forth in this subsection will be followed but a replacement check will not be issued until 90 days after the check date have passed.

(b) The Division of Pensions and Benefits, upon being notified that the retirant has not received a particular check, shall review its canceled check file.

1. If the check has been paid, a copy of the check, together with a forged check affidavit, shall be sent to the retirant.

2. Upon receipt from the retirant of the properly executed affidavit and issuance of a credit by the bank to the account, a replacement check shall be issued.

(a)

DIVISION OF PENSIONS AND BENEFITS
Workers' Compensation Reductions
Proposed Repeal and New Rule: N.J.A.C. 17:1-4.32

Authorized By: Margaret M. McMahon, Director, Division of Pensions and Benefits.

Authority: N.J.S.A. 52:18A-96 et seq.

Proposal Number: PRN 1994-319.

Submit comments by July 6, 1994, to:

Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed repeal and new rule changes the present practice of permanent retirement allowance reductions based upon the present value retirement annuity factor in favor of a dollar-for-dollar reduction in the pension portion of the allowance over the period of the workers' compensation award. The Division's actuaries have indicated that this would be consistent with industry practice.

Under present practice, workers' compensation offsets are prospective in nature, that is, any workers' compensation benefits the retiree received prior to the date the Division received notice of the award serve to reduce future pension benefits. The proposed amendment would require Division personnel to collect any pension overpayment resulting from workers' compensation benefits received by the retiree prior to the date the pension offset is effected; however, the pensioner is spared the effect of a lifetime reduction in pension benefits.

Additionally, proposed new rule will base the pension adjustments or cost of living adjustments on the full retirement allowance rather than the reduce allowance created by the workers' compensation offset.

Finally, the proposed new rule will apply future actuarial reductions only in accidental disability cases.

Social Impact

The proposed new rule may affect disability retirants from the State-administered retirement systems who have been granted workers' compensation awards and are having their State-administered monthly retirement allowances reduced as a result of the receipt of the workers' compensation award.

At present, public employment pensioners who retire under the several disability retirement provisions of the statutes and thereafter receive workers' compensation payments relating to that public employment receive lifetime reductions in their pension benefits as a result. Further, in the case of retirees of the Public Employee's Retirement System and the Teachers' Pension and Annuity Fund, those reductions are passed onto the pension beneficiaries at the pensioners' death. The proposed amendments limit future pension reductions resulting from the receipt of workers' compensation benefits to only those individuals retiring under the accidental disability provisions of the statutes, and eliminate reductions for pension beneficiaries.

Economic Impact

The proposed new rule would benefit current disability retirants from the State-administered retirement systems who have received workers' compensation awards and are having their monthly retirement allowances reduced as a result. In some cases, the lifetime actuarial reductions have caused some disability retirants to suffer economically an amount in excess of their actual workers' compensation award. Although the proposed new rule might result in an additional cost to the retirement systems, it does not appear to be a significant, adverse economic loss.

The proposed amendments permit COLA payments to be calculated on the full retirement allowance instead of the reduced allowance resulting from the workers' compensation offset. Further, upon the pensioner's death, pension option beneficiaries would receive the full retirement option allowance rather than a reduced allowance derived from the pensioner's reduced allowance.

The proposed amendments will also alter the actuarial method by which the pension reduction due to receipt of workers' compensation benefits is calculated. As an example, we may consider the case of a

55 year old disability retiree who has been awarded a workers' compensation award of $100.00 a week for 52 weeks (or $433.33 a month for 12 months) commencing after the date of retirement. The retiree is receiving a retirement allowance of $700 per month (composed of a pension of $500.00 plus an annuity of $200.00). Under the current method, the retirement reserves are considered to be reduced by the value of the total award of $5,200. This would reduce his retirement allowance by about $580.00 a year for the rest of his life. Under the proposed method, the pension portion of the retiree's allowance would be offset by $433.33 a month only for the 12 months' duration of the award, after which time the full allowance would be restored. The proposed amendment would ease the economic hardship disability retirees now face when reduced pension benefits continue after the workers' compensation award has ceased, and would eliminate the penalty to long-lived pensioners who suffer greater pension reductions over time than the total value of the workers' compensation award.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new rule does not impose reporting, recordkeeping or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, the new rule will not have any effect upon small businesses or private industry in general.

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

17:1-4.32 Workers' [Compensation: Reduction] **compensation; reduction** of retirement allowance

[(a) In the event the Division receives, subsequent to the date a member has retired, a confirmation that he is in receipt of periodic Workers' Compensation benefits, his allowance shall be reduced.

1. The reduction will be based on the actuarial factors applicable to his age at the time the confirmation is received.

2. The allowance will be reduced to take effect as of the first of the month following the date the confirmation is received.]

(a) A member who retires on an accidental disability retirement under the provisions of the applicable statutes governing the various State-administered retirement systems and who receives periodic benefits under the workers' compensation law after the date of retirement shall be subject to a reduction in the pension portion of his or her retirement allowance in the amount of the periodic benefits received after the date of retirement.

1. The reduction shall be a dollar-for-dollar reduction in the pension portion of the retirement allowance in the amount of the periodic benefits for the time period for which the periodic benefits are received.

2. If an accidental disability retiree receives a retirement allowance without reduction and periodic benefits under the workers' compensation law for any time period after the date of retirement, the retiree shall repay to the retirement system the amount of the pension portion of his or her retirement allowance which should have been subject to reduction under the applicable statute and this rule. The repayment may be in the form of a lump sum payment or scheduled as deductions from the retiree's retirement allowances and pension adjustment benefits, except that, if the retiree does not respond by remitting payment in a lump sum within 60 days, the Division shall establish a repayment schedule. In the event of the death of the retiree before full repayment of the amount required under this rule, the remaining balance shall be deducted from any death benefits payable on behalf of the retiree.

3. The reduction under this rule shall not affect the retiree's pension adjustment benefits or survivor benefits that may be payable upon the death of the retiree.

(b) Any retiree or beneficiary receiving pension adjustment benefits based upon a retirement allowance reduced due to receipt of periodic workers' compensation benefits shall be entitled to receive pension adjustment benefits based upon the full retirement allowance.

(a)

DIVISION OF PENSIONS AND BENEFITS
State Health Benefits Commission
Voluntary Furlough Program; Continued Coverage
Proposed Amendments: N.J.A.C. 17:9-4.2, 8.3 and 9.1

Authorized By: State Health Benefits Commission, Patricia A. Chiacchio, Acting Secretary.
Authority: N.J.S.A. 52:14-17.27 et seq.
Proposal Number: PRN 1994-253.

Submit comments by July 6, 1994 to:
Peter J. Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments provide for continued coverage for core benefits, State prescription drug program and State Employees' dental expense program regarding persons participating in the State's voluntary furlough program, as authorized by P.L. 1993, c.297. The continued coverage requires advance payments of the appropriate charges, if any.

Social Impact

The proposed amendments may positively affect present and future participants in the State's voluntary furlough program who wish to continue his or her core benefits, State prescription drug program and State employees' dental expense program during the periods of such voluntary furloughs, by providing for continuing coverage, with the employee remitting, in advance, any required employee contribution.

Economic Impact

The proposed amendments will require payments from the participants for the cost of their contributions to continued coverage during voluntary furloughs, but, in return, they will receive health benefits coverage during their periods of voluntary furlough. The proposed amendments should not have a significant, adverse economic effect upon the State, since the participants will not be paying for their continued coverage themselves, but only for their contributions, if any.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements upon small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions and Benefits only impact upon public employers and/or public employees, the amendments will not have any effect upon small businesses or private industry in general.

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

17:9-4.2 State; full-time defined

(a) (No change.)

(b) Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee, provided that the employee remits in advance to the employer the amount required, if any, as the employee's contribution for coverage.

17:9-8.3 Termination; effective date

(a) (No change.)

(b) Eligibility shall be terminated as follows:

1.-5. (No change.)

6. Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee.

17:9-9.1 State Dental Expense Program; comparable to State Health Benefits Program

(a) (No change.)

(b) Where the otherwise eligible employee elects a voluntary furlough, as authorized by P.L. 1993, c.297, coverage shall continue with the employer paying the costs as if the member were an active employee, provided that the employee remits in advance to the employer the amount required, if any, as the employee's contribution for coverage.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax

Urban Enterprise Zones; Qualified Business; Credits

Proposed Amendments: N.J.A.C. 18:7-15.1, 15.2, 15.4 and 15.5

Proposed Repeal: N.J.A.C. 18:7-15.3

Authorized By: Robert K. Thompson, Acting Director, Division of Taxation.

Authority: N.J.S.A. 52:27H-81 and 54:10A-27.

Proposal Number: PRN 1994-354.

Submit comments by July 6, 1994 to:

Nicholas Catalano
Chief, Tax Services
Division of Taxation
CN 269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

This proposal makes certain modifications to rules on the urban enterprise zone corporation business tax credits, to bring the language of the rules into closer conformity with the language of the applicable statutes. N.J.A.C. 18:7-15.1 is amended to reference the historical chronology of amendments to the Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq. A cross reference to sales and use tax and Urban Enterprise Zone Authority rules is added. Rules on the sales and use tax and urban enterprise zones are in N.J.A.C. 18:24-31. Rules promulgated by the Urban Enterprise Zone Authority are in N.J.A.C. 12A:120 and 12A:121.

P.L. 1988, c.93 and P.L. 1993, c.367 modified the definition of a "qualified business" to allow a business to be qualified if 25 percent of its full time employees were resident not only in the zone in which the business is located but also resident in another zone or within a qualifying municipality, or were unemployed or on public assistance for at least six months, instead of one year, prior to being hired. P.L. 1993, c.367 also included in the definition of "qualifying municipality" the seven municipalities in which the six zones were to be designated under P.L. 1983, c.303. These changes are incorporated into the definitions rule, N.J.A.C. 18:7-15.2. This rule is amended to make clear that the qualified business must be a corporation subject to the corporation business tax in order to claim the credits against the tax. There is no statutory provision allowing for a "pass through" of the credits from businesses operating as partnerships in the zones to corporations which are partners in the partnerships but which are not themselves "qualified businesses."

The rule on net worth tax benefits, N.J.A.C. 18:7-15.3, is repealed because the net worth tax was phased out under N.J.S.A. 54:10A-5 for accounting and privilege periods beginning on and after July 1, 1986. The provision on net worth tax benefits is therefore no longer relevant.

N.J.A.C. 18:7-15.4 is amended to clarify that the employee tax credit is a one-time credit, that employees for which the credit is claimed must be full-time permanent employees, and that the employee may be a resident of either the qualifying municipality in which the designated enterprise zone is located or any other qualifying municipality in which an urban enterprise zone is located. These criteria were mandated by P.L. 1988, c.93. P.L. 1988, c.93 also made the credit available only for new full-time permanent employees who have been employed by the qualified business for at least six continuous months during the year for which the credit is claimed. For a new employee to be considered a full-time permanent employee, the total number of full-time permanent employees, including the new employee, employed by the qualified business during the calendar year must exceed the greatest number of full-time permanent employees employed in the zone by the qualified business during any period calendar year since the zone was designated. These requirements of P.L. 1988, c.93 are brought into the rules in proposed N.J.A.C. 18:7-15.4(f).

N.J.A.C. 18:7-15.5(b) is proposed for deletion because it relates to an exemption from net worth tax for qualified businesses which is no longer relevant since the net worth tax has been phased out, as explained above. Certain other recodifications of subsections and changes in cross references are proposed for purposes of accuracy.

Social Impact

The proposed amendments and repeal should have a beneficial social impact by correcting inaccuracies in the rules dealing with urban enterprise zone corporation tax credits. With the expansion in the number of urban enterprise zones authorized by P.L. 1993, c.367, it is important that the rules relating to the credits accurately reflect the applicable statutory provisions. The amendments will ensure that taxpayers in urban enterprise zones and taxpayers wishing to avail themselves of the credits will be able to review up-to-date rules explaining the credits. The reaction to the amendments should be positive since the proposal eliminates inaccuracies in the rules which could lead to errors in tax preparation.

Economic Impact

The proposed amendments affect the eligibility of corporations in urban enterprise zones to claim the urban enterprise zone employee and investment tax credits. The amendments only reflect statutory provisions enacted in 1988 and 1993, however, and should have no economic impact beyond the impact of the statutes themselves. The effect of the provisions, in general, was to ease restrictions on the availability of the credit by allowing employees for which the employee credit is claimed to have been unemployed for only six months instead of one year prior to being hired, but at the same time restricted the availability of the credit to full-time, not part-time employees. The employee tax credit was structured by statute to limit it to businesses which expand in the zones and do not simply hire away persons already employed elsewhere in the area. The urban enterprise zone employee tax credit was aimed at increasing employment among the unemployed and those on welfare. The investment tax credit, together with the employee tax credit and other stimulative elements in the Urban Enterprise Zone Act, were intended to stem the decay of cities and promote economic growth in those areas.

Regulatory Flexibility Analysis

The proposed amendments apply to all corporate taxpayers, including small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which might qualify for urban enterprise zone employee tax credits. The amendments relate to the aspect of becoming a "qualified business" for purposes of claiming the credits, and to limits on the credit itself. The amendments only reflect language in the applicable statutes, as described in the Summary above, and should therefore have no impact beyond that intended by the drafters of the statutes. The rules reflect the statutory compliance requirements for obtaining the urban enterprise zone employee tax credits, as described in the Summary. No recordkeeping or reporting requirements are imposed on small businesses. Small businesses in urban enterprise zones may wish to obtain professional services, charging at normal rates, to review the rules to determine if they can qualify for the credits. In general, the amendments should serve to reduce the need for professional services by eliminating inaccuracies in the rules and by bringing the rules up to date with the applicable provisions.

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

SUBCHAPTER 15. URBAN ENTERPRISE ZONES ACT

18:7-15.1 General

(a) The New Jersey Urban Enterprise Zones Act, Chapter 303, Laws of 1983, N.J.S.A. 52:27H-60 et seq., approved August 15, 1983, provides for the establishment of up to [ten] **10** urban enterprise zones in urban areas suffering from high unemployment and

economic distress. **P.L. 1985, c.391 made certain changes to eligibility requirements for designation as a zone. P.L. 1988, c.93 modified the definition of a qualified business, made adjustments to the eligibility requirements for the employee tax credit, and provided for an alternative investment tax credit. P.L. 1993, c.367 further modified the definition of a qualified business and provided for the designation of 10 additional enterprise zones.** Zones are designated by an Urban Enterprise Zone Authority. The Authority may grant certain corporation tax and other benefits to businesses existing in, or formed in, enterprise zones, which have met the definition of a qualified business. This subchapter of the corporation tax rules sets forth the possible benefits, the necessary definitions, and the procedures for qualifying for any or all of these corporation tax benefits. **Rules on the sales and use tax and urban enterprise zones are in N.J.A.C. 18:24-31. For Urban Enterprise Zone Authority rules and policies, see N.J.A.C. 12A:120 and 12A:121.**

(b) (No change.)

18:7-15.2 Definitions

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

A "qualified business" means either:

1. (No change.)

2. An entity which, after that designation but during the designation period of 20 years, becomes newly engaged in the active conduct of a trade or business in that zone, and has at least 25 percent of its full-time employees at a business location in the zone, who meet at least one of the following criteria:

i. Resident within the zone, **within another zone,** or within [the] **a qualifying** municipality [within which the zone is located];

ii. Either unemployed, while residing in New Jersey, for a least [one year] **six months** prior to being hired, or recipients of New Jersey public assistance programs, for at least [one year] **six months** prior to being hired;

iii. Determined to be economically disadvantaged pursuant to the Jobs Training Partnership Act, P.L. 97-300 (29 United States Code 1501, et seq.). Section 1503(8) of that Act defines the term as follows:

"The term 'economically disadvantaged' means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, state or local welfare program; (B) has, or is a member of a family which has received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, or (ii) 70 percent of the lower living standard income level; (C) is receiving food stamps pursuant to the Food Stamp Act of 1977; (D) is a foster child on behalf of whom state or local government payments are made; or (E) in cases permitted by regulations of the Secretary (U.S. Secretary of Labor), is an adult handicapped individual whose own income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements."

For purposes of the corporation business tax credits, the "qualified business" must be a corporation. The credits shall not be passed through a partnership doing business in a zone to an unqualified corporation which is a partner in the partnership.

...

"Qualifying municipality" means any municipality in which there was, in the last full calendar year immediately preceding the year in which the municipality makes application for enterprise zone designation, an annual average of at least 2,000 unemployed persons, and in which the municipal average annual unemployment rate for that year exceeded the state average annual unemployment rate; except that any municipality which qualifies for state aid pursuant to P.L. 1978, c.14 (C.52:27D-178, et seq.) shall qualify if its municipal average unemployment rate for that year exceeded the state average annual unemployment rate. The annual average of unemployed persons and the average annual unemployment rates shall be estimated for the relevant calendar year by the Office of Labor Statistics, Division of Planning and Research of the State Department of Labor. **For purposes of P.L. 1983, c.303 (N.J.S.A. 52:27H-60 et seq.), the seven municipalities in which the six enterprise zones are to be designated pursuant to criteria according priority consideration for designation of these zones pursuant to section 7 of P.L. 1983, c.303 (N.J.S.A. 52:27H-66) shall be deemed qualifying municipalities.**

18:7-15.3 [Net worth tax benefits] **(Reserved)**

[(a) Section 17 of the Urban Enterprise Zones Act (N.J.S.A. 52:27H-76) is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 17 applicable when the enterprise zone was designated. Section 17 provides that any qualified business (as defined in N.J.A.C. 18:7-15.2) employing a larger number of persons at a place of business within a designated enterprise zone than at all other places of business of the taxpayer within New Jersey, shall be exempt from the net worth tax under N.J.S.A. 54:10A-5(a) and from the tax imposed by N.J.S.A. 54:10A-5(f) for a period of 20 tax years from the date of designation of the enterprise zone, or for a period of 20 tax years from the date upon which taxpayer first became subject to the Corporation Business Tax Act (N.J.S.A. 54:10A-1, et seq.), whichever date is later. The 20 year benefit period, once properly granted, is not affected by the termination of the enterprise zone after 20 years. The net worth tax exemption applies to any tax year during the 20 year period during which the qualified business is carried on in an enterprise zone for at least one day. The provisions for this section are subject to the phase-out of the net worth tax under N.J.S.A. 54:10A-5(a). For accounting or privilege periods beginning on or after July 1, 1986, the net worth tax does not exist.

(b) See N.J.A.C. 18:7-15 for applicable minimum taxes.]

18:7-15.4 Credits against total tax for new employees **and investments** in urban enterprise zones

(a) (No change.)

(b) A **one-time** credit against the tax of $1,500 shall be allowed for each new **full-time, permanent** employee employed at that location who is a resident of the qualifying municipality (as defined in N.J.A.C. 18:7-15.2) in which the designated enterprise zone is located, **or any other qualifying municipality in which an urban enterprise zone is located,** who was, immediately before employment by the taxpayer, unemployed for at least 90 days, or dependent upon public assistance as the primary source of income. Further qualifications for this benefit are in [(d)] **(e) and (f)** below.

(c) A **one-time** credit against the tax of $500.00 shall be allowed for each **new full-time, permanent** employee employed at that location who is a resident of **the qualifying municipality (as defined in N.J.A.C. 18:7-15.2) in which the designated enterprise zone is located, or** any **other** qualifying municipality in which [a designated] **an urban** enterprise zone is located, who does not meet the requirements of [N.J.A.C. 18:7-15.4](b) **above,** and who was not, immediately before employment by the taxpayer, employed at a location within the qualifying municipality in which the qualified business is located. Further qualifications for this credit are in [(d)](e) **and (f)** below.

(d) (No change.)

(e) The enterprise zone employee tax credits provided in (b) and (c) above, shall be allowed in the tax year immediately following the tax year in which the new **full-time, permanent** employee was first employed by the taxpayer, but shall only be allowed if the employee for whom credit is claimed was employed by the taxpayer for at least six continuous months during the tax year for which the credit is claimed. The credit shall be permitted in any tax year of a 20 year period from the date of designation of the enterprise zone, or in any tax year of a period of 20 tax years from the date within that designation period upon which the taxpayer is first subject to the corporation business tax under N.J.S.A. 54:10A-1[,] et seq., whichever is later. The termination of designation as an enterprise zone at the end of the 20 year designation period shall not terminate the eligibility period under this section.

(f) The employee tax credit is available only for new full-time, permanent employees who have been employed by the qualified business for at least six continuous months during the year for

which the credit is claimed. For a new employee to be considered a full-time, permanent employee, the total number of full-time, permanent employees, including the new employee, employed by the qualified business during the calendar year must exceed the greatest number of full-time, permanent employees employed in the zone by the qualified business during any prior calendar year since the zone was designated. "Calendar year" means the year the new employees are hired. The comparison is made to the peak employment on any date during the calendar years prior to the calendar year in which the new employees are hired, not the employment level on the last date of prior calendar years. The new employees must then continue to be employed during the following year in which the credit is claimed for six continuous months.

Example 1: ABC Company is a qualified business. The highest number of full-time permanent employees the company has employed in any prior calendar years since the zone was designated was 100. ABC Company employs 100 employees in 1985 and hires five new employees in June 1995. The five new employees reside in the qualifying municipality in which the zone is located and, immediately prior to employment by the qualified business, were unemployed for at least 90 days. The five new employees remain with the company through June 30, 1996. ABC may claim the employee tax credit for the 1996 tax year for the employees hired in 1995. The employees remained employed by ABC Company for at least six continuous months during the year for which the credit is claimed (1996). The five new employees are considered full-time permanent employees because the total number of full-time permanent employees, including the new employees, employed by ABC during the 1995 calendar year (105) exceeded the greatest number of full-time permanent employees employed in the zone by ABC in prior calendar years (100). The total credit is $7500 ($1500 × 5).

Example 2: Same facts as above except that in March 1996 ABC Company terminated two of the employees hired in 1995, and in April 1996 hires three new employees. The new employees reside in the qualifying municipality in which the zone is located and, although they were not unemployed for at least 90 days prior to employment by the qualified business or on public assistance, they were not employed, immediately prior to employment by the qualified business, within the qualifying municipality in which the qualified business is located. The new employees remained with ABC through December 1997. ABC may claim the $1500 credit for tax year 1996 only for the three employees hired in 1995 who were not terminated, since the two terminated employees would not have worked for six continuous months during the year for which the credit is claimed. ABC may claim the $500.00 credit for tax year 1997 for each of the three employees hired in 1996 since they remained with ABC for six continuous months in 1997 and the highest number of employees in 1996 (106) exceeded the highest number of full-time permanent employees (105) in prior calendar years. The $1500 credit could not be claimed for the three employees hired in 1996 because they were not unemployed or on public assistance.

[(f)]**(g)** Enterprise zone employee tax credits **or enterprise zone investment tax credits** under this section shall not reduce the taxpayer's tax liability under N.J.S.A. 54:10A-1[,] et seq. in any tax year by more than 50 percent or the amount otherwise due, but any unused **employee or investment tax** credits may be carried forward by the taxpayer to the next succeeding tax year and be applied against 50 percent of that year's tax, but not beyond the 20 year totals set forth in [(d)]**(e)** above.

[(g)]**(h)** [For minimum tax, see N.J.A.C. 18:7-15.3(b).] **The credit shall not exceed an amount which would reduce the total tax liability below the statutory minimum. For minimum tax see N.J.A.C. 18:7-3.4.**

18:7-15.5 Qualification for benefits

[(a)] There is no formal procedure for registration as a qualified business for the purpose of obtaining the corporation tax benefits. However, each annual CBT-100 Corporation Business Tax Return which claims any urban enterprise zone corporation tax benefits must include proof that it is a qualified business. This proof may consist of a certificate or other proof of status as a qualified business for sales tax purposes under N.J.A.C. 18:24-31. If a sales tax certificate or some other form of proof has not been obtained, the taxpayer should attach a statement setting forth how it qualifies as a "qualified business" as defined in N.J.A.C. 18:7-15.2, with sufficient detail to permit verification by the Division of Taxation.

[(b) For the purposes of the exemption for all net worth tax described in N.J.A.C. 18:7-5.3, the qualified business must have more employees at the place or places of business in an enterprise zone than the total number of employees at all other places of business in New Jersey on the last day of its accounting period. If this qualification is met, the qualified business is exempt from the net worth tax.]

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Definitions, Service, Construction

Proposed Readoption with Amendments: N.J.A.C. 19:10

Authorized By: Public Employment Relations Commission, James W. Mastriani, Chairman.

Authority: N.J.S.A. 34:13A-11.

Proposal Number: PRN 1994-340.

Submit comments by July 6, 1994 to:

James W. Mastriani, Chairman
Public Employment Relations Commission
CN 429
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order 66(1978), the Public Employment Relations Commission proposes to readopt, with amendments, N.J.A.C. 19:10-1.1 through N.J.A.C. 19:10-6.1. These rules define terms, set forth service and filing requirements, provide how Commission rules should be construed and applied, allow delegation of the Commission's authority, describe how the Commission is organized and provide for the filing of rulemaking petitions by interested parties. The entire chapter is due to expire on September 5, 1994. A summary of each section in N.J.A.C. 19:10 follows:

N.J.A.C. 19:10-1.1 defines terms used in the Commission's rules. Amendments are proposed which define the position of Director of Arbitration and which capitalize the titles of the Directors of Conciliation, Representation and Unfair Practices in order to conform the definitions to previously amended chapters of the Commission's rules. The proposal also corrects an error in the technical term "Showing of Interest" which as proposed is singular and reflects its proper use in N.J.A.C. 19:11.

N.J.A.C. 19:10-2.1 establishes how time limits for the service and filing of papers with the Commission will be construed and applied. A proposed amendment to this section states that facsimile transmission is not an acceptable means of filing pleadings with the Commission. Other proposed changes list the Commission's mailing address and its address for courier deliveries and service made in person.

N.J.A.C. 19:10-2.2 specifies the form, size, and number of copies of documents to be filed with the Commission and lists the parties authorized to sign the original of any document to be filed. Proposed amendments eliminate references to carbon copies of typewritten documents in order to reflect changes in technology.

N.J.A.C. 19:10-2.3 provides how documents filed with the Commission and issued by the Commission shall be served. Proposed amendments eliminate references to service of papers by telegraph and the use of telegraph receipts to prove service to reflect changes in technology.

N.J.A.C. 19:10-3.1 provides that the rules will be liberally construed to prevent injustice and effectuate the purposes of the New Jersey Employer-Employee Relations Act. A proposed amendment adds a subsection (c) which would provide that the burden of proof will not be relaxed, in order to conform this rule to N.J.A.C. 1:1-1.3.

N.J.A.C. 19:10-3.2 validates actions taken prior to the effective date of the rules despite departures from procedural requirements imposed by the rules.

N.J.A.C. 19:10-4.1 provides that Commission officers specified in the rules are acting with the powers necessary to discharge the delegated duties, but that the Commission retains the authority to designate itself or some other officer to perform the specified acts.

N.J.A.C. 19:10-5.1 describes the Commission's table of organization and the functions of its major sections. Proposed amendments conform the titles of the Commission's Directors to the amendments proposed for N.J.A.C. 19:10-1.1 and note the existence of deputies to the Commission's general counsel in order to more accurately describe the staff of the Commission.

N.J.A.C. 19:10-6.1 specifies the procedure by which any interested person may petition the Commission to make, amend or repeal any rule.

Social Impact

The readoption of this chapter with the proposed minor amendments will permit the continued smooth functioning of the Public Employment Relations Commission in furtherance of the goal of the New Jersey Employer-Employee Relations Act—the prevention or prompt settlement of labor disputes in the public sector. Readoption of these rules will permit the users of the Commission's services to properly file petitions or other documents to allow the Commission to process cases and requests for services smoothly.

Economic Impact

The readoption of this chapter with the proposed minor changes will not have any economic impact on the Commission, other entities of State government or the public, beyond the increased efficiency entailed in the amicable resolution of disputes and the avoidance of the need for costly litigation.

Regulatory Flexibility Statement

The readoption of this chapter with the proposed minor changes will not have any impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as the Commission has jurisdiction over public employers and public employees only.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:10.

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

19:10-1.1 Definitions

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

. . .

"Director of Arbitration" means that officer of the commission designated to act on behalf of the commission with respect to arbitration procedures contained in N.J.A.C. 19:12 and 19:16.

"Director of [impasses] **Conciliation**" means that officer of the commission designated to act on behalf of the commission with respect to those matters related to negotiations impasses[, and arbitration procedures] contained in [chapters 12 and 16 of these rules] **N.J.A.C. 19:12 and 19:16.**

"Director of [representation] **Representation**" means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to representation procedures contained in [chapter 11 of these rules] **N.J.A.C. 19:11.**

"Director of [unfair practices] **Unfair Practices**" means that officer of the commission designated to act on behalf of the commission with respect to those matters relating to unfair practice proceedings contained in [chapter 14 of these rules] **N.J.A.C. 19:14.**

"Election agent" means that officer of the commission designated to conduct elections in accordance with the procedures set forth in [chapter 11 of these rules] **N.J.A.C. 19:11.**

. . .

"Showing of interest[s]" means a designated percentage of public employees in an allegedly appropriate negotiations unit, or a negotiations unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiations representative or have signed a petition requesting an election for decertification of public employee representative. When requesting certification, such designations shall consist of written authorization cards or petitions, signed and dated by employees normally within six months prior to the filing of the petition, authorizing an employee organization to represent such employees for the purpose of collective negotiations; current dues records; an existing or recently expired agreement; or other evidence approved by the director of representation. When requesting decertification, such designations shall consist of written petitions, signed and dated by employees normally within six months prior to the filing of the petition, indicating that the employees no longer desire to be represented for purposes of collective negotiations by the recognized or certified exclusive representative or by any other employee representative.

. . .

19:10-2.1 Time for filing papers; **Commission address**

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

(d) When these rules require the filing of any paper, **the original of** such document must be received by the commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted. **Facsimile transmission will not be accepted as a proper or timely filing.**

(e) Any filings or other correspondence sent to the Commission by mail should be addressed to:

Public Employment Relations Commission
CN 429
Trenton, New Jersey 08625-0429

(f) Any filings or other correspondence sent to the Commission by courier or in person should be delivered to:

Public Employment Relations Commission
495 West State Street
Trenton, New Jersey 08625-0429

19:10-2.2 Form of documents

(a) (No change.)

(b) Except as otherwise provided in these rules, any documents or papers shall be filed with four copies in addition to the original. All matters filed with the commission shall be printed, typed or otherwise legibly duplicated on letter size paper (8½ inch by 11 inch); [carbon] copies [of typewritten matter] will be accepted only if they are clearly legible.

(c) (No change.)

19:10-2.3 Service of pleading and other process; proof of service

(a) Notices of hearings, decisions, orders and other process or papers may be served personally or by registered or certified mail [or by telegraph,] and proof of service established by the verified return of the individual serving the same, setting forth the manner of such service[,] **or** return post office receipt [or telegraph receipt].

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

19:10-3.1 Rules to be liberally construed

(a) [Whenever] **Except as stated in (c) below, whenever** the commission or a designated officer finds that unusual circumstances or good cause exists and that strict compliance with the terms of these rules will work an injustice or unfairness, the commission or such officer shall construe these rules liberally to prevent injustices and to effectuate the purposes of the act (N.J.S.A 34:13A-1 et seq.).

(b) (No change.)

(c) In accordance with N.J.A.C. 1:1-1.3, the burden of proof shall not be relaxed.

19:10-5.1 Description of organization

(a) (No change.)

(b) The staff of the commission consists of the personnel of the Division of the Public Employment Relations, all of whom have been designated officers of the commission (N.J.A.C. 19:10-1.1). The division is divided into three general sections—impasses, representation and unfair practices, which correspond to the three main areas of responsibility delegated to the commission by the act. (See N.J.S.A. 34:13A-6(b); N.J.S.A. 34:13A-6(d); and N.J.S.A. 34:13A-5.4(c), respectively.) The commission has designated a staff member of the division to be the director of the particular section

of the division which administers that area of responsibility and has delegated to that officer the powers conferred on the commission in connection with the discharge of the duty or duties delegated as set forth in the appropriate chapters of these rules. (See N.J.A.C. 19:10-1.1 for the definition of [director] **Director** of [impasses] **Arbitration; Director of Conciliation; Director of Representation; and Director of Unfair Practices.** [N.J.A.C. 19:10-1.1 for the definition of director of representation; and N.J.A.C. 19:10-1.1 for the definition of director of unfair practices.)] An additional area of statutory responsibility, scope of negotiations proceedings (N.J.S.A. 34:13A-5.4(d)), is administered under the direct supervision of the chairman.

(c) The staff of the commission also includes a full-time general counsel **and one or more deputies** who render[s] legal advice with respect to commission matters, and represent[s] the commission in judicial proceedings pursuant to [a] special counsel appointments under N.J.S.A. 52:17A-13. Additionally, the chairman of the commission is assisted in the performance of his or her duties, particularly in the area of scope of negotiations proceedings, by an individual designated by the commission as the special assistant to the chairman.

(d) (No change.)

(a)

CASINO CONTROL COMMISSION

Applications

Position Endorsements; Experience and Training Requirements

Gaming Schools

Courses and Programs of Instruction; Minimum Hours

Proposed New Rules: N.J.A.C. 19:41-1.5A, 1.8 and 1.9; and 19:44-8.6

Proposed Amendments: N.J.A.C. 19:44-5.2 and 8.3

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

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 80a, 86a, 89, 90 and 94.

Proposal Number: PRN 1994-331.

Submit written comments by July 6, 1994 to:

Rose Papa-Zaino
Supervising Analyst, Employee License Bureau
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

In accordance with the Casino Control Act ("the Act"), each casino key employee, casino employee or gaming school employee license issued by the Commission is endorsed with the particular position that the licensee is qualified to hold. N.J.S.A. 5:12-89c, 90d and 92b. The Casino Control Commission ("Commission") recently published proposed new rules which codified the various positions which may be endorsed on a casino employee license. See 26 N.J.R. 910(a). The Commission also intends, in the near future, to publish new rules to codify positions which may be endorsed on a casino key employee license.

In order to obtain a position endorsement on an employee license, the licensee or applicant must demonstrate by clear and convincing evidence that he or she is qualified to perform the duties and responsibilities of that position. N.J.S.A. 5:12-89b(3), 90b. Proposed new rule N.J.A.C. 19:41-1.9 would codify the qualification standards for endorsement of table games positions. These rules list the training and experience which must be demonstrated by persons who seek a license endorsement as a dealer, boxperson, floorperson, pit boss, shift manager and casino manager. Ultimately, the Commission will propose similar experiential standards for other types of positions.

Proposed new rule N.J.A.C. 19:41-1.5A includes general provisions regarding position endorsements. The rule makes clear that an employee licensee with an endorsement in a "core game" may also perform the functions of that position in a variation of that core game without further endorsement, although some training may be required in the variation game. Proposed new rule N.J.A.C. 19:41-1.8 similarly sets forth general criteria for satisfying the experience and training standards. The rule states that the requisite experience must have been acquired in a legally operated gaming establishment or, where specified, a licensed gaming school. The rule also specifies the employment data which must be provided as evidence of work experience.

Related amendments and a new rule are proposed in N.J.A.C. 19:44 (Gaming Schools). Proposed new rule N.J.A.C. 19:44-8.6 specifies the requisite course content for "supervisory training courses." Such courses are designed to prepare a floorperson or pit boss for employment in a second or subsequent game or as a poker shift supervisor. See proposed N.J.A.C. 19:41-1.9(c)3, (d)2 and (e). N.J.A.C. 19:44-5.2 would be amended so as to specify the experience requirements for those gaming school instructors who will teach the supervisory training courses. A proposed new subsection, N.J.A.C. 19:44-8.3(c), lists the minimum hours of instruction for a supervisory training course. Proposed new N.J.A.C. 19:44-8.3(a)2v likewise lists the minimum hours required for a student who is certified to deal poker and who is being trained to deal a second or subsequent game. The game of red dog has been deleted from N.J.A.C. 19:44-8.3(a)1. This deletion is a result of the Commission's determination that red dog is actually a variation game of blackjack, baccarat/mini-baccarat, poker and pai gow poker. No formal training is required by the Commission for a variation game. Finally, the proposal would amend N.J.A.C. 19:44-8.3(a)1 to revise the minimum hours of training and instruction for a student being trained to deal a first game.

These new rules and amendments are the product of a committee consisting of representatives from the casino industry, gaming schools, the Division of Gaming Enforcement and the Commission. The committee was initially developed to address experiential and training requirements. At the committee's initial meeting in 1993, the task at hand was modified somewhat to address the implementation of poker in Atlantic City casinos.

The majority of the casino industry and gaming school suggestions are addressed by this proposal. However, some of the suggestions regarding minimum training hours have been modified. Several training courses were modified to be consistent with other courses. Some course hours were reduced (for example, pai gow poker) and some were increased (for example, poker) based upon the Commission's practical experience and observations during the implementation and continued existence of these games in Atlantic City.

Social Impact

The proposed qualification standards and course requirements will ensure that each casino key employee, casino employee and gaming school employee licensee has sufficient training and experience necessary to perform the duties and responsibilities of his or her position. Such standards are essential to a system of regulation that will ensure the qualification of persons involved in the operation of gaming. As such, the rules will help to maintain the public trust and confidence in the regulatory process and in casino gaming operations.

Further, the codification of these requirements should benefit employee licensees and applicants, as well as the regulatory agencies, by providing clear and consistent standards for endorsement of table games positions.

Economic Impact

For the most part, the proposed new rules and amendments codify existing qualification standards and thus are not expected to result in any new or increased economic impact.

While employee licensees and applicants will incur some costs in acquiring such training and experience, the enforcement of uniform standards is essential to ensuring the qualifications of persons licensed by the Commission for employment in the Atlantic City casino industry. Licensees and applicants may also expend some time and expense in providing the documentation necessary to demonstrate qualification, but such costs will likely be minimal in most cases. In addition, the new rules will allow certain licensees to take advantage of the proposed supervisory training courses, rather than incur the time and expense required to obtain dealing experience. Finally, the regulatory agencies will continue to devote resources to reviewing each applicant's qualifications for licensure under the Casino Control Act.

Regulatory Flexibility Analysis

For the most part, the proposed new rules and amendments affect casino licensees and applicants and their individual employees, none of

which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, proposed amendments to Chapter 44 impact on gaming school licensees, some of which may qualify as a small business. The proposed amendments to N.J.A.C. 19:44-8.3 set forth the minimum hours required for various courses offered by gaming schools. The proposed amendments to N.J.A.C. 19:44-5.2 specify minimum experiential requirements for certain gaming school instructors. Further, proposed N.J.A.C. 19:44-8.6 sets forth minimum standards for supervisory training courses.

Gaming schools are already required to obtain Commission approval of each course of instruction, by submitting a detailed course outline. See N.J.A.C. 19:44-8.1 and 8.2. Each gaming school must also establish that it has in its employ properly licensed instructors for its courses. See N.J.A.C. 19:44-3.2. Thus, the revised course and instructor standards do not involve any new reporting or recordkeeping requirements. It is not anticipated that any professional services would be required to comply with the proposed rules, or that there will be any additional capital costs involved.

It would not be feasible for the Commission to exempt small businesses from compliance with the course and instructor standards set forth in N.J.A.C. 19:44 or, in applying these standards, to differentiate between gaming schools based upon size. The enforcement of uniform standards is imperative if the Commission is to ensure that all persons trained in New Jersey licensed gaming schools are qualified for employment in the casino industry. Therefore, no differing standards based on business size are offered.

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

19:41-1.5A Position endorsements

(a) In accordance with N.J.S.A. 5:12-89c, 90d, 92b and 102, each casino key employee, casino employee, gaming school employee or junket representative license issued by the Commission shall be endorsed with the particular positions which the licensee is qualified to hold.

(b) An employee licensee with a position endorsement in a particular core game may also perform the functions of that position in any variation game thereof without further endorsement of his or her license, provided that he or she completes any additional minimum training required by the Commission for the variation game. For purposes of this subchapter:

1. Blackjack, craps, baccarat/minibaccarat, roulette, poker, pai gow poker and pai gow are "core games"; and

2. The following are "variation games":

i. Sic bo and big six are variation games of blackjack, craps, baccarat/minibaccarat, roulette, poker, pai gow poker and pai gow;

ii. Red dog is a variation game of blackjack, baccarat/minibaccarat, poker, pai gow poker;

iii. Pokette is a variation game of roulette; and

iv. Double down stud is a variation game of poker and pai gow poker.

19:41-1.8 Experience and training requirements

(a) Each employee licensee or applicant shall establish by clear and convincing evidence that he or she meets the education, training and experience requirements for the particular position for which an application for endorsement has been filed.

(b) Any experience requirement set forth in N.J.A.C. 19:41-1.9 shall be satisfied only by employment in a legally operated gaming establishment in any jurisdiction or, where otherwise specified, in a licensed gaming school in this State.

(c) No experience shall be credited toward the requirements in N.J.A.C. 19:41-1.9 unless such experience is evidenced at the time of application by accurate records which indicate the following information:

1. The nature of the position;

2. The location of the gaming establishment or, where applicable, the gaming school;

3. Date of hire and date of termination;

4. Whether employment was full-time or part-time;

i. For purposes of this subchapter, "full-time" employment means employment for a minimum of 130 hours per month;

5. Whether the period of employment was continuous or intermittent; and

6. The number of hours worked, recorded in accordance with N.J.A.C. 19:43-9.4 or, for experience acquired in another jurisdiction, the months of employment and the approximate number of hours worked per month.

(d) For purposes of satisfying the experience requirements in N.J.A.C. 19:41-1.9:

1. One "month" means 130 hours; and

2. For purposes of satisfying any experiential requirement which is expressed in hours, no more than 130 hours of experience shall be credited for hours worked in any one calendar month unless such hours were recorded in accordance with N.J.A.C. 19:43-9.4.

(e) In addition to any other requirement set forth in this subchapter, no person shall be employed by a casino licensee to perform the duties and responsibilities of a "casino manager," "shift manager," "surveillance director," "surveillance supervisor" or "surveillance employee" as set forth in N.J.A.C. 19:41-1.6 and 1.7 unless he or she demonstrates knowledge of the basic rules of each authorized game offered by the casino licensee, evidenced by either:

1. Experience in that game; or

2. Completion of an approved training course in that game.

19:41-1.9 Qualification standards: table games positions

(a) The qualification standards for a "dealer" endorsement are as follows:

1. Satisfactory completion of an approved course of study in a gaming school in this State in the game for which endorsement is sought; or

2. At least five months of experience as a dealer or supervisor in the game for which endorsement is sought.

(b) The qualification standards for a "boxperson" endorsement are as follows:

1. Both of the following:

i. The experience or training required in (a) above for a "dealer" endorsement in craps; and

ii. At least 1,500 hours or 12 months of additional experience as a dealer, boxperson or floorperson in craps; or

2. At least 12 months experience as a dealer, boxperson, floorperson or pit boss in craps if such experience was acquired within the three years preceding application.

(c) The qualification standards for a "floorperson" endorsement are as follows:

1. Blackjack, baccarat/minibaccarat, roulette, poker, or pai gow poker as the first game in which "floorperson" endorsement is sought:

i. The experience or training required in (a) above for a "dealer" endorsement in the game for which the "floorperson" endorsement is sought, and either of the following:

(1) At least 1,500 hours or 12 months of additional experience as a dealer or supervisor for the game in which "floorperson" endorsement is sought; or

(2) At least 1,125 or nine months of additional experience as a dealer or supervisor for the game for which "floorperson" endorsement is sought, if such experience was acquired within the three years preceding application; or

ii. At least 12 months of experience as a dealer or supervisor in the game for which "floorperson" endorsement is sought, if such experience was acquired within the three years preceding application;

2. For craps as the first game in which "floorperson" endorsement is sought:

i. The experience or training required in (b) above for a "boxperson" endorsement; and

ii. Either of the following:

(1) At least 1,000 hours or eight months as a boxperson or floorperson in craps; or

(2) At least 750 hours or six months as a boxperson or floorperson in craps, if such experience was acquired within the three years preceding application;

3. For blackjack, baccarat/minibaccarat, roulette, poker, or pai gow poker as the second or subsequent game in which a "floorperson" endorsement is sought:

i. The experience or training required in (a) above for a "dealer" endorsement in the game in which floorperson endorsement is sought, and either:

(1) At least 500 hours or four months of additional experience as a dealer or supervisor in the game for which "floorperson" endorsement is sought; or

(2) At least 350 hours or three months of additional experience as a dealer or supervisor in the game for which "floorperson" endorsement is sought, if the applicant has a total of at least 1,500 hours of experience as a boxperson or supervisor in any one or more authorized games; or

ii. Both of the following:

(1) At least 4,500 total hours or 36 months of experience as a supervisor or instructor, including experience in at least two authorized games; and

(2) Completion of an approved supervisory course or, for any applicant for "floorperson" endorsement within one year from (the operative date of this rule) completion of an approved dealer training course in the game in which "floorperson" endorsement is sought;

4. An employee licensee with a "boxperson" endorsement may apply for a "floorperson" endorsement in blackjack, baccarat/minibaccarat, roulette, poker, or pai gow poker in accordance with the standards in (c)3 above; and

5. For craps as the second or subsequent game in which a "floorperson" endorsement is sought:

i. The experience or training required in (b) above for a "boxperson" endorsement; and

ii. Either of the following:

(1) At least 500 hours or four months of additional experience as a boxperson, floorperson or pit boss in craps; or

(2) At least 350 hours or three months of additional experience as a boxperson, floorperson or pit boss in craps, provided that the applicant has a total of at least 1500 hours as a floorperson or pit boss.

(d) The qualification standards for a "pit boss" endorsement are as follows:

1. For the first game in which "pit boss" endorsement is sought:

i. A total of at least 24 months of experience in one or more of the following positions:

(1) Boxperson, floorperson or pit boss in any authorized game;

(2) Poker shift supervisor;

(3) Poker room manager; or

(4) Instructor in a licensed gaming school in this State; and

ii. The experience or training required in (c)1 or (c)2 above for "floorperson" endorsement in the game for which "pit boss" endorsement is sought;

2. For blackjack, baccarat/minibaccarat, roulette, or pai gow poker as the second or subsequent game in which "pit boss" endorsement is sought:

i. The experience or training required in (c)3i above for a "floorperson" endorsement in the game for which "pit boss" endorsement is sought; or

ii. Both of the following:

(1) The experience or training required in (c)3ii above for a "floorperson" endorsement in the game in which "pit boss" endorsement is sought; and

(2) At least 350 hours of additional experience as a dealer or supervisor in the game for which "pit boss" endorsement is sought; or

iii. Both of the following:

(1) At least 3,000 hours or 24 months of experience as a pit boss, or 7,500 hours or 60 months of experience as a supervisor, including experience in at least two authorized games; and

(2) Completion of an approved supervisory training course or, for any applicant for "pit boss" endorsement within one year from (the operative date of this rule), completion of an approved dealer training course in the game in which "pit boss" endorsement is sought;

3. For craps as the second or subsequent game in which "pit boss" endorsement is sought;

i. The experience or training required in (c)4 above for a "floorperson" endorsement in craps as a second or subsequent game.

(e) The qualification standards for a "poker shift supervisor" endorsement are as follows:

1. Both of the following:

i. At least 3,000 hours or 24 months of experience as a floorperson or pit boss in blackjack, baccarat/minibaccarat, red dog, poker or pai gow poker; and

ii. At least 12 months of experience as a dealer, floorperson or manager in poker; or

2. Both of the following:

i. At least 3,000 hours or 24 months of experience as a pit boss, or 7,500 hours or 60 months of experience as a supervisor, including experience in at least two authorized games; and

ii. Completion of an approved supervisory training course; or

3. Both of the following:

i. The experience or training required in (c)1 above for a "floorperson" endorsement in poker; and

ii. At least 4,500 hours of experience as a boxperson, floorperson, pit boss, poker shift supervisor or poker room manager, including at least 3,000 hours as a floorperson in poker.

(f) Notwithstanding the above:

1. An applicant for a "boxperson," "floorperson," "pit boss" or "poker shift supervisor" endorsement may satisfy up to one-fourth of the experiential requirements set forth in (b), (c), (d) or (e) above with experience in a variation of the game in which endorsement is sought, as follows:

i. For endorsement in any game, credit equal to one-third of the total hours or months of experience dealing or supervising Sic Bo or Big Six;

ii. For endorsement in blackjack, baccarat/minibaccarat, pai gow poker or poker, credit equal to the total hours or months dealing or supervising Red Dog;

iii. For endorsement in roulette, credit equal to the total hours dealing or supervising Pokette; and

iv. For endorsement in poker or pai gow poker, credit equal to the total hours or months dealing or supervising Double Down Stud; and

2. An applicant for "floorperson" endorsement may satisfy the experiential requirements in (c) above as follows:

i. For "floorperson" endorsement in any authorized game, credit equal to the total hours employed on the casino floor in assisting and orienting a new dealer in the game in which "floorperson" endorsement is sought;

ii. For "floorperson" endorsement in roulette, credit equal to the total hours or months of experience as a roulette chip mucker, provided that such experience was acquired subsequent to receiving a certificate of graduation in roulette from a licensed gaming school; and

iii. For "floorperson" endorsement in blackjack, craps, baccarat/minibaccarat, poker, or pai gow poker, credit equal to one-third of the total hours or months of experience as a roulette chip mucker, provided that such experience was acquired subsequent to receiving a certificate of graduation in roulette from a licensed gaming school.

(g) The qualification standards for a "shift manager" endorsement are as follows:

1. A thorough knowledge of each authorized game, evidenced by any one of the following:

i. Experience in that game;

ii. Completion of an approved supervisory training course in that game; or

iii. Completion prior to (the operative date of this rule) of an approved dealer training course in that game;

2. A total of at least 48 months of experience dealing or supervising one or more authorized games, including at least 12 months of experience as a pit boss or table games executive; and

3. Qualification in accordance with (d)1 and (d)2 above for "pit boss" endorsement in a first and at least one subsequent game.

(h) The qualification standards for a "casino manager" endorsement are as follows:

1. A thorough knowledge of each authorized game, evidenced by any one of the following:

i. Experience in that game;

ii. Completion of an approved supervisory training course in that game; or

iii. Completion prior to (the operative date of this rule) of an approved dealer training course in that game;

2. A total of at least 60 months of experience dealing or supervising one or more authorized games, including at least 24 months of experience as a pit boss or table games executive; and

3. Qualification in accordance with (d)1 and (d)2 above for "pit boss" endorsement in a first and at least one subsequent game.

19:44-5.2 Establishment of thorough knowledge of regulations

(a) In addition to [section 1 of this subchapter] **the requirements set forth in N.J.A.C. 19:44-5.1**, no natural person shall be employed in the following positions unless he **or she** shall have first established that he **or she** has a thorough knowledge of the regulations of the Commission relevant to the position and that:

1. (No change.)

2. In the case of an instructor, he **or she** has had not less than two years of experience in a position identical to or closely related to that about which he **or she** will instruct [so as to have provided him with the necessary skills, knowledge and ability to competently and effectively undertake the responsibilities for teaching his subject area];

i. If the instructor will teach a supervisory training course pursuant to N.J.A.C. 19:44-8.6, such experience shall include at least one year of experience as a supervisor in the game about which he or she will instruct;

3.-4. (No change.)

19:44-8.3 Minimum hours

(a) Any training or instruction designed to prepare a student for employment as a dealer shall satisfy the following minimum requirements:

1. For a student being trained to deal a first game the following minimum hours of training and instruction shall be required:

i. [165]**160** hours to deal blackjack [and red dog];

ii. [213]**200** hours to deal baccarat[,] **and** minibaccarat [and red dog];

iii.-vii. (No change.)

2. For a student being trained to deal a second or subsequent game the following minimum hours of training and instruction shall be required:

i. For a student certified to deal blackjack:

(1)-(2) (No change.)

(3) [90]**80** hours to deal baccarat[,] **and** minibaccarat [and red dog];

[(4) Five hours to deal red dog;]

[(5)](**4**) 210 hours to deal pai gow;

[(6)](**5**) [95] **70** hours to deal pai gow poker; and

[(7)](**6**) [80] **100** hours to deal poker.

ii. For a student certified to deal roulette:

(1) (No change.)

(2) [85]**95** hours to deal blackjack [and red dog];

(3) [93]**95** hours to deal baccarat[,] **and** minibaccarat [and red dog];

(4) (No change.)

(5) [110]**85** hours to deal pai gow poker; and

(6) [95]**115** hours to deal poker.

iii. For a student certified to deal craps:

(1) (No change.)

(2) [85]**95** hours to deal blackjack and red dog;

(3) [93]**95** hours to deal baccarat[,] **or** minibaccarat [and red dog];

(4) (No change.)

(5) [110]**85** hours to deal pai gow poker; and

(6) [95]**115** hours to deal poker.

iv. For a student certified to deal baccarat:

(1)-(2) (No change.)

(3) [85]**80** hours to deal blackjack [and red dog];

[(4) 10 hours to deal minibaccarat;

(5) Five hours to deal red dog;]

[(6)](**4**) 210 hours to deal pai gow;

[(7)](**5**) [95] **70** hours to deal pai gow poker; and

[(8)](**6**) [80] **100** hours to deal poker.

v. For a student certified to deal poker:

(1) 180 hours to deal craps;

(2) 120 hours to deal roulette;

(3) 85 hours to deal blackjack;

(4) 90 hours to deal baccarat and minibaccarat;

(5) 210 hours to deal pai gow; and

(6) 45 hours to deal pai gow poker.

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

(b) (No change.)

(c) A supervisory training course pursuant to N.J.A.C. 19:44-8.6 shall include the following minimum hours of training and instruction:

1. For a student holding the appropriate license and position endorsement required to supervise blackjack, baccarat, minibaccarat, pai gow poker or poker:

i. 60 hours to supervise blackjack;

ii. 60 hours to supervise baccarat and minibaccarat;

iii. 55 hours to supervise pai gow poker;

iv. 80 hours to supervise poker; and

v. 95 hours to supervise roulette; or

2. For a student holding the appropriate license and position endorsement required to supervise roulette or craps:

i. 70 hours to supervise blackjack;

ii. 70 hours to supervise baccarat and minibaccarat;

iii. 65 hours to supervise pai gow poker;

iv. 90 hours to supervise poker; and

v. 95 hours to supervise roulette.

19:44-8.6 Supervisory training course

(a) A course designed to prepare a student for employment as a floorperson or pit boss in a particular second or subsequent game or as a poker shift supervisor pursuant to N.J.A.C. 19:41-1.9(c)3, (d)2 or (e)2 shall include the minimum hours of training and instruction required by N.J.A.C. 19:44-8.3(c) including, at a minimum, training and instruction which addresses the following for the particular game:

1. The rules of the game;

2. The handling of customer disputes;

3. Methods of cheating and marking cards;

4. Supervisory concerns; and

5. Simulated casino experience.

(b) For purposes of N.J.A.C. 19:44-8.4, no student shall be deemed to have satisfactorily completed a supervisory training course pursuant to (a) above unless he or she:

1. Holds the appropriate license and position endorsement required to supervise a first game and at least one subsequent game; and

2. Satisfied the supervisory experience requirements set forth in N.J.A.C. 19:41-1.9(c)3ii(1), (d)2iii(1) or (e)2i.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Definitions; Casino Checks Procedure for Exchange of Checks Submitted by Gaming or Simulcast Wagering Patrons

Proposed Amendments: N.J.A.C. 19:45-1.1 and 1.25

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c, 69a, 70g, 99a and 101g(1)(a).
Proposal Number: PRN 1994-332.

Submit written comments by July 6, 1994 to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Section 101(g) of the Casino Control Act identifies various circumstances under which a check drawn by a casino licensee may be provided to a gaming or simulcast wagering patron (see N.J.S.A. 5:12-101g(1)(a)), and further provides that any such check issued by a casino licensee (a "casino check") may in turn be exchanged by the patron for cash or cash equivalents. N.J.A.C. 19:45-1.1 incorporates these statutory provisions in the definition of a "casino check," which is defined as a check drawn by a casino licensee and made payable to a person either in redemption of the licensee's gaming chips, in return of a patron's deposit on account with the casino licensee, or for winnings from slot machine or simulcast wagering payoffs.

Unlike an individual slot machine payoff, which is paid by a casino licensee, annuity jackpot payments are paid by an annuity jackpot trust, pursuant to N.J.A.C. 19:45-1.40B. An annuity jackpot trust must be comprised of all the casino licensees participating in offering the annuity jackpot. See N.J.A.C. 19:45-1.40B(b)1. When an annuity jackpot is won, the first payment (usually 1/20 of the entire jackpot) is paid to the winner by the casino licensee at the property where the win occurs. The casino licensee making the initial payment is then reimbursed by the trust, which is also responsible for making the remaining 19 annual payments to the jackpot winner as they become due. These subsequent payments are paid to the jackpot winner by the annuity jackpot trust with checks drawn on the funds of that trust.

Although the subsequent 19 trust checks do represent slot machine winnings, the checks are issued by the trust, rather than the casino licensees which comprise the trust. Because the trusts' annuity jackpot payment checks do not meet the present definition of a "casino check" in N.J.A.C. 19:45-1.1, casino patrons are unable to cash these checks at a casino cage.

However, as noted above, an annuity jackpot trust must be comprised solely of casino licensees. These casino licensees are also jointly and severally liable for each annual annuity jackpot payment, pursuant to N.J.A.C. 19:45-1.40B(e). Since an annuity jackpot trust essentially consists of its participating casino licensees, which operate the trust, the proposed amendments would also include within the definition of a "casino check" in N.J.A.C. 19:45-1.1 any check issued by an annuity jackpot trust in payment of an annuity jackpot.

The proposed amendments to N.J.A.C. 19:45-1.25 would also require that an annuity jackpot trust provide information verifying the validity of its casino checks to any casino licensee proposing to accept a casino check issued by the annuity jackpot trust. Because annuity jackpot trusts do not maintain full-time staffs in the same manner as casino licensees, annuity jackpot trusts would be permitted to provide this information in a manner to be submitted to and approved by the Commission.

Social Impact

These amendments would provide an additional convenience for casino patrons, by enabling a patron to cash an annuity jackpot check issued by an annuity jackpot trust at a casino cage, in the same manner as other casino checks issued in payment of slot machine payoffs.

Economic Impact

These amendments would impose additional recordkeeping and compliance requirements upon annuity jackpot trusts, which may incur some additional costs as a result. However, such requirements have been uniformly imposed upon all casino licensees which issue and cash casino checks. To maintain that uniformity, and to preserve the integrity and security of the casino check system, annuity jackpot trusts should also be subject to confirmation and verification requirements, if annuity jackpot checks issued by them are to be included in the definition of casino checks.

Regulatory Flexibility Statement

The proposed amendments would affect casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments would also affect annuity jackpot trusts, which are comprised solely of casino licensees, but are not casino licensees. However, as noted above, in order to maintain the integrity and security of the casino check system, annuity jackpot trusts should be required to comply with verification requirements equivalent to those imposed on participating casino licensees; accordingly, no exemption has been made for them in this instance.

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

19:45-1.1 Definitions

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

...

"Casino check" means a check which is drawn by a casino licensee upon the licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), for winnings from slot machine or simulcast wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine or simulcast wagering payoffs. **In addition, a casino check means a check issued by an annuity jackpot trust as an annuity jackpot payment to a patron who has won an annuity jackpot pursuant to the provisions of N.J.A.C. 19:45-1.40B.**

...

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

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

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino licensee which issued the check**, or by confirming, in a manner approved by the Commission, the issuance of the casino check by an annuity jackpot trust,** and shall verify the following information:

1.-4. (No change.)

5. That the check represents:

i.-ii. (No change.)

iii. The winnings from slot machine payoffs; [or]

iv. An annuity jackpot payment by an annuity jackpot trust pursuant to N.J.A.C. 19:45-1.40B; or

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

(g) The general cashier accepting a casino check shall document the verifications performed in (f) above in a log and**, if applicable,** record the name of the cashier providing such information and the date and time the information was obtained. In addition, the general cashier shall record his **or her** name and license number in the log.

(h) A general cashier of the New Jersey casino which issued the casino check **or, if the casino check was issued as an annuity jackpot payment, the annuity jackpot trust which issued the casino check** shall provide [such] **the** information[, as] required by (f) above[,] to [the] **any** casino licensee accepting such check. [and] **If the casino**

check was issued by a casino licensee, the general cashier providing the information shall indicate the verification was requested by notating in a log the following information:

1.-7. (No change.)

(i)-(p) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Application of Cash Complimentary Gifts to Counter Checks, Returned Checks or Cash Deposits

Proposed Amendments: N.J.A.C. 19:45-1.1, 1.9B, 1.24, 1.26, 1.27 and 1.29

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

Authority: N.J.S.A. 5:12-63(c), 69, 70(g) and (l) and 99.

Proposal Number: PRN 1994-334.

Submit written comments by July 6, 1994 to:

E. Dennis Kell
Assistant General Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

These proposed amendments would permit a casino licensee, upon receipt of a written request from a patron, to apply a complimentary cash gift as payment toward outstanding counter checks or returned checks, as well as use it to establish a cash deposit for gaming purposes. Documentation with respect to the issuance and tracking of cash complimentary gifts is not affected by these amendments.

Social Impact

Minimal social impact is expected from the amendments. A patron is already able to use the proceeds from a cash complimentary gift for these purposes. The amendments will merely permit this to be accomplished more expeditiously.

Economic Impact

The proposed amendments are expected to have little economic impact. It is possible, however, that the amendments will cause some gambling debts to be paid which would otherwise be uncollectible. To the extent it has this effect, additional money will accrue to the Casino Revenue Fund, since such debts can, subject to a four percent limitation, be deducted from gross revenue.

Regulatory Flexibility Statement

The proposed amendments will affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly a regulatory flexibility analysis is not required.

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

19:45-1.1 Definitions

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

...

"Patron cash deposit" means an amount of cash, cash equivalent, **complimentary cash gift,** gaming chips or plaques deposited with a casino by a patron for his **or her** subsequent use.

...

19:45-1.9B Procedures for complimentary cash and noncash gifts

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

(k) Notwithstanding any other provisions of this section, a casino licensee which intends to provide a complimentary cash gift to a patron in accordance with the requirements of N.J.S.A. 5:12-102m and this chapter may, upon receipt of a written request from the patron and in accordance with internal controls approved by the Commission, credit the cash complimentary directly to:

1. The payment of any outstanding Counter Checks or Slot Counter Checks issued by the patron and held by that casino licensee in accordance with the provisions of N.J.A.C. 19:45-1.26, 1.27 and 1.28;

2. The payment of any returned checks issued by the patron and held by that casino licensee in accordance with the provisions of N.J.A.C. 19:45-1.29; or

3. The establishment or enhancement of a cash deposit held for the benefit of the patron in accordance with the provisions of N.J.A.C. 19:45-1.24.

(l) The written request required pursuant to (k) above shall be attached to documentation of the cash complimentary gift maintained by the casino licensee pursuant to its approved internal controls.

1. The written request shall include, at a minimum, the following:

i. The date of the request;

ii. The name and address of the patron;

iii. Instructions as to the use to which the cash complimentary is to be credited; and

iv. The signature of the patron.

2. Prior to the crediting of any complimentary cash gift to the payment of an outstanding counter check, slot counter check or returned check, the general cashier or check cashier shall verify that the signature of the patron on the request agrees with the signature of the patron in the credit file.

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

(a) Whenever a patron requests that the casino hold his **or her** cash, cash equivalents, **complimentary cash gift,** gaming chips or plaques for subsequent use he **or she** shall deposit the cash, cash equivalents, **complimentary cash gift,** gaming chips or plaques with a general cashier.

(b)-(q) (No change.)

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

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

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

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

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

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

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

1.-2. (No change.)

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

i.-v. (No change.)

4. (No change.)

(m)-(o) (No change.)

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

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

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

1.-5. (No change.)

6. The date(s) and amount(s) of any collections received on the check after being returned by a bank**, including the date(s) and amount(s) of any complimentary cash gifts applied as payment on the check after being returned by a bank.**

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

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Temporary Storage of Slot Cash Storage Boxes and Slot Drop Boxes in Slot Machine Bases

Proposed Amendments: N.J.A.C. 19:45-1.17 and 1.42

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

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(l), 99(a) and 100(c).

Proposal Number: PRN 1994-335.

Submit written comments by July 6, 1994 to:

Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

These amendments would codify the present practice, which has been approved in the internal controls of several casino licensees, of temporarily storing a slot cash storage box in the locked base of the slot machine attached to the bill changer, while the bill changer is being serviced. If the bill changer cannot be repaired by the end of the repair person's shift, or must be removed from the casino floor, the slot cash storage box must also be transported to the count room.

The amendments would similarly permit a full or inoperable slot drop box to be replaced with an empty emergency replacement box, and then stored in its corresponding locked slot machine base until the next scheduled slot drop box pickup.

Proposed N.J.A.C. 19:45-1.42(a)1 and 2 would also include new provisions for the storage of slot drop boxes not attached to a slot machine or temporarily stored in its base, as well as empty emergency slot drop boxes. These are similar to the storage provisions in N.J.A.C. 19:45-1.17 for table drop boxes and slot cash storage boxes.

Social Impact

These operational changes in bill changer and slot machine procedures are not expected to have any social impact.

Economic Impact

By providing for the temporary storage of slot cash storage boxes and slot drop boxes within slot bases on the casino floor, these proposed amendments would eliminate the necessity for emergency transfers of those drop boxes to the count rooms, as well as the need for a security guard to be present while a bill changer is being serviced. It is hoped that these changes will provide additional flexibility for casino licensees in repairing and maintaining bill changers and slot drop boxes, and may reduce operational expenses slightly in the process, while continuing to maintain the necessary integrity and security over the gross revenue funds.

Regulatory Flexibility Statement

The proposed amendments will affect only casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.17 Drop boxes, transportation to and from gaming tables; slot cash storage boxes, transportation to and from bill changers; storage in count room **or slot machine base**

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

(c) All slot cash storage boxes removed from the bill changer shall be transported by a Commission inspector, security department member and count room supervisor, at a minimum, directly to and secured in the count room, except that slot cash storage boxes removed on an emergency basis shall be transported by a Commission inspector, security department member and cage supervisor or count room supervisor, at a minimum, directly to and secured in the count room; **provided however, that a slot cash storage box removed from a bill changer in order to service the bill changer may be temporarily stored in the corresponding double-locked base of the slot machine (the compartment of the slot machine containing the slot drop bucket or slot drop box) attached to the bill changer, and shall be replaced and relocked in the bill changer when the repairs are completed. If the repairs cannot be completed and the slot cash storage box cannot be replaced in the bill changer by the end of the repair person's shift, or if the bill changer must be removed from the casino floor, the slot cash storage box shall be removed from the locked slot compartment and transported to the count room in accordance with N.J.A.C. 19:45-1.38.**

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

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; meter readings

(a) For each slot machine and attached bill changer on the gaming floor, the slot drop bucket, slot drop box and slot cash storage box shall be removed at least once a week on specific days and at times designated by the casino licensee on a schedule which shall be filed with the Commission and the Division. No slot drop bucket, slot drop box or slot cash storage box shall be emptied or removed from its compartment at other than the times specified on such schedule except with the express approval of the Commission. Prior to emptying or removing any slot drop bucket, slot drop box or slot cash storage box, a casino licensee shall notify the Commission and the surveillance department of the transportation route that will be utilized.

1. All slot drop boxes which are not attached to a slot machine or temporarily stored in the base of a slot machine pursuant to (c)2ii below, except emergency slot drop boxes which are not actively in use, shall be stored in the count room in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by the Commission.

2. Emergency slot drop boxes, when not in use, shall be stored in a secured area approved by the Commission, in an enclosed storage cabinet or trolley and secured in such cabinet or trolley by a separately keyed, double locking system. The key to one lock shall be maintained and controlled by the security department and the key to the second lock shall be maintained and controlled by the Commission.

(b) (No change.)

(c) Procedures and requirements for removing slot drop buckets, slot drop boxes and slot cash storage boxes from the casino shall be as follows:

1. (No change.)

2. All slot drop buckets, slot drop boxes and slot cash storage boxes removed from compartments shall be transported by at least the employees described in (b) above and a Commission inspector directly to, and secured in the count room for the counting of their

contents, except that slot cash storage boxes and slot drop boxes removed on an emergency basis shall be transported by at least a Commission inspector, a casino security department member and a cage supervisor or count room supervisor directly to and secured in the count room; [and] **provided, however, that:**

i. A slot cash storage box removed from a bill changer in order to service the bill changer may be temporarily stored in the corresponding double-locked base of the slot machine (the compartment of the slot machine containing the slot drop bucket or slot drop box) attached to the bill changer, and shall be replaced and relocked in the bill changer when the repairs are completed. If the repairs cannot be completed and the slot cash storage box cannot be replaced in the bill changer by the end of the repair person's shift, or if the bill changer must be removed from the casino floor, the slot cash storage box shall be removed from the locked slot compartment and transported to the count room in accordance with N.J.A.C. 19:45-1.38; and

ii. A full or inoperable slot drop box shall be replaced with an empty emergency slot drop box, and may be stored in its corresponding double-locked slot machine base until no later than the next scheduled slot drop box pickup; and

3. (No change.)

(d)-(q) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Definitions
Progressive Slot Machines
Electronic Transfer Credit Systems
Proposed Amendments: N.J.A.C. 19:45-1.1 and 1.39
Proposed New Rule: N.J.A.C. 19:45-1.37A

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

Authority: N.J.S.A. 5:12-63(c), 69(e), 70(f) and 99.

Proposal Number: PRN 1994-333.

Submit written comments by July 6, 1994 to:

Barbara A. Mattie, Manager
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments and new rule are intended to permit the availability of an electronic transfer credit system at slot machines. By using an access device, patrons may transfer cash complimentary funds accumulated pursuant to N.J.A.C. 19:45-1.9(f) to a meter on or connected to a slot machine. Accordingly, the definitions of "handle" and "slot machine drop" have been updated. The new rule sets forth the requirements of the electronic transfer credit system, the steps to be followed to implement such a system and the equipment, reports and procedures for auditing the electronic transfers.

Social Impact

The proposed amendments and new rule are not anticipated to have any social impact independent of that created by the statutory authorization which permits the Casino Control Commission to regulate and account for the conduct of gaming at slot machines. The proposed amendments and new rule do not reflect any social judgments made by the Commission. It is anticipated that the implementation of electronic transfer credit systems may generate more patron interest in slot machine play, however, any attempt to quantify such increase in patron interest in slot machine play or the addition of patrons attracted to Atlantic City as a result of the introduction of electronic transfer credit systems is highly speculative.

Economic Impact

The availability of an electronic transfer credit system requires that certain technological improvements which permit the use of such a system be implemented by a casino which elects to offer this feature to its slot machine patrons. The costs associated with the implementation of an electronic transfer credit system will presumably be offset by increased slot machine revenues generated. To the extent an electronic transfer credit system generates new slot machine revenues, senior and disabled citizens of New Jersey will benefit from the additional tax revenues which will be collected. However, as noted earlier, any attempt at this time to quantify an increase in patron interest in slot machine play or the addition of patrons attracted to Atlantic City as a result of the introduction of such a system is highly speculative. The proposed amendments will require the regulatory agencies to incur some costs in preparing to regulate, account for and audit electronic transfer credit systems. However, these costs are necessary to maintain the technological edge of the New Jersey casino industry and to provide more efficient service to slot patrons, all the while enhancing and greatly simplifying the slot patron's gaming experience.

Regulatory Flexibility Statement

The proposed amendments and new rule will affect only casino licensees, none of which is a "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.1 Definitions

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

"Access control" means a system or device used by a casino licensee to grant a patron exclusive authority to initiate the transmission of electronic transfer credits to the electronic transfer credit meter of a slot machine in accordance with the provisions of N.J.A.C. 19:45-1.37A and may include, without limitation, the use of an access card with a magnetically coded strip, a coded key pad system or any other means of access control approved by the Commission.

...

"Electronic credit" means an electronic signal or transmission which is generated by a device contained in or connected to a slot machine and which is initiated by a player as a means to activate the play of the slot machine. Electronic credits shall include, without limitation, electronic transfer credits generated in accordance with the provisions of N.J.A.C. 19:45-1.37A.

...

"Handle" means the total amount of coins [or], **slot tokens,** currency [placed into a slot machine] **and electronic credits invested** by a patron to **activate the** play **of** a slot machine.

...

"Slot machine drop" means the amount of coins and slot tokens in a slot drop bucket or slot drop box, [and cash] **the amount of currency** and coupons in a slot cash storage box, if applicable, **and the amount of electronic transfer credits recorded on an electronic transfer credit meter pursuant to N.J.A.C. 19:45-1.37A, if applicable.**

19:45-1.37A Electronic transfer credit systems

(a) A casino licensee may operate an electronic transfer credit system which permits a patron to convert cash complimentaries accumulated by the patron pursuant to N.J.A.C. 19:45-1.9(f) into electronic credits and to have those credits transferred directly to a slot machine.

(b) All aspects of an electronic transfer credit system, including all hardware and software utilized therein, shall be subject to review and approval by the Commission prior to the implementation of the system by the casino licensee. The internal control procedures submitted by the casino licensee shall address the integrity, security and control of its electronic transfer credit system and shall, without limitation, include:

1. An overview of the system design;

2. System access restrictions including, at a minimum, copies of all menus;

3. Hardware and software controls;
4. Magnetic tape controls;
5. Override policies and restrictions;
6. Copies of all reports generated related to the use of electronic transfer credits;
7. Backup and recovery procedures and failure analysis;
8. The duties and responsibilities of the MIS, internal audit, slot and casino accounting departments with regard to the electronic transfer credit system;
9. Access controls;
10. Procedures for handling customer disputes;
11. Network security; and
12. Audit programs.

(c) Each transfer of electronic credits to a slot machine authorized by this section shall be initiated by a patron using an access control approved by the Commission. All access controls shall require the use of a unique access code for each patron, which access code shall only be made available to the patron to whom it is assigned.

(d) An electronic transfer credit system shall not permit a patron to transfer more than $400.00 in electronic credits to a slot machine in a single transaction.

(e) A record of each transfer of electronic credits to a slot machine authorized by this section shall be maintained by the casino licensee and shall be identified by, at a minimum, the asset number of the slot machine to which the transfer occurred and an identification number assigned to the patron who initiated the transaction. The identification number assigned to each patron for the purposes of this subsection shall be different from the unique access code assigned to that patron as part of an access control.

(f) In addition to the requirements of N.J.A.C. 19:45-1.37(b), each slot machine which can be activated through the use of an electronic transfer credit shall be equipped with an "electronic transfer credit meter" that continuously and automatically increments in an amount equal to the value of any cash complimentaries which are converted into electronic credits and transferred to that slot machine by a patron. The electronic transfer credit system shall store this information in machine-readable form and such stored data shall not be susceptible to unauthorized alteration or deletion by any person. On a daily basis, a member of the casino accounting department shall generate a report of the amounts transferred to each electronic transfer credit meter and file a copy of such report with the Commission.

(g) No slot machine may be connected to, or disconnected from, an electronic transfer credit system without the prior written approval of the Commission.

(h) Each casino licensee shall develop a report or reports which shall be used by a casino accounting department employee to audit the system on a daily basis. Once the audit has been completed, the casino accounting department employee shall sign the report(s) and either attach the report(s) to the Slot Win Report for that gaming day or record the appropriate figures from the report(s) on the Slot Win Report. The report(s) required by this subsection and all related audit procedures shall be approved by the Commission.

(i) On at least a monthly basis, each casino licensee using an electronic transfer credit system shall provide a statement to each patron who has participated in the system that month. The statement shall include, at a minimum, the patron's beginning monthly balance, credits earned pursuant to N.J.A.C. 19:45-1.9(f), credits transferred to a slot machine pursuant to this section and the patron's monthly ending balance. In addition, if requested by a patron, the casino licensee shall have the ability to provide a detailed account of all electronic transfer credit transactions initiated by that patron.

(j) No adjustment to the amount of any electronic transfer credit shall be made by a casino licensee without the approval of the Commission.

19:45-1.39 Progressive slot machines

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each progressive machine in a casino shall have the following identifying features:

1. A mechanical, electrical or electronic device, to be known as a "progressive meter(s)", visible from the front of the machine which increments at a set rate of progression [with coins played into the machine] **based on handle**, and which advises the player of the amount which can be won if the progressive jackpot combination appears;

2.-4. (No change.)

(c) Unless otherwise authorized by the Commission, each progressive slot machine connected to a common progressive display unit shall:

1. (No change.)

2. Require that the same [number of coins be inserted] **amount of handle be invested** to entitle the player to a chance at winning the progressive jackpot and **that** each [coin shall] **increase in handle** increment the meter(s) by the same rate of progression as every other machine connected to such display unit; and

3. (No change.)

(d)-(l) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures for Accepting, Verifying and Accounting for Wire Transfers; Wire Transfer Fees

Proposed Amendment: N.J.A.C. 19:45-1.24A

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

Authority: N.J.S.A. 5:12-69(a), 70(g), 99(a), and 101.

Proposal Number: PRN 1994-336.

Submit written comments by July 6, 1994 to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Transmittal fees are sometimes deducted from a patron's wire transfer by one or more of the transmitting banks, so that the funds received by the casino licensee are slightly less than the amount of the counter check sought to be redeemed or the returned counter check being paid.

This proposed amendment, originally suggested by Caesars Atlantic City, would permit a casino licensee to credit a patron for the fees charged by a bank for a wire transfer in certain situations. Such fees could be credited only if the wired funds are being used for the purpose of redeeming a counter check or paying a returned counter check. Additionally, any credit would be limited to $250.00 or the actual amount of the wire transfer fees charged against the wire transfer, whichever is less. See proposed N.J.A.C. 19:45-1.24A(i)1 and 2.

A record would have to be maintained of the date and amount of any such credit and the wire transfer involved; the credit would also have to be included as a balancing item on the main bank summary. Pursuant to N.J.A.C. 19:45-1.24A(j), such credits would not be included in determining the amount of cash complimentaries which may be issued to a patron pursuant to N.J.A.C. 19:45-1.9B.

Social Impact

This proposed amendment is not expected to have any social impact; it merely provides a casino licensee with the option of crediting a patron for certain wire transfer fees.

Financial Impact

The proposed amendment may have a financial impact upon a casino licensee which wishes to credit patrons for certain wire transfer fees. However, such credits may also expedite the processing of wire transfers used to redeem or pay counter checks, where there is a slight discrepancy

between the amount of the wire transfer and the amount of the counter check due to deduction of wire transfer fees.

Regulatory Flexibility Statement

The proposed amendments will affect only casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.24A Procedures for accepting, verifying and accounting for wire transfers; **wire transfer fees**

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

(c) Upon notification in accordance with (b) above that a wire transfer of funds has been credited to the casino licensee's operating account, the cage employee who received the notice shall record, at a minimum, the following information in the notification section of a Wire Transfer Log maintained in the main bank of the cashiers' cage:

1.-3. (No change.)

4. The **actual** amount of funds transferred **to the operating account of the casino licensee**, stated in numbers and words;

5.-7. (No change.)

(d) (No change.)

(e) Upon verification of the wire transfer and completion of the Wire Transfer Log, the general cashier of the casino licensee shall be deemed, for purposes of compliance with the Commission's rules, to have received cash at the general cashiers' cage in [the] **an** amount [of the wire transfer] **equal to the actual amount of funds transferred to the operating account of the casino licensee.**

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

1.-2. (No change.)

3. The **actual** amount of **funds received pursuant to** the wire transfer, stated in numbers and words;

4.-7. (No change.)

(g)-(h) (No change.)

(i) Upon the receipt and processing of a wire transfer of funds in accordance with the provisions of this section, a casino licensee may, in its discretion, credit to the patron's account the amount of any wire transfer fees charged against the original amount of the wire transfer, provided that:

1. The credit shall be limited to the lesser of $250.00 or the actual amount of the wire transfer fees charged by any financial institution involved in the wiring of the funds;

2. The purpose of the wire transfer is to enable a transaction identified in (a)2 or 3 above and the credit is applied toward the completion of that transaction;

3. The credit is authorized and recorded by the casino licensee pursuant to internal controls approved by the Commission, which internal controls shall, at a minimum, include:

i. The creation of a record identifying the date and the amount of the credit and the sequential wire transfer number of the wire transfer for which the credit is being issued; and

ii. The recording of the credit as a balancing item on the main bank summary.

(j) Notwithstanding any other provision of this chapter, the amount of a credit of wire transfer fees authorized by (i) above need not be included in determining the amount of cash complimentaries which may be issued to a patron pursuant to N.J.A.C. 19:45-1.9B.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedure for Exchange of Checks Submitted by Gaming Patrons or Simulcast Wagering Patrons; Repurchase of Cash Equivalents by Gaming Patrons

Proposed Amendment: N.J.A.C. 19:45-1.25

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

Authority: N.J.S.A. 5:12-69(a), 70(g), 99(a), and 101.

Proposal Number: PRN 1994-337.

Submit written comments by July 6, 1994 to:

Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

This proposed amendment would codify the present practice, which has been approved in the internal controls of several casino licensees, under which patrons may repurchase cash equivalents that they have deposited with the casino cage.

At present, patrons may exchange cash equivalents, such as cashier's checks, traveler's checks and certified checks, at the casino cage for cash, gaming chips and slot tokens. See N.J.A.C. 19:45-1.1 and 1.25(b) and (e). This amendment would also permit a casino licensee, in its discretion, to offer patrons the option of repurchasing their cash equivalents for a specific period of time. The repurchase option could be exercised only if the instrument is endorsed in blank by the patron at the time of its acceptance by the casino licensee, and a definite time limit on the repurchase right of the patron is established. See proposed N.J.A.C. 19:45-1.25(e)3 and (e)4ii(2). That period of time could be no later than five calendar days after the date the instrument is deposited with the casino licensee. See proposed N.J.A.C. 19:45-1.25(e)4ii(2). Note that this period of time could be extended by N.J.A.C. 19:40-1.3(f), which provides that whenever an act is to occur on a certain day, and such day falls on a Saturday, Sunday, or legal holiday, the date referred to shall be the next business day immediately following the date in question.

If the cash equivalent is not repurchased by the patron within the allotted time, the casino licensee would be required to restrictively endorse it when the repurchase option expires, and to deposit it for collection by the next banking day.

This amendment would also recodify N.J.A.C. 19:45-1.25(e)1 as new subsection (h), and clarify existing subsection (g).

The basic substance of this proposal was previously published in a slightly different form at 24 N.J.R. 3232(a), as proposed N.J.A.C. 19:45-1.25E(i), as part of a proposed overall revision of credit and check handling procedures. That proposal was not adopted and has since expired. Accordingly, any comments submitted in response to the earlier proposal will not be considered unless they are specifically resubmitted during the present comment period. Additional comment from other parties is also welcome.

Social Impact

This proposed amendment would provide casino licensees and their patrons with another method of handling cash equivalents. It should provide an additional convenience to casino patrons by permitting the repurchase of these instruments in certain instances and under certain conditions, which are designed to maintain the security and integrity of the repurchase process at the cashier's cage.

Economic Impact

To the extent this proposed amendment may streamline the handling of cash equivalents by eliminating the need for a casino licensee to deposit any instruments that are repurchased, the amendment may reduce some of the costs associated with processing cash equivalents.

Regulatory Flexibility Statement

The proposed amendment would only affect casino licensees, none of which qualifies as a small business under the Regulatory Flexibility

Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.25 Procedure for exchange of checks submitted by gaming or simulcast wagering patrons; **repurchase of cash equivalents**

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

(e) Cash equivalents and casino checks, as defined in N.J.A.C. 19:45-1.1, shall only be accepted at the cashiers' cage by general cashiers.

1. Prior to the acceptance of any cash equivalent from a patron, the general cashier shall determine the validity of such cash equivalent by performing the necessary verification for each type of cash equivalent and such other procedures as may be required by the issuer of such cash equivalent. **Prior to the acceptance of any casino check from a patron, the general cashier shall comply with the requirements of (f) below.**

2. In order to ensure the patron's identity, prior to the acceptance of a cash equivalent made payable to a presenting patron or of a casino check **issued** pursuant to N.J.S.A. 5:12-101(g), the general cashier shall be required to examine that patron's identification credentials or verify that the patron's signature recorded on the cash equivalent or casino check and the patron's physical description agree with the information recorded in the patron's credit file prepared pursuant to N.J.A.C. 19:45-1.27. Each casino licensee shall maintain documentation supporting that examination or verification.

[1. Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:

i. Requiring the patron to countersign the travelers check in his or her presence;

ii. Comparing the countersignature with the original signature on the travelers check;

iii. Examining the travelers check for any other signs of tampering, forgery or alteration; and

iv. Performing any other procedures which the issuer of the travelers check requires in order to indemnify the acceptor against loss.]

3. Any cash equivalent other than a travelers check or credit card and any casino check which is accepted from a patron by a general cashier shall be:

i. Endorsed in blank by the patron (but in the case of a cash equivalent, only if the cash equivalent is made payable to the presenting patron); and

ii. Except as otherwise provided in (e)4ii below, restrictively endorsed "For Deposit Only" to the bank account of the casino licensee immediately upon acceptance by the general cashier and deposited no later than the next banking day following the date of the transaction.

4. A casino licensee may, in its discretion, allow a patron who has exchanged a cash equivalent (other than a travelers check or credit card) for currency, coin or a Customer Deposit Form to repurchase the cash equivalent for an equal amount of cash, gaming chips, plaques or slot tokens prior to the deposit of the cash equivalent or by the casino licensee. If a casino licensee agrees to provide a patron with this repurchase option, the general cashier shall, prior to acceptance of the cash equivalent:

i. Immediately determine the validity of the cash equivalent by performing the verification required in (e)1 above; and

ii. In lieu of complying with the requirements of (e)3ii above, comply with the approved internal control procedures of the casino licensee for the processing of such transactions, which procedures shall include, at a minimum, the following:

(1) The creation of an audit trail which shall assure that no single employee is in a position to convert the cash equivalent to his or her personal use without detection;

(2) The establishment of a definite time limit on the repurchase rights of the patron, which time limit shall be no later than the end of the fifth calendar day following the date of acceptance of the cash equivalent; and

(3) Upon expiration of the time limit required by (e)4ii(2) above, the immediate restrictive endorsement of the cash equivalent "For Deposit Only" to the bank account of the casino licensee, and the deposit of the cash equivalent by no later than the next banking day.

(f) (No change.)

(g) Each casino licensee shall maintain a casino check log.

1. The general cashier **of the casino licensee** accepting a casino check shall document the verifications performed in (f) above in [a] **the casino check** log and **shall** record the name of the cashier providing such information and the date and time the information was obtained. In addition, the general cashier shall record his **or her** name and license number in the log.

[(h)]**2.** A general cashier of the New Jersey casino which issued the casino check shall provide [such] **the** information[, as] required by (f) above[,] to the casino licensee accepting such check, and shall indicate that verification was requested by notating in [a] **the casino check** log the following information:

1.-7. (No change.)

(h) Prior to acceptance of a travelers check from a patron, the general cashier shall verify its validity by:

i. Requiring the patron to countersign the travelers check in his or her presence;

ii. Comparing the countersignature with the original signature on the travelers check;

iii. Examining the travelers check for any other signs of tampering, forgery or alteration; and

iv. Performing any other procedures which the issuer of the travelers check requires in order to indemnify the acceptor against loss.

(i)-(p) (No change.)

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Slot Machines and Bill Changers; Entry Authorization Logs

Proposed Amendment: N.J.A.C. 19:45-1.36

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

Authority: N.J.S.A. 5:12-63c, 69a, 99a and 100c.

Proposal Number: PRN 1994-338.

Submit written comments by July 6, 1994 to:

Barbara A. Mattie
Manager—Operations
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

Under the current provisions of N.J.A.C. 19:45-1.36(k)3, whenever a bill changer is opened by a casino licensee, except as otherwise specified in the rule, the entry must be recorded on a "Bill Changer Log" maintained within the bill changer. The proposed amendment would permit a casino licensee to record this information on the "Machine Entry Authorization Log" of a slot machine (see N.J.A.C. 19:45-1.36(k)1) when a bill changer is contained completely within the cabinet of the slot machine.

Social Impact

The proposed amendment modifies an administrative internal control procedure and is not anticipated to have any social impact.

Economic Impact

The proposed amendment would eliminate the necessity of a casino licensee maintaining two separate entry authorization logs when a bill changer is contained completely within the cabinet of a slot machine. Therefore, the amendment may have a slight positive economic impact upon casino licensees.

Regulatory Flexibility Statement

The proposed amendment will only affect casino licensees, none of which is a small business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.36 Slot machines and bill changers; coin and slot token containers; slot cash storage boxes; entry authorization logs

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

(k) Unless a computer which automatically records the information specified in (k)1, 2, and 3 below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee[;]:

1.-2. (No change.)

3. With the exception of the transportation of slot cash storage boxes, pursuant to N.J.A.C. 19:45-1.17(a), whenever it is required that a bill changer, other than a separate slot cash storage box compartment, be opened, [the entry shall be made] **certain information shall be recorded** on a form to be entitled "Bill Changer Log." The [entry] **information** shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of the authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and the serial number or asset number of the bill changer. **If the bill changer is contained completely within the cabinet of a slot machine and there is no separate access to the bill changer unit, the information may be recorded on the Machine Entry Authorization Log required by (k)1 above.**

(a)

CASINO CONTROL COMMISSION

Keno
Rules of the Games
Accounting and Internal Controls
Gaming Equipment

Reproposed Amendments: N.J.A.C. 19:41-1.3, 19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.25, 1.33 and 1.46; and 19:46-1.5, 1.20 and 1.33
Reproposed New Rules: N.J.A.C. 19:45-1.47 through 1.51 and 19:47-15

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

Authority: N.J.S.A. 5:12-5, 69(e), 70(f) and (j), 99 and 100(e).

Proposal Number: PRN 1994-339.

Submit written comments by July 6, 1994 to:

Barbara A. Mattie, Manager
Casino Operations Unit
Casino Control Commission
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

On November 17, 1993, the Casino Control Commission proposed new rules and amendments intended to govern the implementation of the game of keno, which were published in the January 3, 1994, New Jersey Register at 26 N.J.R. 115(a). The Commission determined pursuant to N.J.S.A. 5:12-5 that keno constitutes a game which is compatible with the public interest, subject to the Commission ultimately finding that keno is suitable for casino use after an appropriate test period. As a result of several comments received in response to this proposal, the Commission has determined to make several substantive changes in the original proposal and to republish the new rules and amendments. The actual rules of the game are set forth in N.J.A.C. 19:47-15.1 through 15.7.

Briefly, keno is an electronic game which uses the numbers 1 through 80. These numbers are preprinted on a form known as a "keno request". For an individual wager, players may select numbers by appropriately marking the keno request. The keno request is converted into a keno ticket by a keno writer. All gaming at keno shall be conducted at a keno booth or satellite keno booth. Using a computer as a random number generator, the casino licensee selects twenty of the eighty available numbers for each keno game. The amount that the player shall win depends on the proportion of the player's choices that match those selected at random by the computer. The proposed regulations permit each casino licensee to set the winning pay out amount for each wager, provided, however, that the house advantage for each wager does not exceed 30 percent.

N.J.A.C. 19:45-1.11 and 1.12 address the personnel needed to operate the game of keno. Proposed new rule N.J.A.C. 19:45-1.47 specifies the physical characteristics of a keno booth and satellite keno booth. Proposed new rules N.J.A.C. 19:45-1.48, 1.49 and 1.50 set forth the accounting and internal control requirements for the keno booth and keno writers. Keno booths may be located on the casino floor, in a casino simulcasting facility or in an area adjacent to the casino floor provided that the patrons are standing on the casino floor when placing a wager. Proposed new rule N.J.A.C. 19:45-1.51 contains the internal control procedures governing the security of and control over the keno computer system. The remainder of the proposed new rules and amendments are technical proposals which govern the operation of keno in Atlantic City casinos.

The amendments are as follows: N.J.A.C. 19:41-1.3 establishes those employees, related to keno, that require casino key employee licenses. At N.J.A.C. 19:45-1.1, definitions relating to keno are added. At N.J.A.C. 19:45-1.1A, gaming days are established for keno. At N.J.A.C. 19:45-1.2, methods for keno statistical game records are established. At N.J.A.C. 19:45-1.8, the amendment establishes that keno requests need not be retained as records for any minimum period of time. At N.J.A.C. 19:45-1.10, surveillance for keno is established. At N.J.A.C. 19:45-1.15, the role of cashiers in the game of keno is addressed. At N.J.A.C. 19:45-1.19 tips and gratuities to keno writers are addressed. At N.J.A.C. 19:45-1.33, the procedures for recording of keno revenue are established. At N.J.A.C. 19:45-1.46 the amendment establishes procedures for control of coupons redeemed by keno writers. At N.J.A.C. 19:46-1.5 there are provisions added allowing for the use of slot tokens or coins in wagering at keno. At N.J.A.C. 19:46-1.20, the discretion of the Commission to review and approve of keno equipment is established. At N.J.A.C. 19:46-1.33, a provision establishes that metal tokens can be used for waging at keno.

Trump's Castle Associates (Trump's Castle), Trump Taj Mahal Associates (Taj Mahal), Resorts International Hotel, Inc. (Resorts) and Boardwalk Regency Corporation (Caesars) suggested that the regulations permit a keno supervisor to maintain an imprest amount of funds to prepare keno drawers. N.J.A.C. 19:45-1.15, 1.47 and 1.48 have been changed, from the original proposal, accordingly.

Trump's Castle and Resorts suggest that the Keno Credit Slip be a two-part form instead of a three-part form and that a keno writer be permitted to perform a keno credit with a keno supervisor. N.J.A.C. 19:45-1.50 has been changed in the reproposal in response to the comment.

Trump's Castle, Resorts and Caesars request that the announcement of "last call for wagers" be eliminated as the requirement is not feasible to be carried out from keno satellite booths. N.J.A.C. 19:47-15.5(c) has been modified to require either verbal notice that the current keno game will be closing or a display of the remaining time between keno games.

Taj Mahal suggests that a keno writer be permitted to count the contents of his or her drawer at a "cash counting counter" within the keno booth instead of at the work station. N.J.A.C. 19:45-1.48(m) has been added accordingly.

Sands suggests that N.J.A.C. 19:45-1.49 and 1.50 be modified to permit computer-generated keno fill and credit slips. Computer-generated forms were permitted, but clarification has been added to N.J.A.C. 19:45-1.49 and 1.50.

Resorts suggests that the regulations be modified to eliminate the requirement that a keno writer record the total amount of all winning keno tickets on the Keno Inventory Slip, since some computer systems void the keno ticket upon payment in a manner which makes the amount paid out not readable. N.J.A.C. 19:45-1.48(j) has been changed in the reproposal in response to the comment.

Bally's suggests that keno requests be able to be distributed anywhere in the casino/hotel facility and that N.J.A.C. 19:45-1.47 set forth that gaming activity be located on the casino floor, adjacent to the casino floor or in a casino simulcasting facility. This clarification has been made.

Bally's suggests that the threshold for keno supervisor involvement in a winning keno ticket be increased to $1,500.00. N.J.A.C. 19:45-1.47 and 19:47-15.6 have been changed in the reproposal in response to the comment.

Caesars requests that the reasons for the issuance of a casino check be revised to include winnings from keno wagering payoffs. N.J.A.C. 19:45-1.1 and 1.25 and 19:47-15.6 have been changed in the reproposal in response to the comment.

Caesars requests that a grid listing the numbers 1 through 80 not be required on a keno ticket. N.J.A.C. 19:47-15.4 has been changed in the reproposal in response to the comment.

Caesars requests clarification that a multi-race keno ticket can be paid prior to the last game if the remaining games on the ticket have been cancelled. N.J.A.C. 19:47-15.4 has been changed in the reproposal in response to the comment.

The Division of Gaming Enforcement (Division) objects to the keno department being the responsibility of the casino accounting department since this would result in an incompatible function. N.J.A.C. 19:45-1.11 and 1.12 are being reproposed in the Alternative. Alternative A would not permit keno to report to casino accounting and Alternative B would permit keno to report to casino accounting. The Division also recommends that the term "items" in N.J.A.C. 19:45-1.51(c) be defined. Accordingly, clarification has been added.

In addition to the above changes initiated by public comment, the Commission has made changes to N.J.A.C. 19:45-1.33 which clarify which figures should be used for gross revenue purposes if there is a discrepancy between the keno computer system reports and the keno writer's inventory; N.J.A.C. 19:47-15.5(a) which clarify the security measures over the random number generator; N.J.A.C. 19:47-15.5(d) and (e) which clarify that a keno computer system may or may not have an automatic lock-out feature; N.J.A.C. 19:47-15.3(e) which clarify that if a casino licensee establishes an aggregate payoff limit for a game it shall be at least $100,000; and N.J.A.C. 19:47-15.6(d) which clarify that unclaimed jackpot funds shall be added to either an existing keno jackpot or jackpots.

Please note that this reproposal supersedes the proposal published on January 3, 1994. Accordingly, any comments received in response to the prior proposal will not be considered in connection with this reproposal unless they are specifically submitted during the present comment period. Additional comments from any other interested persons is also permissible.

Social Impact

The proposed new rules and amendments are not anticipated to have any social impact independent of that created by the statutory authorization of a game which is compatible with the public interest. The proposed rules do not reflect any social judgdments made by the Commission. It is anticipated that the implementation of the new game may generate patron interest in the game, but it is unclear at this time whether new or additional patrons will be attracted to Atlantic City as a result of the introduction of keno.

Economic Impact

Implementation of any new game will, by its very nature, require casino licensees to incur some costs in preparing to offer the game to the public. These costs will presumably be offset by the increased casino revenues generated by the new game. Moreover, to the extent that the new game does generate increased casino revenues, senior and disabled citizens of New Jersey will benefit from the additional tax revenues which will be collected. As noted above, however, any attempt to quantify the effects of the introduction of keno on casino revenue would be highly speculative at this time. The proposed amendments and new rules may require the regulatory agencies to incur some costs in preparing to regulate the game. However, these costs are necessary to introduce and test the game of keno in Atlantic City casinos.

Regulatory Flexibility Statement

The proposal affects casino licensees and casino employees, none of which is a "small business" within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. Therefore, a regulatory flexibility analysis is not required.

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

19:41-1.3 Employee licenses

(a) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility in a supervisory capacity or be empowered to make discretionary decisions which regulate casino or casino simulcasting facility operations or the management of an approved hotel unless he or she is over 18 years of age and holds a current and valid casino key employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino key employee license:

1.-9. (No change.)

10. Junket representatives, as defined in section 102 of the Act; [and]

11. Simulcast counter manager;

12. Simulcast counter shift supervisor;

13. Keno manager;

14. Keno supervisor; and

Recodify 11. as **15.** (No change in text.)

(b) No natural person shall be employed in the operation of a licensed casino or a casino simulcasting facility or in a position whose employment duties require or authorize access to restricted casino areas unless he or she is over 18 years of age, is a citizen of the United States and holds a current and valid casino employee license authorizing employment in the particular position. The following positions, without limitation, shall require a casino employee license:

1.-5. (No change.)

6. Any natural person employed by a casino or its agent to provide physical security in a casino [hotel];

7. Casino simulcasting facility personnel involved in wagering-related activities in a casino simulcasting facility, **such as casino pari-mutuel cashiers**; [and]

8. Keno writers; and

Recodify 8. as **9.** (No change in text.)

(c) (No change.)

19:45-1.1 Definitions

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

. . . .

"Casino check" means a check which is drawn by a casino licensee's account at any New Jersey banking institution and made payable to a person in redemption of the licensee's gaming chips, pursuant to N.J.S.A. 5:12-100(k), in return, either in whole or in part, of a person's deposit on account with the casino licensee pursuant to N.J.S.A. 5:12-101(b), for winnings from slot machine, **keno** or simulcasting wagering payoffs, and which is identifiable in a manner approved by the Commission as a check issued for one of these purposes. At a minimum, such identification method shall include an endorsement or imprinting on the check which indicates that the check is issued in redemption of gaming chips, in return of funds on account with the casino licensee or for winnings from slot machine, **keno** or simulcast wagering payoffs.

. . . .

"Handle" means the total amount of coins, **slot tokens** or currency placed into a slot machine by a patron to play a slot machine.

. . . .

"Keno booth" is defined in N.J.A.C. 19:45-1.47.

"Keno drawer" is defined in N.J.A.C. 19:45-1.48.

"Keno drop" means the sum of the total amount of currency, coin, gaming chips, coupons and slot tokens wagered on keno tickets.

"Keno payout" means the currency or coin paid to a player in exchange for a winning keno ticket.

"Keno request" is defined in N.J.A.C. 19:47-15.1.

"Keno ticket" is defined in N.J.A.C. 19:47-15.1.

"Keno win or loss" means the amount of currency, coin, gaming chips, coupons and slot tokens wagered by patrons at keno less the

amount of currency and coin collected by patrons for winning keno wagers.

"Keno work station" is defined in N.J.A.C. 19:45-1.47.

....

"Shift" means the regular, daily work period of a group of employees administering and supervising the operation of table games, slot machines, simulcast counter, [and] **keno booths,** cashiers' cage **and satellite cages,** working in relay with another such succeeding or preceding group of employees or specific times, as approved by the Commission, during the day that all drop boxes attached to gaming tables are removed, expeditiously transported to the count room, and replaced with empty ones.

....

19:45-1.1A Gaming day

(a) (No change.)

(b) The "gaming day" for a casino licensee on a calendar day which has been approved for extended hours of operation pursuant to N.J.S.A. 5:12-97(a) shall commence and terminate, and the end of the gaming day for the previous calendar day shall terminate, at those times set forth in the approved system of internal procedures and administrative and accounting controls of each casino licensee. Each casino licensee may establish a gaming day for slot machines which is different from its gaming day for table games **and the game of keno**; provided, however, that no gaming day shall be longer than 24 hours.

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

1. (No change.)

2. Statistical game records to reflect drop and win amounts or, for the game of poker, the poker revenue, by table for each **table** game, **and by keno work station number for the game of keno,** by each shift.

3.-10. (No change.)

19:45-1.8 Retention, storage and destruction of books, records and documents

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

(c) All original books, records and documents shall be retained by a casino licensee in accordance with the following schedules. For purposes of this subsection, "original books, records or documents" shall not include copies of originals, except for copies which contain original comments or notations or parts of multi-part forms.

1.-7. (No change.)

8. The following original books, records and documents do not have to be retained by a casino licensee for any minimum period of time, and may be destroyed without notice otherwise required by (f) below:

i.-xvi. (No change.)

xvii. Survey questionnaires regarding service in the casino hotel; [and]

xviii. Any form not required by Commission regulations that is blank or unused, unless otherwise specified by this section[.]; **and**

xix. Keno requests.

(d)-(i) (No change.)

19:45-1.10 Closed circuit television system: surveillance department control; surveillance department restrictions

(a) (No change.)

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i.-ii. (No change.)

iii. The operations conducted at and in the cashiers' cage, **any satellite cage,** and each office ancillary thereto;

iv.-vii. (No change.)

ix. The entrances and exits to the casino, casino simulcasting facility and the count rooms; [and]

x. The gaming and operations associated with the conduct of keno; and

[x.]**xi.** (No change in text.)

2.-5. (No change.)

(c)-(i) (No change.)

ALTERNATIVE A

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

v. The clandestine surveillance of the operation of the cashiers' cage **and satellite cages;**

vi.-x. (No change.)

xi. Providing timely notification to appropriate supervisors, the Commission and Division upon detecting, and also upon commencing video or audio recording of, any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1, or any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119(a); [and]

xii. The communication in writing to the supervisor of the credit department or accurate and verifiable information which may be relevant in determining a patron's credit worthiness[.]; **and**

xiii. The clandestine surveillance of all keno gaming and operations.

2.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter **and the operation and conduct of keno** and shall be responsible for the operation and conduct of the following games:

i.-xi. (No change.)

5. A slot department supervised by a casino key employee holding a license endorsed with the position of a slot department manager. The slot department **may be responsible for the operation and conduct of keno and** shall be responsible for the operation of the slot machines and bill changers.

6.-7. (No change.)

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department may be responsible for the operation and conduct of the simulcast counter and, except as otherwise provided in (b)9 below, shall [also] be responsible for the control and supervision of the cashiers' cage and any satellite cages. The casino accounting department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

9. (No change.)

[10. A casino licensee which elects to conduct casino simulcasting shall operate a simulcast counter supervised by a casino key employee designated as simulcast counter manager, who shall perform the functions set forth in N.J.A.C. 19:45-1.12(h)3.]

10. A keno department supervised by a casino key employee holding a license endorsement approved by the Commission, unless the casino licensee chooses to not offer the game of keno or to assign responsibility for the operation and conduct of keno to the table games department or the slot department.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

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

(i) The following personnel of the casino accounting or table games department shall, at a minimum, be used to operate a simulcast counter in a casino simulcasting facility:

1. Casino pari-mutuel cashiers [shall be licensed as casino employees and] shall be assigned the responsibility of generating, and issuing to patrons, pari-mutuel tickets and credit vouchers, making simulcast payouts to patrons, and redeeming credit vouchers for patrons;

2. Simulcast counter shift supervisor [shall be licensed as a casino key employee and] shall be the first level supervisor assigned the responsibility for directly supervising the operation and conduct of the simulcast counter;

3. Simulcast counter manager [shall be licensed as a casino key employee and] shall be the executive assigned the responsibility and authority for the supervision and management of the overall operations of the simulcast counter, including without limitation, the hiring and termination of all simulcast counter personnel and the creation of high employee morale and good customer relations, all in accordance with the policies and practices established by the casino licensee's board of directors or non-corporate equivalent.

(j) The following personnel, at a minimum, shall be used at keno:

1. Keno writer shall be the person assigned the responsibility to generate keno tickets, redeem coupons, accept wagers and issue keno payouts at a keno booth or satellite keno booth.

2. Keno supervisor shall be the supervisor assigned to each shift with the responsibility for directly supervising all activities at a keno booth.

3. Keno manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the game of keno by the casino licensee, including, without limitation, the hiring and terminating of all keno personnel in accordance with the policies and practices established by the casino licensee. Nothing in these rules shall preclude the keno manager from also having the responsibility to manage either the table games department or the slot department, provided that the reporting lines and span of control of the keno manager have been approved by the Commission. The keno manager may not function simultaneously as a simulcast counter manager.

[(j)] (k) (No change in text.)

ALTERNATIVE B

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

v. The clandestine surveillance of the operation of the cashiers' cage **and satellite cages**;

vi.-x. (No change.)

xi. Providing timely notification to appropriate supervisors, the Commission and Division upon detecting, and also upon commencing video or audio recording of, any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1, or any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119(a); [and]

xii. The communication in writing to the supervisor of the credit department of accurate and verifiable information which may be relevant in determining a patron's credit worthiness[.]; **and**

xiii. The clandestine surveillance of all keno gaming and operations.

2.-3. (No change.)

4. A table games department supervised by a casino key employee holding a license endorsed with the position of casino manager. The table games department may be responsible for the operation and conduct of the simulcast counter **and the operation and conduct of keno** and shall be responsible for the operation and conduct of the following games:

i.-xi. (No change.)

5. A slot department supervised by a casino key employee holding a license endorsed with the position of a slot department manager. The slot department **may be responsible for the operation and conduct of keno and** shall be responsible for the operation of the slot machines and bill changers.

6.-7. (No change.)

8. A casino accounting department supervised by a casino key employee holding a license endorsed with the position of controller. The supervisor of the casino accounting department may be responsible for the operation and conduct of the simulcast counter **and the operation and conduct of keno** and, except as otherwise provided in N.J.A.C. 19:45-1.11(b)9, shall also be responsible for the control and supervision of the cashiers' cage and any satellite cages. The casino accounting department shall be responsible for, without limitation, the following:

i.-iv. (No change.)

9. (No change.)

[10. A casino licensee which elects to conduct casino simulcasting shall operate a simulcast counter supervised by a casino key employee designated as simulcast counter manager, who shall perform the functions set forth in N.J.A.C. 19:45-1.12(h)3.]

10. A keno department supervised by a casino key employee holding a license endorsement approved by the Commission, unless the casino licensee chooses to not offer the game of keno or to assign responsibility for the operation and conduct of keno to the table games department, the slot department or the casino accounting department.

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

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

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

(i) The following personnel of the casino accounting or table games department shall, at a minimum, be used to operate a simulcast counter in a casino simulcasting facility:

1. Casino pari-mutuel cashiers [shall be licensed as casino employees and] shall be assigned the responsibility of generating, and issuing to patrons, pari-mutuel tickets and credit vouchers, making simulcast payouts to patrons, and redeeming credit vouchers for patrons;

2. Simulcast counter shift supervisor [shall be licensed as a casino key employee and] shall be the first level supervisor assigned the responsibility for directly supervising the operation and conduct of the simulcast counter;

3. Simulcast counter manager [shall be licensed as a casino key employee and] shall be the executive assigned the responsibility and authority for the supervision and management of the overall operations of the simulcast counter, including without limitation, the hiring and termination of all simulcast counter personnel and the creation of high employee morale and good customer relations, all in accordance with the policies and practices established by the casino licensee's board of directors or non-corporate equivalent.

(j) The following personnel, at a minimum, shall be used at keno:

1. Keno writer shall be the person assigned the responsibility to generate keno tickets, redeem coupons, accept wagers and issue keno payouts at a keno booth or satellite keno booth.

2. Keno supervisor shall be the supervisor assigned to each shift with the responsibility for directly supervising all activities at a keno booth.

3. Keno manager shall be the executive assigned the responsibility and authority for the supervision and management of the overall operation of the game of keno by the casino licensee, including, without limitation, the hiring and terminating of all keno personnel in accordance with the policies and practices established by the casino licensee. Nothing in these rules shall preclude the keno manager from also having the responsibility to manage either the table games department, the slot department or the casino accounting department, provided that the reporting lines and span of control of the keno manager have been approved by the Commission. The keno manager may not function simultaneously as a simulcast counter manager.

[(j)](**k**) (No change in text.)

19:45-1.15 Accounting controls within the cashiers' cage, satellite cages, master coin bank, and coin vaults

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

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

1.-3. (No change.)

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

i.-viii. (No change.)

ix. Be responsible for the reserve cash bankroll; [and]

x. Receive gaming chips, slot tokens and coupons from the simulcast vault or casino pari-mutuel cashiers; **and**

xi. Exchange currency, coin, slot tokens, gaming chips and coupons with the keno booth in exchange for proper documentation.

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

i.-v. (No change.)

vi. Prepare the daily bank deposit of excess cash and coins; [and]

vii. Prepare Jackpot Payout Slips in accordance with N.J.A.C. 19:45-1.40[.]; **and**

viii. Exchange currency, coin, slot tokens, gaming chips and coupons with the keno booth in exchange for proper documentation.

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

19:45-1.19 Acceptance of tips or gratuities from patrons

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

(d) All tips and gratuities allowed keno writers shall be:

1. Immediately deposited into a transparent locked box reserved for that purpose;

2. Accounted for; and

3. Distributed to each keno writer on a pool basis in a manner to be determined by the casino licensee.

[(d)](**e**) Upon receipt from a patron of a tip or gratuity, a dealer [or], casino pari-mutuel cashier **or keno writer** [assigned to the gaming table or pari-mutuel window] shall extend his or her arm in an overt motion, and deposit such tip or gratuity in the locked box reserved for such purpose.

[(e)](**f**) (No change in text.)

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

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

(f) Prior to the acceptance of any casino check from a patron, a general cashier shall determine the validity of such casino check by contacting the New Jersey casino licensee which issued the check and shall verify the following information:

1.-4. (No change.)

5. That the check represents:

i.-ii. (No change.)

iii. The winnings from slot machine **or keno** payoffs; or

iv. (No change.)

(g)-(p) (No change.)

19:45-1.33 Procedure for opening, counting and recording contents of drop boxes and slot cash storage boxes **and the recording of keno revenue**

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

(k) The keno computer system shall have the capability of generating a report which lists, by keno work station, the keno drop, total amount won by patrons and keno win or loss for each gaming day. This report shall be audited by a casino accounting department employee. Once the audit procedures have been completed, the casino accounting department employee shall sign the report and either attach the report to the Master Game Report for that gaming day or record the appropriate figures from the report onto the Master Game Report.

(l) If there is a difference between the keno win or loss as represented in the report referenced in (k) above and the figures reported as a result of the reconciliation of the keno drawer pursuant to N.J.A.C. 19:45-1.48(l), the casino licensee shall be required to pay gross revenue tax pursuant to N.J.S.A. 5:12-24 on the larger figure unless the casino licensee can adequately explain and document the reason for said difference. No adjustments to gross revenue shall be permitted without approval from the Commission.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(j) Coupons shall be redeemed in the following manner:

1. Coupons redeemable for coin, currency or slot tokens shall only be redeemed by changepersons or at the slot [change] **or keno** booths or the cashiers' cage [located on the casino floor]. A changeperson, slot cashier or general cage cashier shall accept the coupons in exchange for the stated amount of cash or slot tokens, **or a keno writer shall accept the coupons in exchange for the stated amount of cash or keno ticket,** and shall cancel the coupons upon acceptance. A coupon redeemable for currency may also be redeemed by slot attendants, who shall accept the coupon in exchange for the stated amount of currency and shall cancel the coupon upon acceptance. Cancellation of coupons by changepersons and slot attendants shall be in a manner that will permit subsequent identification of the individual who accepted and canceled the coupon.

i. Redeemed coupons shall be maintained by the slot or general cashier **or keno writer** and shall be exchanged with the Main or Master Coin Bank for a like amount of cash at the conclusion of gaming activity each day, at a minimum.

ii. (No change.)

2.-4. (No change.)

(k)-(o) (No change.)

19:45-1.47 Keno booths; satellite keno booths

(a) Keno gaming operations shall only be conducted in a separate and distinct area approved by the Commission, although a casino licensee may conduct the same keno game or different keno games in separate approved areas. Any area designated for keno gaming activity shall be located:

1. On the casino floor;

2. Adjacent to the casino or casino simulcasting facility, provided, however, that the location from which patrons place wagers is on the casino floor; or

3. In a casino simulcasting facility.

(b) Any area designated for keno shall contain a physical structure known as a keno booth to house the keno writers and to serve as the central location for the following:

1. The custody of the keno booth inventory, including currency, coin, coupons, gaming chips, slot tokens, and forms and documents normally associated with the operation of a keno booth;

2. The exchange by patrons of coupons for currency, coin or keno tickets in conformity with N.J.A.C. 19:45-1.46(j);

3. The receipt of currency, coin, gaming chips, coupons and slot tokens for wagering at the game of keno;

4. The payment of winning wagers at the game of keno; and

5. Such other functions normally associated with the operation of a keno booth.

(c) The keno booth shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein, and shall include the following:

1. Separate work stations which shall include:

i. Manually triggered silent alarm systems connected directly to the monitoring rooms of the closed circuit television system, the security department office and the on-site office of the Division;

ii. A computer terminal which shall be used to issue keno tickets and calculate payouts for winning keno tickets; and

iii. An area for the storage of a keno drawer.

2. A segregated area for the storage of the keno computer equipment. The location and security of the keno computer equipment shall be approved by the Commission. Nothing herein shall preclude a casino licensee from storing its keno computer equipment in another segregated and secure area of the casino hotel facility, provided that the location of and the security measures for such area have been approved by the Commission.

(d) In addition to the requirements in (c) above, a keno booth may contain the following:

1. A segregated and secure area for the storage of locked keno drawers pursuant to N.J.A.C. 19:45-1.48; and

2. A segregated and secure area, maintained on an imprest basis by the keno supervisor, which may be used to establish opening keno inventories and complete keno fills and keno credits pursuant to the requirements of this chapter.

i. The casino licensee shall submit for review and approval procedures governing how this area will be maintained on an imprest basis. In addition, each keno supervisor shall prepare a count sheet to record the opening and closing balance for their shift which shall be signed by both the incoming and outgoing keno supervisor.

(e) If a keno booth is designed so as to be immediately adjacent to the cashiers' cage or a satellite cage and access to the keno booth is through the cashiers' cage or satellite cage, the casino security department escort otherwise required by N.J.A.C. 19:45-1.48, 1.49 and 1.50 for the transportation of keno drawers and keno fills and credits shall not be required.

(f) A casino licensee may, in its discretion, operate one or more satellite keno booths. All the provisions of this subchapter governing the operation of a keno booth shall apply to a satellite keno booth with the exception of the following:

1. The keno games for which wagers are accepted at a satellite keno booth must be the same keno games for which wagers are accepted at the keno booth;

2. The only keno computer equipment which may be located at a satellite keno booth shall be the computer terminals used by the keno writers to issue keno tickets and calculate payouts of winning keno tickets;

3. A satellite keno booth may not contain a separate area for the storage of currency and coin pursuant to (d) above; and

4. A satellite keno booth may operate without the presence of a keno supervisor; however, a keno writer at a satellite keno booth may not redeem a winning keno ticket for $1,500 or more unless a keno supervisor is present pursuant to N.J.A.C. 19:47-15.6(b).

19:45-1.48 Accounting controls for the operation of keno booths and keno work stations

(a) Whenever a keno work station is opened for gaming, the keno work station shall commence operation with an amount of currency and coin to be known as the "keno inventory." No casino licensee shall cause or permit currency or coin to be added to, or removed from, such keno inventory during the gaming day except:

1. In exchange for a keno ticket purchased by a patron;

2. In order to make change for a patron buying a keno ticket;

3. In receipt of a coupon from a patron in exchange for currency, coin or a keno ticket in conformity with N.J.A.C. 19:45-1.46(j);

4. In payment of a winning or voided keno ticket in conformity with the provisions of N.J.A.C. 19:47-15.6; or

5. In conformity with the keno fill and keno credit procedures described in N.J.A.C. 19:45-1.49 and 1.50.

(b) Whenever a keno work station is opened for gaming activity, the keno inventory shall be stored in a lockable container known as a "keno drawer." For a given shift, each keno writer shall have his or her own keno drawer and no other person shall operate out of the drawer of that keno writer. Nothing herein shall preclude a keno writer from working at multiple keno work stations throughout the gaming day provided the keno writer appropriately logs on and off each computer terminal and continues to operate from his or her assigned keno drawer.

(c) Keno drawers shall be prepared by a main bank cashier, master coin bank cashier, cage supervisor or keno supervisor.

(d) The keys to the keno drawers containing the keno inventories shall be maintained and controlled in a secure place approved by the Commission. Each key shall be signed-in and signed-out in accordance with procedures approved by the Commission.

(e) Immediately prior to opening a keno work station for gaming, the keno writer assigned to such work station shall:

1. If the drawer is not already in the keno booth or satellite keno booth, transport the keno drawer, in the presence of a casino security department member, to the appropriate keno work station where the drawer shall be counted in accordance with the requirements of (h) below; or

2. If the drawer is in the keno booth or satellite booth, count the drawer in accordance with the requirements of (h) below.

(f) Nothing in this section shall preclude a casino licensee from developing approved internal control procedures pursuant to which the keno drawers for a shift are delivered to the keno booth by a member of the casino security department, provided the casino security department does not have access to the keys to the keno drawers.

(g) Each keno drawer which is prepared shall contain a form in addition to the currency and coin. The form shall be, at a minimum, a two-part form with the preparer of the drawer maintaining the duplicate as a balancing item and the original being sent with the currency and coin. The preparer shall record, at a minimum, the following information on the original and duplicate form:

1. The date and time of preparation of the keno drawer;

2. The keno work station location number;

3. The total amount of each denomination of currency and coin to be distributed;

4. The total amount of all denominations of currency and coin to be distributed; and

5. The signature of the preparer.

(h) At the keno work station, the keno writer shall count the contents of the drawer in the presence of a keno supervisor or a supervisor thereof and shall assure the accurate comparison of the count to the figures recorded on the form referenced in (g) above.

1. If the count and figures agree, the keno writer and keno supervisor or supervisor thereof shall sign the form attesting to the accuracy of the information recorded thereon.

2. If a discrepancy exists between the amount of currency and coins counted and the amount of currency and coins recorded on the form, the appropriate corrections shall be made on the form by the keno supervisor or supervisor thereof. The keno supervisor or supervisor thereof shall place his or her initials next to each correction. Once all appropriate corrections have been made, the keno writer and keno supervisor or supervisor thereof shall sign the form. The keno supervisor or supervisor thereof shall immediately prepare a discrepancy report and forward a copy of the report to casino accounting, the Commission booth, the security department and the on-site office of the Division.

(i) Upon compliance with the signature requirements of (g) and (h) above, the keno writer shall input the opening inventory figure in total or by denomination into the computer terminal and maintain the form required by (g) above in the keno drawer until the end of the keno writer's shift. Notwithstanding the foregoing, the keno supervisor or a supervisor thereof may input the opening inventory figure or figures into the computer terminal provided the keno writer verifies the opening inventory figure or figures in the computer to the figures recorded on the form required by (g) above.

(j) At the end of each keno writer's shift, all currency, coin, slot tokens, coupons and gaming chips remaining in the keno drawer shall be counted by the keno writer. The keno writer shall record on the form required by (g) above or on a separate one-part form the following information:

1. The total value of each denomination of currency, coin, slot tokens and gaming chips in the keno drawer;

2. The total value of all coupons in the keno drawer;

3. The total value of all denominations of currency, coins, slot tokens and gaming chips in the keno drawer;

4. The total amount of all keno fill slips;
5. The total amount of all keno credit slips; and
6. The signature of the preparer.

(k) Once the form required by (g) above has been completed with the information required by (j) above, it shall be placed in the keno drawer. If the casino licensee uses a separate form to record the closing keno inventory pursuant to (j) above, both forms shall be placed in the keno drawer. The keno drawer shall then be locked by the keno writer and either:

1. Immediately transported to the cashiers' cage, master coin bank or satellite cage by the keno writer in the presence of a casino security department member;
2. Placed in a secure storage area in the keno booth and held for subsequent transportation by the casino security department in a manner approved by the Commission; or
3. Turned over to the keno supervisor for subsequent reissuance.

(l) Each casino licensee shall develop internal control procedures for the accounting and reconciliation of the assets and documents contained within the keno drawers used each gaming day. These procedures shall include reports generated by the keno computer system and shall provide for the verification of each keno drawer by a keno supervisor, main bank cashier, master coin bank cashier or cage supervisor and the reporting of any overage or shortage. Copies of all reports shall be forwarded to casino accounting on a daily basis.

(m) Nothing herein shall preclude a keno writer from counting the contents of his or her drawer at an area designed for this purpose within the keno booth rather than at the keno work station, provided however, that such area is approved by the Commission.

(n) Each keno writer shall be required to independently count the contents of his or her keno drawer and prepare the form required in (j) above without access to any information recorded on the reports referenced in (l) above.

19:45-1.49 Keno drawer fill procedures

(a) Once a keno drawer has been opened for use by the keno writer, if the keno writer needs additional currency or coin the keno writer shall prepare a keno fill slip.

(b) Keno fill slips shall be serially prenumbered forms. The series numbers of all keno fill slips shall be unique to the game of keno and each series of keno fill slips shall be used in sequential order. All original and duplicate void keno fill slips shall be marked "VOID" and shall require the signature of the keno writer who prepared the slip.

(c) A keno fill slip shall be at least a two-part manual or computerized form and shall contain, at a minimum, the following information on the original and each copy of the slip:

1. The denomination of the currency and coin being requested;
2. The total amount of each denomination of currency and coin being requested;
3. The total amount of all denominations of currency and coin being requested;
4. The keno work station location number which the currency and coin will be distributed;
5. The date and time of preparation; and
6. The signature of the keno writer or, if computer-prepared, the identification code of the keno writer.

(d) Upon completion of the keno fill slip by the keno writer, a keno supervisor shall either prepare the requested fill from the excess currency and coin maintained in the keno booth pursuant to N.J.A.C. 19:45-1.47 or transport all copies of the keno fill slip to the main bank or master coin bank where a cashier shall prepare the requested fill. Nothing herein shall preclude a main bank or master coin bank cashier or cage supervisor from picking up the completed keno fill slip at the keno booth.

(e) Once the requested funds have been prepared for transfer, either the keno supervisor or a supervisor thereof or the main bank or master coin bank cashier, as applicable, shall sign all copies of the keno fill slip and retain a copy as a balancing item. The funds shall be transported to the keno writer by the keno supervisor or a supervisor thereof or by a main bank or master coin bank cashier or cage supervisor in a sealed envelope or container along with the original keno fill slip. If the funds have been prepared by a main bank or master coin bank cashier, the individual who will transport the funds shall sign for receipt of the funds and a member of the casino security department shall escort the funds.

(f) Once the sealed envelope or container has been given to the keno writer, the casino security department employee or, if no casino security department employee is required for the transfer, the individual who delivered the requested funds to the keno writer shall sign the original keno fill slip as evidence of the transportation of the funds. The keno writer shall then count the currency and coin and, if the amount is consistent with the amount recorded on the keno fill slip, sign the original keno fill slip and enter the amount of the fill into the computer terminal.

(g) Upon compliance with the signature requirements described in (f) above, the original keno fill slip shall be maintained in the keno drawer for subsequent reconciliation purposes.

19:45-1.50 Keno drawer credit procedures

(a) Prior to the end of each keno writer's shift or at such other times as may be necessary, the keno writer may transfer excess currency, coin, gaming chips, slot tokens and coupons to either the main bank, master coin bank or keno supervisor by preparing a keno credit slip.

(b) Keno credit slips shall be serially prenumbered forms. The series numbers of all keno credit slips shall be unique to the game of keno and each series of keno credit slips shall be used in sequential order. All original and duplicate void keno credit slips shall be marked "VOID" and shall require the signature of the keno writer who prepared the slip.

(c) A keno credit slip shall be at least a two-part manual or computerized form and shall contain, at a minimum, the following information on the original and duplicate of the slip:

1. The denomination of the currency, coin, gaming chips and slot tokens being exchanged;
2. The total amount of each denomination of currency, coin, gaming chips and slot tokens being exchanged;
3. The total amount of coupons being exchanged;
4. The total amount of currency, coin, gaming chips, coupons and slot tokens being exchanged;
5. The keno work station location number;
6. The date and time of preparation; and
7. The signature of the keno writer or, if computer prepared, the identification code of the keno writer.

(d) Upon completion of the keno credit slip by the keno writer, a keno supervisor or a supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor shall verify the items being removed from the keno drawer and the information recorded on the keno credit slip. If the items to be removed and the recorded information agree, the keno supervisor or supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor shall sign the original and duplicate keno credit slip and place the items into a secured envelope or container for transportation to the main bank or master coin bank or designated area of keno booth pursuant to N.J.A.C. 19:45-1.47. The duplicate keno credit slip shall be maintained by the keno writer in the keno drawer as a balancing item and the original shall be transported by the keno supervisor or supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor with the envelope or container. Prior to the transportation of the keno credit, the keno writer shall enter the amount being credited into the computer terminal.

(e) A casino security department employee shall be required to escort the keno supervisor or supervisor thereof, main bank cashier, master coin bank cashier or cage supervisor and the envelope or container if the credit is with the main bank or master coin bank. Once at the main bank or master coin bank, the casino security department employee shall sign the original keno credit slip as evidence of his or her escort of the funds.

(f) Upon receipt of the envelope or container, the receiving individual shall count the contents and compare the amount counted to the total recorded on the keno credit slip. If the contents and the recorded totals agree, the receiving individual shall sign the original and maintain it for subsequent forwarding to the accounting

department at the end of the gaming day or deposit it into a locked accounting box.

19:45-1.51 Keno computer system

(a) Each casino licensee shall submit for approval the internal control procedures governing the security and control of its keno computer system. Such internal controls shall, without limitation, include:

1. System access restrictions which shall, at a minimum, preclude multiple log-ons by the same individual;

2. Hardware and software controls;

3. Floppy disc controls;

4. Override policies and restrictions;

5. Adequate documentation of keno tickets and payoff information; and

6. Backup and recovery procedures.

(b) The keno computer system shall have the capability of generating a hard (paper) copy of each keno transaction. Each keno transaction shall be identified with a unique identification number for the individual who performed said transaction. The identification number for each employee shall be different than that employee's computer password code.

(c) At any time, a representative of the Commission may count the contents of a selected keno drawer and compare that count to the computer-generated reports.

19:46-1.5 Nature and exchange of gaming chips, slot tokens and plaques, and match play coupons

(a) All wagering on authorized games in a casino or casino simulcasting facility shall be conducted with gaming chips or plaques; provided however, that slot tokens or coins shall be permitted for use in slot machines or **keno or** simulcast wagering at authorized games in accordance with N.J.A.C. 19:45-1.18 and 19:45-1.46. Gaming chips previously issued by a casino licensee which are not in active use by that casino licensee shall not be used for wagering at authorized table games, **keno** or casino simulcasting, and shall not be accepted nor exchanged for any purpose at a gaming table, **keno booth** or a casino simulcast counter. Such chips shall only be redeemed at the cashiers' cage pursuant to (f) below.

(b) Gaming chips or plaques shall be issued to a person only at the request of such person and shall not be given as change in any other but a gaming transaction. Gaming chips and plaques shall only be issued to casino patrons at the gaming tables and shall only be redeemed at the cashiers' cage; provided, however, that gaming chips may be exchanged by a patron at the slot booths or with changepersons for currency, coin or slot tokens issued pursuant to N.J.A.C. 19:46-[1.33(c)1]**1.33(d)1** to play the slot machines and may be used for **keno or** simulcast wagering.

(c)-(e) (No change.)

(f) Each casino licensee shall redeem promptly its own genuine gaming chips and plaques by cash or by check dated the day of such redemption on an account of the casino licensee as requested by the patron, except when the gaming chips or plaques were obtained or being used unlawfully. Slot tokens shall be redeemed or exchanged in the following manner:

1. Slot tokens issued pursuant to N.J.A.C. 19:46-[1.33(c)1]**1.33(d)1** shall be redeemed promptly by the issuing casino at the request of the patron for:

i.-ii. (No change.)

2. Slot tokens issued pursuant to N.J.A.C. 19:46-[1.33(c)2]**1.33(d)2** shall be exchangeable for a coupon which is redeemable for goods or services offered by, or on behalf of, the casino licensee; provided, however, that a casino licensee shall require that the amount of tokens exchangeable be equal to the face value of the coupon, the denomination of which shall be approved by the Commission.

(g) Each casino licensee shall have the right to demand the redemption of its gaming chips, slot tokens or plaques from any person in possession of them and such person shall redeem said chips, slot tokens or plaques upon presentation of an equivalent amount of cash by the casino; provided, however, that slot tokens issued pursuant to N.J.A.C. 19:46-[1.33(c)2]**1.33(d)2** shall be exchanged in accordance with (f)2 above.

(h)-(i) (No change.)

(j) Each casino licensee shall cause to be posted and remain posted in a prominent place on the front of the cashiers' cage, [and] any satellite cage[s], **the simulcast counter, the keno booth and any satellite keno booth** a sign that reads as follows:

"By law, gaming chips or plaques issued by another casino may not be used, exchanged or redeemed in this casino or casino simulcasting facility."

(k) Each casino licensee shall cause to be posted and remain posted in a prominent place on all slot booths, **the keno booth, all satellite keno booths, the simulcast counter** and **all** coin redemption booths a sign that reads as follows:

"It is a violation of Federal law to use tokens issued by this casino outside these premises or to use tokens issued by another casino here."

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) Each casino licensee shall submit to the Commission, for its review, inspection and approval after consultation with the Division, each piece of gaming and simulcast wagering equipment, and any other related device, prior to its use, whether initially or following any modification thereto or replacement or movement thereof, in a casino, casino simulcasting facility or hub facility. Each such item, including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, count room equipment and counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, data processing equipment, slot machines and slot bases (see N.J.A.C. 19:41-9.6(b) and N.J.A.C. 19:46-1.28), pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines, [and] totalisators[,] **and all equipment utilized in the operation of keno,** shall be subject to review, inspection and approval for, at a minimum, quality, design, integrity, fairness, honesty and suitability.

(b) (No change.)

(c) Any evidence that gaming equipment or other devices used in a casino, casino simulcasting facility or hub facility including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, gaming chips, plaques, chip holders, racks and containers, scales, counting devices, trolleys, slip dispensers, dealing shoes, locking devices, card reader devices, data processing equipment, tokens, slot machines, pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines, [and] totalisators **and any equipment used in the operation of keno** have been tampered with or altered in any way which would affect the integrity, fairness, honesty or suitability of the gaming equipment or other device for use in a casino, casino simulcasting facility or hub facility shall be immediately reported to an agent of the Commission and the Division. A member of the casino licensee's casino security department shall be required to insure that the gaming equipment or other device and any evidence required to be reported pursuant to this subsection is maintained in a secure manner until the arrival of an agent of the Division. Rules concerning evidence of tampering with dice, cards and pai gow tiles may be found at N.J.A.C. 19:46-1.16, 19:46-1.18 and 19:46-1.19B, respectively.

(d) (No change.)

19:46-1.33 Issuance and use of tokens for gaming; slot token specifications

(a) A casino licensee may, with Commission approval, issue metal tokens designed for gaming use in its slot machines and in **keno or** simulcast wagering, provided that each slot token:

1.-11. (No change.)

12. Contains a statement that is not redeemable for cash, if the slot token is issued pursuant to section [(c)2] **(d)2** below.

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

(d) A slot token shall be capable of insertion into and activating the play of a designated slot machine operated by the casino licensee which issued the slot token.

1. A slot token that is redeemable by the patron pursuant to N.J.A.C. 19:46-1.5(f)(1) shall:

i.-ii. (No change.)

iii. Be available for use in **keno or** simulcast wagering.

2. A slot token that is exchangeable only for a coupon pursuant to N.J.A.C. 19:46-1.5(f)2 shall:

i.-ii. (No change.)

iii. Be retained in a separate slot drop bucket or slot drop box, pursuant to N.J.A.C. [19:46-1.25(h)] **19:45-1.36(f)**; and

iv. Not be available for use in **keno or** simulcast wagering.

SUBCHAPTER 15. KENO

19:47-15.1 Definitions

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

"Conditioning" means the coding which the player and computer mark on the keno request and keno ticket, respectively, to indicate the type of keno ticket being wagered and the rate at which the keno ticket is to be played.

"House advantage" means the difference between true odds (the statistical probability of a selected event occurring) and the established payoff odds (the payoff rate at which a winner will be paid if the selected event occurs).

"Keno request " means a one-part form used by a patron to select the desired number or numbers (spots) for one or more keno games.

"Keno ticket" means a one-part computer-generated form which is issued by a keno writer to a patron based on the information recorded on the keno request.

"Quick-pick" means a straight or basic keno ticket in which the computer system randomly selects the marked number or numbers (spots) for the patron.

"Rate card" means the document issued by a casino licensee listing the available types of wagers, payoff rates, wagering format and such other information as required by this chapter.

"Spots" means the number or number selected by a player for a keno game. For example, a keno ticket based on a keno request on which a player selected three numbers is referred to as a "three-spot" keno ticket.

19:47-15.2 Permissible wagers

(a) Keno shall be played with 80 consecutive numbers starting with the number one.

(b) The maximum number of spots that may be selected by a player for any keno game shall be determined by the casino licensee and set forth in its approved rate card.

(c) The following shall constitute the permissible wagers at the game of keno:

1. "Straight or basic ticket" is a keno ticket on which a player selects from one spot to the maximum number of spots that may be selected as permitted by the casino licensee without any type of groupings. The type of straight or basic ticket shall be determined by the number of spots the player selects.

2. "Split ticket" is a keno ticket on which the equivalent of two or more straight or basic tickets are written. Each group of spots shall be separated from each other by either circling each group or by drawing a line between them. The wager shall be limited in that the numbers in one group of spots shall not be duplicated in any other group of spots. For purposes of determining a winning keno ticket, each group of spots on a split ticket shall be evaluated separately.

i. When all of the groups on a split ticket contain an equal number of spots, the split ticket must be wagered at the same rate for each group.

ii. When at least two groups on a split ticket contain an unequal number of spots, the split ticket may be wagered at the same or a different rate for each group, notwithstanding (c)2i above.

3. "Way ticket" is a keno ticket on which a player selects at least two groups containing an equal number of spots which are then combined to form several straight or basic ticket combinations within one ticket. Each group played must be wagered at the same rate.

4. "Combination ticket" is a keno ticket on which a player selects at least two groups containing any number of spots and also selects how the groups shall be combined to form multiple tickets within one ticket.

5. "King ticket" is a keno ticket on which a player selects a single spot which is referred to as the "king" and then combines the king with other groups of spots to form multiple tickets within one ticket. A king ticket may contain more than one king.

6. "Multi-race ticket" is a keno ticket which is wagered for more than one game. All of the games covered by the ticket must be consecutive and must be wagered at the same rate.

19:47-15.3 Placement of wagers; payoff requirements

(a) All wagering at the game of keno shall be conducted at a keno work station in a keno booth or satellite keno booth.

(b) All wagers at keno shall be made with currency, coin, gaming chips, coupons or slot tokens. Except for a quick-pick, each player shall be required to use a keno request in order to place a wager and no verbal wagers may be accepted at the game of keno. Nothing herein shall preclude acceptance of a losing or winning keno ticket as the patron's keno request for the next game.

(c) Each player shall be responsible for ensuring that the spots recorded on the keno ticket agree with the spots marked on the player's keno request. The casino licensee shall not be responsible for any error by a keno writer which the player does not detect prior to the start of the first game for which the ticket has been generated. All winnings shall be paid in accordance with the computer-generated keno ticket and not the keno request. A keno ticket may not be voided or changed once the keno computer system has been locked out for the start of the game.

(d) Each casino licensee shall provide notice of the minimum wagering requirements and the maximum wagers in effect at the game of keno in its approved rate card.

(e) Each casino licensee shall set the payoff amount for each winning wager so that the house advantage for each wager shall not exceed 30 percent; provided, however, a casino licensee may establish a maximum aggregate payoff of not less than $100,000 to all players in a game.

19:47-15.4 Issuance of keno tickets

(a) Unless a player uses a previously generated keno ticket as a keno request or requests a quick-pick, a player shall request the issuance of a keno ticket by completing a keno request and submitting the request to a keno writer. The player shall complete a keno request by placing some type of distinguishing mark over the number or numbers he or she wishes to play. Prior to submitting the keno request to a keno writer, the player shall properly condition and price the keno request in accordance with the information set forth in the rate card of the casino licensee.

(b) Keno requests shall contain, at a minimum, the following:

1. A grid listing the numbers 1 through 80;

2. An area to record the number of games to be played;

3. An area to record the dollar value of each wager;

4. An area to record the conditioning; and

5. An area for the total price of the ticket.

(c) The keno writer shall input the information on the player's keno request or previously issued keno ticket into the keno computer system in a manner approved by the Commission. This action shall cause a one-part sequentially numbered keno ticket to be printed. Upon receipt of currency, coin, gaming chips, coupons or slot tokens in an amount equal to the total price of the keno ticket from the player, the keno writer shall issue the keno ticket to the player. The keno ticket shall contain, at a minimum, the following:

1. The date and time of issuance;

2. The keno work station number where the ticket was issued;

3. The numbers selected by the patron listed in a clearly identifiable manner;

4. The number of games to be played;

5. The first and last game number;

6. The conditioning;
7. The rate of each wager;
8. The number of ways played;
9. The total price of the keno ticket;
10. The identification code of the keno writer;
11. A representation as to the maximum keno limit for each game and an indication as to how that limit will be distributed to winners;
12. A statement that winning patrons must present a computer generated keno ticket in order to collect winnings; and
13. A statement as to the amount of time available to present a claim for the collection of keno winnings.

(d) If a casino licensee permits multi-race keno tickets, one keno request shall be used for all of the games to be wagered by the player. The player shall be required to pay for the wager prior to the start of the first game and shall not be paid for any winning games until the completion of the last game for which the multi-race keno ticket was issued unless the remaining races on the multi-race keno ticket are cancelled. A casino licensee may permit a player to receive a refund on a multi-race keno ticket for those games not drawn; provided, however, that the keno computer system is capable of generating adequate documentation for the refund and the internal control procedures governing the refund transaction are approved by the Commission.

(e) A keno writer may void a keno ticket prior to the start of the game for which the keno ticket was issued. A multi-race keno ticket may only be voided, in its entirety, prior to the start of the first game for which the keno ticket was generated. The method for voiding keno tickets shall be approved by the Commission. Each keno computer system shall be capable of maintaining, on a daily basis, a listing of voided keno tickets for each keno work station.

19:47-15.5 Keno games; selection of numbers

(a) Each casino licensee which elects to offer the game of keno shall conduct the game with an independent computer system which selects the winning numbers for the game in a random fashion. All keno computer systems shall be approved by the Commission in consultation with the Division. The random number generator for the keno system shall be maintained under dual key control with the Commission inspector maintaining and controlling one key and the keno supervisor or supervisor thereof or another department member as approved by the Commission maintaining and controlling the second key.

(b) The casino licensee, at its discretion, shall determine the number of keno games to be conducted during the gaming day. Nothing in this subchapter shall preclude a casino licensee from conducting keno games at different intervals at separate locations. Each keno game conducted during the gaming day shall be assigned a unique sequential game number by the keno computer system.

(c) A keno supervisor or a keno writer shall provide verbal notice that the current keno game will be closing at least one minute prior to closing that game or the casino licensee shall display the remaining time between keno games at each keno booth or satellite keno booth.

(d) If the keno computer system does not have an automatic lock-out feature, a keno supervisor or a keno writer with verbal approval from a keno supervisor shall cause the keno computer system to start a keno game by:

1. Locking out all keno work station terminals so that no additional keno tickets may be voided or issued for the game being conducted; and
2. Randomly selecting 20 of the 80 available numbers.

(e) If the keno computer system does have an automatic lock-out feature, each casino licensee shall be required to submit override procedures which document who performed the override of the lock-out system and the reason for the override. The ability to override the lock-out feature shall be available only to a keno supervisor or supervisor thereof.

(f) As the 20 numbers are selected by the computer, the keno supervisor or a keno writer may announce the winning numbers for the patrons in the area of the keno booth or satellite keno booth.

(g) The 20 numbers which are randomly selected by the keno computer system and the game number shall be displayed or illuminated on a keno board or video monitor visible to patrons in the area of the keno booth and in such other areas of the casino, hotel and casino simulcasting facility as are approved by the Commission.

(h) Each casino licensee shall be required to maintain a record of the winning numbers for each keno game for a period of at least one year.

19:47-15.6 Payment of winning wagers

(a) After the 20 numbers have been selected by the keno computer, a player may take a winning keno ticket to a keno booth or satellite keno booth for redemption. All winning wagers shall be paid in accordance with the information recorded on the computer-generated keno ticket. The method used by the casino licensee to evaluate the keno ticket for correct payment and cancellation shall be approved by the Commission. The keno writer shall pay the player from the cash in the keno drawer or issue a casino check and shall retain the keno ticket in the keno drawer until the end of the keno writer's shift.

(b) Winning payouts of $1,500 or more shall be authorized by a keno supervisor or a supervisor thereof. The keno supervisor or supervisor thereof shall sign the back of the winning keno ticket as evidence of such authorization.

(c) All winning keno tickets shall be valid for a maximum of one year unless a casino licensee establishes a lesser time limit for the validity of its winning keno tickets. In no case, however, may a casino licensee establish a time limit which is less than five minutes from the start of the game for which the winning ticket was sold. The time limits for which winning keno tickets shall be valid shall be set forth in the casino licensee's Rules of the Games Submission, its rate card and on all keno tickets. In the case of a multi-race keno ticket, any time limit set by a casino licensee shall:

1. Begin on the date of the last game for which the ticket was sold; and
2. Be at least five minutes from the start of the last game for which the ticket was sold.

(d) On a yearly basis, the dollar amount of all expired and unclaimed winning keno tickets shall be added to existing keno jackpot or jackpots by the casino licensee in a manner approved by the Commission.

19:47-15.7 Irregularities

(a) A keno request which is marked in such a way that it is not clear which number or type of wager is to be played shall be returned to the player for preparation of another keno request.

(b) A winning keno ticket which is not accepted or read by the keno computer system shall be manually input by the keno writer in a manner approved by the Commission.

(c) If the keno computer system is not operational, in accordance with approved internal control procedures, a winning keno ticket:

1. For $10.00 or less may be manually paid by a keno writer;
2. For more than $10.00 but less than or equal to $1,000 may be manually paid by the keno writer with authorization from the keno supervisor or a supervisor thereof; and
3. For over $1,000 may not be paid until the keno ticket can be vertified by the keno computer system.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DAM SAFETY SECTION

Dam Restoration and Inland Waters Projects Loans

Proposed New Rules: N.J.A.C. 7:24A

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1D-9, 58:4-1 et seq., and the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88.

DEPE Docket Number: 25-94-04/335.

Proposal Number: PRN 1994-320.

Submit written comments, identified by the Docket Number given above, by July 6, 1994 to:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

On November 3, 1992, the voters of New Jersey approved by referendum the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88 (the Act). Bonds of the State of New Jersey were authorized to be issued in the amount of $15,000,000 to finance State loans to assist local government units, and private lake associations and private dam owners as co-applicants with local government units, in meeting the costs of dam restoration or inland waters projects. The money from the sale of the bonds is deposited into a revolving, nonlapsing fund, the 1992 Dam Restoration and Clean Water Trust Fund.

These proposed new rules provide the procedures and criteria under which the Dam Safety Section in the Department of Environmental Protection and Energy (Department) will make loans for dam restoration and inland waters projects. A dam restoration project involves the demolition, reconstruction, rehabilitation or restoration of a dam that impounds water for water supply, flood control or recreation. An inland waters project involves work related to pollution control, flood control, or recreation and conservation purposes associated with inland waters. Such projects can include, but are not limited to, work concerned with abating pollution caused by stormwater runoff, soil erosion or other nonpoint sources of pollution, the dredging of sediments or removal of stumps, vegetation or rocks to improve the overall quality of inland waters, parks, natural areas, fishing, boating, swimming areas, water reservoirs, wildlife preserves and hunting areas, and flood control facilities or structures.

The proposed new rules establish the basic loan eligibility criteria for proposed dam restoration and inland waters projects, the priority points system for ranking approved projects, the loan application procedures, the conditions an applicant must satisfy before the Department will award a loan and the Department's remedies when a borrower fails to comply with these rules or the loan award agreement. As required by the Act, N.J.A.C. 7:24A-1.3 provides that an applicant for a loan may be a county or municipality or any agency or instrumentality thereof (local government unit). A private lake association or similar organization or an owner of a private dam may apply only as a co-applicant with a county or municipality. N.J.A.C. 7:24A-4.1(d) provides that a local government unit may assess the cost of payment of the principal and interest on a loan to a private lake association or similar organization against the real estate benefited by the project in the same manner as it might assess such costs for local improvements. An eligible project must meet the definition of a dam restoration project or inland waters project set forth in proposed N.J.A.C. 7:24A-1.7, and must be an independent and complete project.

N.J.A.C. 7:24A-2.2(a) sets forth the procedures for applying for a dam restoration and inland waters projects loan. The applicant is required to submit a written application on a form provided by the Department together with required documentation. This documentation must contain information sufficient to enable the Dam Safety Section to determine whether the applicant and the proposed project are eligible for a loan, and the amount which should be allocated to the project. In addition, the applicant must provide evidence that all required permits necessary to construct the project have been received or that appropriate steps have been taken to initiate the permit review process. N.J.A.C. 7:24A-2.2(d) provides that the initial application period will be established upon adoption of these rules and that a notice describing the application period will be published in the New Jersey Register. Subsequent application periods will be established as deemed necessary by the Department and notices thereof will be published in the New Jersey Register. After the closing date of the application period, the Dam Safety Section will evaluate the applications to determine project eligibility and eligible project costs. A priority list will be established based upon the priority ranking system set forth in N.J.A.C. 7:24A-5.1. Under this system, projects for which applications have been approved will be assigned points according to the impact the project will have on the population. This system places high priority on projects which will serve to protect public safety (high hazard dams and flood control) and low priority on projects which have minimal or no public safety benefits (pollution control and recreation).

The Department will send a notice of qualification to those applicants whose approved projects rank high enough to receive funds. The total number of projects funded will depend on the total eligible project costs of the approved and ranked applications. The Department will fund as many projects as possible given the balance available in the 1992 Dam Restoration and Clean Water Trust Fund. Upon receipt of a notice of qualification, the applicant must provide all required documentation (engineering report, plans, specifications, cost estimate and plan to repay the loan) as outlined in N.J.A.C. 7:24A-3.2 within six months. N.J.A.C. 7:24A-4.1 sets forth the terms applicable to any loan to be made pursuant to these rules. The Act requires that the interest rate for loans will be established at a rate not to exceed two percent per year. The loan maturity period will not exceed 20 years.

Social Impact

The proposed new rules set forth procedures for the disbursement of loans from funds made available under the Act for the repair of dams in New Jersey which have deteriorated to a degree that substantial remedial construction has become necessary. Loans will also be made for inland waters projects, which include flood control projects, pollution control projects and recreation and conservation projects.

The priority ranking system that will be implemented under these proposed rules considers the impact a project may have. High hazard dams will receive the highest number of points, since a project undertaken to restore a high hazard dam would contribute to the safety and well-being of people who live and work downstream of such deteriorated structures, as well as protect the impoundment itself. The failure of a high hazard dam could potentially result in the loss of life. The second tier of projects includes significant hazard dams and flood control projects. Such projects would contribute to the safety and well-being of people who live and work downstream of such deteriorated structures or in flood-prone areas. The failure of a significant hazard dam could potentially result in significant property damage. Flood control projects would provide protection from property damage.

The third tier of projects includes low hazard dams and pollution control projects. The failure of a low hazard dam would not threaten lives or property downstream, but would result in the loss of the impoundment and possibly cause erosion of the stream bed. Pollution control projects would benefit water quality because the construction or rehabilitation of a water conveyance or containment facility would help abate pollution from stormwater runoff, soil erosion or other nonpoint sources in previously developed areas.

The fourth and final tier of projects includes recreation and conservation projects. A recreation and conservation project would have a positive social impact because lake dredging and/or restoration, stream cleaning and the construction of other water-quality related facilities can help enhance recreational fishing and wildlife preserves.

Economic Impact

The proposed new rules will facilitate the distribution of revolving loan funds for dam restoration and inland waters projects and should therefore have a positive economic impact. This program will assist financially strapped municipal and county government units, as well as private lake

associations or similar organizations and private dam owners, in undertaking necessary and costly dam repairs. The program will also assist the same entities in undertaking inland waters projects, which are generally not given top priority and which may be left undone because of financial constraints. This program will also generate jobs in the construction trades. Since the fund will be replenished as loans are repaid, it will provide a long-term funding source for dam restoration and inland waters projects.

The loan program will have an economic impact on the borrowers in terms of payment of interest on the loan. In addition, since it is required to have a project which is near completion in design, some money will be required to be spent prior to submitting an application. If the applicant is a private association or owner, and a local government unit has agreed to be a co-borrower, the local government unit may incur the cost of payment of the principal and interest on the loan if the borrower defaults on the loan agreement. Also, the local government unit will incur administrative costs, such as legal fees, if the local government unit agrees to be a co-borrower. Additional administrative costs will be incurred by the local government unit if it is necessary to assess the cost of payment of the principal and interest on a loan against the real estate benefited by the project. However, the administrative costs can be financed through the loan.

Administrative costs will be incurred by the Department for implementing the loan program. These administrative costs will include staff necessary to review applications and prepare loan award agreements. The loan award agreements will require financial and legal review. Administrative costs will also be incurred for the disbursement of loan funds. The Act allows for monies to be appropriated for the Department to administer the program.

Environmental Impact

The proposed new rules will have a positive environmental impact because the loan funds will be used to restore, rehabilitate and improve the dams and waterways of the State. The restoration of dams in the State will protect fisheries and the environments which have been established around the impoundments created by such dams. Since these proposed rules require that proposed projects obtain the necessary permits for construction from the Department, any potential adverse environmental impacts of the projects will be addressed prior to their funding.

Regulatory Flexibility Analysis

Private lake associations and private dam owners, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are faced with the need to maintain their dams and waterways. Maintenance and restoration of a dam is a regulatory obligation under the Dam Safety Standards, N.J.A.C. 7:20. Therefore, the costs involved in obtaining a loan for funding the maintenance and restoration of a dam are often part of the normal operating costs or costs which must be incurred in order to comply with the Dam Safety Standards. The private lake association or private dam owner benefits, however, in that the costs of constructing such a project may be funded by a low interest loan from the State under this program.

A private lake association or private dam owner must follow the application procedures and comply with the conditions imposed by the Department under this loan program. The administrative costs of applying for, and complying with, the conditions of the loan are minor and are minimized by the following: Dam Safety staff is available for technical assistance in the application process; the documentation required by the State generally must be produced for compliance with the Dam Safety Standards or as part of normal operations for maintenance and improvement projects, so the association or owner can rely on existing staff and available resources; and all requirements are clearly explained prior to the commencement of the project, thereby reducing unnecessary work.

The private lake association or private dam owner will need to retain the services of certain businesses such as engineering consultants and construction contractors. The association or owner must bear the cost of the professional services necessary to design the project; however, the costs are generally small compared to the total construction cost of the project and are generally required in order to comply with the Dam Safety Standards or as part of normal operations for maintenance and improvement projects.

The costs for construction are also generally required for compliance with the Dam Safety Standards or as part of normal operations for maintenance and improvement projects; however, this program is intended to assist private lake associations or private owners in funding these often costly projects by offering a low interest loan with an extended maturity period.

The cost associated with complying with the loan requirements and conditions will involve repayment of the loan plus interest. The interest rate is to be established at a rate not to exceed 2 percent per year. The loan maturity period will not exceed 20 years. Some additional costs may be incurred to comply with the accounting procedures required under the grant agreement; however, these accounting procedures are generally the same procedures which must be followed on the project regardless of State funding.

Since the purpose of this program is to assist local government units, private lake associations and private dam owners in restoration of their dams or for inland water projects, and the requirements imposed are the minimum necessary for efficient management of the program, no lesser requirements or exemptions for private lake associations or private dam owners who may be small businesses have been provided.

Full text of the proposed new rule follows:

CHAPTER 24A
DAM RESTORATION AND INLAND WATERS PROJECTS LOAN PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

7:24A-1.1 Scope and construction

(a) The following constitute the rules governing loans to assist local government units, private lake associations or similar organizations, and owners of private dams for dam restoration and inland waters projects pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88. These rules prescribe the procedures, minimum standards for the conduct of borrowers, and standards for obtaining loans.

(b) These rules shall be liberally construed to permit the Department to effectuate the purposes of the Act.

7:24A-1.2 Purposes

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88;

2. To establish policies and procedures for the administration of funds appropriated pursuant to the Act for the purpose of making loans for dam restoration and inland waters projects;

3. To protect the public and the State of New Jersey by ensuring that funds appropriated are spent in a proper manner and for the intended purposes;

4. To ensure that the distribution and use of funds is consistent with the laws and policies of the State of New Jersey;

5. To establish minimum standards of conduct to prevent conflicts of interest and ensure proper administration of loans; and

6. To establish accounting procedures for the administration of loans.

7:24A-1.3 Project eligibility

(a) Any local government unit with a proposed dam restoration or inland waters project as defined in N.J.A.C. 7:24A-1.7 is eligible to apply for loan under this chapter. Any private lake association or similar organization or any owner of a private dam with a proposed project is eligible to apply for loan as a co-applicant with a local government unit.

(b) To be eligible for a loan in any loan period, a proposed dam restoration or inland waters project, as defined in N.J.A.C. 7:24A-1.7, must satisfy the following criteria:

1. The proposed design of a dam restoration project must meet all requirements of the Dam Safety Standards, N.J.A.C. 7:20, including the development of an Operation and Maintenance Manual and Emergency Action Plan. The Operation and Maintenance Manual and Emergency Action Plan are not required to be completed at the time of application but must be completed as a condition of the loan award agreement;

2. A dredging or lake restoration project at a site where the dam impounding the lake is not in compliance with the Dam Safety Standards, N.J.A.C. 7:20, shall not be eligible;
3. The project shall be an independent and complete project;
4. The project shall not be excessively expensive; and
5. The project shall not conflict with any other State projects.

7:24A-1.4 Project phases

(a) The application phase of a dam restoration or inland waters project shall consist of the following:
1. Pre-application conference;
2. Application submittal;
3. Review of application;
4. Priority ranking of project; and
5. Notice of qualification.

(b) The development phase of a dam restoration or inland waters project shall consist of the following:
1. Pre-loan conference;
2. Submittal and review of the materials required under N.J.A.C. 7:24A-3.2; and
3. Preparation and execution of the loan award agreement.

(c) The implementation phase of a dam restoration or inland waters project shall consist of the completion of the project in accordance with the terms of the loan award agreement and the requirements of this chapter.

7:24A-1.5 Legislative appropriations

Funding of loans shall be conditioned upon the appropriation by the legislature of funds from the 1992 Dam Restoration and Clean Water Trust Fund pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88, and subsequent bond acts.

7:24A-1.6 Severability

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

7:24A-1.7 Definitions

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

"Act" means the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88, and any subsequent bond acts and legislative appropriations made for the purposes provided in this chapter.

"Administrator" means the Section Chief of the Dam Safety Section of the Department or other person designated by the Commissioner to carry out the functions of the Administrator.

"Allowable project costs" means the costs which are determined by the Department under the Act and this chapter to be eligible for a dam restoration or inland waters project loan.

"Applicant" means any local government unit that applies independently, or a private lake association or similar organization or private dam owner who has a local government unit as a co-applicant, for a loan pursuant to the provisions of this chapter.

"Bonds" means the bonds authorized under the Green Acres, Clean Water, Farmland, and Historic Preservation Bond Act of 1992, P.L. 1992, c.88, and subsequent bond acts.

"Borrower" means an applicant who has been awarded a loan pursuant to the Act and this chapter, and who has executed a loan award agreement.

"Commissioner" means the Commissioner of the Department of Environmental Protection and Energy or his or her designated representative.

"Construction" means, in addition to the usual meaning thereof, acts of construction, reconstruction, replacement, and improvement, and includes the solicitation of bids in accordance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules N.J.A.C. 5:34-1.

"Dam restoration project" means the demolition, reconstruction, rehabilitation, or restoration of a dam that impounds water for water supply, flood control or recreation purposes.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Flood control facility" means any dam, basin, dike, channelization or other measure which provides a flood control benefit to a documented flood-prone, previously developed area.

"Flood control project" means the construction, reconstruction, rehabilitation, or restoration of a flood control facility.

"Fund" means the 1992 Dam Restoration and Clean Water Trust Fund established pursuant to the Green Acres, Clean Water, Farmland and Historic Preservation Bond Act of 1992, P.L. 1992, c.88.

"Height of dam" means the vertical dimension from the lowest point in the streambed or ground surface at the downstream toe of the dam to the elevation of the top of dam (without camber).

"High hazard dam" means a dam, the failure of which may cause the probable loss of life or extensive property damage, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

"Inland waters" means any lake, river, pond, stream, marsh, or freshwater wetland; any floodway, flood fringe area, or flood hazard area as defined in N.J.S.A. 58:16A-51 or as delineated by the Department pursuant to N.J.S.A. 58:16A-52; and any area delineated by or for the Federal government which, if appropriately regulated by a local government unit, qualifies the residents therein for Federal flood insurance.

"Inland waters project" means any flood control project, pollution control project, or recreation and conservation project as defined in this chapter.

"Loan" means a loan awarded pursuant to the Act and this chapter.

"Local government unit" means a county or a municipality, or any agency, authority, board, commission, or other instrumentality thereof; or any two or more counties or municipalities operating jointly through a joint meeting or interlocal services agreement, permitted by law, or any agency, authority, board, commission or other instrumentality thereof; or any other local or regional entity created by the legislature as a political subdivision of the State, or any agency, authority, board, commission, or other instrumentality thereof.

"Low hazard dam" means a dam, the failure of which would result in the loss of the dam itself but little or no additional damage to other property, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

"Pollution control facility" means any water conveyance or containment facility (basin, well, swale or other practice acceptable to the Department), proposed or existing, which contributes to the abatement of pollution from stormwater runoff, soil erosion, or other nonpoint sources in previously developed areas.

"Pollution control project" means the construction, reconstruction, rehabilitation, or restoration of a water pollution control facility.

"Project costs" means the applicant's expenses incurred in connection with all things deemed by the Department to be necessary or useful and convenient for completion of a project; the execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with any project authorized by the Act; the procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of the Act.

"Recreation and conservation project" means the construction, rehabilitation, or restoration of a facility, lake or stream to improve the overall quality of inland waters, including the dredging of lakes, cleaning of streams, construction of water quality related facilities to enhance recreational fishing and wildlife preserves, or other practices acceptable to the Department.

"Significant hazard dam" means a dam, the failure of which may cause significant damage to property and project operation, but loss of human life is not envisioned, as defined in the Dam Safety Standards at N.J.A.C. 7:20-1.8.

SUBCHAPTER 2. PROJECT APPLICATION PHASE

7:24A-2.1 Pre-application procedures

(a) Each applicant shall request a pre-application conference prior to making a formal application for a loan. During the conference, the Department shall identify and explain all loan application procedures and requirements. The Department shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a loan. Neither written nor oral statements made during the pre-application conference shall bind the Department. The Department may waive the pre-application conference at its discretion.

(b) Questions concerning the dam restoration and inland waters projects loan program and requests for a pre-application conference may be directed to:

Department of Environmental Protection and Energy
Dam Safety Division
CN 419
Trenton, NJ 08625
(609) 984-0859

7:24A-2.2 Application procedures

(a) To apply for a dam restoration or inland waters project loan, the applicant shall submit the following:

1. A completed loan application on the form available from the Department which shall include the information specified in (a)2 through 13 below;

2. A description of the applicant's plans to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan;

3. Evidence that all Federal, State, regional and local agencies with jurisdiction over the project have been notified of the project, including, but not limited to, the appropriate municipal planning board and environmental commission and county planning board and environmental commission;

4. Evidence that all required permits have been obtained or that steps have been taken to initiate the permit review process for the required permits in order to demonstrate that the requirements of N.J.A.C. 7:24A-3.2(c) can be met;

5. An explanation of the need for the project and a discussion of alternatives to the proposed project;

6. A statement explaining how the loan will accomplish the goal set out in the application;

7. A proposed construction schedule for the project;

8. Details of proposed financial arrangements for construction of the project;

9. All other forms, supplementary materials, agreements and subagreements which the Department may require as determined in the pre-application conference required pursuant to N.J.A.C. 7:24A-2.1(a);

10. An estimate of construction costs by unit price for the project. Estimated costs for labor, equipment, materials, supplies, overhead and contractors' and consultants' profit margins with supporting background and summary sheets as may be requested by the Department to substantiate the estimate of unit costs. Total project costs and those project costs that the applicant anticipates will be allowable project costs must be separately summarized;

11. A brief description of the environmental impact of the proposed project, including the environmental impact of the proposed project on water quality, plant and animal life, project site land characteristics, historical sites and other pertinent environmental factors;

12. Proof of the applicant's ownership of the real property on which the project is located, or the capability (easement or property owner's permission) to use that property for undertaking the project; and

13. All documentation and other information as the Department may require to adequately determine the applicant's priority point total pursuant to N.J.A.C. 7:24A-5.1.

(b) The application shall be signed by a person authorized by written resolution or ordinance of a local government unit to file an application for a loan under this chapter or to apply as a co-applicant with a private lake association or similar organization or private dam owner, to represent the local government unit in all matters relating to the application process, and to obligate the local government unit to the terms and conditions of a loan award agreement. A copy of the resolution or ordinance shall accompany the application.

(c) The application of a private lake association or similar incorporated organization shall be signed by a person authorized by written resolution of the association's or organization's board of directors or governing body to file an application for a loan under this chapter, to represent the private lake association or similar organization in all matters relating to the application process, and to obligate the private lake association or similar organization to the terms and conditions of a loan award agreement. A copy of the resolution shall accompany the application, along with the resolution required pursuant to (b) above.

(d) An application shall be submitted prior to the application closing date for the application period in which the applicant wishes to be awarded a loan. No application will be accepted after the close of business on the application closing date.

1. The initial application period and application closing date will be established subsequent to the adoption of this chapter. A notice of the details of the application period will be published in the New Jersey Register.

2. Additional application periods may be established as deemed necessary by the Department upon publication of a notice of the details of the additional application period in the New Jersey Register.

3. The application closing date for any application period may be extended, if deemed necessary by the Department, upon publication of a notice of extension in the New Jersey Register.

(d) Applications shall be sent to:

Department of Environmental Protection and Energy
Dam Safety Section
CN 419
Trenton, NJ 08625

7:24A-2.3 Allowable project costs

(a) Project costs shall be allowed to the extent permitted under this chapter and the loan award agreement. Allowable project costs shall be those costs set forth below:

1. For a dam restoration project:

i. All items deemed by the Department to be necessary or useful and convenient in connection with a dam restoration project;

ii. Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with a dam restoration project;

iii. Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

iv. Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

2. For an inland waters project:

i. All items deemed by the Department to be necessary or useful and convenient in connection with an inland waters project;

ii. Execution of any agreements and franchises deemed by the Commissioner to be useful and convenient in connection with an inland waters project;

iii. Procurement or provision of engineering, inspection, relocation, legal, financial, planning, geological, hydrological and other professional services, estimates and advice; and

iv. Organizational, administrative and other work and services, including salaries, equipment and materials necessary to comply with the applicable provisions of this chapter.

3. The project costs set forth below shall not be allowable:

i. Project design and development costs incurred in preparing necessary documentation for the application phase of this loan program;

ii. Any costs associated with a project for which construction commenced prior to the filing of a loan application with the Department;

iii. Any items deemed by the Department to be unnecessary or not useful and convenient for the project; and

iv. Any costs not listed in (a)1 or (a)2 above.

7:24A-2.4 Use and disclosure of information

Any loan application, pre-application, or other submittal, when received by the Department, constitutes a public record. The Department shall make such records available to persons who request them to the extent allowed by State and Federal law.

7:24A-2.5 Application review

(a) The Department shall review each application according to the following protocol:

1. Administrative review to determine the completeness of the application;

2. Project, technical, scientific and environmental review to determine the merit and relevance of the project to the Department's program objectives;

3. Budget review to determine whether proposed project costs are allowable, reasonable, and applicable; and

4. Eligibility determination.

7:24A-2.6 Approval or disapproval of application

(a) Upon completion of its review of an application, the Department shall take one of the following actions:

1. Request additional information to complete the application;

2. Approve the application for priority ranking and possible loan; or

3. Disapprove the application.

(b) The Department shall promptly notify the applicant in writing of any disapproval and provide the reasons for such disapproval. A disapproval of an application shall not preclude its reconsideration during a subsequent application period if revised and resubmitted by the applicant.

7:24A-2.7 Notice of qualification

(a) The Department shall send a notice of qualification to an applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 and ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan. An applicant who has submitted an application approved pursuant to N.J.A.C. 7:24A-2.5 and 2.6 but not ranking high enough on the priority list pursuant to N.J.A.C. 7:24A-5.1 to be awarded a loan shall be so notified by the Department.

(b) Any applicant who receives a notice of qualification but who decides not to proceed with a project shall so notify the Department within 30 days of the date of the notice.

(c) The Department shall award a loan to any applicant who receives a notice of qualification subject to available appropriations, execution of a loan award agreement and submittal of required permits and materials, prepared to the satisfaction of the Department, within six months after the Department issues the notice of qualification or within any extension of the period for such submittals granted pursuant to N.J.A.C. 7:24A-3.2(c).

(d) An applicant with a project on a priority list who is not awarded a loan in any application period may reapply for a position on any subsequent priority list for a subsequent application period by timely filing a new loan application form and by updating the other application documents required under N.J.A.C. 7:24A-2.2. The reapplication will be treated as a new application for a loan and will be evaluated in accordance with the requirements of this chapter.

SUBCHAPTER 3. PROJECT DEVELOPMENT PHASE

7:24A-3.1 Pre-loan conference

(a) Each applicant who receives a notice of qualification shall arrange to have a pre-loan conference within 30 days from the date of the notice of qualification and shall submit all materials required pursuant to N.J.A.C. 7:24A-3.2(a) to the Department within six months after the date of the notice of qualification or within any extension of the period for materials submittal granted pursuant to N.J.A.C. 7:24A-3.2(c).

(b) During the pre-loan conference the Department shall identify and explain the submittals required before a loan award agreement can be executed.

7:24A-3.2 Required submittals prior to execution of a loan award agreement

(a) An applicant who receives a notice of qualification shall submit the following materials prepared in accordance with accepted engineering practices, within the time period specified in N.J.A.C. 7:24A-3.1(a):

1. A complete engineer's report prepared, signed and sealed by a New Jersey-licensed professional engineer experienced in hydrologic, hydraulic, structural and geotechnical engineering. The report shall include, but is not limited to, the engineering assumptions, references, calculations and conclusions relative to the structural, hydrologic and hydraulic design of all elements within the project scope, as well as all information, narrative, data, and computations necessary to support and describe the design developed in such detail as to permit complete understanding of the project design;

2. Plans for the loan project prepared by a New Jersey-licensed professional engineer. Each drawing shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, the name of the engineer and his or her license number. Plans shall show clearly the datum to which elevations shown are referred. The National Geodetic Vertical Datum of 1929 (U.S.G.S.) should be used wherever possible or an equation converting to that datum given. The plans shall clearly reflect and label all existing and proposed features;

3. Construction specifications, including, but not limited to:

i. General provisions, specifying the rights, duties, and responsibilities of the applicant, engineer and builder, and the prescribed order of work;

ii. Technical provisions, describing in detail the work methods, equipment, and materials to be used, the results to be obtained and the project and payment schedule; and

iii. All other provisions, submissions and certifications deemed necessary by the Department;

4. A detailed cost estimate of expenses for the project. The breakdown of the cost estimates shall be by unit price covering estimated labor, equipment, materials, supplies and contractor's overhead and profit. A summary form showing item number, description, estimated quantity, unit, unit price, and estimated amount is required; and

5. A description of the applicant's plan to repay the loan and pay any other expenses necessary to fully complete and implement the project and the steps the applicant has taken or will be taking to implement this plan.

(b) The Department reserves the right to waive any of the submission requirements of (a) above if it determines that the submission of such information is not required or necessary in order for the Department to enter into a loan award agreement with the applicant.

(c) An applicant who receives a notice of qualification shall obtain all necessary Federal, State and local permits and approvals within six months of the date of the notice of qualification. Failure to obtain the required permits within the required time period shall disqualify the project for a loan for that application period unless prior written approval for an extension has been granted by the Department.

1. The Department may extend the time for submission of the required materials and/or permits for up to three months if the applicant provides written justification of the need for such extension to the satisfaction of the Department. The applicant must submit such written justification to the Department no later than 30 days before the expiration of the specified six-month period.

2. The Department may grant an additional extension for the submission of the required permits and/or materials if the applicant demonstrates to the satisfaction of the Department that the permits are delayed through no fault of the applicant.

7:24A-3.3 Execution of a loan award agreement

(a) The Department shall prepare and transmit duplicate copies of the loan award agreement to the applicant.

1. The applicant shall execute such duplicate copies of the loan award agreement and return them within 30 calendar days after the date of the Department's transmittal letter. The Department may, in its discretion, extend the time for execution. The loan award agreement of a local government unit applicant shall be signed by a person authorized by written resolution or ordinance to obligate the applicant to the terms and conditions of the loan award agreement. The loan award agreement shall be signed by, or on behalf of, each co-applicant, if any.

2. The loan award agreement shall set forth the terms and conditions of the loan, including an estimated loan repayment schedule, approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof.

3. The loan award agreement is deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department during the application phase of the project.

4. After the Department has executed the loan award agreement, it shall transmit a copy of the executed loan award agreement to the applicant, and co-applicant, if any.

5. The Department shall not execute the loan award agreement if the applicant is in default on any State loan.

(b) The loan award shall become effective upon execution of a loan award agreement by the Department and the applicant, and shall constitute an obligation of the Fund in the amount and for the purposes stated in the loan award agreement.

(c) The loan award shall not commit or obligate the Department to award any continuation loan to cover cost overruns for any project. Cost overruns for any project or portion thereof are solely the responsibility of the borrower.

SUBCHAPTER 4. PROJECT IMPLEMENTATION PHASE

7:24A-4.1 Amount and terms of loan

(a) The amount of the loan, determined by the Department, shall be based upon allowable project costs as set forth in this chapter.

(b) The interest rate for loans made pursuant to the Act from the 1992 Dam Restoration and Clean Water Trust Fund shall not exceed two percent per year.

(c) The loan maturity period shall be for a period not to exceed 20 years from the date that disbursements to the borrower begin. The Department and borrower may establish a shorter repayment schedule by mutual agreement. Principal and accrued interest may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

(d) The cost of payment of the principal and interest of any loan made to a private lake association or similar organization or owner of a private dam, as a co-applicant with a local government unit, shall be assessed by the local government unit against the real estate benefited thereby in proportion to and not in excess of the benefits conferred. Such assessments shall bear interest and penalties from the same time and at the same rate as assessments for local improvements in the municipality where they are imposed. From the date of confirmation, the assessments shall be a first and paramount lien upon the real estate assessed to the same extent, and be enforced and collected in the same manner as assessments for local improvements.

(e) A local government unit may be required to secure a loan awarded under this chapter in a manner acceptable to the Department. Acceptable security arrangements include, but are not limited to, general obligation bonds of the local government unit, municipal bond insurance and surety bonds.

(f) An estimated amortization or loan repayment schedule will be provided to the borrower by the Department and be made part of the loan award agreement. The schedule will indicate installment dates and loan repayment amounts. The Department reserves the right to unilaterally adjust the loan repayment dates and amounts on the amortization schedule if the timetable for completion and the actual project costs and disbursements vary from the estimated amortization schedule.

(g) The loan shall be repaid in semi-annual installments over a period which will not exceed 20 years from the date of the first drawdown to the date of the borrower's final repayment.

(h) Interest shall accrue on the amount of loan funds disbursed from the Fund at a rate of two percent per year, computed from the date of disbursement to the date of the final repayment of principal. Interest accrued against each interim drawdown, from the date of the first drawdown to a date three months following the last project drawdown, must be paid to the Treasurer of the State of New Jersey three months after the date of the final drawdown.

(i) The first principal repayment will be made to the Treasurer of the State beginning nine months after the final project drawdown, or two years from the date of the first disbursement, or as per a schedule prescribed by the loan award agreement, whichever comes first.

(j) The borrower shall allocate a portion of its budget in an amount sufficient to meet the annual debt service on the loan. Repayment funds must be deposited into a fund specifically established for the purpose of assuring repayment of the loan to the Treasurer of the State.

(k) The borrower's failure to make any repayment within 30 days of the scheduled payment due date will result in the Department's assessing a late fee. The late fee is computed on the following basis:

1. When a payment is 30 days past due, the late fee shall be five percent of the payment amount due.

2. When a payment is 60 days past due, the late fee shall be 10 percent of the payment amount due.

3. When a payment is 90 days past due, the late fee shall be 15 percent of the payment amount due, and the borrower will be in default of the loan award agreement. Upon default, all outstanding principal, interest, and penalty amounts immediately become payable to the Treasurer of the State.

4. On a loan in default, interest charges at a rate of two percent accrue on the outstanding principal, interest, and penalty charges calculated from the date the repayment was due.

7:24A-4.2 Loan conditions

(a) The following requirements, in addition to the requirements of such other statutes, rules, terms and conditions as may be applicable to a particular loan, are conditions of each loan and conditions precedent to each disbursement under a loan award agreement:

1. No disbursement shall be made under a loan award agreement until a specific appropriation therefore has been made by the Legislature.

2. The borrower shall certify that the project or phase of the project was initiated and completed in accordance with the time schedule specified in the loan award agreement.

3. The borrower shall certify that the borrower and its contractors and subcontractors shall comply with all insurance requirements of the loan award agreement and certify, when appropriate, that the insurance is in full force and effect and that the premiums have been paid. The borrower shall include the State and its agencies, employees and officers as additional named insureds on any certificate of liability insurance (or other similar document evidencing liability insurance coverage) of the contractor. The borrower shall provide the Department with a copy of the certificate of liability insurance (or other similar document evidencing liability insurance coverage) prior to proceeding with the project. Such certificate shall be maintained in full force and represent a continuing obligation to include the State and its agencies, employees and officers as additional named insureds through the completion of construction. The borrower shall not alter or cancel such certificate without prior notification to the Department, in writing, 15 days in advance of any alteration or cancellation.

4. The borrower shall certify that the borrower and its contractors and subcontractors maintain their financial records in accordance with N.J.A.C. 7:24A-4.20.

5. The borrower shall certify that the borrower and its contractors and subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, the

New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules promulgated pursuant thereto.

6. The borrower shall certify that the borrower includes in all its construction or development contracts for the project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project.

i. The performance bond or performance guarantee shall remain in effect until the Department conducts its final inspection of the project and states in writing to the applicant that the project is satisfactorily completed.

ii. The performance bond or performance guarantee shall be both nondiscriminatory and financially satisfactory to the Department, and meet all statutory requirements.

7. The borrower shall certify that the borrower is in compliance with all other requirements and conditions of the loan award agreement.

8. Bid specifications shall require that project elements which constitute unallowable project costs be bid as line items in the total bid specifications separate from project elements which constitute allowable project costs.

9. Bid specifications shall require that each general contractor who bids on the project shall identify in the bid submission to the borrower the principal subcontractors.

10. Before the borrower makes any final award of a construction contract, the borrower shall submit to the Department for review and approval the final construction contract, with work specifications detailing any changes made since submittal of the materials required during the project development phase pursuant to N.J.A.C. 7:24A-3.

11. Concurrent with the submittal to the Department required under (a)10 above, the borrower shall provide the Department with a tabulation of bids received and identify the general contractor to be awarded the construction contract for the project. In the event a contract is not proposed to be awarded to the contractor who has submitted the lowest bid, the borrower shall provide adequate justification for said award.

12. The Department reserves the right to require the borrower to readvertise the bid specifications for the project if the Department deems the certifications required in (a)13 below unsatisfactory.

13. The borrower shall certify the following to the Department before the borrower awards any contract on a bid.

i. The borrower is in compliance with the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., and the Local Public Contracts rules, N.J.A.C. 5:34;

ii. All contracts for the project will be awarded to the qualified, responsible and responsive bidder who submits the lowest acceptable bid; and

iii. The bid prices included in the bid specifications are reasonably balanced.

14. The borrower shall insert in all contracts or subcontracts that the borrower awards pursuant to this chapter the Department's subcontractor certification form as included in the loan award agreement.

15. The borrower shall submit one copy of the executed construction contract and subcontracts and associated documents to the Department within 10 days of their execution.

7:24A-4.3 Formal amendments to loan award agreement

(a) A formal amendment means any written alteration of any term or condition, budget or project scope or construction method or other administrative, technical or financial provision of the loan award agreement.

(b) A formal amendment shall not increase the loan amount. Any increased costs resulting from a formal amendment pursuant to (a) above shall be the sole responsibility of the borrower.

(c) The borrower shall promptly notify the Administrator in writing (certified mail, return receipt requested) of any event or proposed project change which may require a formal amendment, including, but not limited to:

1. Rebudgeting;

2. Any changes in approved technical plans or specifications for a project;

3. Any changes in the approved scope or objective of a project;

4. Any significant, changed conditions at the project site;

5. Any delay in the time for the completion of the project or any major phase thereof;

6. Any changes which may increase or substantially decrease the total cost of a project; and

7. Any changes in personnel identified in the loan award agreement or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department determines that a formal amendment to the loan award agreement is necessary, it shall notify the borrower and prepare the formal amendment. If the Department determines that a formal amendment is not necessary, N.J.A.C. 7:24A-4.4 or 4.5 shall apply.

7:24A-4.4 Other changes to loan award agreement

If the Department determines that a proposed project change does not require a formal amendment to the loan award agreement, the Administrator shall provide the borrower with written approval of such a change.

7:24A-4.5 Modification of administrative provisions

The Department may effect a modification of an administrative provision of the loan award agreement by notifying the borrower by letter (certified mail, return receipt requested). Such a modification of an administrative provision may include a change in the designation of key Department personnel, a change in address to which a report is to be transmitted by the borrower, or a change in the payment schedule.

7:24A-4.6 Loan disbursements

(a) Loan disbursements shall be made only to the local government unit as sole borrower or as co-borrower, unless otherwise indicated in the loan award agreement.

(b) Funds shall be released to the borrower upon completion of the entire project to the satisfaction of the Department, or on an interim basis. If interim disbursements are made, each will be equal to the loan amount corresponding to the percentage of the total project completed. Ten percent of each disbursement shall be withheld until the whole project has been completed to the satisfaction of the Department. No disbursement shall be made until the Department receives the necessary information to document project cost. The information shall include all forms and documentation required by the Department as specified in the loan award agreement.

7:24A-4.7 Unused loan funds

Unused loan funds for a project for which actual allowed implementation costs are less than the amount appropriated for the loan shall be retained by the State and deposited in the Fund to be applied to other dam restoration and inland waters projects, as appropriate, pursuant to the Act and this chapter.

7:24A-4.8 Assignment

The right to receive disbursements from the State pursuant to a loan award agreement under this chapter shall not be assigned.

7:24A-4.9 Publicity and signs

(a) Any press release or other public dissemination of information by the borrower concerning the project shall acknowledge State loan support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblems of the State and the Department, shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project, State loan support, and other information as required by the Department.

7:24A-4.10 Access

(a) The borrower and its contractors and subcontractors shall allow Department personnel and any authorized representative of the Department access to the facilities, premises and records related to the project.

1. Each contract executed by the borrower and its contractors and subcontractors shall contain provisions allowing for such access to any facilities, premises and records related to the project.

2. The borrower shall submit to the Department any documents and information related to the project as requested by the Department.

7:24A-4.11 Fraud and other unlawful or corrupt practices

(a) The borrower shall administer the loan and shall award contracts and subcontracts pursuant to the loan award agreement, free from bribery, graft, and other corrupt practices. The borrower bears primary responsibility for prevention and detection, and shall cooperate in the prosecution of any such conduct.

(b) The borrower shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The borrower shall notify the Administrator immediately after such allegation or evidence comes to its attention, and shall periodically advise the Administrator of the status and ultimate disposition of such matter.

7:24A-4.12 Debarment

(a) No borrower shall enter into a contract for work on a project with any person debarred, suspended or disqualified from contracting with the Department pursuant to N.J.A.C. 7:1-5.

(b) Each borrower shall insert in every contract for work on a project a clause that states that the contractor may be debarred, suspended or disqualified from contracting with the State and the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) Each borrower shall prepare bid specifications which require bidders to submit a sworn statement of the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's list of debarred, suspended and disqualified bidders. Bid specifications prepared by the borrower shall also state that the borrower will immediately notify the Department whenever a bidder is on the Treasurer's list. The Department reserves the right, in such circumstances, to immediately suspend such bidder from Department contracting, and to take such other action pursuant to N.J.A.C. 7:1-5 as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5, the borrower may take into account, in determining whether such bidder is the lowest responsible bidder pursuant to law, the loss of Department loan funds under these rules which would result from awarding a contract to such bidder. The borrower may advise prospective bidders that the procedures of (c) above and (e) below will be followed.

(e) Any person included on the Treasurer's list of debarred, suspended and disqualified bidders as a result of action by a state agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a loan under this chapter may submit information to the Department to demonstrate why this section should not apply to such person. If the Commissioner determines that contracting with such a bidder is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may make an exception from the application of this section with respect to a particular bidder pursuant to N.J.A.C. 7:1-5.9. In the alternative, the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1-5.

7:24A-4.13 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of a borrower's, contractor's or subcontractor's noncompliance with any requirement of this chapter, or term or condition of the loan award agreement, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:24A-4.14;

2. Withhold loan funds pursuant to N.J.A.C. 7:24A-4.15;

3. Order stoppage of the project work pursuant to N.J.A.C. 7:24A-4.16; or

4. Terminate or annul a loan pursuant to N.J.A.C. 7:24A-4.17 or 4.18, respectively.

7:24A-4.14 Notice of noncompliance

When the Department determines that a borrower is not in compliance with any requirement of this chapter or with any term or condition of the loan award agreement, it shall notify the borrower in writing (certified mail, return receipt requested or hand delivery) of the noncompliance. The Department may require the borrower, its engineer and/or contractor to take and complete corrective action within 10 working days of the date of delivery of a notice of noncompliance. If the borrower, its engineer and/or contractor do not take corrective action or if such corrective action is not adequate in the judgment of the Department, then the Department may withhold payment or issue a stop work order pursuant to N.J.A.C. 7:24A-4.15 or 4.16.

7:24A-4.15 Withholding of funds

The Department may withhold a loan disbursement or any portion thereof when it determines and provides notification in writing that a borrower has failed to comply with any provision of this chapter, or any term or condition of the loan award agreement.

7:24A-4.16 Stop work order

(a) The Department may order that work on a project be stopped for good cause. Good cause shall include, but is not limited to, default by the borrower or noncompliance with the terms of the loan award agreement or where the Department determines it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) A stop work order shall contain:

1. The reasons for issuance of the stop work order;

2. A clear description of the work to be suspended;

3. Instructions as to the issuance of further orders by the borrower for materials or services;

4. Instructions as to action to be taken by the borrower on subagreements;

5. Other suggestions to the borrower for minimizing costs; and

6. A notice of noncompliance pursuant to N.J.A.C. 7:24A-4.14.

(c) The Department may, by written order to the borrower (certified mail, return receipt requested), require the borrower to stop all, or any part of, the project work for a period of not more than 45 days after the borrower receives the order, and for any extension of such period to which the parties may agree.

(d) Upon receipt of a stop work order, the borrower shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the stoppage period or within any extension of such period to which the parties agree, the Department shall either:

1. Rescind the stop work order, in full or in part;

2. Terminate the work covered by such order; or

3. Authorize resumption of work.

(e) If a stop work order is rescinded or the period of the order or any extension thereof expires, the borrower shall promptly resume the previously suspended work. The Department may, in its discretion, make an equitable adjustment to the loan period, the project, or both, and shall amend the loan award agreement in accordance with N.J.A.C. 7:24A-4.3 or make other changes in accordance with N.J.A.C. 7:24A-4.4.

7:24A-4.17 Termination of loan

(a) The Department may terminate a loan in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. Good cause shall include, but is not limited to, default by the borrower or noncompliance with the terms and conditions of the loan.

1. The Department shall give written notice to the borrower (certified mail, return receipt requested) of its intent to terminate a loan in whole or in part at least 10 days prior to the proposed date of termination, which notice shall state the reasons for the proposed termination.

(b) If a borrower completely or partially terminates the project for which a loan has been awarded, the borrower shall promptly give written notice to the Administrator. The Department may enter into a loan termination agreement or unilaterally terminate the loan, effective as of the date that the borrower terminated work on the project. The Department may also annul the loan pursuant to N.J.A.C. 7:24A-4.18.

(c) The Department and borrower may enter into a loan termination agreement at any time, on terms consistent with the requirements of this chapter. The agreement shall establish the effective date of termination of the project and loan, basis for settlement of loan termination costs, and the amount and date of payment of any sums due either party.

(d) Upon termination of a loan, the borrower shall refund or credit to the State of New Jersey that portion of loan funds paid to the borrower and allocable to the terminated portion of the project, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination of the loan and as may be otherwise allowable as determined by the Department.

1. Upon receipt of written notice of the Department's intent to terminate the loan, the borrower shall make no new financial commitments of loan funds without Department approval.

2. Upon receipt of written notice of the Department's intent to terminate the loan the borrower shall reduce the amount of outstanding commitments of loan funds insofar as possible and report to the Administrator the uncommitted balance of loan funds.

7:24A-4.18 Annulment of loan

(a) The Department may, in writing, annul the loan if it determines that:

1. Without good cause, the borrower has not substantially completed the project;

2. The borrower obtained the loan by fraud; or

3. The borrower has committed corrupt practices in administering the project.

(b) The Department shall give written notice to the borrower (certified mail, return receipt requested) of its intent to annul the loan at least 10 days prior to the intended date of annulment. Upon annulment of the loan, the borrower shall return all loan funds disbursed to it. The Department shall make no further disbursements to the borrower.

(c) The Department may pursue such other remedies as may be available under Federal, State and local law.

7:24A-4.19 Adjudicatory hearings

(a) The Administrator shall decide any dispute arising under a loan upon written request by the borrower. The borrower must specify in detail the basis of the dispute and the relief sought. The Administrator will reduce the decision to writing and send a copy to the borrower.

(b) Within 20 days of receipt of the Administrator's decision, a borrower may submit a written request for an adjudicatory hearing to contest the Administrator's decision. The hearing request shall be submitted to the Department at the following address:

Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402.

(c) The borrower shall include the following information in a request for an adjudicatory hearing:

1. The location of the project;

2. A copy of the Administrator's decision and the loan award agreement;

3. The legal and factual questions at issue; and

4. Documents and other information supporting the request.

(d) Following receipt of a timely and complete hearing request, the Department may attempt to settle the dispute through whatever proceedings, meetings and conferences that the Department deems appropriate.

(e) If efforts at settlement fail, the Department shall decide whether to grant the hearing request. A granted hearing request shall be transmitted to the Office of Administrative Law and conducted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(f) The Department, if it denies a hearing request, shall briefly state the reasons for the denial. A denial shall be considered a final agency action.

7:24A-4.20 Accounting procedures, financial records and auditing requirements

(a) The borrower's accounting system must be adequate to identify all costs associated with the project.

(b) The borrower must maintain records, books, documentation, and other evidence and appropriate accounting procedures and practices to reflect:

1. The total cost of the project, including all eligible costs;

2. The amount, date of receipt, and disposition of all assistance received for the project, including both Department loan assistance and any other grants, contributions, gifts, or donations; and

3. In the case of more than one loan, separate records must be maintained for each project.

(c) All financial records of the borrower and of its contractors and subcontractors shall conform to generally accepted accounting principles.

(d) The Department, or its duly authorized representative or representatives, shall have access to all records, books, documents and papers pertaining to the loan award agreement and/or the approved project for audit examination, excerpt and transcription purposes. All records shall be maintained and made available to the Department during the performance of the approved project and for three years after the date of final disbursement by the Department or the date of audit resolution, whichever is later. The borrower shall reference N.J.A.C. 7:24A-4.20(d) in all project-related contracts.

(e) The borrower shall conduct annual audits in conformance with the Federal Single Audit Act of 1984, P.L. 98-502, Federal OMB Circular A-128, "Audits of State and Local Governments," and State OMB Circular 87-11 "Single Audit Policy," incorporated herein by reference. The documents may be obtained from the Department.

(f) Each audit report must document the borrower's compliance with the material terms and conditions of the loan award agreement and applicable laws and regulations.

(g) Each audit report shall contain an itemized schedule of all of the borrower's State grant and other financial assistance that identifies grantor agency, program title, State account number, total amount of assistance, and total disbursement to date.

(h) The Department may adjust the borrower's account or final disbursement, if necessary, upon the Department's completion of its review of the annual audit reports.

SUBCHAPTER 5. PRIORITY RANKING OF PROJECTS

7:24A-5.1 Criteria for priority determination

(a) The Department shall assign priority points in accordance with the provisions set forth in (b) below to each project for which an application has been approved pursuant to N.J.A.C. 7:24A-2.6.

(b) Priority points shall be assigned according to the following protocol:

1. Priority points shall be assigned according to the project type.

i. 100 points shall be assigned for a dam restoration project for a high hazard dam.

ii. 75 points shall be assigned for a flood control project or a dam restoration project for a significant hazard dam.

iii. 50 points shall be assigned for a pollution control project or a dam restoration project for a low hazard dam.

iv. 25 points shall be assigned for a recreation and conservation project.

2. For dams, priority points shall be assigned according to the volume of water stored behind the dam at normal pool elevation.

i. One point shall be assigned for storage volumes of less than 75 acre-feet.

ii. Three points shall be assigned for storage volumes of 75 acre-feet or greater, but less than 200 acre-feet.

iii. Six points shall be assigned for storage volumes of 200 acre-feet or greater, but less than 500 acre-feet.

iv. Nine points shall be assigned for storage volumes of 500 acre-feet or greater.

3. For dams, priority points shall be assigned according to the height of the dam.

i. One point shall be assigned for a height of less than 10 feet.

ii. Three points shall be assigned for a height of 10 feet or greater, but less than 20 feet.

iii. Six points shall be assigned for a height of 20 feet or greater, but less than 40 feet.

iv. Nine points shall be assigned for a height of 40 feet or greater.

4. For dams, priority points shall be assigned according to the findings contained in the U.S. Army Corps of Engineers Phase 1 Inspection Report.

i. Zero points shall be assigned for a green-covered report or if no report was prepared.

ii. Three points shall be assigned for a yellow-covered report.

iii. Six points shall be assigned for a white-covered report.

iv. Nine points shall be assigned for a red-covered report.

5. For dams, priority points shall be assigned according to the surface area of water at normal pool created by the dam.

i. One point shall be assigned for a surface area of less than 20 acres.

ii. Three points shall be assigned for a surface area of 20 acres or greater, but less than 50 acres.

iii. Six points shall be assigned for a surface area of 50 acres or greater, but less than 150 acres.

iv. Nine points shall be assigned for a surface area of 150 acres or greater.

6. For dams, priority points shall be assigned according to the use of the dam. A particular dam may be assigned points for more than one use.

i. One point shall be assigned if the impoundment created by the dam is used for recreation.

ii. Two points shall be assigned if the dam is used as a municipal roadway for public use.

iii. Three points shall be assigned if the dam is used as a county roadway for public use.

iv. Four points shall be assigned if the dam's primary design purpose is for flood control.

v. Six points shall be assigned if the water stored behind the dam is used as a potable water supply.

7. For flood control projects, priority points shall be assigned according to the extent the project protects homes.

i. Three points shall be assigned for a project that protects one to five homes.

ii. Five points shall be assigned for a project that protects six to 10 homes.

iii. Seven points shall be assigned for a project that protects 11 to 20 homes.

iv. Nine points shall be assigned for a project that protects 21 or more homes.

8. For flood control projects, priority points shall be assigned according to the extent the project protects commercial businesses.

i. Three points shall be assigned for a project that protects one or two businesses.

ii. Five points shall be assigned for a project that protects three or four businesses.

iii. Seven points shall be assigned for a project that protects five to 10 businesses.

iv. Nine points shall be assigned for a project that protects 11 or more businesses.

9. For flood control projects, priority points shall be assigned according to the extent the project protects industrial facilities.

i. Three points shall be assigned for a project that protects facilities which employ up to 50 people.

ii. Five points shall be assigned for a project that protects facilities which employ 51 to 100 people.

iii. Seven points shall be assigned for a project that protects facilities which employ 101 to 200 people.

iv. Nine points shall be assigned for a project that protects facilities which employ 201 or more people.

10. For flood control projects, priority points shall be assigned according to the extent the project protects agriculture land.

i. Three points shall be assigned for a project that protects less than 100 acres.

ii. Five points shall be assigned for a project that protects 100 acres or more, but less than 200 acres.

iii. Seven points shall be assigned for a project that protects 200 acres or more, but less than 300 acres.

iv. Nine points shall be assigned for a project that protects 300 acres or more.

11. For pollution control projects, priority points shall be assigned according to the extent the project addresses the water quality of stormwater runoff from the area affected by the project.

i. One point shall be assigned for a project that addresses water quality for an area covering less than five acres.

ii. Three points shall be assigned for a project that addresses water quality for an area covering five acres or more, but less than 10 acres.

iii. Five points shall be assigned for a project that addresses water quality for an area covering 10 acres or more, but less than 20 acres.

iv. Seven points shall be assigned for a project that addresses water quality for an area covering 20 acres or more.

12. For pollution control projects, priority points shall be assigned according to the extent the project protects against permanent soil erosion.

i. One point shall be assigned for a project that protects less than five acres.

ii. Three points shall be assigned for a project that protects five acres or more, but less than 10 acres.

iii. Five points shall be assigned for a project that protects 10 acres or more, but less than 20 acres.

iv. Seven points shall be assigned for a project that protects 20 acres or more.

13. Pollution control projects not assigned points under (b)11 and 12 above will be assigned points only pursuant to (b)1iii above.

14. For recreation and conservation projects, priority points shall be assigned according to area of the lake dredged.

i. One point shall be assigned for dredging less than 20 acres.

ii. Three points shall be assigned for dredging 20 acres or more, but less than 50 acres.

iii. Five points shall be assigned for dredging 50 acres or more, but less than 150 acres.

iv. Seven points shall be assigned for dredging 150 acres or more.

15. For recreation and conservation projects, priority points shall be assigned according to the length of the stretch of stream cleaned.

i. One point shall be assigned for a project that cleans less than 0.25 miles of stream.

ii. Three points shall be assigned for a project that cleans 0.25 miles or more, but less than 0.5 miles of stream.

iii. Five points shall be assigned for a project that cleans 0.5 miles or more, but less than 1.0 miles of stream.

iv. Seven points shall be assigned for a project that cleans 1.0 miles of stream or more.

16. For recreation and conservation projects, priority points shall be assigned for projects which provide fish passage.

i. Five points shall be assigned for a project that provides fish passage located on the existing obstruction furthest downstream.

ii. Three points shall be assigned for a project that provides fish passage on an existing structure which blocks the passage of migratory fish and is not the furthest downstream.

17. Recreation and conservation projects not assigned points under (b)14, 15, and 16 above will be assigned points only pursuant to (b)1iv above.

(c) The Department shall determine the total number of priority points assigned to each project under (b) above.

(d) The Department shall rank the projects on a priority list according to the total number of priority points assigned each pro-

ject, with the project assigned the greatest total number of priority points ranking first.

(e) The Department may, when two or more projects are assigned the same total number of priority points, take geographical distribution of projects into consideration when assigning rank to obtain greater geographical distribution.

(f) The Department shall establish and maintain a separate priority list for each application period.

(a)

BOARD OF COMMISSIONERS OF PILOTAGE

Rules of the Board of Commissioners of Pilotage of the State of New Jersey Drug Free Workplace Program

Proposed Amendments: N.J.A.C. 7:61-3.15 and 3.16

Authorized By: Board of Commissioners of Pilotage, Hon. Edward B. Pulver, President.

Authority: N.J.S.A. 12:8-2.

DEPE Docket Number: 26-94-05/443.

Proposal Number: PRN 1994-343.

Submit written comments by July 6, 1994 to:

Hon. Frank A. Johannessen
Secretary-Treasurer
Board of Commissioners of Pilotage
of the State of New Jersey
P.O. Box 1022
Rahway, New Jersey 07065

The agency proposal follows:

Summary

The Board of Commissioners of Pilotage of the State of New Jersey ("Board") established a chemical and alcohol testing program for all New Jersey licensed pilots and registered apprentices at N.J.A.C. 7:61-3. See 25 N.J.R. 625(a) and 25 N.J.R. 2123(a).

The Board proposes to amend N.J.A.C. 7:61-3.15(c). The amendment requires follow-up chemical testing for dangerous drugs where any pilot or apprentice tests positive for any dangerous drugs or alcohol in a test required by any Federal or state statute or regulation. This extends the follow-up testing requirement in the current regulation when a pilot or apprentice tests positive under a United States Coast Guard regulation to require follow-up testing when a pilot or apprentice tests positive under any Federal or state statute or regulation. The reason for this extension of follow-up testing is that the Board wants its own evidence in the event of detection of such dangerous drug or alcohol use by a pilot or apprentice. Thus, the Board will be in a position to take appropriate suspension or revocation proceedings without relying on another Federal or state agency to seek a conviction under any Federal or state statute, which the Board would utilize to suspend or revoke a pilot or apprentice's license/registration. Such testing will be at the pilot's or apprentice's expense.

The necessity for this rule amendment was demonstrated by an incident arising in San Francisco. Federal officials had evidence of drug use by a pilot, but opted not to take any license suspension or revocation action. The State board having jurisdiction over the pilot was unable to take any suspension or revocation action because the State board possessed no evidence. Amendment of the rule would eliminate the chance of such a matter "falling between the cracks."

The Board also proposes to amend N.J.A.C. 7:61-3.16(c). N.J.A.C. 7:61-3.16(c) currently requires the permanent revocation of a license/registration for a first offense for driving while under the influence or driving while intoxicated, absent extenuating circumstances which, in the discretion of the Board, justify only suspension of license/registration. The proposed amendment will provide an opportunity for rehabilitation of a pilot or apprentice convicted of such a first offense while at the same time requiring close supervision by the Board in terms of follow-up testing of the pilot or apprentice.

It is the intent of the Board to consider convictions which occurred prior to the effective date of this amendment to determine whether a present conviction constitutes a second offense. In determining whether the license/registration of a pilot or apprentice should be revoked, the Board may consider extenuating circumstances (including recentness or remoteness of the first conviction) which, in the discretion of the Board, justify only suspension of such license/registration.

Social Impact

These proposed amendments will have a positive social impact. It is anticipated that these amendments, in conjunction with the Drug Free Workplace Program as a whole, will deter and detect drug and alcohol use by pilots and apprentices so that risk of a serious maritime accident is greatly reduced.

Economic Impact

Under the proposed amendments, pilots and apprentices will bear the costs associated with follow-up chemical drug and alcohol testing required after a pilot or apprentice tests positive for any dangerous drugs or alcohol in a test required by any Federal or State statute or regulation. These limited costs to pilots and apprentices in these situations are justified based on concerns to ensure public health, safety and the environment.

Environmental Impact

The implementation of the proposed amendments will have a positive impact on the environment. The follow-up chemical drug and alcohol testing required after a pilot or apprentice tests positive for any dangerous drugs or alcohol in a test required by any Federal or state statute or regulation will enable the Board to take appropriate license/registration suspension or revocation action. The Board anticipates that by taking such actions, the use of dangerous drugs and alcohol by pilots and apprentices will be reduced, thereby reducing the risk of a maritime accident and of a consequent harm to the environment.

Regulatory Flexibility Statement

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Association or the practice of piloting may be deemed to constitute a "small business" within the meaning of the statute, the following statement is applicable:

The Board has determined that the proposed amendments will not impose new or additional reporting, recordkeeping, or other compliance requirements on small businesses. The follow-up chemical drug and alcohol testing is required of the individual pilot or apprentice. The requirements for the Association or the Board to take any actions as a result of positive testing is currently required by the Federal Department of Transportation, Coast Guard, and/or the Drug Free Workplace Program already in place. Therefore, a regulatory flexibility analysis is not required.

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

7:61-3.15 Notice to Board of criminal or Coast Guard charges and convictions

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

(c) The Association shall require any pilot or apprentice who tests positive for dangerous drugs or alcohol [under a United States Coast Guard regulation] in a test required by any **Federal or state statute or regulation, including a motor vehicle statute,** to submit to a chemical drug test for dangerous drugs **at the pilot's or apprentice's expense** within 48 hours of such positive test and to be subject to increased, unannounced chemical drug testing for dangerous drugs and/or alcohol **at the pilot's or apprentice's expense** for a period as determined by the Board of up to 24 months.

7:61-3.16 Suspension or revocation of license/appointment

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

(c) Any pilot or apprentice who fails to comply or cooperate with specimen collection and/or chemical drug testing; or who tests positive on a chemical drug test required pursuant to this subchapter or a chemical drug test required pursuant to [the] **a** Federal **statute or** regulations, **including** 46 C.F.R. part 16; or who is convicted under a Federal or state criminal drug statute or **for a second conviction under** any state motor vehicle statute for driving while under the influence or driving while intoxicated; or who violates any other provision of the subchapter, shall immediately be prohibited from engaging in pilotage operations and shall, after opportunity for a hearing, have his or her license/registration permanently revoked unless there are extenuating circumstances which, in the discretion of the Board, justify only the suspension of his or her license/registration.

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

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
ESSENTIAL HEALTH SERVICES COMMISSION

Manual for Hospital Services
Disproportionate Share Adjustment for the Other Uncompensated Care Component

Joint Proposed Amendment: N.J.A.C. 10:52-8.2

Authorized By: William Waldman, Commissioner, Department of Human Services, and the Essential Health Services Commission, Anne F. Weiss, Executive Director.

Authority: N.J.S.A. 30:4D-5, 6a(1), 30:4D-7, 7a, b and c; N.J.S.A. 30:4D-12; N.J.S.A. 26:2H-18; and 42 CFR 447.251, 253.

Proposal Number: PRN 1994-350.

Agency Control Number: 94-P-16.

Submit written comments by July 6, 1994 to both:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625-0712
and
Anne Weiss, Executive Director
Essential Health Services Commission
CN 360
Trenton, New Jersey 08625-0360

A copy of the proposal is available at the 21 county welfare agencies (CWAs) and in the Medicaid District Offices.

The agency proposal follows:

Summary

The Health Care Reform Act, P.L. 1992, c.160, created an Other Uncompensated Care (OUC) account within the Health Care Subsidy Fund. Funds in this account are distributed, pursuant to formulas set forth in the Act, to hospitals experiencing uncompensated care costs not reimbursed by hospital payers, excluding charity care, graduate medical education, discounts, bad debt and reduction in Medicaid payments. Under the Act, $100 million is to be distributed in 1993 to the 45 percent of hospitals with the highest percent OUC; $67 million to 30 percent of hospitals in 1994; and $33 million to 15 percent of hospitals in 1995. The Act expressly requires in Section 11(c) that "in 1993, the formulas shall use 1991 hospital specific" OUC costs. The Act requires that 1992 costs be used in calculating 1994 and 1995 subsidy distributions. N.J.S.A. 26:2H-18.61(c).

The Essential Health Services Commission has the authority to promulgate rules governing the calculation of the 1991 and 1992 OUC costs for the purpose of distributing the OUC subsidy payments for 1993 through 1995. N.J.S.A. 26:2H-18.56(g). Chapter 160 expressly delegates this authority to the Commission in Section 11(d): "the Commission shall notify the Division of Medical Assistance and Health Services of the amount of OUC hospital subsidy payment to be included in the disproportionate share payment to each eligible hospital." N.J.S.A. 26:2H-18.61(d). The Division of Medical Assistance and Health Services also has rulemaking authority with regard to the OUC subsidy payments because they comprise a portion of the State's Medicaid disproportionate share payments. N.J.S.A. 30:4D-5 and 7; and N.J.S.A. 26:2H-18.52, 18.61(a), and 18.58(a). Accordingly, the rule amendment is a joint proposal by the Division of Medical Assistance and Health Services and the Essential Health Services Commission.

In early 1993, because Essential Health Services Commission members were not yet appointed, the Department of Health had calculated eligibility and distribution of OUC subsidy funds. Prompt action was required to allow Medicaid to make timely disproportionate share payments to eligible hospitals. To apply the statutory formulas for OUC eligibility and distribution for 1993, the Division used the only official 1991 OUC amounts on file. These were the amounts approved by the Hospital Rate Setting Commission (HRSC) for inclusion in hospitals' 1991 payment rates. By definition, these amounts were projected and not "actual."

The Department's use of the 1991 approved amounts in its calculation of OUC payments was challenged by a hospital in the Superior Court of New Jersey, Appellate Division. In an unpublished decision, (*Southern Ocean County Hospital v. Commissioner of Health, et al.,* Docket #A-2826-92T1, decided June 17, 1993) the Court concluded that the legislative intent was to use the actual 1991 OUC data in calculating the OUC subsidy for 1993 and, therefore, the Court remanded the matter for recalculation of the distribution of the 1993 OUC subsidy consistent with its opinion.

The proposed amendment, therefore, supplements the rules defining the calculation and method of payment of disproportionate share adjustments, including OUC subsidy payments under Chapter 160. The amendment defines the data sources and the methodology to be used in the calculation of the 1991 and 1992 OUC costs, as well as legislatively mandated formulas to distribute the OUC subsidy payments in 1993, 1994, and 1995.

Social Impact

The change from the use of estimated 1991 OUC amounts to actual 1991 OUC amounts to determine the 1993 subsidy payments will result in changes in some hospitals' subsidy payments. Specifically, some hospitals will experience increases or decreases to their original subsidy payments. Some hospitals will lose the whole subsidy payment originally calculated, and several hospitals that originally received no subsidy will receive subsidy payments.

The legislatively mandated formula to determine eligibility for OUC subsidies is based on each hospital's OUC amount as a percentage of the hospital's total revenue base. For 1993, the revenue base was the 1992 Preliminary Cost Base. The legislative intent was to allocate these subsidy payments to the hospitals with the highest percentage OUC amounts compared to their revenue base. Therefore, those hospitals receiving the subsidy payments are those with the highest proportional OUC amounts, which are theoretically the "neediest" according to the formula.

The calculation of actual 1991 OUC percentages to determine subsidy eligibility is more accurate than an estimate based on historical data that is two years old. Consequently, the revised subsidy payments comply with the Court's directive to better meet the Legislature's objective in allocating these payments to those hospitals demonstrating the greatest need based on the mandated formula.

Economic Impact

Originally, for the 1993 calculation of the subsidy payments, the estimated 1991 OUC amounts were used. These estimated amounts were based on the most recent available data, which was largely 1989 data. For the payment side of the calculation, filed cost reports were used, which necessarily included estimates of certain outpatient payments since actual payments would not be known until the 1989 cost reports were audited and finalized, which was long after the cost report filing deadline. For these reasons, some of the data used in the original 1991 OUC calculation was substantially different from the actual data used in the revised calculation.

The original estimated 1991 OUC amount was $369.1 million statewide, upon which the $100 million was distributed. In December 1993, the New Jersey Department of Health sent to hospitals a revised calculation of the 1992 OUC based on actual data, as mandated by the Court in *Southern Ocean County Hospital.* The hospitals submitted comments on the data and methodology used in the 1991 actual OUC calculations; the New Jersey Department of Health is in the process of researching those comments to determine the necessary changes to finalize the 1991 amounts. The proposed number is subject to two major changes to correct systemic data errors, and several of the hospital-specific comments are not yet resolved. Therefore, the precise economic impact on each hospital is not yet known. However, the final impact will be known before final adoption by the Essential Health Services Commission, and will be available to the Commission and the Department of Human Services prior to the Commission's consideration and vote on the final version of the rule. The methodology contained in this proposal is not expected to change, although the results of each calculation will vary, based upon the data utilized.

While there were substantial changes to some hospitals' subsidy payments, most changes were slight increases or decreases. The actual data reflects a more accurate picture of the hospitals' OUC amounts.

Regulatory Flexibility Statement

The proposed amendment would not affect small business, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The hospitals in New Jersey are the only businesses affected by the proposed amendment, and they all employ more than 100 full-time people. Therefore, a regulatory flexibility analysis is not required.

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

10:52-8.2 Method of [Payment] **payment**

(a) The disproportionate share adjustment shall include at least the adjustment amount recommended by the Commissioner of the Department of Health based upon a determination regarding payments for charity and uncompensated care from the Health Care Subsidy Fund.

1. (No change.)

2. The recommendation from the Department of Health shall be calculated in the following manner pursuant to P.L. 1992, c.160 **(N.J.S.A. 26:2H-18)**.

i.-ii. (No change.)

[iii.]**3.** A hospital's eligibility for the Other Uncompensated Care Hospital Subsidy Fund payment shall be calculated using the following formula:

i. Hospital Specific Other Uncompensated Care for Year/Hospital Specific Revenue for Year = Hospital Specific Percentage of Other Uncompensated Care (%OUC). A hospital is eligible for a subsidy if, upon establishing rank order of the %OUC for all hospitals:

(1) In 1993, the hospital is among the 45 percent of hospitals with the highest %OUC;

(2) In 1994, the hospital is among the 30 percent of hospitals with the highest %OUC; and

(3) In 1995, the hospital is among the 15 percent of hospitals with the highest %OUC.

[iv.]**ii.** The amount of the subsidy an eligible hospital shall receive shall be based on the following:

Hospital Specific Other Uncompensated Care for Year/Total Other Uncompensated Care for all Eligible Hospitals for Year multiplied by Total Amount of Subsidy Allocated for the Year = Hospital Specific Subsidy for the Year

The monies in the Other Uncompensated Care component of the disproportionate share hospital subsidy account shall be distributed to eligible hospitals in accordance with the formulas provided in this section. In 1993, the fund shall distribute $100 million in subsidies to eligible hospitals; in 1994, the fund shall distribute $67 million to eligible hospitals; and in 1995, the fund shall distribute $33 million to eligible hospitals. For 1993, the formulas shall use 1991 Hospital Specific Other Uncompensated Care and Total Uncompensated Care for eligible hospitals and the hospital's PCB for "Hospital Specific Revenue for Year." In 1994 and 1995, the formulas shall use 1992 Other Uncompensated Care and Total Other Uncompensated Care for all eligible hospitals and the hospital's 1993 revenue cap established pursuant to P.L. 1992, c.160 section 3. **(N.J.S.A. 26:2H-18)**.

iii. Other Uncompensated Care (OUC) shall be distributed to hospitals to meet the requirements of Chapter 160, Section 1d (N.J.S.A. 26:2H-18). OUC is defined as all costs not reimbursed by hospital payers excluding charity care, graduate medical education, discounts, bad debt, and reduction in Medicaid payments. The Department of Health (DOH), under the direction of the Essential Health Services Commission (EHSC), will calculate the actual OUC amounts for the purpose of determining the distribution of the OUC subsidy payments.

(1) In 1993, OUC subsidies shall be based upon actual 1991 OUC amounts.

(2) In 1994 and 1995, OUC subsidies shall be based upon actual 1992 OUC amounts.

(3) In 1994, interim OUC subsidy payments shall initially be based upon the projected 1992 OUC amounts determined by the DOH under Chapter 83 (N.J.S.A. 26:2H-1) for the rate year 1992; the actual 1992 OUC amounts shall be determined after October 1, 1994, when final 1992 data for all acute hospitals is available from the fiscal intermediary. After the actual 1992 OUC amounts are calculated by the DOH and approved by the EHSC, the 1994 OUC subsidy payments or other Medicaid payments shall be adjusted by making adjustments to the OUC or other DSH or Medicaid

payments made by the Division of Medical Assistance and Health Services (DMAHS).

iv. The Chapter 83 (N.J.S.A. 26:2H-1) inpatient payments referenced in (a)3iii above, shall be based upon Diagnosis Related Groups (DRG) payments from the applicable rate year's uniform bill (UB) data submitted to the DOH under the former N.J.A.C. 8:31B-3.45.

(1) Fixed indirect costs shall be apportioned to Medicare inpatients based upon the Medicare percentage of total DRG payments using UB data.

(2) Variable indirect costs shall reflect the applicable rate per year volume levels.

(A) For 1993, 1991 inpatient indirect costs under Chapter 83 (N.J.S.A. 26:2H-1) were volume variable. Inpatient indirect costs shall be adjusted based upon the percentage change in inpatient discharges between base year 1988 and the rate year 1991. The source of the discharge data is the 1988 and 1991 Chapter 83 cost reports.

(B) For 1994, most 1992 indirect costs were volume variable and included in the DRG rates. Therefore, for 1992 volume variable indirect costs, no additional volume calculation is necessary for volume changes between 1988 and 1992.

(3) Inpatient Part B physician costs shall be removed since no comparable Medicare data on Medicare payments is available.

v. The DOH will apply the Federal Prospective Payment System (PPS) GROUPER and Pricer programs to determine DRG payments for the Medicare patients identified in (a)3iv above.

(1) The DOH will include "excluded unit" Medicare reimbursement in Medicare inpatient payments for the applicable rate year for those Medicare cases reimbursed under Chapter 83 (N.J.S.A. 26:2H-1) but not under PPS.

(2) The DOH will include the following data from the applicable rate year Medicare cost reports in order to determine the other components of Medicare inpatient payments:

(A) Excluded unit reimbursement;

(B) Pass-through payments; and

(C) Inpatient Part B physician costs.

vi. Chapter 83 (N.J.S.A. 26:2H-1) Medicare outpatient payments shall be based upon:

(1) Applicable rate year routine outpatient payment rates and Medicare volume from the applicable rate year Chapter 83 cost report.

(2) Payments for outpatients without rates shall be based upon the applicable rate year Medicare outpatient revenue percent of total approved cost from the rate year audited proforma final reconciliations submitted to the DOH by the hospitals as of December 31, 1992.

(3) Fixed indirect costs shall be allocated to Medicare outpatients based upon the applicable rate year Medicare outpatient revenue percent.

(4) For 1993, same day surgery (SDS) 1991 indirect costs were volume variable. SDS indirect costs shall be adjusted based upon the 1988 to 1991 percentage change in SDS cases. The source of the SDS data is the 1988 and 1991 Chapter 83 cost reports.

(5) For 1994, most 1992 indirect costs were volume variable and included in the outpatient rates. Therefore, for 1992 volume variable indirect costs, no additional volume calculation is necessary for volume changes between 1988 and 1992.

(6) Outpatient Part B physician costs shall be removed since no comparable Medicare data on payments is available.

vii. The DOH will use the following Medicare outpatient data from the applicable rate year Medicare cost reports:

(1) Medicare outpatient payments;

(2) Medicare outpatient revenue which shall be used to determine the Medicare outpatient percentages to apportion Chapter 83 (N.J.S.A. 26:2H-1) outpatient indirect costs; and

(3) Medicare outpatient Part B physician costs.

viii. The OUC formula is as follows: The sum of Chapter 83 (N.J.S.A. 26:2H-1) inpatient and outpatient payments as defined in (a)3iv and vi above, minus inpatient and outpatient payments as defined in (a)3v and vii above.

ix. The DOH will calculate the OUC subsidy payments based upon the formula in P.L. 1992, c.160, section 11 (N.J.S.A. 26:2H-18), as follows:

(1) In 1993, each hospital's actual 1991 OUC amount divided by its 1992 preliminary cost base shall yield a percentage called the OUC percentage. Forty-five percent of the hospitals with the highest OUC percentages will receive $100 million in OUC subsidy payments. For those hospitals qualifying for a share of the subsidy payments, in accordance with (a)3ix(2) below, each hospital's payment is determined by the hospital's OUC as a percentage of the sum of all eligible hospitals' OUC amounts; this hospital-specific percentage is multiplied by the Statewide subsidy amount to derive the hospital's subsidy payment.

(2) In 1994, each hospital's actual 1992 OUC amount divided by its 1993 revenue cap shall yield the OUC percentage. Thirty percent of the hospitals with the highest OUC percentage will receive $67 million in OUC subsidy payments. For those hospitals qualifying for a share of the subsidy payments, each hospital's payment is determined by the hospital's OUC as a percentage of the sum of all eligible hospitals' OUC amounts; this hospital-specific percentage is multiplied by the Statewide subsidy amount to derive the hospital's subsidy payment.

(3) In 1995, each hospital's actual 1992 OUC amount divided by its 1993 revenue cap shall yield the OUC percentage. Fifteen percent of the hospitals with the highest OUC percentages will receive $33 million in OUC subsidy payments. For those hospitals qualifying for a share of the subsidy payments, each hospital's payments is determined by the hospital's OUC as a percentage of the sum of all eligible hospitals' OUC amounts; this hospital-specific percentage is multiplied by the Statewide subsidy amount to derive the hospital's subsidy payment.

[v.]4. (No change in text.)

[(d)]i. (No change in text.)

[(e)]5. (No change in text.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Hospital Services
Hospital Subsidy Fund for Mentally Ill and Developmentally Disabled Clients

Proposed Amendment: N.J.A.C. 10:52-8.2

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

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b and c; 30:4D-12; 42 CFR 447.251,253.

Agency Control Number: 94-P-18.

Proposal Number: PRN 1994-351.

Submit comments by July 6, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, New Jersey 08625-0712

A copy of the proposal is available at the 21 county welfare agencies (CWAs) and in the Medicaid District Offices.

The agency proposal follows:

Summary

The Division of Medical Assistance and Health Services (the Division) is submitting the proposed amendments to allow payments from the Hospital Subsidy Fund for Mentally Ill and Developmentally Disabled Clients to be made to acute care hospitals adding short term care facility (STCF) or child community inpatient Service (CCIS) beds recognized by the Division of Mental Health and Hospitals and licensed by the Department of Health. The initial redistribution of the funds among eligible hospitals will be carried out on the first of the month following adoption (in 1994). Thereafter, in subsequent years, the redistribution of funds, if necessary, will be carried out in January of each year. The

present rule does not explicitly state the timing of possible redistributions.

The origin of this proposed amendment is an administrative action of the Division. The Division is submitting the proposed amendments to provide a time frame for the redistribution of payments from the Hospital Subsidy Fund for Mentally Ill and Developmentally Disabled Clients. The purpose of the proposed amendments is to allow hospitals adding STCF or CCIS beds to become eligible for payments from this Fund.

These proposed amendments do not apply to out-of-State hospitals, nor to Classification B and C special hospitals. Also, these proposed amendments do not apply to any hospital outpatient services.

Social Impact

These proposed amendments do not directly impact upon Medicaid recipients who require hospital inpatient services. Hospitals will be able to receive payments for adding eligible beds to provide services to mentally ill and developmentally disabled clients in these beds. The proposed amendments impact specifically upon providers of hospital services, but is limited to hospitals adding beds in a short term care facility (STCF) or a child community inpatient service (CCIS) or hospitals which provide services under contract with the Division of Mental Health and Hospitals. These proposed amendments should increase access to these services by recognizing new facilities that add these mental health services.

The resulting impact on each hospital is more economic than social, as indicated under Economic Impact below.

Economic Impact

There will be no impact on Medicaid recipients, since they are not required to pay towards the cost of inpatient hospital care.

There is no anticipated increase or decrease in the aggregate expenditure of the Division. The impact of the proposed amendment is to redistribute the Fund to include the hospitals that have added beds to care for mentally ill clients. The timing of the redistribution of the Funds will ease the uncertainty among these providers about when payments will begin.

There is no financial impact on the Division. An appropriation of $8,773,006 is proposed in the Budget by the Governor for the State fiscal year 1995. This change will redistribute the approximately $17,546,000 of combined State/Federal matched funds.

There is no financial impact on county or municipal government.

Regulatory Flexibility Analysis

A regulatory flexibility analysis might not be necessary because most hospital providers are not considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., since hospitals generally employ more than 100 persons full time. However, in the event a hospital might qualify under the terms of the Act, this analysis is included.

Hospitals are required to maintain sufficient records to indicate the name of the patient, dates of service, nature and extent of inpatient hospital services, and any additional information as may be required by regulation. The requirement is part of the State Medicaid Statute, N.J.S.A. 30:4D-12. With respect to reimbursement, hospitals will be required to maintain sufficient records, such as cost studies, to enable the Division to establish rates for payment under this regulation. The reporting provisions will be similar to the regulatory requirements that existed under N.J.A.C. 8:14B. These requirements apply uniformly to all providers. There is no differentiation in the reporting, recordkeeping or compliance requirements based on size. The amendments do not create any additional reporting, recordkeeping or other compliance requirements. There should be no need to hire any additional professional staff other than those persons already involved in preparing cost reports and related reimbursement data. There are no capital costs associated with these rules.

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

10:52-8.2 Method of [Payment] **payment**

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

(e) Disproportionate Share Hospitals which service a large number of low income mentally ill or developmentally disabled clients may also be eligible to receive increased disproportionate share payment. The amount of payments to be made to facilities which serve a large number of mentally ill low income clients will be based upon recommendation by the Division of Mental Health and Hospitals within the Department of Human Services to the Commissioner of the Department of Human Services. This recommendation will identify hospitals essential to preserve the fragile network of mental health providers in the State. The Division of Developmental Disabilities may also recommend an additional payment to facilities who serve a large number of developmentally disabled clients. These additional payments will assure that these low income and special needs clients continue to have access to critical care.

1. The Hospital Subsidy Fund for Mentally Ill and Developmentally Disabled Clients shall be an amount allocated by the Commissioner during the fiscal year for this purpose. It shall be distributed in the following manner:

i. Hospitals who receive funding from the Hospital Relief Subsidy Fund shall only be eligible for a payment from this fund if recognized by the Division of Mental Health and Hospitals and a Short Term Care Facility (STCF) or a Child Community Inpatient Service (CCIS). Payments to STCF and CCIS shall be based upon its distribution of beds for these services times a projection of the cost of providing the service in a state facility. **Any hospital adding these beds will be eligible for payments from this fund. The initial redistribution of the funds among eligible hospitals will be carried out on the first of the month following adoption (in 1994). In subsequent years, the redistribution will be carried out in January of each year.**

ii. Hospitals who are not STCF or CCIS, but which are under contract with the Division of Mental Health and Hospitals shall receive an allocation of funds based upon the percentage of services provided by the hospital as a percentage of all services provided by all hospitals. **The initial redistribution of the funds among eligible hospitals will be carried out on the first of the month following adoption (in 1994). In subsequent years, the redistribution will be carried out in January of each year.**

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Vocational Rehabilitation Services Program

Proposed New Rules: N.J.A.C. 10:95

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

Authority: 29 U.S.C. 701 et seq., 34 CFR Parts 74, 76, 77, 78, 79, 80, 361, 363, and 395, N.J.S.A. 30:6-11.

Proposal Number: PRN 1994-352.

Submit comments by July 6, 1994 to:

Merilyn C. Rosenthal, Esq.
Administrative Practice Officer
Department of Human Services
Office of Legal and Regulatory Liaison
222 South Warren Street
CN 700
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq., is the Federal statute governing state administration of Federally funded vocational rehabilitation services. The Commission for the Blind and Visually Impaired, hereinafter referred to as the Commission, was designated by N.J.S.A. 30:6-11 as the State agency responsible for utilizing Federal and State appropriations for the provision of vocational rehabilitation services to eligible blind and visually impaired residents of this State.

Pursuant to this authority, the Commission has developed a comprehensive program for the delivery of vocational rehabilitation services to assist eligible clients in obtaining and maintaining suitable employment. The Commission has decided to propose these new rules concerning the operations and specific components of its vocational rehabilitation

services program to follow the language and intent of Federal and State laws, regulations and policies governing the vocational rehabilitation services rendered by the Commission. Additionally, the new rules are being proposed at this time because of current efforts by the Commission to convert appropriate policy material now contained in the Commission's operations manuals, and identified as rules, into proper rule form (see *Metromedia Inc. v. Director, Division of Taxation,* 97 *N.J.* 313 (1984)).

The proposed new rules are intended to clearly inform the public of the specific vocational rehabilitation services offered by the Commission and the standards and procedures which govern the delivery of these services from the determination of eligibility through follow-up reviews after case closure. In addition, the proposed new rules are designed to inform the public of the rights and responsibilities of the Commission and its clients in the provision and receipt of vocational rehabilitation services and reflect the Commission's general service delivery rules which are contained in its organizational rule at N.J.A.C. 10:91. The proposed new rules also make reference to the Commission's allied independent living services and allied prevention services as they relate to the delivery of vocational rehabilitation services. The Commission's allied independent living services and allied prevention services rules will be proposed as new rules at N.J.A.C. 10:93 and N.J.A.C. 10:94 respectively at a later date.

A summary of the proposed new rules follows:

Proposed N.J.A.C. 10:95-1 provides an overview of the purpose and scope of vocational rehabilitation services and briefly summarizes the broad array of goods and services that may be provided by the Commission to render blind or visually impaired individuals employable. The proposed subchapter also includes definitions of key terms used in the field of vocational rehabilitation.

Proposed N.J.A.C. 10:95-2 discusses the purpose of eligibility determination for vocational rehabilitation services. The proposed subchapter sets forth the criteria used by the Commission in determining an individual's eligibility for vocational rehabilitation services. The criteria used by the Commission in determining that an individual is ineligible for vocational rehabilitation services is also reviewed in the proposed subchapter. Additionally, the proposed subchapter provides a time frame for the Commission's determination of an individual's eligibility for vocational rehabilitation services.

Proposed N.J.A.C. 10:95-3 details the Commission's rules for the provision of diagnostic services which are used to determine an applicant's eligibility for services, develop service programs, determine which vocational rehabilitation services may be of benefit to the individual, and assess the appropriateness of active vocational rehabilitation services. This subchapter describes the conditions under which a preliminary diagnostic study, a thorough diagnostic study or an extended evaluation will be performed and the components of each type of evaluation.

Proposed N.J.A.C. 10:95-4 discusses the provision of physical and mental restoration services to alleviate or diminish the effects of a disability. These services are designed to improve a client's employment potential and are provided only in conjunction with other vocational rehabilitation services. The Commission's rules with regard to nonreimbursement for certain restoration services are set forth in this subchapter. Additionally, this subchapter contains a description of the procedures used by the Commission in determining whether to approve or reject requests for the provision of prosthetic, orthodic and other assistive devices. The purposes of the Commission's low vision services is also briefly discussed.

Proposed N.J.A.C. 10:95-5 outlines the Commission's training services which are provided to eligible clients in order to develop or remediate those vocational and daily living skills needed for successful entry into employment. The proposed subchapter describes the types of training services which may be offered to eligible clients and lists training services which are not covered under this subchapter. Additionally, this subchapter reviews the Commission's rules for paying the expenses of eligible clients receiving training services from the agency.

Proposed N.J.A.C. 10:95-6 details a variety of specialized vocational rehabilitation related services and programs offered by the Commission. These services include orientation and mobility, rehabilitation home instruction and on-the-job training. This subchapter also sets forth the functions, rules and criteria for the receipt of the Commission's college and deaf-blind services and discusses vocationally-related transitional summer services which may be offered by the agency. Additionally, the proposed subchapter contains a description of the programs offered by the Commission's Joseph Kohn Rehabilitation Center and the criteria for attending this residential facility.

Proposed N.J.A.C. 10:95-7 provides rules for the provision of training and adaptive equipment to enable eligible clients to participate in a training program. The proposed subchapter also describes the recovery of Commission equipment from a client after the client's last year of high school and discusses the procedures used by the Commission in the provision of equipment needed for the client's post high school training or college program.

Proposed N.J.A.C. 10:95-8 deals with the Commission's counseling and guidance services, which are the core of the vocational rehabilitation process. The proposed subchapter focuses on the Commission's transition and career development services.

Proposed N.J.A.C. 10:95-9 sets forth the Commission's rules for the provision of maintenance services. The proposed subchapter discusses the purpose and scope of maintenance services, describes the standards for the provision of these services and sets forth the Commission's rate of payment for each service.

Proposed N.J.A.C. 10:95-10 provides a thorough discussion of the services offered by the Commission with regard to the placement of vocational rehabilitation clients in suitable employment. The proposed subchapter discusses the achievement of a vocational goal through competitive, noncompetitive or self-employment and details the Commission's services to assist clients in achieving their vocational goal. Additionally, the client's responsibilities in achieving his or her vocational goal, particularly in the area of self-employment, are set forth in this subchapter.

Proposed N.J.A.C. 10:95-11 discusses services which are designed to assist rehabilitated clients in maintaining employment. The proposed subchapter sets forth the criteria for the provision of post-employment services and the rules for terminating those services.

Proposed N.J.A.C. 10:95-12 reflects the Commission's policy of providing services to a client's family member(s) when such services are necessary to the adjustment or rehabilitation of the client. This subchapter defines the term "family member" and sets forth the criteria for service initiation and termination.

Proposed N.J.A.C. 10:95-13 sets forth the Commission's rules for the provision of transportation services to enable eligible clients to participate in or benefit from vocational rehabilitation services. This suchapter also discusses the use of escorts for severely disabled clients, the provision of subsistence while in transit and the Commission's rates of payment for transportation services.

Proposed N.J.A.C. 10:95-14 briefly outlines other basic training and placement related services which are required by clients for their education or training because of their visual impairment. The proposed subchapter sets forth the circumstances under which a client may be eligible to receive these special services and delineates the conditions under which a client will be ineligible to receive such services.

Proposed N.J.A.C. 10:95-15 describes the criteria used by the Commission in closing the case of a vocational rehabilitation client. The proposed subchapter details the reasons for closing a case at each point along the service continuum.

Proposed N.J.A.C. 10:95-16 reflects the Commission's responsibility to review ineligibility decisions which were made based on a determination that the individual's disability was too severe to benefit from vocational rehabilitation services. This subchapter also discusses the Commission's responsibility, in conformance with Federal rules, to annually review and re-evaluate the status of each individual who has been placed in a community based organization to receive extended employment services in order to determine the continued appropriateness of the current placement.

Social Impact

The proposed new rules will benefit the blind and visually impaired by providing them with timely notice of the services available through the Commission's vocational rehabilitation services program. The proposed new rules will further benefit these individuals by setting forth the specific policies, procedures, criteria and standards used by the Commission in the delivery of vocational rehabilitation services and the rights and responsibilities of the client in the rehabilitation process. Additionally, the proposed new rules will benefit the blind and visually impaired population by providing a step-by-step guide through each phase of the rehabilitation process from the determination of eligibility and initiation of services through the provision of services after a client has reached his or her vocational goal and follow-up reviews after case closure. The proposed new rules will benefit the Commission in that

the procedures and standards used for the provision of vocational rehabilitation services will be clearly set forth as rules.

The Commission's vocational rehabilitation services program, as reflected in the proposed new rules, benefits blind and visually impaired persons by assisting eligible clients in obtaining and maintaining suitable employment. In fiscal year 1993, 2,663 clients received vocational rehabilitation services from the Commission. During this period, 392 clients were placed in employment. Society benefits from the Commission's vocational rehabilitation services program by enabling employers to utilize the skills and abilities of these rehabilitated individuals.

Economic Impact

In fiscal year 1993, the Commission spent approximately $2.6 million in vocational rehabilitation client service funds. The Commission's vocational rehabilitation services program provides an economic benefit to society by enabling suitably employed individuals who are blind or visually impaired to become taxpayers and eliminate their need for Social Security payments. There is no additional economic impact associated with the proposed new rules as these rules merely reflect procedures, standards and services which provide rehabilitation benefits for clients of the Commission that were already available under Federal and State laws, rules and policies.

Specifically, the client's responsibility to participate in payment for services and the concept that the Commission will serve as the last dollar resource for the purchase of services is set forth at N.J.A.C. 10:91-3. The Commission's financial need standard is a test which is used to determine a client's ability to pay for certain services. For those clients who meet the test, the Commission provides the cost of these services. For clients who do not meet the test, the standard establishes the level of their responsibility toward the cost of those services. The financial aid provided by the Commission supplements rather than replaces resources available to a client. These rules are designed to minimize any burden on clients while recognizing the Commission's severe fiscal constraints.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because the proposed new rule at N.J.A.C. 10:95-6.4(f) imposes reporting requirements on employers, some of whom may be small businesses, as the term is defined by N.J.S.A. 52:14B-16 et seq. However, it is estimated by the Commission that most, if not all, of the employers are large businesses. The proposed new rules reflect procedures, standards and services as they apply to and benefit the rehabilitation of blind and visually impaired clients of the Commission. More specifically, the Commission, in order to justify the salary support provided, and in order to assess the progress of the client toward his or her vocational goals, requires that every employer of a client in the Vocational Rehabilitation program submit a report in writing to to the Commission regarding the progress of that client. The expense is considered minor, involving a minimal amount of time, postage and materials. Since the Commission provides salary support to the employer, and, since the requirements are both minimal and a necessary part of the evaluation process, no differentiation based on business size is provided in the rule.

Full text of the proposed new rules follows:

CHAPTER 95
VOCATIONAL REHABILITATION SERVICES PROGRAM OF THE COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

SUBCHAPTER 1. OVERVIEW OF VOCATIONAL REHABILITATION

10:95-1.1 Purpose and scope

(a) This chapter contains the rules of the Commission for the Blind and Visually Impaired regarding the vocational rehabilitation services available to eligible individuals so that such individuals might maximize their employment outcome, independence, and integration into the workplace and their communities.

(b) Vocational rehabilitation (VR) services derive from a Federally funded program emanating out of the Rehabilitation Act of 1973, as amended. The services provided under this Act are any goods or services necessary to render blind or visually impaired individuals employable, including, but not limited to, the following:

1. Evaluation of rehabilitation potential, including diagnostic and related services, following the determination of eligibility for VR services;
2. Physical and mental restoration services;
3. Vocational and other training services;
4. Counseling and guidance services;
5. Maintenance services;
6. Placement services;
7. Post employment services;
8. Services to clients' families;
9. Transportation services; and
10. Other VR related services.

(c) The individualized written rehabilitation program (IWRP) shall be the mechanism that the Commission for the Blind and Visually Impaired will utilize to ensure that client involvement and choice is present in every case (see N.J.A.C. 10:91-5.4(a) and (c)). A statement indicating that ample choices were provided to the client shall be included in every individualized written rehabilitation program.

10:95-1.2 Definitions

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

"Amanuensis" means an individual who reads and/or writes appropriate material for a blind or visually impaired person. For the purposes of this chapter, an amanuensis is equivalent to a reader.

"Employment outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market. Pursuant to 34 CFR Part 361.1(c), independent homemaker is deemed to be an employment outcome.

"Individualized written rehabilitation program (IWRP)" means an agreement between the Commission and an individual that is designed to achieve the employment objective of the individual.

"Post-employment services" means the provision of services to individuals previously rehabilitated as employed who need additional vocational rehabilitation services to maintain employment.

"Rehabilitation" means the capacity of an individual to benefit from vocational rehabilitation services sufficient to achieve an employment outcome.

"Substantial gainful activity" means the performance of significant physical or mental activities in work for remuneration or profit as determined by the United States Social Security Administration.

"Substantial impediment to employment" means that a physical or mental disability (in light of attendant medical, psychological, vocational, educational, and other related factors) impedes an individual's occupational performance by preventing the obtaining, retaining, or preparing for employment consistent with the individual's capacities and abilities.

"Supported employment" means competitive work in integrated work settings for individuals with the most severe disabilities. These are persons for whom competitive employment has not traditionally occurred, for whom competitive employment has been interrupted or intermittent as a result of a severe disability. Because of the nature and severity of their disabilities, these persons need intensive supported employment services or extended services in order to perform such work.

"Vocational goal" means an employment objective consistent with the unique strengths, resources, priorities, concerns, abilities and capabilities of the individual.

SUBCHAPTER 2. ELIGIBILITY STANDARDS FOR VOCATIONAL REHABILITATION SERVICES

10:95-2.1 Purpose of eligibility determination

The purpose of eligibility determination is to identify those blind and visually impaired persons who may be served so as to provide such persons an opportunity to reach a level of independence which will promote employment potential consistent with each individual's capacity, interest and ability.

10:95-2.2 Determining eligibility

(a) The Commission shall determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive the services, unless:

1. The Commission notifies the individual that exceptional and unforeseen circumstances beyond the control of the agency preclude completing the determination within the prescribed time and the individual agrees that an extension of time is warranted; or

2. An extended evaluation is required in accordance with N.J.A.C. 10:95-3.3.

(b) Eligibility for VR services shall be based on the following criteria:

1. The person has a visual impairment or is legally blind as defined at N.J.A.C. 10:91-1.12; and

2. The visual impairment or legal blindness results in a substantial impediment to employment as defined at N.J.A.C. 10:95-1.2.

(c) Eligibility for an extended evaluation shall be based upon the criteria as required by N.J.A.C. 10:95-3.3.

(d) Ineligibility for vocational rehabilitation services shall be based upon the determination that:

1. The individual does not have a severe visual impairment or is not legally blind;

2. The visual impairment or legal blindness does not result in a substantial impediment to employment; and

3. There is clear and convincing evidence that such individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in accordance with the Rehabilitation Act of 1973 as amended (29 U.S.C. 701 et seq.) and any regulations promulgated thereunder.

SUBCHAPTER 3. DIAGNOSTIC AND EVALUATION SERVICES

10:95-3.1 Preliminary diagnostic study

(a) A vocational rehabilitation counselor shall request an eye report from an ophthalmologist, optometrist, and/or utilize medical records from other sources in order to determine an applicant's eligibility for Commission services.

(b) An otological examination by an otologist or an otorhinolaryngologist may be obtained when any of the following are present:

1. The client is legally or totally blind as defined at N.J.A.C. 10:91-1.12;

2. The client indicates difficulty hearing;

3. The counselor observes that the client has difficulty hearing; or

4. The physician indicates on the basic medical examination that the client has difficulty hearing.

10:95-3.2 Thorough diagnostic study

(a) The thorough diagnostic study is designed to determine which vocational rehabilitation services may be of benefit to the individual in terms of an employment outcome. This study shall consist of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, recreational and other factors relating to the individual's impediment to employment and rehabilitation needs.

(b) A medical examination performed by a licensed M.D. or a licensed doctor of osteopathy shall be obtained when any of the following are present:

1. An individual has a medical condition that may impact upon his or her ability to undertake or achieve their vocational program; or

2. A medical examination is required by a service provider.

10:95-3.3 Extended evaluation

(a) An extended evaluation is provided to those individuals who require in-depth analysis in order to assess the appropriateness of vocational rehabilitation services. This evaluation offers individuals who have a disability and an impediment to employment the opportunity to demonstrate vocational potential when documentation indicates:

1. The presence of a physical or mental disability which is a substantial impediment to employment as defined at N.J.A.C. 10:95-1.2; and

2. The Commission's inability to make a determination that vocational rehabilitation services may benefit the individual in terms of an employment outcome.

(b) The extended evaluation of an individual may continue for a period of up to a maximum of 18 months. The evaluation is terminated after it is determined that the individual is eligible or ineligible for VR services.

SUBCHAPTER 4. PHYSICAL AND MENTAL RESTORATION SERVICES

10:95-4.1 General purpose and scope

Restoration services are designed to alleviate or diminish the effects of a disability in order to improve a client's employment potential. These services include surgery, hospitalization, physical therapy, psychological, psychiatric or other medical services. Physical and mental restoration services shall be considered only after it is determined that a client is ineligible for funding from other sources.

10:95-4.2 Physical restoration services

(a) Physical restoration services are designed to correct or substantially modify, within a reasonable period of time, a physical condition which is stable or slowly progressive and results in a substantial disability which directly affects the employment outcome of the individual.

(b) Physical restoration services may be provided to a client who has been accepted for rehabilitation services, has an individualized written rehabilitation program and a vocational goal. Physical restoration services shall be provided based upon a physician's recommendation and approval by the Commission's administrative medical consultant using generally accepted medical standards. The client's vocational rehabilitation counselor shall assure, on the individualized written rehabilitation program, that the provision of specific physical restoration services are related to the vocational goal. Physical restoration services, even if they are the primary service provided, shall never be the only service. At a minimum, counseling, guidance and placement must be written into the individualized written rehabilitation program.

(c) An individual who is undergoing an extended vocational rehabilitation evaluation pursuant to N.J.A.C. 10:95-3.3 may, with the approval of the Commission's administrative medical consultant, be provided with physical restoration services in order to assess the individual's rehabilitation potential.

(d) A financial needs test shall be applied to the provision of physical restoration services to clients who have been accepted for vocational rehabilitation services. The Commission's financial need standards for the provision of vocational rehabilitation services are set forth at N.J.A.C. 10:91-3.

(e) If a client has an acute or physical illness during the time the individual is already receiving other planned rehabilitation services, services shall be provided if the acute condition or illness is such that it would complicate or delay the extended evaluation or the client's achievement of the vocational goal. If the acute condition or illness leads to changes in the client's condition, it may be necessary to re-evaluate the client, amend the program, close the case or transfer the client to another more appropriate agency.

(f) The client may choose his or her health professionals, and health facilities as long as the professional or facility meets the agency's standards for providing the required services and is willing to accept the Commission's reimbursement fee schedule (see N.J.A.C. 10:91-7.1). All physical restoration services, including non-vision related treatments and surgeries, shall be approved by a Commission medical consultant. If the fee requested by the provider is higher than the fee schedule, the Commission medical consultant may authorize fee approval in writing.

(g) The Commission shall exclude from reimbursement those physical restoration services which:

1. Do not directly relate to the client's visual disability; or

2. Do not directly relate to the client's vocational goal.

10:95-4.3 Mental restoration services

(a) Mental restoration services are designed to stabilize, correct or substantially modify, a mental condition. The Commission shall exclude from reimbursement those mental restoration services which:

1. Do not directly relate to the client's impediment to employment;
2. Do not directly relate to the client's vocational goal;
3. Involve in-patient mental restoration services; or
4. Involve primary treatment for alcohol or drug problems.

(b) Mental restoration services may be provided to a client who has been accepted for vocational rehabilitation services, has an individualized written rehabilitation program and a vocational goal. The vocational rehabilitation counselor shall assure, on the individualized written rehabilitation program, that the provision of specific mental restoration services are related to the client's vocational goal. Mental restoration services shall not be the only service provided.

(c) An individual who is undergoing an extended vocational rehabilitation evaluation pursuant to N.J.A.C. 10:95-3.3 may be provided with mental restoration services in order to assess the individual's rehabilitation potential.

(d) A financial needs test shall be applied to the provision of mental restoration services to clients who have been accepted for vocational rehabilitation services. The Commission's financial need standards for the provision of vocational rehabilitation services are set forth at N.J.A.C. 10:91-3.

(e) The client may choose his or her mental health professionals and mental health facilities as long as the professional or facility meets the agency's standards for providing the required services and is willing to accept the Commission's reimbursement fee schedule (see N.J.A.C. 10:91-7.1). All mental restoration services shall be approved by a Commission psychiatric consultant. If the fee requested by the provider is higher than the fee schedule, the Commission psychiatric consultant may authorize fee approval in writing.

(f) To qualify for Commission reimbursement, the mental restoration services must be provided by:

1. A licensed physician specializing in psychiatry or neuropsychiatry;
2. A licensed psychologist;
3. A social worker eligible for third party payment;
4. A clinic or hospital certified by the American Hospital Association to provide psychological, psychiatric or psychotherapeutic services; or
5. A professional or facility certified by the American Hospital Association to provide outpatient drug or alcohol treatment.

(g) The Commission's psychiatric consultant shall have approved a client's mental restoration services treatment plan prior to the implementation of the plan.

(h) If a client has an acute or mental illness during the time the individual is already receiving planned rehabilitation services, services shall be provided if the acute condition or illness is such that it would complicate or delay the extended evaluation or the client's achievement of the vocational goal. If the acute condition or illness leads to changes in the client's condition, it may be necessary to re-evaluate the client, amend the program or close the case.

10:95-4.4 Low vision services

Low vision services are physical restoration services designed for low vision Commission clients who qualify to receive specialized services to assist them in maximizing visual efficiency and functioning. Low vision services rules are set forth at N.J.A.C. 10:94-3.3.

10:95-4.5 Provision of prosthetic, orthodic and other assistive devices

(a) Prosthetic, orthodic or other assistive devices, such as hearing aids, are sometimes necessary to assist a client in obtaining or retaining employment. The Commission may assist in providing these devices to severely disabled clients with dual disabilities if the client has been determined as financially eligible and there are no comparable benefits.

(b) In order for a client to be eligible to receive the Commission's assistance in the provision of any prosthetic, orthodic or other assistive device(s), the Commission shall have established that the client's primary disability is a visual impairment. If the Commission determines that the client's primary physical disability is other than visual, the case shall be referred to the Division of Vocational Rehabilitation Services (DVRS) in the Department of Labor.

(c) The Commission shall apply its financial needs standard as set forth at N.J.A.C. 10:91-3 and its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of prosthetic, orthodic and other assistive devices.

(d) The Commission's Administrative Medical Consultant, according to professional medical standards, shall be responsible for reviewing and either approving or denying each medical recommendation for an assistive device. If the request is denied, the Administrative Medical Consultant must document the reason for the denial. If the request for an assistive device is denied, the vocational rehabilitation counselor will assist the client in finding an alternate source of funding, if available.

SUBCHAPTER 5. TRAINING SERVICES

10:95-5.1 General purpose and scope

The Commission's training services are designed to develop and/or remediate those vocational and/or daily living skills needed for successful entry into employment.

10:95-5.2 Training services

(a) The client's training services shall be consistent with his or her interests, aptitudes and abilities as documented in the case record and shall be supportive of the client's vocational goal.

(b) The Commission shall apply its financial needs standard as set forth at N.J.A.C. 10:91-3 and its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of training services.

(c) Vendors utilized for training services shall be licensed, certified or accredited by appropriate professional organizations.

(d) Preference shall be given to in-State programs and schools to enable the counselor to provide guidance, support, and assistance in placement and to maintain fiscal responsibility. If a client wishes to attend an out-of-State program or school, the client shall be responsible for any additional expense that would not have occurred if he or she attended an in-State program or school.

(e) The types of training covered under this subchapter are as follows:

1. Basic education skills training. This type of training leads to a certificate or diploma in basic education skills below the college level.
2. Business and industry training which leads to a certificate and usually provides specific job-related instruction but does not include broad-based academic courses.
3. Trades training which leads to a license or certificate and provides specific job skills but does not include broad-based academic courses.
4. Work adjustment training to help a client adjust to a work situation.
5. Technical associates degree training which is higher than secondary education and consists of a combination of basic academic and technical courses and leads to an Associate degree.

(f) This subchapter does not cover the following types of training:

1. Academic Associates, Baccalaureate and higher degree training (see N.J.A.C. 10:95-6.3); and
2. On the job training (see N.J.A.C. 10:95-6.4).

(g) Each client will be expected to complete the course of study within the time frame customarily required of other students.

(h) The expenses of eligible clients receiving training services under this subchapter shall be covered by the Commission as follows:

1. Room and board costs authorized for each client shall not exceed the rates established by the training service for that semester. Off campus living arrangements shall be subject to the same constraints;

2. Personal maintenance is issued at the discretion of the vocational rehabilitation counselor based on documented economic need (see N.J.A.C. 10:91-4.3(m) and N.J.A.C. 10:95-9.1);

3. Each eligible client receiving training services may receive a stipend for reader/amanuensis services and books and supplies according to the established Commission fee schedule as set forth in N.J.A.C. 10:95-6.8; and

4. Transportation services shall be available to eligible clients in accordance with the criteria set forth at N.J.A.C. 10:95-13.1.

SUBCHAPTER 6. COMMISSION OPERATED VOCATIONAL REHABILITATION SERVICES

10:95-6.1 Orientation and mobility services

Orientation and mobility services are designed to teach methods for safe, independent indoor and/or outdoor travel emphasizing environmental awareness, sensory training and utilization of remaining vision. The purpose of these services will be to enable clients, whenever possible, to be appropriately oriented and to travel on their own to and around their workplace, schools, homes and communities. The Commission's orientation and mobility services program rules are set forth at N.J.A.C. 10:93-3.

10:95-6.2 Vocational rehabilitation home instruction services

(a) Vocational rehabilitation home instruction services are designed to provide instruction and counseling in the techniques of daily living. The purpose of these services is to help clients, whenever possible, accommodate to their visual loss and to acquire the needed skills to function independently as a homemaker. The general rules for the Commission's rehabilitation and home instruction services program are set forth at N.J.A.C. 10:93-4.

(b) A homemaker is an individual who has the skills and abilities to maintain a home and actively functions in the capacity of maintaining a home. Homemaking activities relate to the maintenance of a suitable living environment for the individual and for the individual's family, if appropriate. Pursuant to 34 CFR Part 361.1(c), homemaking is deemed to be employment. Preparing an individual for this employment goal is one of the objectives of the Commission's vocational rehabilitation home instruction services program.

(c) In order to be accepted for services with a homemaker program, the client shall:

1. Meet the eligibility criteria set forth at N.J.A.C. 10:91-2.3 and 2.7;

2. Be given counseling and guidance to assure that vocational alternatives and options are explored with the client; and

3. Be able to and intend to fulfill the functions of a homemaker when rehabilitation services are completed.

(d) A client's vocational goal of homemaking shall be established by the client and vocational rehabilitation counselor when formulating the client's individualized written rehabilitation program (see N.J.A.C. 10:91-5.4(a) and (c)).

(e) The criteria for closing a rehabilitated case as a homemaker are set forth at N.J.A.C. 10:95-15.4.

10:95-6.3 College services

(a) College services are designed to assist Commission clients who require college training in order to achieve their vocational goal. The Commission monitors eligible clients during their college careers and functions as a resource to clients for information concerning:

1. Financial aid and similar benefits;
2. College admissions and qualifications;
3. Specific college programs;
4. A specific client's qualifications for college admission; and
5. The acceptance of a client for college services.

(b) Each applicant for college training shall meet the following criteria:

1. The client shall meet the eligibility requirements for vocational rehabilitation services as set forth at N.J.A.C. 10:91-2.3 and 2.7;

2. The client shall not be receiving financial aid from another state or territory;

3. The client shall not be residing in New Jersey for the sole purpose of receiving support for college training from the Commission;

4. The client shall be formally accepted into a full-time college program;

5. The client's vocational goal shall have been endorsed by the Commission;

6. The client, or his or her guardian, shall submit a completed Commission Financial Survey Form to the Commission in accordance with the provisions of N.J.A.C. 10:91-3; and

7. The client, or his or her parent or guardian, shall complete a Financial Aid Form (FAF) or its equivalent as required by the college or university to determine if the client is eligible for any financial assistance from sources outside the Commission. This information will then be used to determine if the client is eligible for financial assistance from the Commission (see N.J.A.C. 10:91-3).

(c) The vocational rehabilitation counselor, along with his or her supervisor, shall be responsible for making the recommendation to accept the client for college services based on the criteria in (b) above.

(d) The Commission shall provide reader service, books and supplies, in accordance with the rates set forth in N.J.A.C. 10:95-6.8, and academic intervention for all clients as needed.

(e) Appeals shall be handled in accordance with the provisions of N.J.A.C. 10:91-6.

(f) Each client, or his or her parent or guardian, shall annually complete the Financial Aid Form (FAF) or its equivalent in order to determine whether the client is eligible for any financial assistance other than from the Commission (see N.J.A.C. 10:91-3).

(g) The Commission shall annually review the Financial Survey Form in order to determine the client's level of financial participation (see N.J.A.C. 10:91-3).

(h) All college expenses shall be subject to the Financial Aid Form or equivalent or Commission needs test. The expenses of eligible clients receiving college sponsorship by the Commission under this subchapter shall be paid by the Commission as follows:

1. Tuition, and room and board costs shall be paid up to the current rates charged for clients attending a New Jersey State college or Rutgers, the State University of New Jersey;

2. For clients attending private in-state colleges and universities or private or public out-of-state colleges and universities, tuition, and room and board costs may not exceed the rates charged by Rutgers, the State University of New Jersey;

3. Each eligible client attending a full-time undergraduate program may receive a stipend for reader/amanuensis services and books and supplies according to the established Commission fee schedule as set forth in N.J.A.C. 10:95-6.8;

4. Transportation services may be available to eligible clients in accordance with the criteria set forth at N.J.A.C. 10:95-13.1; and

5. Personal maintenance is issued at the discretion of the vocational rehabilitation counselor based on documented economic need (see N.J.A.C. 10:91-4.3(m) and N.J.A.C. 10:95-9.1).

(i) The client's college program shall be consistent with his or her interests, aptitudes and abilities as documented in the client's case record and shall be supportive of the client's vocational goal.

(j) Each client will be expected to complete a degree program within the same time frame as customarily required of other full time students enrolled in the same program.

(k) Each client shall be expected to maintain a "B" or better average. Failure to maintain at least a "B" average will result in loss of Commission sponsorship.

10:95-6.4 On-the-job training services

(a) The purpose of on-the-job training is to encourage an employer to hire a Commission vocational rehabilitation client who may not be fully productive in the particular job opening available, but who shows promise of being able to perform the job with some additional on-the-job training.

(b) In order to enhance the possibility of a client being hired for a job, the Commission will pay for a percentage of the salary until the client is fully trained. This partial payment is made only on the position for which the client will be hired. The percentage of the Commission's payment during each period of the on-the-job training is based on the percentage of the job which actually constitutes training.

(c) In order to qualify as on-the-job training, the job opening must be a real position that the employer intends to fill at the completion of the on-the-job training period. The employer must be willing to carry the client on its payroll and to pay the percentage of salary and fringe benefits agreed upon for the length of the on-the-job training program. The position must have a salary and the income derived from the job may not be totally dependent on commissions or tips.

(d) Each program will be based on the individual client's circumstances. The training period for each client will be determined by the difficulty and/or complexity of the job being learned and the amount of time needed for the individual client to learn the job.

(e) To participate in on-the-job training, a client receiving training services from the Commission must accept the on-the-job training program that has been offered, and be advised that permanent employment will be based on the individual's job performance and ability to become fully trained for the position during the on-the-job training program.

(f) Each employer shall file a short written report with the Commission during each period of the on-the-job training program indicating the continued possibility of employing the client. The report must include a satisfactory or unsatisfactory rating of the client's job performance and a statement as to whether or not the employer intends to continue the on-the-job training.

10:95-6.5 Deaf-blind services

(a) The Commission's deaf-blind services are designed to better serve those individuals who experience a unique set of problems and needs due to profound hearing loss in addition to their visual loss.

(b) In order to be eligible to receive the Commission's deaf-blind services, an applicant shall meet the same criteria needed to receive Commission services as set forth at N.J.A.C. 10:91-2, and:

1. Have a hearing impairment so severe that speech cannot be understood with optimum amplification and not be correctable with aids or medical assistance; or

2. Have a prognosis of imminent hearing loss.

(c) Vocational rehabilitation services available to deaf-blind clients include:

1. All services that shall be provided to any other vocational rehabilitation client;

2. Specialized communication services and devices; and

3. Consultation with any education client over the age of 14 with a hearing loss so as to explore vocational possibilities.

10:95-6.6 Transitional summer services

(a) The Commission's vocationally-related transitional summer services are designed to evaluate the academic and vocational potential of the clients involved and provide them with an opportunity to test their skills to function independently. In addition, the services provide documented pre-vocational assessments for the Commission's education instructors, vocational rehabilitation counselors, transition counselors and local school guidance counselors to use in future discussions with clients and parents.

(b) Transitional summer services may be offered to a client only after the Commission has assessed the particular needs of the client.

(c) The Commission shall annually determine the feasibility of offering the transitional summer services based on the availability of funds and a cost benefit analysis of each program.

(d) To be eligible to attend the transitional summer service program, a client shall have been registered with the Commission for vocational rehabilitation services.

10:95-6.7 Joseph Kohn Rehabilitation Center

(a) The Joseph Kohn Rehabilitation Center (JKRC) is a residential facility which functions as a resource to:

1. Offer evaluation and adjustment services;

2. Clarify the client's fundamental concepts about blindness and visual impairment;

3. Maximize the client's independent functioning;

4. Garner information that can be used in the development of the client's vocational goals; and

5. Provide the client with the opportunity to have positive interaction with other blind and visually impaired individuals.

(b) The following programs shall be available at the Joseph Kohn Rehabilitation Center:

1. The independent living program helps clients maximize independent functioning in relation to their visual disability. The components of the program are:

i. Personal communications skills;

ii. Orientation and mobility;

iii. Home and personal management; and

iv. Arts and crafts.

2. The vocational program helps clients to move toward vocational rehabilitation through evaluation and some training. The following services may be provided:

i. Vocational counseling;

ii. Pre-vocational work adjustment;

iii. Vocational evaluation;

iv. Psychometric testing;

v. Clerical training program;

vi. Homebound employment program; and

vii. Training for candidates of the Business Enterprise Program (see N.J.A.C. 10:97).

3. A counseling program is offered to all clients. The counseling program may include:

i. A weekly case management review;

ii. Weekly psychological counseling which focuses on adjustment to vision loss; and

iii. Group counseling.

(c) The services of the Joseph Kohn Rehabilitation Center shall be provided to all eligible Commission clients free of charge.

(d) Attendance at the Joseph Kohn Rehabilitation Center is based on the following criteria:

1. The client must be registered with the Commission to receive vocational rehabilitation services;

2. The client's medical record must indicate that he or she can physically participate in the program without risk to the health or safety to self or others;

3. The vocational rehabilitation counselor and the client agree that the client can benefit from the intensity of instruction provided at the center;

4. The client needs assistance in developing independent living skills and/or exploring information that can be used in the development of a vocational goal;

5. The client may have a specific vocational objective, and need assistance in moving toward the objective; or

6. The client is not registered for vocational rehabilitation services but needs the center's services to adjust to vision loss. The Joseph Kohn Rehabilitation Center may also serve the Commission's education and allied services clients for the purpose of rendering them independent living skills.

(e) A client who exhibits one or more of the following difficulties may be terminated from a Joseph Kohn Rehabilitation Center program, as determined by the Joseph Kohn Rehabilitation Center manager, and as delineated in the client information brochure, if a client demonstrates:

1. Repeated failures to cooperate with established policies and procedures;

2. Deteriorating emotional, physical or intellectual functioning which jeopardizes the health, safety, or well being of the individual;

3. Violent behavior;

4. Inability to benefit from further instruction; or

5. Behavior which has a negative or disruptive effect on others.

(f) Clients terminated from the Joseph Kohn Rehabilitation Center have the right to appeal this termination in accordance with the provisions of N.J.A.C. 10:91-6.

10:95-6.8 Reader/amanuensis services; books and supplies

(a) A client shall be eligible for reader/amanuensis services if:

1. The client's primary medium of communication is braille or CCTV;

2. The client's reading rate is 200 words per minute or less; and

3. The client's responsible counselor has certified the client as print-handicapped, in accordance with (a)1 and 2 above.

(b) Reader service fees shall be established as follows:
1. For full time undergraduate program, up to $150.00 per month;
2. For full time graduate program, up to $250.00 per month;
3. For full time training program, up to $100.00 per month; and
4. For part time undergraduate/graduate/training program, pro rated.

(c) Reader service fees for deaf/blind clients may exceed the limits in (b) above on a case-by-case basis, with documentation in the case folder and the approval of the counselor's supervisor.

(d) Amanuensis service fees shall be established at a maximum of $30.00 per day.

(e) Books and supplies shall be reimbursed at the rate of:
1. Up to $250.00 per semester for full time students; and
2. Pro rated for part time students.

SUBCHAPTER 7. PROVISION OF TRAINING AND ADAPTIVE EQUIPMENT

10:95-7.1 General purpose and scope

(a) Training equipment refers to those tools, appliances, materials and other supplies which any individual would need in order to participate in a specific training program.

(b) Adaptive equipment refers to those pieces of equipment, materials and/or accommodative devices which allow a visually impaired person to perform tasks so that the individual can participate in a training program and subsequently in an occupation.

(c) The Commission shall provide training/adaptive equipment and/or materials to eligible vocational rehabilitation clients to enable them to participate in a training program. The client's individualized written rehabilitation program must specify the training/adaptive equipment to be purchased (see N.J.A.C. 10:91-5.4).

(d) Equipment which has been fully paid for by the Commission shall remain the property of the Commission. If the client is a co-payer for a piece of equipment, then the equipment shall become the property of the client. While this equipment remains the Commission's property, the Commission shall pay all associated costs such as insurance and maintenance.

(e) The Commission shall provide training and adaptive equipment to an eligible client only after the client has signed the loan of equipment agreement form (see Appendix I of this chapter, incorporated herein by reference).

(f) If the client violates the loan of equipment agreement, the Commission shall refuse to authorize any additional services to the client.

(g) The Commission's economic needs test will be applied to all training and adaptive equipment except that which is purchased relative to work adjustment training (see N.J.A.C. 10:91-3 and 5.4).

10:95-7.2 Replacement equipment in last year of high school

(a) Equipment provided in high school through the Commission's educational services program shall be recovered when a client drops out, graduates or otherwise no longer attends high school.

(b) Appropriate Commission staff serving the client shall meet as early as possible during the client's last year in high school to determine the client's post high school equipment needs.

SUBCHAPTER 8. COUNSELING AND GUIDANCE SERVICES

10:95-8.1 General purpose and scope

The Commission's counseling and guidance services are designed to counsel the individual in connection with his or her vocational potential and the health and social problems related to their vocational objective or adjustment. Counseling and guidance is the core of the rehabilitation process. These services assist the individual in developing and understanding their capabilities and limitations and appropriately using the rehabilitation services needed to achieve the best possible vocational objective or adjustment. Counseling and guidance may be provided to a client during any phase of the rehabilitation process.

10:95-8.2 Transition services

(a) Transition services are designed to provide the client, family, high school personnel and other professionals with specialized vocational achievement to assure a smooth transition from high school to college or work. The goal of transition services is to provide early vocational planning.

(b) The services of a transition counselor shall be requested when a client's education instructor feels there is a need for involvement or consultation by the Commission's vocational rehabilitation staff. The transition counselor, the education instructor and any other ancillary workers are part of a transition team. Mainstreamed clients who will be graduating in two to three years shall be referred for transition services at age 16. Clients who remain in high school until age 21 shall be referred for transition services at age 19.

(c) The client's current Commission individual service program shall include the services rendered by the transition counselor.

(d) The client's education instructor shall provide direct instructional and other education related services to the client, high school personnel and families.

(e) The transition services supervisor, or the transition counselor, shall confer with the appropriate vocational rehabilitation supervisor on all cases where the client is in his or her last year of formal education to determine appropriate actions such as transfer to a vocational rehabilitation counselor, transfer for college services or closure of the client's case.

10:95-8.3 Career development services

(a) The Commission's career development services assist vocational rehabilitation clients in obtaining appropriate employment by working directly with clients, professionals and prospective employers of blind and visually impaired job applicants. These services may be provided to clients who are ready for employment, receiving post-employment services, or in need of career information.

(b) Career development services may include the following:
1. Development of on-the-job evaluations, training and employment opportunities;
2. Provide consultative services to employers regarding job placement and related services;
3. Assistance to clients in developing job seeking skills; and
4. Provision of career information on employment trends, career choices, job evaluation, training, job readiness and the appropriate choice of a post-secondary education curriculum.

SUBCHAPTER 9. MAINTENANCE SERVICES

10:95-9.1 General purpose and scope

(a) Maintenance is a supportive service provided only to enable an individual to participate in other vocational rehabilitation services. It is provided to the client in meeting the extra or added costs of food, shelter, clothing and other subsistence expenses arising from the active participation in a vocational rehabilitation program. Maintenance payments are not intended to ameliorate poverty.

(b) The Commission shall provide maintenance payments to or on behalf of eligible clients only up to the amount of increased expenses that the rehabilitation program causes for the individual or his or her family.

(c) The Commission shall apply its financial needs standard as set forth at N.J.A.C. 10:91-3 to the provision of maintenance services to all vocational rehabilitation clients except for those individuals who are receiving diagnostic services, work adjustment training or basic skills training.

(d) The Commission shall ascertain an individual's financial need each time the need for maintenance services arises (see N.J.A.C. 10:91-3).

(e) The Commission shall provide maintenance services to or on behalf of eligible clients as follows:

1. If the client is receiving meals as part of boarding costs, the Commission shall pay the published cost of the meal plan;

2. If the client is not receiving meals as part of boarding costs, the payment rate shall be the current daily rate of meal reimbursement for New Jersey State employees. This rate will also be paid to clients at residential facilities for those meals that shall not be provided on weekends or holidays;

3. If the client is receiving a room as part of residential costs, the Commission shall pay for the current cost of the room;

4. If housing is available at the facility and the client chooses to live independently, the rate of payment shall not exceed that of the residential housing available;

5. If no housing is available at the facility, the rate of payment shall not exceed the rate paid for board at Rutgers, the State University of New Jersey.

(f) Maintenance payments shall not be considered earned income.

SUBCHAPTER 10. PLACEMENT SERVICES

10:95-10.1 General purpose and scope of placement and adaptive equipment

(a) Placement and adaptive equipment may be issued to eligible vocational rehabilitation clients to enable them to compete equally in the job market.

(b) Placement equipment refers to those tools, appliances, machinery, licenses, initial stocks and supplies which enable an individual to perform his or her job.

(c) A description of adaptive equipment is set forth at N.J.A.C. 10:95-7.1(b).

(d) A client who has just begun employment or who is receiving post-employment services may be eligible to receive placement or adaptive equipment provided by the Commission. Employers will be encouraged to participate in the purchase of placement and/or adaptive equipment.

(e) The Commission's economic needs standard as set forth at N.J.A.C. 10:91-3 shall be applied to the purchase of all placement and/or adaptive equipment.

(f) The Commission shall officially transfer ownership of placement or adaptive equipment to the client or co-payee (employer) when the client is deemed to be competitively employed in accordance with the provisions of N.J.A.C. 10:95-15.2. The client or the employer shall be responsible for the cost of insuring the equipment. The counselor shall discuss this obligation with the client and the employer to assure that the client or employer agree to insure the equipment. The Commission shall purchase any necessary maintenance contract on the equipment for up to one year when the equipment is purchased. The client shall pay the cost of the maintenance contract after the first year. The client shall be responsible for all deductibles, repairs or routine maintenance not covered by the contract.

10:95-10.2 Business enterprise program

(a) The Commission's business enterprise program is designed to emphasize and reaffirm the Commission's commitment to assist those clients whose vocational goal is self-employment. The program provides coordinated services to the client from the beginning of the diagnostic evaluation through and into the actual operation of the business.

(b) The business enterprise program includes the following:

1. The Randolph Sheppard program (see N.J.A.C. 10:97); and

2. The small business program (see N.J.A.C. 10:95-10.3).

10:95-10.3 Small business program

(a) The small business program is designed to provide vocational rehabilitation services to those clients whose goal is to establish a solely owned business.

(b) The following criteria will determine a client's eligibility for the small business program:

1. The client must indicate a commitment to own and operate his or her own business;

2. The business goal must be appropriate to the client's physical condition according to the counselor based upon documented medical conditions pertaining to the requirement of the business; and

3. The client must demonstrate an ability to acquire basic business management skills such as maintaining inventory and financial records.

(c) The Commission's similar benefits rules as set forth at N.J.A.C. 10:91-3 shall apply to the provision of financial services to clients in the small business program.

(d) The Commission shall evaluate each client who wishes to establish a business. The outcome of this evaluation will be a written report which provides justification for any projected expenditure of vocational rehabilitation funds.

(e) Each client shall utilize his or her own resources to fund the business venture. Each successful applicant for the business enterprise program shall have an outside source for financing his or her own business.

(f) Start-up costs are one-time expenditures such as the purchase of licenses, supplies, services and equipment. The client shall provide a minimum of 20 percent of the total start-up cost of the business before the Commission will intervene by providing vocational rehabilitation funds. The Commission's maximum expenditure of vocational rehabilitation funds for any individual business shall be no more than $25,000. The client shall submit to the Commission verification that the client's co-payment of start-up costs is available before authorization for the expenditure of vocational rehabilitation funds will be processed. No vocational rehabilitation funds shall be provided for long term operational or fixed asset costs. However, adaptive equipment shall be funded.

(g) The business enterprise program may continue to provide assistance to the client after financing has been put into place and until the business is operational. Commission staff may visit the business for up to one year after the business is established.

(h) The Commission shall retain title to any equipment it purchases for a self-employed client in the business enterprise program until all necessary post-employment services have been provided and the case is successfully closed. As title holder, the Commission shall be responsible for the maintenance and insurance of all equipment. When a case is closed due to the unsuccessful provision of post-employment services, the Commission shall recoup any equipment purchased with Commission funds.

10:95-10.4 Competitive employment

(a) A client shall be considered competitively employed when the client, vocational rehabilitation counselor and employer determine that the client is suitably employed for a minimum of 60 days and has reached his or her vocational goal. The standards for determining suitable employment shall be as follows:

1. The client and the employer are mutually satisfied;

2. The client is maintaining acceptable behavior in the job environment;

3. The occupation is consistent with the client's capabilities and the client possesses the acceptable skills to perform or continue to work satisfactorily;

4. The employment and working conditions do not aggravate the client's disability, and the client's disability will not jeopardize his or her own or others health and safety;

5. The wage and working conditions conform to all state and Federal statutory requirements; and

6. The employment is regular, reasonably permanent and the client receives a wage commensurate with that paid other workers for similar work.

(b) In addition to (a) above, clients shall be considered to be employed if they are working full time as lay workers for religious groups or organizations even if they are paid at a very minimal level and/or receive payment in kind.

10:95-10.5 Non-competitive employment

(a) The following shall be considered non-competitive occupations:

1. Sheltered employment;

2. Unpaid family worker; and

3. Homemaker.

(b) In order for a client to be considered suitably employed in a sheltered environment, the employment must meet the following standards:

1. The employment is productive, is based upon each individual's capacities and abilities, and is measured by, but not limited to, the following:

i. The number of hours the client is actually working;

ii. How the activity improves the individual's social well-being;

iii. How the activity contributes to the economy of the individual, the family and the community;

iv. The degree of positive change attributed to the rehabilitation effort; and

v. The degree to which the client is performing near optimum level;

2. The wages earned by the client are one of the primary purposes for the employment. Wages include fringe benefits, such as social security, workers compensation insurance, paid vacation, sick leave and any other benefits earned by other employees; and

3. The goal is gainful employment, rather than therapeutic activity, and the sheltered employment is consistent with the goal established on the client's individualized written rehabilitation program and the client's capabilities (see N.J.A.C. 10:91-5.4(a) and (c)).

(c) An unpaid family worker is a person who works without actual cash reimbursement on a family farm or in a family business. In order to be considered an unpaid family worker, an individual must make an economic contribution to the family business. The contribution is measured by the cost to the family of employing another person to do the same work.

(d) The Commission's homemaker rules are set forth at N.J.A.C. 10:95-6.2 and 15.4.

SUBCHAPTER 11. POST-EMPLOYMENT SERVICES

10:95-11.1 General purpose and scope

(a) Post-employment services are designed to assist the individual in maintaining employment after the individual has been determined to be rehabilitated. Post-employment services may include any vocational rehabilitation services or combination of services necessary to assist the individual in maintaining employment. Counseling and guidance and other appropriate services shall be provided to maintain an individual's employment.

(b) The following criteria shall be established for the provision of post-employment services:

1. The individual has been determined to be rehabilitated;

2. Post-employment services are necessary to assist the individual in maintaining employment;

3. The services act as a supplement to the services provided prior to case closure;

4. The services do not entail a complex or comprehensive rehabilitation effort; and

5. The services are related to the client's individualized written rehabilitation program developed during the rehabilitation process.

(c) The Commission shall inform each individual as part of the process of closing a case as rehabilitated that the individual may be eligible to receive post-employment services.

(d) The following groups of individuals generally require post-employment services:

1. Individuals identified prior to closure as needing post-employment services. In these cases, the Commission's intention to provide post-employment services will be indicated on the client's individualized written rehabilitation program;

2. Individuals for whom unexpected situations arise; and

3. Individuals identified through re-evaluation of extended employment.

(e) The Commission shall apply its economic needs test as set forth at N.J.A.C. 10:91-3 to the same services and items during the post-employment phase as it does during the rest of the rehabilitative process. The Commission shall administer a new needs test to reflect the individual's changed financial situation due to his or her employment status. The Commission shall apply its policy regarding the use of similar benefits as set forth at N.J.A.C. 10:91-3 to the provision of post-employment services.

(f) The Commission may provide post-employment services to individuals in sheltered employment identified as needing additional rehabilitation services to maintain employment, either in the sheltered workshops or by progressing to competitive employment.

(g) The Commission shall not provide post-employment services to upgrade an individual's financial status (see definition of post-employment services at N.J.A.C. 10:95-1.2).

(h) The vocational rehabilitation counselor shall record the decision to terminate post-employment services in the individual's amended individualized written rehabilitation program. Post-employment services shall be terminated if:

1. The problem requiring post-employment services has been resolved;

2. The individual attains sufficient independence to function without continued post-employment services;

3. The individual's employment appears secure;

4. The employment continues at a suitable level in relation to the individual's potential; or

5. The individual's condition or situation becomes such that post-employment services cannot maintain them in employment.

SUBCHAPTER 12. SERVICES TO CLIENTS' FAMILIES

10:95-12.1 General purpose and scope

(a) Services shall be provided to family members when such services are necessary to the adjustment or rehabilitation of the client. The objective of the client's successful rehabilitation is carried out by helping the family recognize its responsibilities to use its own resources for contributing to the rehabilitation of the client, and supplementing or supporting as necessary the family's own resources or the resources available in the community.

(b) For the purposes of this subchapter, a family member is any relative of the client by blood or marriage, or legally responsible person or other individual(s) living in the same household with whom the client has a close interpersonal relationship.

(c) An individual who meets the definition of family member in (b) above may receive services after the client has been determined eligible for vocational rehabilitation services, during any active phase of the client's case (see N.J.A.C. 10:91-2.3, 2.7, and 5.4(a) and (c), and N.J.A.C. 10:95-3.3 and 11.1).

(d) The Commission shall provide services to a client's family only if it is necessary for the rehabilitation of the client and the services are not otherwise available through existing community agencies.

(e) The Commission, the client and the client's family member(s) shall jointly determine the need for Commission services based on the following criteria:

1. The services to the client's family will have a substantial impact on the client;

2. The service will allow or increase the opportunities for the client to use vocational rehabilitation services;

3. Without the services the client would be unable to begin or continue his or her individualized rehabilitation program; or

4. The individualized written rehabilitation program would be jeopardized or interfered with to the extent that employment would be unnecessarily delayed or could not be achieved.

(f) The Commission shall apply its financial needs test as set forth at N.J.A.C. 10:91-3 to the provision of services to a client's family. Any participation in the costs of services to families, whether by the client or other family member is considered participation by the client. The Commission shall also apply its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of services to a client's family.

(g) The Commission shall provide to the client's family only those goods or services which are necessary to the adjustment or rehabilitation of the client as stipulated in the client's individualized written rehabilitation program. These services may include:

1. Group or individual counseling to help family member(s) understand the needs of the client;

2. Day care services for children which would enable the client to pursue his or her individualized written rehabilitation program;

3. Genetic or marital counseling services when indicated; and

4. Housing services to assist the family in locating adequate living quarters as appropriate to meet the needs of the client in promoting his or her rehabilitation program.

(h) The Commission shall terminate services to a client's family when:

1. The service(s) no longer makes a substantial contribution to the client's rehabilitation;

2. The client is not accepted for vocational rehabilitation services or the client's case is closed as not rehabilitated either before or

after the initiation of an individualized written rehabilitation program; or

3. The client is rehabilitated and the case is closed.

SUBCHAPTER 13. TRANSPORTATION SERVICES

10:95-13.1 General purpose and scope

(a) Transportation is a supportive service which contributes to the eligible individual's ability to participate in or receive the benefits of vocational rehabilitation services. Transportation services consist of necessary travel and related expenses, including subsistence during travel, in connection with transporting individuals and their escorts (if necessary) for the purpose of providing vocational rehabilitation services. Transportation includes:

1. Travel costs associated with using public or private transportation;

2. Subsistence while in travel;

3. Payment for the services of escorts, other than family members, for severely disabled persons and the escorts' travel costs;

4. Relocation and moving expenses; and

5. Other transportation related expenses such as tolls.

(b) The Commission shall apply its needs test as set forth at N.J.A.C. 10:91-3 to the provision of all transportation services except when an individual is an applicant for Commission services or during diagnostic evaluation, work adjustment training or basic skills training at a community based organization. The Commission and the client shall explore all alternative sources before the Commission will provide any transportation services in accordance with N.J.A.C. 10:91-3.

(c) The type of transportation provided is based on the limitations of the client and the obstacles in his or her environment rather than convenience. The factors to be considered in determining the most appropriate mode of transportation include:

1. The circumstances of the individual client;

2. The availability and appropriateness of the transportation system; and

3. The current cost of the transportation.

(d) A client must have an orientation and mobility evaluation stating that the client cannot travel by public transportation, or that the commute is too lengthy or difficult prior to an authorization for private transportation such as a private automobile or a van.

(e) Subsistence is a temporary type of maintenance which is limited to the cost of food and lodging only while a client is in transit.

(f) The Commission may pay for the services of an escort in transit only for the multi-disabled severely impaired client. In order to receive an authorization for a paid escort, the client must be unable to travel without assistance. The Commission shall apply the following standards when an escort must accompany a client during transit:

1. A family member may be paid as an escort only in instances where acting as an escort causes undue financial hardship to the family member;

2. The Commission shall pay an additional fee for assistance during travel only when a paid attendant is normally unavailable to the client; and

3. The Commission may furnish the escort's travel costs, including food or lodging.

(g) The Commission may provide financial assistance for any expense in transit when permanent relocation is necessary for the client to accept an offer of employment. Such expenses include, but are not limited to, the cost of a moving van and meals and lodging on route. The Commission shall provide transportation assistance to family members when such services are necessary to the rehabilitation or adjustment of the client, and the family members meet all of the criteria for Commission services to family members as set forth at N.J.A.C. 10:95-12.1. The Commission shall deny transportation assistance to family member(s) when the transportation is for the purpose of a permanent relocation and the client is not involved in the move.

(h) The Commission may provide transportation services to enable an individual to participate in post-employment services. The Commission shall not pay for a client's transportation to and from work.

(i) The Commission shall provide transportation at the client's request to permit an individual to attend a fair hearing or administrative review.

(j) The Commission shall provide transportation service pursuant to N.J.A.C. 10:95-13.1(b).

(k) Other rates shall be set as follows:

1. For transportation by private individuals, reimbursement for mileage, tolls and parking is the current rate paid to New Jersey State employees. The Commission disallows reimbursement to family members providing transportation to the client unless it would cause undue financial hardship as demonstrated by the Commission's financial needs standard test (see N.J.A.C. 10:91-3);

2. Reimbursement for meals and lodging will be commensurate with the current rate paid to New Jersey State employees; and

3. Escorts will be paid the hourly minimum wage plus allowable travel expenses incurred.

SUBCHAPTER 14. OTHER SERVICES

10:95-14.1 Other training and placement related services

(a) Other training and placement related services are basic services or pieces of equipment which are required by clients for their education or training because of their visual impairment.

(b) The Commission shall apply its similar benefits rules as set forth at N.J.A.C. 10:91-3 to the provision of services described in (c) below.

(c) The other training and placement related services available from the Commission shall be:

1. An allotment for reader/amanuensis service. The Commission's reader/amanuensis rules are set forth at N.J.A.C. 10:95-5.2(i)4;

2. Orientation and mobility training. The Commission's orientation and mobility rules are set forth at N.J.A.C. 10:93-3;

3. Rehabilitation teaching. The Commission's rehabilitation teaching rules are set forth at N.J.A.C. 10:93-4; and

4. Interpreter for deaf/blind clients.

(d) The Commission may provide other training and placement related services to any client for whom there is a vocational goal which is documented in the client's individualized written rehabilitation program (see N.J.A.C. 10:91-5.4(a) and (c)). The individualized written rehabilitation program must delineate the specific services that shall be provided and the length of service provision.

(e) The Commission may also provide other training and placement related services to a client attending a college or training program while undergoing an extended evaluation (see N.J.A.C. 10:95-3.3) or during the development of the individualized written rehabilitation program.

(f) A client shall not receive other training and placement related services if:

1. The client is attending a program that is uncertified or unaccredited;

2. The client is taking make-up courses. If these courses are being repeated during a semester in which new courses are being undertaken, payments for other training and placement related services shall be pro rated to provide for the new courses only; or

3. The client elects to take a second training or education program similar to one already completed.

(g) The Commission's vocational rehabilitation funds shall be used to pay for other training and placement related services as long as another rehabilitation service is being provided. In order to continue receiving the services described in this subchapter, there must be a reason for the Commission to continue the provision of primary vocational rehabilitation services. The Commission shall not pay for other training and placement related services beyond the amount of time normally needed to complete the training program or beyond the extended course of study in the client's individualized written rehabilitation program.

SUBCHAPTER 15. CRITERIA FOR CASE CLOSURE

10:95-15.1 Case closure in referral or applicant status

(a) Upon a determination of ineligibility, the Commission shall close the case of an individual who was either referred or applied to the agency for vocational rehabilitation services.

(b) The Commission shall base its determination of ineligibility for vocational rehabilitation services in accordance with the criteria set forth at N.J.A.C. 10:95-2.2(c).

(c) The Commission shall issue a certificate of ineligibility in accordance with N.J.A.C. 10:91-2.10 upon a determination that an individual is ineligible for vocational rehabilitation services.

10:95-15.2 Competitive closure

(a) The Commission shall consider a client to be competitively employed and close the case as rehabilitated when the following criteria have been met:

1. An evaluation was made of the rehabilitation potential of the client which resulted in a determination that the client met the eligibility criteria as set forth at N.J.A.C. 10:95-2.2(b);

2. The client's individualized written rehabilitation program will have been jointly formulated by the client and counselor, and the provision of services has been completed insofar as feasible (see N.J.A.C. 10:91-5.4(a) and (c));

3. The client has received substantial rehabilitation services. Substantial rehabilitation services are any vocational rehabilitation services that shall be provided which assist the client's vocational potential. A determination of whether substantial vocational rehabilitation services have been received is based upon their impact on the client's vocational rehabilitation, not on the number, type or cost of services;

4. Counseling and guidance services were provided;

5. It is determined by the client, counselor and employer that the client is suitably employed for a minimum of 60 days in accordance with the criteria set forth at N.J.A.C. 10:95-10.4(a); and

6. The client shall be considered competitively employed in a supported employment situation providing that he or she meets the definition of supported employment as set forth at N.J.A.C. 10:95-1.2.

(b) The Commission may, in some instances, close a case as rehabilitated when some of the criteria for determining suitable employment are not met. For example, the client may decide to accept or remain on a job which, in the opinion of the counselor, is not compatible with the client's physical, mental or educational capacities, or is not permanent enough to assure continued self support. When the client has made such a job choice in light of all the facts, the counselor shall inform the client that the case will be closed as rehabilitated. The client may, however, reapply for vocational rehabilitation services as the need arises. The case record must clearly indicate the justification for closing a case under these exceptional circumstances.

(c) If a client becomes employed before beginning planned vocational rehabilitation services, the vocational rehabilitation counselor and the client may amend the individualized written rehabilitation program to provide the client with needed services. At the completion of these services, the case will be closed as rehabilitated when the criteria set forth at N.J.A.C. 10:95-10.4 and 15.2, N.J.A.C. 10:95-10.5 and 15.3, or N.J.A.C. 10:95-6.2 and 15.4 are met.

10:95-15.3 Non-competitive closure

(a) In order to close the case of a rehabilitated client who is suitably engaged in non-competitive employment, the case record shall show that:

1. The Commission provided substantial services which materially contributed to an improvement in the client's adjustment or ability to function in the non-competitive occupation;

2. The improved level of functioning enabled the client to make a significant contribution in actual work activities in a sheltered environment, at home or in a family worker situation; and

3. As a result of the improved level of functioning and the work activity performed, socio-economic benefits may be realized.

(b) The Commission's other non-competitive employment rules are set forth at N.J.A.C. 10:95-10.5.

10:95-15.4 Homemaker closure

(a) The counselor shall document in the client's case folder the amount of time actually needed for the homemaker training. The Commission shall make every effort to schedule homemaking training in such a manner as to permit an individual's case to be closed as a rehabilitated homemaker within nine months of the receipt of a referral from the client's vocational rehabilitation counselor.

(b) In order to close a client's case as being a rehabilitated homemaker, the case record will show evidence that:

1. The Commission provided services which contributed to the client's adjustment and ability to function as a homemaker;

2. The client is able to perform homemaking activities; and

3. The client actually functions as a homemaker on a day-to-day basis.

(c) The Commission's homemaker rules are set forth at N.J.A.C. 10:95-6.2.

10:95-15.5 Case closed as not rehabilitated after initiation of planned services

(a) The Commission may close a client's case as not rehabilitated in accordance with (b) below, after the initiation of services developed through an individualized written rehabilitation program, when the client is unable to achieve his or her vocational goal after having received at least one planned vocational rehabilitation service (see N.J.A.C. 10:91-5.4(a) and (c)).

(b) The Commission shall close a case as not rehabilitated after the initiation of planned services when one of the following circumstances occurs:

1. The client cannot achieve suitable employment;

2. The client does not follow through with the program of services. After documenting that the client understands the purpose and availability of vocational rehabilitation services, the vocational rehabilitation counselor shall record and document the reasons for the client's decision not to proceed with planned services;

3. There are intervening reasons for closing the case which may include:

i. The client moves, dies or is institutionalized;

ii. The client cannot be located;

iii. The case is transferred to another state's vocational rehabilitation agency; or

iv. Another agency's services are more appropriate to the client's needs;

4. New information or other factors determine that suitable employment for the client is not possible. Examples include:

i. The client's disability becomes too severe;

ii. The client's medical condition deteriorates;

iii. The medical prognosis becomes unfavorable;

iv. Additional disabilities or problems are identified with the provision of services; or

v. Evaluation and training reports and records indicate that the client cannot be expected to benefit from vocational rehabilitation services; or

5. The client obtained employment without benefiting from the Commission's vocational rehabilitation services.

SUBCHAPTER 16. FOLLOW-UP REVIEW

10:95-16.1 Review of ineligibility decisions

(a) Vocational rehabilitation clients declared ineligible because their disability was deemed too severe to benefit from services shall have an opportunity for their cases to be reviewed and reopened, if appropriate.

(b) The Commission shall conduct one review within 12 months after closure of each individual who initially signed a written document requesting vocational rehabilitation services and was subsequently determined to be ineligible because of an inability to achieve a vocational goal. The reasons for such an ineligibility determination include, but are not limited to, a disability that is too severe or an unfavorable medical prognosis.

(c) The Commission shall be responsible for informing individuals deemed ineligible for vocational rehabilitation services after undergoing an extended evaluation that additional reviews will be conducted upon receipt of a written request for a review by the individual.

(d) The Commission shall conduct no review of an ineligibility determination if:

1. The individual refuses review;

2. The individual is no longer present in this state;

3. The individual's whereabouts are unknown;
4. The individual's medical condition is rapidly progressive or terminal;
5. The individual has died;
6. The individual is unavailable for review; or
7. The individual has no disabling condition.

10:95-16.2 Review of extended employment

The Commission shall annually review and re-evaluate the status of each individual who has been placed in a community based organization to receive extended employment services (see N.J.A.C. 10:95-10.5(c)).

APPENDIX I

AGREEMENT
CONCERNING THE LOAN OF TOOLS,
EQUIPMENT, INITIAL STOCK, AND
OTHER MATERIAL ITEMS FOR EDUCATIONAL
AND TRAINING PURPOSES.

NEW JERSEY STATE COMMISSION FOR THE BLIND
AND VISUALLY IMPAIRED
153 Halsey Street
P.O. Box 47017
Newark, New Jersey 07101

I, _____
Name of Client Address

hereby agree that the New Jersey State Commission for the Blind is providing me with the use of the following equipment, stock or supplies:

All tools, equipment, other material items, and the equivalent of initial stock or inventory provided for my use by the New Jersey State Commission for the Blind are the property of the said Commission, and are furnished to me for instructional and/or training purposes. These items are for my use, with the residual title and interest remaining with the said Commission. They are on loan for as long as I remain in the Commission sponsored or approved educational or training program. I further understand that this property may be used by me only for the purposes granted, and may not be disposed of or sold.

I understand that I am responsible for any deliberate damage or misuse and for routine maintenance, including cleaning and typewriter ribbon replacement. I will be responsible for minor repairs ($35.00 or less) unless this causes a financial hardship which is substantiated by the Commission's needs test. I will return my listed equipment immediately upon request to the New Jersey Commission for the Blind and Visually Impaired.

Signature _____ Date _____

CBVI-5FA
7/88/244B

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Subpoenas

Adopted Amendment: N.J.A.C. 1:1-11.1
Adopted Repeal: N.J.A.C. 1:13A-11.1

Proposed: March 21, 1994 at 26 N.J.R. 1276(a).
Adopted: May 13, 1994 by Jaynee LaVecchia, Director, Office of Administrative Law.
Filed: May 16, 1994 as R.1994 d.293, **without change.**

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

Effective Date: June 6, 1994.
Expiration Date: April 21, 1997.

Summary of Public Comments and Agency Responses:

The Office of Administrative Law received five comments regarding the proposed amendment which permits attorneys, *pro se* parties and non-lawyer representatives to issue subpoenas in contested cases, with the provision that subpoenas for high-level government officials may be issued only by an administrative law judge.

COMMENT: The New Jersey School Boards Association and the Department of Personnel supported the proposal and favored its adoption. The New Jersey School Boards Association indicated that the amendment should simplify the process, saving litigants time and money. The Department of Personnel particularly supported the provision that subpoenas for high level government officials be issued only by an administrative law judge.

RESPONSE: The Office of Administrative Law concurs that the amendment should result in a more efficient process and should reduce the expense to the parties.

COMMENT: Joseph Rosa Jr., Esq., commented that the exception to the proposed subpoena process for high-level government officials was too broad. While concurring that the Governor and agency heads were high-level government officials, he felt that the inclusion of assistant commissioners, deputy commissioners, and in particular, division directors was inappropriate and could include possibly hundreds of employees within the definition. He further felt that these officials are the very individuals who have the most knowledge of the facts sought to be adduced at the hearing, and that case law adequately sets forth the standards as to the thought processes and knowledge of government officials which should be the sole basis for their exclusion.

RESPONSE: The OAL disagrees that the exclusion should be limited to the Governor and agency heads. As the commenter indicates, case law sets forth standards regarding the appropriateness of the testimony of high-level government officials. The amendment does not preclude a party from subpoenaing these individuals, but merely requires that such subpoenas be issued by an administrative law judge upon a showing that the case law standards have been met. Since currently subpoenas for every witness are issued by an administrative law judge, it is not unduly burdensome to require the parties to obtain a judge's signature when subpoenaing these specified governmental officials. If an official has personal knowledge of the facts at issue, a subpoena for that person can be issued by an administrative law judge.

COMMENT: Jersey Central Power and Light Company did not object to the proposal for "general OAL purposes," but argued that public utility cases transmitted from the Board of Regulatory Commissioners should be excluded from the process. It argued that party-issued subpoenas not be permitted with regard to employees, affiliates, consultants, or representatives of parties in public utility cases. The commenter argued that there was little need for the proposal in these cases since the witnesses are almost exclusively utility personnel, State agency personnel and expert witnesses who can be relied upon to attend the hearing without subpoena. Balanced against that diminished need, the commenter felt that the potential for misuse is weightier than in other cases. For example, a party might use the hearing as a fishing expedition by compelling the attendance of utility personnel who ae not designated as witnesses and who do not prefile testimony. Commenter therefore felt that a limitation in these cases prohibiting party subpoenas for the above-listed individuals was advisable.

COMMENT: The Office of Administrative Law does not agree that public utility cases should be excluded from this procedure. The procedure does not require parties to issue subpoenas; to the extent that witnesses in public utility cases can be expected to attend voluntarily, the proposal has no effect on the process. Nor does OAL believe that there is any reason to expect greater abuse of the process in this area. In almost all public utility cases, the parties are represented by lawyers who are experienced in the area and should be expected to appropriately utilize procedures. If a party believes that a subpoena has been inappropriately issued, it is, of course, subject to a motion to quash. The statute granting subpoena authority to the OAL does not differentiate categories of cases. N.J.S.A. 52:14f-5u. OAL does not believe it is appropriate to create differing procedures for cases depending on transmitting agency absent a clear demonstration that such variations and exemptions are warranted. Thus OAL does not deem it appropriate to exclude public utility cases from the proposal at this time.

COMMENT: Stephen A. Gregory submitted a comment on May 2, after the expiration of the deadline for comments. Nevertheless, the Office of Administrative Law has accepted and will respond to his comment. Mr. Gregory objected to the proposal indicating that he believed it had not been sufficiently circulated to members of the public who might appear in an OAL proceeding. He recommended a press release distributed to the larger newspapers prior to adoption of the amendment. He felt that publication in the New Jersey Register or the New Jersey Lawyer was insufficient. Further, he felt that the rule will create more "red tape" which will thwart the effort at obtaining discovery.

RESPONSE: In addition to publication in the New Jersey Register, New Jersey Lawyer, and the New Jersey Law Journal, the proposal was submitted to the Public Advocate, New Jersey Legal Services, the New Jersey State Bar Association, the New Jersey Education Association, lay advocates representing parents in special education cases, union representatives, the administrative law section of the New Jersey Bar Association, the Attorney General's office, and the New Jersey School Boards Association. These are groups involved in hearings before the Office of Administrative Law, or whose members are frequently involved in hearings before the Office of Administrative Law. The groups represent a diversity of viewpoints and a spectrum of different types of cases which may be transmitted to the Office of Administrative Law. The Office of Administrative Law believes that such publication and distribution is legally sufficient to notify the affected public of the proposed amendment.

Further, commenter misconstrues the regulation when he characterizes it as adding "red tape" to the effort at collecting discovery. The proposal does not impact on the discovery process. The Uniform Administrative Procedure Rules specifically provide that subpoenas may not be used as a discovery device. N.J.A.C. 1:1-11.1(b). The use of subpoenas is appropriate only to obtain the attendance of an individual or presentation of documents at the hearing. Rather than make the process more difficult, the proposed change will simplify it by permitting parties to issue subpoenas in most instances without first returning a completed subpoena form to the Office of Administrative Law for a judge's signature. This change should therefore make it easier for parties to ensure attendance of necessary witnesses at a hearing.

Full text of the adoption follows:

1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents

(a) Subpoenas may be issued by the Clerk, any judge, or by *pro se* parties, attorneys-at-law or non-lawyer representatives, in the name of the Clerk, to compel the attendance of a person to testify or to produce books, papers, documents or other objects at a hearing, provided however, that a subpoena to compel the attendance of the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director may be issued only by a judge. A subpoena for the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director shall be issued only if the requesting party makes a showing that the sub-

poenaed individual has firsthand knowledge of, or direct involvement in, the events giving rise to the contested case, or that the testimony is essential to prevent injustice.

(b) The subpoena shall contain the title and docket number of the case, the name of the person to whom it has been issued, the time and place at which the person subpoenaed must appear, the name and telephone number of the party who has requested the subpoena and a statement that all inquiries concerning the subpoena should be directed to the requesting party. The subpoena shall command the person to whom it is directed to attend and give testimony or to produce books, papers, documents or other designated objects at the time and place specified therein and on any continued dates.

(c) Subpoenas to compel the attendance of a person to testify at a deposition may be issued by a judge pursuant to N.J.A.C. 1:1-10.2(c).

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

CHAPTER 13A
DIVISION OF CONSUMER AFFAIRS
LEMON LAW HEARINGS

SUBCHAPTER 11. (RESERVED)

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program Conditions

Adopted Amendments: N.J.A.C. 2:32-2.1, 2.7, 2.9 and 2.27

Proposed: March 7, 1994 at 26 N.J.R. 1181(a).
Adopted: May 3, 1994 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: May 5, 1994 as R.1994 d.271, **without change.**

Authority: N.J.S.A. 5:5-91.

Effective Date: June 6, 1994.
Expiration Date: May 13, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

2:32-2.1 Adoption of by-laws

(a) The by-laws of the New Jersey Sire Stakes Board of Trustees are hereby adopted as follows:

1.-11. (No change.)

12. The Sire Stakes Board of Trustees shall meet bimonthly during the year. The date, time, and place will be selected by the chairman, and the secretary shall notify all Board members by letter 10 days prior to each meeting.

13.-15. (No change.)

2:32-2.7 Transfer of race

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

(d) In the event that a Fair Race is postponed for any reason and cannot be carried over and raced at that fair, the purse money for that race shall be divided evenly among the horses declared in as drawn and ready to race. The 100 points toward the Fair Finals will also be divided evenly among those horses declared in as drawn and ready to race and the event shall count as a start toward the Fair Finals.

2:32-2.9 Yearling nominations

(a) All foals must be registered with the United States Trotting Association or the Canadian Standardbred Horse Society with a certificate of registration dated on or before the time of nomination.

1. (No change.)

2. The yearling nomination fee shall be $40.00 if a copy of the United States Trotting Association or the Canadian Standardbred Horse Society certificate of registration accompanies the yearling nomination form and an additional $10.00 processing fee shall be due if the copy of the United States Trotting Association or the Canadian Standardbred Horses Society certificate is not submitted. The nomination payment covers the nomination fee to both the Fair and Pari-mutuel divisions. Thereafter, each division will have separate sustaining payments.

3.-4. (No change.)

2:32-2.27 Final races

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

(d) In the event of less than five starters, the points shall be awarded in the same fashion as the purse breakdown with less than five starters, as in N.J.A.C. 2:32-2.21. In the Pari-mutuel events, additional points will be awarded as follows: sixth place (four points), seventh place (three points), eighth place (two points), and ninth, tenth, 11th, or 12th place (one point).

(e)-(j) (No change.)

PERSONNEL

(b)

MERIT SYSTEM BOARD

Make-up Examinations

Adopted Amendment: N.J.A.C. 4A:4-2.9

Proposed: March 7, 1994 at 26 N.J.R. 1183(a).
Adopted: April 26, 1994 by the Merit System Board, Linda M. Anselmini, Commissioner, Department of Personnel.
Filed: May 12, 1994 as R.1994 d.285, **without change.**

Authority: N.J.S.A. 11A:2-6(d) and 11A:4-1 et seq.

Effective Date: June 6, 1994.
Expiration Date: May 12, 1998.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing concerning the proposed amendment was held on March 23, 1994. Henry Maurer served as hearing officer. **No comments were received** on this proposed amendment at that time and no recommendations were made by the hearing officer. The record of the public hearing may be reviewed by contacting Janet Share Zatz, Director of Appellate Practices and Labor Relations, Department of Personnel, CN 312, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:
No written comments received.

Full text of the adoption follows:

4A:4-2.9 Make-up examinations

(a) (No change.)

(b) For police, fire and professional level engineering promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination.

2. Death in the candidate's immediate family as evidenced by a copy of the death certificate;

3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation; or

4. Error by the Department of Personnel or appointing authority.

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

EDUCATION

(a)

STATE BOARD OF EDUCATION

Adult Education Programs

Adopted Repeal and New Rules: N.J.A.C. 6:30

Proposed: February 22, 1994 at 26 N.J.R. 884(b).
Adopted: May 4, 1994 by State Board of Education, Leo Klagholz, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: May 13, 1994 as R.1994 d.286, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7C-1 et seq., 18A:27-2, 18A:48-1, 18A:49-1 through 8, 18A:50-12, 13 and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq.

Effective Date: June 6, 1994.
Expiration Date: June 6, 1999.

Summary of Public Comments and Agency Responses:

The New Jersey State Board of Education held a public testimony session on March 16, 1994 at which the above-captioned rule was on the agenda. The following individuals presented testimony: Judy Kesin, New Brunswick Public Schools Adult Learning Center, and Mary Elizabeth O'Connor, North Plainfield Community Adult School.

The Department received written comments from 21 commenters during the proposal comment period ending March 24, 1994. The following is a list of people who made written comments directly related to the proposed repeal and new rules:

Mary D. Meng, Burlington County Institute of Technology; Nicholas V. Montalto, International Institute of New Jersey; Richard Segall, Englewood Public Schools; James C. Woldow, West Milford Township Schools; Michael A. Matta, Lakewood Community School Program; Anthony J. Sario, New Jersey Department of Corrections; Ted Frett, Gloucester County Institute of Technology; Terry Luxenberg, Monmouth County Vocational School District; Carole Beris, Betty O'Brien and Karen Reichel, Plainfield Adult High School; Sheila Harding, Jeff Bishop and Martha Clifford, New Brunswick Public Schools; Rosaria Capporimo and Janet Masiello, Bergen Community College; Cathy Murphy, Sussex County Community College; Thelma Duterte, Atlantic County Community College; Gloria Chandler and John Westbrook, Brookdale Community College; and Patricia L. Albers, Jointure for Community Adult Education.

COMMENT: Eight commenters opposed the provision at N.J.A.C. 6:30-1.4(a) which allows applicants a six-month period of time to retake, at no charge, the GED test.

RESPONSE: The Department has determined not to make any changes to the re-testing provision at this time. The current proposal was made to reduce the financial impact on students who need to retake the GED test. The Department is aware that the provision at N.J.A.C. 6:30-1.4(a), which allows no cost re-testing during a six-month time frame, will reduce income for testing centers. However, the changes recommended by commenters will be considered as part of a comprehensive review of funding and costs associated with the GED testing program. Such a review will be undertaken during the coming months with recommendations forwarded to the Commissioner on or before December 31, 1994.

COMMENT: One commenter noted that the requirement for teaching certification is missing from the new rules and recommended its inclusion.

RESPONSE: The Department agrees with the commenter. The certification requirement was inadvertently omitted from the February 22, 1994 proposal. The inclusion of the certification requirement is substantive in nature and requires pursuant to N.J.A.C. 1:30-4.3 additional public notice and comment. The Department is proposing a separate certification amendment to N.J.A.C. 6:30-2.1(a) in the June 6, 1994, *New Jersey Register* (see proposal in this Register).

COMMENT: Eleven commenters believe that the proposed rules overlook a large group of their students: the learning disabled. Commenters felt if the new rules are enacted, this group may be prevented from earning their high school diplomas, for there is no meaningful provision for those students whose individual educational plans (IEPs) have or are about to expire and those who are never officially classified as learning disabled. It was recommended that adult high schools, in conjunction with their local school districts, should be able to establish a process whereby students can be evaluated and IEPs developed for students deemed learning disabled.

RESPONSE: The Department believes that the recommendations made by commenters needs further review and, therefore, should be part of an indepth review of the entire process of providing educational services to adult students. This review will be made as soon as possible by Department staff and practitioners. The outcome of this review would be a set of recommendations to guide program operations across the State for adult students. Such a review will be undertaken during the coming months with recommendations forwarded to the Commssioner on or before December 31, 1994.

COMMENT: Four commenters raised concern relative to N.J.A.C. 6:30-3.5(b)2 and (c), which addresses "disabled adults without previous experience in a special education program or those individuals with IEP's that have been issued more than three years prior to their application to the adult high school . . ." Since there is no additional funding available to offer special services to these adults, they do not have the numerous options available to them that high school students have. Commenters believe this situation is discriminatory. The adult high school should have the ability to amend the disabled student's program in the same way that the day high school can.

RESPONSE: The Department believes that the concerns raised by commenters relative to the funding for adult students has merit, but is in need of further study. Similarly, as stated above, the Department will review the comments concerns as a part of the Department's overall review of educational services for adults. Such a review will be undertaken during the coming months with recommendations forwarded to the Commissioner on or before December 31, 1994.

COMMENT: Six commenters expressed concern relative to the provisions at N.J.A.C. 6:30-3.5(a) which state that "Limited English proficient adults shall be required to demonstrate language fluency on the Maculaitis Assessment Program at a score level determined by the State Board of Education." Commenters feel that this requirement appears to be discriminatory since this test has not been normed on adults.

Commenters also pointed out that the cut-off score of 133 is based on norms for high school students who are receiving English as a Second Language instruction for at least one class period, 180 days each year and are in monolingual English speaking classrooms for the rest of the day. Adult high school students typically receive ESL instruction twice a week, for perhaps two or three hours each time. Adults who are not receiving equal services are at disadvantage in trying to achieve this score.

RESPONSE: The Department believes that commenters' concerns relative to limited English proficient adult students should be part of the Department's overall review of educational services for adult students. This review as stated above will be undertaken during the coming months with recommendations for possible changes forwarded to the Commissioner on or before December 31, 1994.

COMMENT: Four commenters asked how adult schools could justify requiring a Statewide Assessment Test that is not developed, standardized or normed for adults. Commenters do not object to an assessment test, but suggest the need for an appropriate test for adults.

RESPONSE: The Department believes that commenters' concerns relative to Statewide Assessment Test have merit and will be part of review of the educational services provided to adult students. The outcome of this review would be a set of recommendations to guide program operations across the State for adult education programs.

COMMENT: Three commenters expressed concern over the fact that the N.J.A.C. 6:30-2.4(a) and (b) require the admission of any New Jersey resident to funded programs. These regulations mandate that ABE, GED and EFB programs be offered on a non-fee basis. The amount of funding is variable depending upon a set of need criteria (N.J.A.C. 6:30-2.2(a)4i through iv). The funding decisions are based upon a set of conditions local in nature. When this results in funding below operating expenses the local district must make up the difference.

RESPONSE: The Department believes that further study is necessary on the issues relative to funding concerns and program options raised by commenters. These concerns will be addressed as part of the Department's overall review of the educational services provided to adult students.

Summary of Agency-Initiated Changes:

1. In N.J.A.C. 6:30-1.6(d), the punctuation has been modified to remove the parenthesis from the phrase "within five years of the effective date of these rules," and a date certain, by June 6, 1999, is established.

2. In N.J.A.C. 6:30-2.1(a)2, the word "Education" has been removed and replaced with the word "Educational" to correct the title of the program being referenced (General Educational Development GED program).

3. In N.J.A.C. 6:30-2.3(b)2, the punctuation has been modified for consistency. A hyphen has been inserted between the words Foreign and Born.

4. In N.J.A.C. 6:30-2.4(a)1, the word "the" has been removed to grammatically correct the sentence.

5. In N.J.A.C. 6:30-2.4(b), the punctuation has been modified for consistency. A hyphen has been inserted between the words Foreign and Born.

6. In N.J.A.C. 6:30-2.6(b)7, "areas" has been made singular to correct a typographical error.

7. In N.J.A.C. 6:30-2.6(b)7iii, "population" has been pluralized to correct a typographical error.

8. In N.J.A.C. 6:30-3.3(b)5, the word "for" has been added after "opportunities" for clarity.

9. In N.J.A.C. 6:30-3.5(b), the word "education" has been removed and replaced with the word "educational" to correct a typographical error and correctly refer to an individualized educational plan (IEP).

10. N.J.A.C. 6:30-3.8(a)6 has been modified to include the words "of Education." This change clarifies that it is the Department of Education that must approve the apprentice training.

11. N.J.A.C. 6:30-3.10(b) has been modified to include the words "of Education." This change clarifies that it is the Department of Education that attendance records must be submitted to on an annual basis.

12. N.J.A.C. 6:30-4.1(a) has been modified to include the words "of Education." This change clarifies that it is the Department of Education that is recognized as the State agency responsible for the administration training and instruction of apprentice programs.

13. N.J.A.C. 6:30-4.2 has been modified to include the words "of Education." This change clarifies that Department of Education will evaluate the related training and instruction component of apprenticeships.

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

CHAPTER 30
ADULT EDUCATION PROGRAMS

SUBCHAPTER 1. GENERAL PROVISIONS

6:30-1.1 Purpose and functions

(a) The purpose of adult basic skills and literacy programs is to provide comprehensive life-long learning opportunities for adults.

(b) The Division of Academic Programs and Standards is responsible for:

1. Providing educational leadership for the programs cited in this chapter;

2. Allocating funds to local school districts, county community colleges, county and State institutions, and non-profit and for profit agencies and organizations for the operation of programs cited in this chapter;

3. Evaluating the programs cited in this chapter;

4. Providing technical assistance and training to programs cited in this chapter;

5. Supervising General Educational Development (GED) Testing Centers;

6. Evaluating college transcripts of persons applying for a State-issued high school diploma; and

7. Awarding State-issued high school diplomas to applicants meeting the requirements for diploma issuance.

6:30-1.2 Age and out-of-school requirements

(a) In order to participate in programs described in this chapter, a person must be at least 16 years of age and no longer enrolled in school.

(b) Requests to participate in programs described in N.J.A.C. 6:30-2 and 3 from persons 16 and 17 years of age domiciled in a natural or foster home shall be accompanied by a Certificate of Consent to Participate signed by a parent, guardian, probation or parole officer, State rehabilitation counselor or a judge.

(c) Requests to participate in programs described in N.J.A.C. 6:30-2 and 3 from persons 16 or 17 years of age who are domiciled in a State, county or municipal institution, or in a residential program, must be accompanied by a Certificate of Consent to Participate signed by either a parent or guardian, or when neither is available, a surrogate parent.

1. Each institution shall ensure that the rights of a youth are protected through the provision of a surrogate parent who shall assume all parental rights under this chapter, when either:

i. The parent(s) cannot be located after reasonable efforts; or

ii. The youth is a ward of the State of New Jersey.

2. Each institution shall establish a method for selecting and training surrogate parents.

3. The person serving as a surrogate parent shall have:

i. No interest that conflicts with those of the youth he or she represents; and

ii. Knowledge and skills that ensure adequate representation of the youth.

4. A surrogate parent may be paid solely to act in that capacity. Persons serving as surrogate parents may not otherwise be employees of the institution.

(d) Requests to participate in programs described in N.J.A.C. 6:30-2 and 3 from emancipated minors, who are at least 16 years of age, shall be accompanied by a Certificate of Consent to Participate signed by a judge appointed in the State of New Jersey. For purposes of this chapter, an "emancipated minor" is a person 16 or 17 years of age, domiciled in an independent housing arrangement and not responsible to natural or foster parents or a guardian.

(e) Programs as described in N.J.A.C. 6:30-2 and 3 shall accept all requests to participate, as space allows, from residents of New Jersey who are at least 16 years of age and no longer enrolled in school. Participation in programs shall not be limited in any way, except with respect to the availability of facilities and teaching personnel. Participants shall not be denied access to a program because of their place of residency as long as they meet the requirement of New Jersey state residency.

6:30-1.3 Certification for a State-issued high school diploma

(a) Either of the following methods may be used to qualify for a State-issued high school diploma:

1. Persons may apply for a State-issued high school diploma by taking the Tests of General Educational Development (GED) of the American Council on Education or other tests approved by the State Board of Education which shall be used as the basis for qualifying for a State-issued high school diploma.

i. The Commissioner shall establish uniform, Statewide standard scores for passage of the GED test.

ii. These standard score requirements shall be adopted and be subject to change by resolution of the State Board of Education. The State Board shall announce its intent to change GED score requirements no less than 28 days prior to final adoption.

iii. Exceptions to the standard score requirement may be made by the Commissioner upon the recommendation of the Assistant Commissioner, Division of Academic Programs and Standards with respect to persons 60 years of age and older. In no case may an exception to the passing score fall below the minimum passing scores established by the American Council on Education. Such a determination will be made on a case by case basis considering circumstances such as health and achievement.

2. Persons may apply and qualify for a State-issued high school diploma by passing the High School Proficiency Test, and presenting official transcripts showing at least 30 general education credits leading to a degree at an accredited institution of higher education. Included in the 30 general education credits must be a minimum of 15 credits with at least three credits in each of the five general education categories as follows: communications; mathematics; science; social science; and the humanities. For the purpose of this section the five general education categories shall be defined as follows:

i. "Comunications" shall mean courses designed to enhance facility in the English language;

ii. "Mathematics" shall mean courses designed to enhance mathematical conceptual understanding and application, including computer science;

iii. "Science" shall mean courses designed to enhance scientific conceptual understanding and application;

iv. "Social science" shall mean courses designed to promote social awareness, including understanding social, economic and political problems and the responsibilities of citizenship in an interdependent world; and

v. "Humanities" shall mean courses in literary, philosophical, foreign language, historical, aesthetic, or other humanistic studies to promote the understanding and transmission of values to one's own and other cultures.

3. Persons seeking to qualify for a State-issued high school diploma as outlined in this section, shall be at least 16 years of age and out of school. Exceptions to the age requirement may be made by the Commissioner upon the recommendation of the Assistant Commissioner, Academic Programs and Standards for persons under 16 years of age who have otherwise met all state high school graduation requirements. Such a determination will be made on a case by case basis considering extraordinary academic or personal achievement.

6:30-1.4 Fees

(a) Persons submitting applications for a State-issued high school diploma by examination or reexamination on the GED test shall pay a $25.00 fee. Upon application to take the GED test, an applicant shall be presented with a certifying document verifying payment of the appropriate fee and designating a six-month time frame during which the applicant may take the GED test or reexaminations as may be necessary. Applicants will be required to present the payment certification document when registering for retesting during the six-month testing time frame.

(b) Persons housed under the custody and supervision of the New Jersey State Department of Corrections may, by contractual agreement with the New Jersey State Department of Education, be administered the GED test without charge to either the candidate or the New Jersey State Department of Corrections.

(c) Persons requesting a State-issued high school diploma based on the evaluation of college coursework, or a copy of a GED transcript and diploma verification shall do so in the form of a written request signed by the person making the request and shall include a $5.00 fee.

6:30-1.5 School and community planning process

(a) Districts or agencies sponsoring programs as cited in N.J.A.C. 6:30-2 and 3 shall adopt school and community planning procedures for the operating of these programs.

(b) Agencies sponsoring these programs shall provide opportunity for public review and comment on programs funded under N.J.A.C. 6:30-2 and 3. Agencies shall establish advisory committees which shall include community residents and program staff and shall make provision annually for public input.

6:30-1.6 Monitoring

(a) The Commissioner shall require the monitoring of all programs described in this chapter pursuant to N.J.S.A. 18A:48-1, 18A:49-1 through 18A:50-12, 13 and 14, and the Adult Education Act, 20 U.S.C. 1201 et seq., to ensure that each is performing according to the standards and procedures prescribed by law and rule.

(b) The monitoring procedure shall be as follows:

1. The Assistant Commissioner, Division of Academic Programs and Standards shall establish a monitoring schedule annually.

2. Each chief school and agency administrator and program director responsible for adult programs described in this chapter shall be notified in advance by the Assistant Commissioner, Division of Academic Programs and Standards, of the date established for the monitoring visit.

3. Prior to the monitoring visit, each chief school and agency administrator and program director responsible for the adult programs described in this chapter shall receive a copy of the monitoring instrument prescribed by the Commissioner containing the specific indicators as noted in N.J.A.C. 6:30-2.6 and 3.3 needed to demonstrate satisfactory program performance.

(c) Based upon the monitoring findings, the Assistant Commissioner, Division of Academic Programs and Standards, shall determine whether to recommend the continuation or suspension of the program to the Commissioner.

(d) All programs cited in this chapter shall be monitored *[(within five years of the effective date of these rules)]* ***by June 6, 1999*** and once every five years thereafter.

(e) Staff of the Bureau of Adult Education and Literacy shall conduct monitoring and shall record findings using worksheets prescribed by the Assistant Commissioner, Division of Academic Programs and Standards, and review the findings with the chief school or agency administrator and director responsible for the adult program.

(f) The Assistant Commissioner, Division of Academic Programs and Standards shall send a formal notification of findings to the chief school or agency administrator responsible for the program within 20 work days of the completion of the monitoring visit. The notification shall contain:

1. Copies of completed worksheets; and

2. A recommendation that the program be continued or suspended by the Commissioner.

(g) A chief school or agency administrator notified that the Assistant Commissioner, Division of Academic Programs and Standards will recommend to the Commissioner that an adult program be suspended shall be granted 60 calendar days from receipt of the notification to document to the Commissioner that the unacceptable findings have been corrected.

(h) Any adult program that does not correct deficiencies within the 60 calendar day period shall be suspended by the Commissioner, in accordance with the procedure established under N.J.A.C. 6:24-3.1.

6:30-1.7 Definitions

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

"Accredited" means that the high school, college or university has met the criteria and standards set by the appropriate accrediting agency such as the Middle States Association.

"Adult" means a person 18 years of age or older.

"Adult high school" means a school conducting supervised educational activities in the day or evening to provide adults with the necessary instruction to enable them to complete the requirements for a locally issued, State-endorsed diploma.

"Adult's primary language" means the language most relied upon by the adult for communication, or the language most spoken by the adult in the adult's home or work environment.

"Apprentice" means an employee of legal working age who meets the qualifications established by the apprentice sponsor and who is employed under a written agreement which provides that related training and on-the-job experience received be in accordance with approved standards of apprenticeship.

"Apprentice sponsor" means an employer who is a party to a written training agreement with an apprentice that includes the components of the training in accordance with approved standards of apprenticeship.

"Apprentice training" means a program of adult vocational education requiring a written training agreement between full-time paid apprentices and their apprentice sponsors. The program includes components of related instruction which are coordinated by an individual who holds a current administrative certificate of Coordinator: Apprentice Programs.

"Apprenticeship agreement joint approval" means a written training agreement between an apprentice and an apprentice sponsor in accordance with approved standards of apprenticeship. This agree-

ment includes the components of the training and is signed by the apprentice, apprentice sponsor, apprentice coordinator, State Department of Education representatives and Federal Bureau of Apprenticeship and Training representative.

"Approved" means that a program has met the standards established by the Department of Education as evidenced by action taken by the State Board of Education.

"Assistant Commissioner" means the Assistant Commissioner, Division of Academic Programs and Standards.

"Attendance" means participation in a learning activity for more than one hour in a session.

"Comprehensive examination" means a test designed to assess mastery of a given set of proficiencies.

"Contact time" means the period in which a student interacts with a staff member of the adult high school for one hour or more at a Department of Education approved facility for purposes of instruction or advisement.

"Course" and "coursework" means activities and projects which are geared toward mastery of a set of proficiencies.

"DD-214" means a Department of Defense form issued to all members of the military which describes their service record.

"Disabled adult" means any adult who has any physiological, mental or psychological disorder or condition which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

"Educational plan" means a signed and dated document developed by the student and a professional staff member of the adult school program.

"English language fluency" means the ability to understand conversational English and to speak the language with sufficient structural accuracy, to use vocabulary to participate effectively in most formal and informal conversations on practical, social and school topics, to read material for information and to complete forms and write essays and reports on familiar topics.

"English language proficiency" is defined as the full command of language skills, including proficiency in listening, speaking, reading and writing. English language proficiency is defined operationally as the passing score on an English language proficiency test. To attain proficiency in a language requires more time than to attain fluency.

"Enrolled" means that an adult has completed and filed an application for enrollment and assisted in the development and completion of an educational plan.

"Flexible course" means a course that identifies and prescribes activities and projects necessary to achieve an accepted level of proficiency rather than a specified number of minutes of class time.

"Full-time employment" means work that is not less than 30 hours per week.

"Limited English proficient adult" is defined as an adult who has not demonstrated English language proficiency as measured by a language proficiency test.

"Locally issued, State-endorsed diploma" means a high school diploma awarded to an individual by a district board of education endorsed by the State Board of Education.

"Monitoring" means a process conducted by representatives of the Department of Education to determine whether or not a program can demonstrate satisfactory operational performance.

"New Jersey resident" means a person who resides in or whose principal residence is in the State of New Jersey.

"Occupational license" means a certificate verifying that a person has met qualifications prescribed by an issuing State agency for occupations designated by the New Jersey State Department of Labor.

"Official transcript" means an individual's record of high school or college courses, grades and credits awarded or a record of GED scores.

"Part-time employment" means work that is more than 15 hours but less than 30 hours per week.

"Proficiency" means an explicitly stated and demonstrable knowledge and/or skill used to define a desired learning outcome.

"Proprietary school" means a privately owned school.

"Remedial college courses" means those courses taken at an accredited college or university which are not applied toward graduation and for which no college academic credit is awarded.

"School year" means a period of time commencing on July 1 and ending on June 30 of the following year.

"State-issued diploma" means a diploma issued by the State of New Jersey. This is contrasted with a locally issued, State-endorsed diploma.

"Statement of responsibilities" means an agreement signed by both the student and a representative of the adult high school establishing the requirements of each to engage in a successful academic program.

"Traditional course" means a course which has specified lengths of time for class meetings and the completion of activities necessary to achieve the accepted level of proficiencies for the award of credit.

SUBCHAPTER 2. ADULT BASIC SKILLS AND GENERAL EDUCATIONAL DEVELOPMENT (GED) PROGRAMS

6:30-2.1 Purpose and program descriptions

(a) Adult basic skills programs shall offer instruction designed to enable students to acquire the skills necessary to function independently as parents, workers, consumers and citizens.

1. Adult Basic Education (ABE) programs are designed for persons who are least educated and lacking the most basic educational skills. ABE programs focus instruction on basic communication, computation, pre-occupational, civic and everyday living skills.

2. General *[Education]* ***Educational*** Development (GED) programs are designed for persons preparing to take the Tests of General Educational Development (GED) in order to qualify for a State-issued high school diploma. GED programs focus instruction on subject areas covered by the GED test, namely, writing skills, social studies, science, interpreting literature and the arts, and mathematics. In these programs instruction may be offered in either English, Spanish or French, subject to the availability of teaching staff.

3. English as a Second Langauge (ESL) programs are designed for persons with limited English language proficiency to prepare them in the acquisition of listening, speaking, reading and writing English language skills necessary to function effectively in an English speaking environment and further, for those who so desire, to enter other adult education programs. Persons with limited English proficiency are those whose primary language is other than English and who, by oral placement test, are determined to be in need of instruction in English as a second language. An adult's primary language is the language most relied upon by the adult for communication or the language most spoken by the adult in his or her home or work environment.

4. Evening schools for Foreign-Born Residents provide foreign-born persons with instruction in the English language pursuant to N.J.S.A. 18A:49-1. The program also provides instruction concerning the organization and function of Federal, State and local government and in the laws of New Jersey and of the United States. All instruction shall be oriented toward preparation for citizenship.

5. General Educational Development (GED) testing centers provide opportunities for adults to take the Tests of General Educational Development (GED) leading to the awarding of a State-issued high school diploma.

6. All curricula shall be adult oriented and shall emphasize instructional approaches and learning activities which are geared to the personal and academic needs and aspirations of each student.

7. For each student, in any adult program noted in this subchapter, an educational plan shall be developed reflecting initial test results indicating deficiencies in basic skills, remedial steps to be taken, dated results of instructional activity and a sign-off by the professional staff person recording the comments.

6:30-2.2 Eligibility for funding

(a) The eligibility of an agency, institution or organization to apply for State and Federal funds for basic skills and GED programs shall

be determined in accordance with requirements pursuant to N.J.S.A. 18A:50-12 and the Adult Education Act, 20 U.S.C. 1201 et seq.

(b) Eligibility for funding Evening Schools for Foreign-Born Residents is subject to the following limitations:

1. Funding is limited to school districts;

2. Teachers employed in the Evening School for Foreign-Born Residents programs shall hold a valid New Jersey teaching certificate; and

3. The classes shall be separate and distinct from other adult education classes. They may be held in the same building with other classes but shall be maintained in separate rooms. Classes may be held during daytime hours but shall be available in the evening in all local programs funded for this activity.

6:30-2.3 Application for funding

(a) Agencies entitled to program support for basic skills or GED programs shall submit a statement of intent to sponsor a program during the succeeding fiscal year to the Bureau of Adult Education and Literacy by September 15 of the pre-budget year. For the purpose of this section, "agency, institution and organization" shall be referred to as "agency." In this section, the phrase "pre-budget year" shall mean the school year prior to the school year to which an application for funding makes reference.

1. The Bureau of Adult Education and Literacy shall forward an application for funding by October 15 of the pre-budget year to each agency which submitted a statement of intent to sponsor a basic skills or GED program.

2. Agencies applying for basic skills or GED programs shall submit an application for funds by the deadline established annually in a request for proposals. Such application, issued by the Division of Academic Programs and Standards, shall be disseminated to all programs or agencies who have submitted a letter of intent pursuant to (a)1 above. Applications shall include the need and purpose of the program, assurance of compliance with state regulations, rationale, goals, a program description including implementation timelines, internal program evaluation, a statement of assurances, personnel and budget.

3. Funding for basic skills or GED programs to agencies shall be established annually as part of the application process.

4. The determination of funding for agencies for adult basic skills programming shall be based upon, but not limited to, the following:

i. Current demographic data related to under-educated adults in the State of New Jersey;

ii. Current demographic data related to each individual eligible agency;

iii. Data submitted by applicants including previous student enrollments and program completion based on attendance or GED passage; and

iv. Anticipated services described by applicants.

5. Agencies applying for funding for basic skills or GED programs will receive a notification of funding by February 15 of the pre-budget year.

(b) School districts requesting funding for Evening Schools for Foreign-Born Residents pursuant to N.J.S.A. 18A:49 shall submit a statement of intent to sponsor a program during the succeeding fiscal year to the Bureau of Adult Education and Literacy by September 15 of the pre-budget year.

1. To receive funding under this program, school districts shall make application annually to the Division of Academic Programs and Standards.

2. Each school district shall submit a statement to the Division of Academic Programs and Standards by September 15 of the pre-budget year stating intent to sponsor an Evening School for Foreign*-*Born Residents and an estimate of local funds which will be made available for program purposes. Allocations shall be developed for the following year pursuant to N.J.S.A. 18A:49.

3. The school district shall appropriate in its annual budget an amount at least equal to the allocation anticipated from the State. The expenditure of State and local funds for that year shall be confirmed in a fiscal report submitted to the Division of Academic Programs and Standards upon completion of the program but no later than July 30 following the close of the program year.

4. In any year that the State appropriation for this program is less than the amount applied for by school districts, the amounts requested by districts shall be prorated. The proration shall be based on the ratio of the State appropriation for that year to the total amount for which application is made.

5. Upon receipt of a notice of allocation from the Division of Academic Programs and standards, districts shall submit an application for approval by the Division. Notice of annual allocation shall be made to school districts by June 30 of the school year preceding funding.

6. School districts approved for funding under this program shall maintain appropriate fiscal records pursuant to N.J.A.C. 6:20-2A.

7. A separate account shall be maintained for the receipt and disbursement of State and local funds. This account shall be shown in the annual audit of the district.

(c) Public schools, public post secondary education institutions, and State agencies, as approved by the State Department of Education, are eligible to apply for funding to operate GED testing centers.

1. Agencies eligible to operate GED testing centers shall submit an application in accordance with procedures established by the Division of Academic Programs and Standards which may include, but not be limited to, documentation related to location, target population, facilities, marketing strategies, institutional commitment, and hours of operation. Contracts shall be approved by the State Department of Education based on an agency's certification that contractual terms and conditions will be met.

6:30-2.4 Eligibility for participation

(a) Participation in ABE and GED programs shall be limited to persons 16 years of age and older and no longer enrolled in school.

1. Participation in ESL programs shall be limited to persons who are residents of New Jersey, are 16 years of age and older and no longer enrolled in school, and judged by oral placement test to be in need of instruction in *[the]* English as a second language.

2. Priority for participation in ABE and ESL programs shall be given first to persons who are least educated and most in need and second, to persons who have not obtained a high school diploma.

3. Participation in GED preparatory programs shall be limited to persons who do not possess a high school diploma, are residents of New Jersey, are 16 years of age or older and no longer enrolled in school, and have demonstrated a reading comprehension ability equivalent to a person functioning on a ninth grade level, as demonstrated on a commercially available, nationally normed, standardized test for adults.

(b) Participants in the Evening School for Foreign*-*Born Residents program shall be limited to adults who are residents of New Jersey, are 16 years of age or older, and no longer enrolled in school.

1. Participation by in-school youth who are under 16 years of age shall be permissible when these persons accompany parents or family members participating in the program but shall not be in lieu of regular day school instruction.

6:30-2.5 Fees

Adult basic skills programs and GED programs and Evening Schools for Foreign-Born Residents provided in total or in part with State or Federal funds shall be offered free of tuition, fees or other charges, including the cost of books and other instructional materials.

6:30-2.6 Monitoring

(a) Staff of the Bureau of Adult Education and Literacy shall monitor programs cited in this subchapter pursuant to the monitoring process outlined in N.J.A.C. 6:30-1.6.

(b) The following indicators of program quality with associated measures of performance shall be used by the monitoring teams in carrying out the monitoring process in adult basic skills programs:

1. Learners demonstrate progress toward attainment of basic skills competencies that support their educational needs and goals. Measures of performance shall include:

i. Standardized test score gains;

ii. Informal Reading Inventory results, pre- and post;

iii. Placement scores for ESL students;

iv. Teacher reports of gains and improvements in computation and/or communications and/or life skill competencies; and

v. Student goals and the identification of student skill needs, student comments and feedback, and examples of student work.

2. Learners progress according to their abilities in the instructional program or complete program educational requirements that allow them to continue their education or training or achieve their personal educational goals. Measures of performance shall include:

i. Student advancement to higher levels of skill or competency in the adult education program;

ii. Attainment of a State High School Diploma for GED level students; and

iii. Attainment of a stated personal goal.

3. Based on a participatory planning process, the program develops, implements, evaluates and revises, as needed, written program goals. Measures of performance shall include:

i. Existence of a planning document that specifies program goals and objectives and is regularly reviewed and revised at least once each year;

ii. Openness of the program to community input on planning through mechanisms such as an advisory board, staff meetings and comments, student questionnaires, and public hearings;

iii. As funding permits, program plan responds to and addresses community needs and priorities regarding location of classes, skills taught, and types of program services offered;

iv. Existence of program evaluation component and evidence that evaluation feeds into the planning process; and

v. Activities are implemented based on reviewed and revised program goals and objectives.

4. Program utilizes curriculum and instructional techniques sensitive to individual student and group learning styles and the varying levels of student need. Measures of performance shall include:

i. Student assessment information is used to guide the goals and design of the instructional process; and

ii. Existence of written curriculum guides outlining instructional content including materials, approaches and strategies to address the educational needs and goals of individual students.

5. Program has a staff development process that considers the specific needs of its staff, offers opportunities for training in the skills necessary to provide quality instruction and utilization of skills learned. Measures of performance shall include:

i. Presence of preservice and inservice staff development opportunities that include a program overview, philosophy and goals of the program, and ongoing topics appropriate to adult learning;

ii. Existence of a process for identifying staff development needs;

iii. Effective staff performance as measured by administrative observations of staff; and

iv. Hours of preservice and inservice staff development training received by staff.

6. Program identifies support service needs and the agencies which address these needs, provides information to students as needed, and promotes student access to these agencies through informal linkages with service providers as a means of enhancing student participation in the program. Measures of performance shall include:

i. Presence of a process for identifying student support service needs; and

ii. Presence of a listing of support service providers, or informal agreements or linkages between the program and support service providers.

7. Program recruits the population within the service delivery area*[s]* as identified in the Adult Education Act as needing literacy services. Measures of performance shall include:

i. The types of recruitment activities the program performs if the program is undersubscribed;

ii. The percentage of target population enrolled compared with state demographics as compiled and reported by the state educational agency; and

iii. The percentage of target population**s** enrolled compared with state averages as compiled and reported by the state education agency.

8. Students are encouraged to remain in the program long enough to meet their educational goal(s). Program has a plan which addresses retention and implements that plan as needed. Measures of performance shall include:

i. Existence of a written statement on the expected levels of student participation and the measures of activities to be implemented if attrition is above the stated acceptable levels;

ii. Hours of participation in the program by type of program; and

iii. Number of students who continue or return to the program in the following program year.

SUBCHAPTER 3. ADULT HIGH SCHOOLS

6:30-3.1 General provisions

(a) Adult high schools shall offer adults opportunity, accessibility and flexibility while maintaining the high standards inherent in the awarding of a high school diploma. Courses shall be sufficiently varied for meeting the educational needs of adults and shall be designed to challenge participants to achieve their highest level of educational ability.

(b) For each student, in an adult high school program, an educational plan shall be developed reflecting the student's past academic record, an analysis of past experiences for which credit may be awarded, graduation requirements, and a proposed schedule of courses for the current school year leading to completion of the requirements for graduation.

6:30-3.2 Permission to establish, expand or relocate an adult high school

(a) To establish an adult high school, the district board of education shall file a request with the Division of Academic Programs and Standards by January 2 of the year of anticipated operation. The request shall include:

1. Data documenting community need;
2. An identification and description of the proposed program site;
3. A projection of enrollment for the first year of operation;
4. A projection of staff by job title;
5. A locally approved program of studies which includes state mandated courses required for graduation as prescribed in N.J.A.C. 6:30-3.7;
6. A projected budget for the first year of operation; and
7. A district board of education resolution approving the establishment of an adult high school.

(b) The Division of Academic Programs and Standards shall evaluate the application of the district board of education and visit the proposed site before the Assistant Commissioner shall grant or deny approval to establish an adult high school.

1. If permission is not granted, the district may resubmit an amended application.

2. If permission is not granted following resubmission, the proposed adult high school may not begin operations during the subsequent school year.

(c) To expand or to relocate an existing program to another site, the district board of education shall file a request with the Division of Academic Programs and Standards three months prior to the anticipated change. The request shall include elements (a)2, 3 and 4 listed above.

6:30-3.3 Monitoring

(a) Staff of the Bureau of Adult Education and Literacy shall monitor programs cited in this subchapter pursuant to the monitoring process outlined in N.J.A.C. 6:30-1.6.

(b) The following indicators of program quality with associated measures of performance shall be used by the monitoring teams in carrying out the monitoring process in adult high schools:

1. Learners demonstrate progress toward attainment of secondary school level competencies that support their educational needs and goals. Measures of performance shall include:

i. Standardized test score gains;

ii. HSPT score data;

iii. Teacher reports of gains and improvements in computation and/or communications and/or life skills competencies; and

iv. Student goals and the identification of student skill needs, student comments and feedback, and examples of student work.

2. Learners progress according to their abilities in the instructional program or complete program educational requirements that allow them to continue their education or training or achieve their personal educational goals. Measures of performance shall include:

i. Student advancement to higher levels of skill or competency in the academic and training community;

ii. Attainment of a district adult high school diploma; and

iii. Attainment of a stated personal goal.

3. Based on a participatory planning process, the program develops, implements, evaluates and revises, as needed, written program goals. Measures of performance shall include:

i. Existence of a planning document that specifies program goals and objectives and is regularly reviewed and revised at least once each year;

ii. Openness of the program to community input on planning through mechanisms such as an advisory board, staff meetings and comments, student questionnaires, and public hearings;

iii. As funding permits, program plan responds to and addresses community needs and priorities regarding location of classes, skills taught, and types of program services offered;

iv. Existence of program evaluation component and evidence that evaluation feeds into the planning process; and

v. Activities are implemented based on reviewed and revised program goals and objectives.

4. Program utilizes curriculum and instructional techniques sensitive to individual student and group learning styles and the varying levels of student need. Measures of performance shall include:

i. Student assessment information is used to guide the goals and design of the instructional process; and

ii. Existence of written curriculum guides outlining instructional content including materials, approaches and strategies to address the educational needs and goals of individual students.

5. Program has a staff development process that considers the specific needs of its staff, offers opportunities ***for*** training in the skills necessary to provide quality instruction and utilization of skills learned. Measures of performance shall include:

i. Presence of preservice and inservice staff development opportunities that include a program overview, philosophy and goals of the program, and ongoing topics appropriate to adult learning;

ii. Existence of a process for identifying staff development needs;

iii. Effective staff performance as measured by administrative observations of staff; and

iv. Hours of preservice and inservice staff development training received by staff.

6. Program identifies support service needs and the agencies which address these needs, provides information to students as needed, and promotes student access to these agencies through informal linkages with service providers as a means of enhancing student participation in the program. Measures of performance shall include:

i. Presence of a process for identifying student support service needs; and

ii. Presence of a listing of support service providers, or informal agreements or linkages between the program and support service providers.

7. Program recruits the population within the service delivery area identified as lacking a high school diploma. Measures of performance shall include:

i. The types of recruitment activities the program performs if the program is undersubscribed;

ii. The percentage of target population enrolled compared with state demographics as compiled and reported by the state education agency; and

iii. The percentage of target populations enrolled compared with state averages as compiled and reported by the state education agency.

8. Students are encouraged to remain in the program long enough to meet their educational goal(s). Program has a plan which addresses retention and implements that plan as needed. Measures of performance shall include:

i. Existence of a written statement on the expected levels of student participation and the measures of activities to be implemented if attrition is above the stated acceptable levels;

ii. Hours of participation in the program by type of program; and

iii. Number of students who continue or return to the program in the following program year.

6:30-3.4 Eligibility for enrollment and State aid

(a) To qualify for enrollment in an adult high school, a person shall:

1. Be a New Jersey resident;

2. Meet the age and out-of-school requirement of N.J.A.C. 6:30-1.2;

i. A person enrolled in secondary school with senior standing, lacking an opportunity to take courses in his or her secondary school of enrollment, which are available in the adult high school, shall be exempt from the out-of-school requirement provisions of N.J.A.C. 6:30-1.2 provided that the chief school administrators of both the sending and receiving districts approve in a written joint agreement the participation of such a person on a space available basis in that adult high school. Such written approval shall explicitly state the course(s) to be taken and the time frame covered by the agreement. Tuition established by the receiving district on a cost-recovery basis may be charged to the sending district for persons enrolled under this exception;

3. Have not earned a locally issued, State-endorsed high school diploma;

i. Persons holding locally issued high school diplomas may enroll in an adult high school on a space available basis for the express purpose of supplementing their high school record. Tuition established by the host district on a cost-recovery basis may be charged to persons enrolling under this exception; and

4. Complete and sign an application for enrollment including a statement of responsibilities.

(b) To qualify for State aid a person shall:

1. Have met the requirements set forth in (a) above;

2. Have an educational plan on file; and

3. Have met the following attendance requirements:

i. Be enrolled and on the school register as of October 15 of the current school year; and

ii. Be in attendance at least once from October 16 through October 31, unless excused by the adult high school principal for reasonable cause.

(c) Adults who qualify for State aid shall be reported for State aid purposes on the basis of the number of course credits projected in the educational plan for the current school year on the following schedule:

1. One, to and including, 14 credits as a value of 0.5.

2. Fifteen or more credits as a value of 1.0.

(d) Persons enrolled pursuant to (a)2i and 3i above shall not qualify for State aid with respect to their participation in the adult high school.

6:30-3.5 Adults with special needs

(a) Limited English proficient adults shall be required to demonstrate language fluency on the Maculaitis Assessment Program at a score level determined by the State Board of Education.

1. Limited English proficient adults shall be referred to appropriate classes in the adult high school to attain English language proficiency. If the language improvement needs of the adult cannot be met by the adult high school, then the principal shall refer the person to the nearest adult program with staff available to meet those needs.

(b) For an adult with previous experience in a special education program now seeking similar services at an adult high school, the principal of the adult high school with the concurrence of the adult shall request the most recent evaluation and individualized *[education]* ***educational*** plan (IEP) for that adult from the high school of last attendance, provided the evaluation was made within the last three years.

1. The principal shall review the IEP to determine the services required by the plan and also the availability of such services in the adult high school.

i. If the IEP can be carried out, it shall serve as the instructional guide for that adult.

ii. If the principal determines that the IEP cannot be carried out, the principal shall promptly refer the adult to the nearest adult high school with staff available to offer the special services required in the IEP or to appropriate county or State agencies or institutions with resources and personnel able to serve the special needs of the adult.

2. If the evaluation was made more than three years prior to application to the adult high school, the IEP may not serve as a guide for the adult's instructional program at the adult high school.

(c) Disabled adults without previous experience in a special education program or those individuals with IEPs that have been issued more than three years prior to their application to the adult high school shall be counseled regarding educational options which would lead to high school graduation and shall be served to the maximum extent appropriate to the needs of the disabled adult within the capability of the program to provide such services.

6:30-3.6 Curriculum

(a) The adult high school curriculum shall comply with the requirements of law and rule and shall include a program of studies which has been adopted by the district board of education.

(b) A copy of the program of studies together with the rules governing its administration as formulated locally and approved by the district board of education shall be kept on file in the principal's office of each adult high school. Such program shall include the courses offered, both required and elective, and the number of credits for each course.

(c) The program of studies shall include all course descriptions. Each course description outline shall include:

1. The course title;
2. A course description;
3. A topical listing of course content;
4. A list of course proficiencies;
5. Evaluation criteria and the standard of mastery; and
6. A comprehensive examination.

(d) The comprehensive examinations for all courses, except for those in the fine, practical or performing arts, shall be written examinations.

(e) When similarly titled courses exist in the adult high school and in high schools of the district, the proficiencies for adult high school courses must meet or exceed the proficiencies established for those courses in the high schools of the district.

(f) The program of studies shall indicate whether a course is traditional or flexible.

1. Traditional courses shall be held in classroom sessions which meet a minimum of 7,200 minutes for each one-year, five credit course.

2. Flexible courses shall require the completion of projects and activities which shall be reviewed in biweekly meetings between a subject area specialist and a student.

6:30-3.7 Graduation

(a) The district board of education of each adult high school shall adopt policies for adult high school graduation requirements pursuant to law and rule. Policies shall include passing the Statewide assessment test. When adults are unable to pass the Statewide assessment test, there shall be further evaluation through a Special Review Assessment pursuant to N.J.A.C. 6:8-7.1(b)3, 4 and 5. When limited English proficient adults are unable to pass the Statewide assessment test, they shall be further evaluated through a Special Review Assessment pursuant to N.J.A.C. 6:7-1(b)3, 4 and 5 and shall demonstrate English language fluency on the Maculaitis Assessment Program as a requirement for graduation.

(b) The district board of education of each adult high school shall establish minimum credit requirements for graduation which shall meet the requirements of the district's regular high school and shall not be less than 110 credits for newly enrolled adults. Continuously enrolled adults are persons with no more than a 12-month break of participation, and as such, must abide by the requirements in effect at the time of initial enrollment.

1. Of the required credits, no more than 15 credits may be in physical education.

2. Of the required credits, at least 10 credits must be earned in coursework taken at the adult high school issuing the diploma.

(c) Each adult high school shall establish minimum curriculum requirements for graduation which shall meet the requirements of the district's regular high school and include the following:

1. Twenty credits of communication, of which five credits shall be in literature;
2. Fifteen credits of mathematics;
3. Ten credits of history as required by N.J.S.A. 18A:35-1 and 2, and five credits of world history/cultures;
4. Ten credits of natural or physical science;
5. Five credits of fine, practical or performing arts;
6. Five credits in health or safety; and
7. Two and one-half credits of career exploration or development.

(d) The staff of each adult high school shall distribute to each entering adult a copy of all State and local adult high school graduation requirements. In addition, all adults shall receive at the beginning of each course a list of proficiencies required for successful completion of that course.

(e) Successful completion of the requirements set forth in (a), (b) and (c) above, and those established by the district board of education, shall be required as conditions for awarding a locally issued, State-endorsed diploma.

(f) No district board of education may issue an adult high school diploma without State endorsement.

(g) No district board of education may issue an adult high school diploma without signed verifications for all credit awarded for experience and an official transcript(s) being on file.

6:30-3.8 Award of credit

(a) The district board of education of each adult high school shall annually adopt policies at a public meeting which provide for the awarding of credit, subject to the following:

1. Credits verified by an official transcript may be transferred from accredited or State-approved high schools or institutions. Experiences being considered for transferred credit from proprietary schools or public vocational training programs shall be assessed in terms of proficiencies for district courses offering similar experiences.

i. An official transcript shall have either of the following indicators: a raised seal or the original signature of an administrator of the school.

2. Credits may be awarded for other than remedial courses which lead to a degree and are taken at an accredited college. Courses must be verified by an official transcript. Five credits may be awarded for each course meeting two semesters or one year. Credit may be prorated for courses meeting for shorter periods of time.

3. Credits may be awarded for physical education and basic military training with the following limitations.

i. Up to 15 credits may be awarded for previously earned high school physical education credits verified by an official transcript.

ii. Up to 10 credits verified by a DD-214 form may be awarded for basic military training.

iii. The combination of (a)3i and ii above may not exceed 15 credits.

4. A maximum of two and one-half credits in health and safety may be awarded for the possession of a valid New Jersey driver's license if credit for driver's education has not been awarded.

5. Credit may be awarded for work experience with the following limitations:

i. Two and one-half credits may be awarded for each 12 months of full-time employment that is verified by a signed statement from the employer(s).

ii. Two and one-half credits may be awarded for each 24 months of part-time employment that is verified by a signed statement from the employer(s).

iii. The combination of (a)5i and ii above may not exceed 10 credits and may not duplicate credits awarded for apprentice training, an occupational license or on-the-job training.

6. Credits may be awarded for completion of apprentice training with the following limitations:

i. The apprentice training must be approved by the Office of Adult and Occupational Education at the Department ***of Education***;

ii. Completion of training must be verified by a signed document from the registered apprentice sponsor;

iii. The award may not exceed 20 credits and may not duplicate credits awarded for work experiences, an occupational license, on-the-job training or transferred credit from an official transcript; and

iv. The Assistant Commissioner, Division of Academic Programs and Standards, shall announce periodically the apprenticeship titles eligible for the award of credit and determine the amount of credit to be awarded.

7. Credit may be awarded for possession of a current occupational license, issued by an agency of the State of New Jersey, with the following limitations:

i. A maximum of five credits may be awarded for a current occupational license;

ii. The Assistant Commissioner, Division of Academic Programs and Standards, shall announce periodically those occupational titles eligible for the award of credit;

iii. Credit may be awarded for only one occupational license; and

iv. Credit awarded for an occupational license may not duplicate credit awarded for work experience, on-the-job training, apprenticeship or transferred credit from an official transcript.

8. Credits may be awarded for on-the-job training and advanced military training with the following limitations:

i. Five credits may be awarded for each 120 hours of on-the-job training that is formally supervised, follows a prescribed training outline and is verified by a signed statement from the employer;

ii. One credit may be awarded for each week of advanced military training not to exceed 10 credits that is verified by the Military Occupational Speciality designation which appears on the DD-214 form; and

iii. The combination of (a)8i and ii above may not exceed 20 credits and may not duplicate credits for work experience, apprentice training, or an occupational license.

9. The cumulative award of credit for (a)5, 6, 7 and 8 above shall not exceed 30 credits.

10. Credit may be awarded for passing a comprehensive examination with the following limitations:

i. The award shall not exceed five credits;

ii. The comprehensive examination must be part of an approved course and may only be used to award credit for a single course; and

iii. The comprehensive examination may not be a standardized test, such as the General Educational Development Test.

11. Credit may be awarded for remedial coursework in communications and computation only to persons who have demonstrated reading or computational proficiency below the 9.0 grade level on a commercially available, nationally normed, standardized test for adults or to persons unable to pass the Statewide assessment test.

i. The award of credit may not exceed 20 credits in communications and 20 credits in computation.

12. Credit may be awarded for coursework in English as a second language (ESL).

i. The award of credit in English as a second language may not exceed 20 credits.

ii. Courses in English as a second language shall be offered only as traditional courses pursuant to the requirements in N.J.A.C. 6:30-3.6(f)1.

6:30-3.9 Awarding credit for foreign studies

(a) Credit for the equivalent of American secondary school studies experienced in a foreign country may only be awarded as determined by the Manager, Bureau of Adult Education and Literacy following an evaluation of transcript(s) presented by the adult.

(b) Transcript evaluation shall be for the purpose of participating in an adult high school program and shall be transmitted to the Bureau of Adult Education and Literacy with a written request for such an evaluation by the principal of the adult high school.

1. Each request for a transcript evaluation shall be accompanied by a $25.00 fee payable by the local educational agency.

2. Transcript evaluations may be made by staff at an approved adult high school for adult students in attendance providing that the evaluator has been trained by the Division of Academic Programs and Standards and has been approved as an adult transcript evaluator by the Manager, Bureau of Adult Education and Literacy.

6:30-3.10 Maintaining student records

(a) Each adult high school shall have the responsibility to compile, maintain and retain student records and to regulate access to and security of such records.

(b) The attendance records of all adult high schools shall be maintained on a daily basis indicating the number of hours of program participation and shall be submitted to the Department ***of Education*** on an annual basis.

(c) For the purpose of attendance record keeping, any adult participating in a learning experience for less than one full hour is not considered as having attended that scheduled session.

6:30-3.11 Maintaining financial records

(a) The financial records of all adult high schools shall be maintained in appropriate accounts pursuant to N.J.A.C. 6:20.

(b) Adult high school opportunities shall be offered free of tuition, fees or other charges, including the cost of books and other instructional materials except as noted in N.J.A.C. 6:30-3.9(b)1.

6:30-3.12 Staffing

(a) The adult high school shall have an adequate number of professional staff, properly certified for their respective assignments; however, those persons involved in adult advisement shall be certified as either principal, supervisor, counselor or teacher.

(b) District boards of education shall only assign position titles to professional staff members which are recognized in N.J.A.C. 6:11.

6:30-3.13 Special conditions

The rules set forth in N.J.A.C. 6:3, 6:8-7.1, and 6:20-3.1 governing the operation of a high school within a school district shall govern the operation of an adult high school unless otherwise explicitly stated in this subchapter.

SUBCHAPTER 4. APPRENTICE TRAINING

6:30-4.1 Apprentice program responsibility and duties

(a) The Department ***of Education*** is the recognized State agency responsible for the administration of the related training and instruction portion of apprentice programs. The Department of Education shall staff the State Apprenticeship Coordinator position. The State Apprenticeship Coordinator shall coordinate activities on apprenticeship in cooperation with the United States Department of Labor, Bureau of Apprenticeship and Training (BAT), under the Statement of Joint Program Administration, to involve training and instruction that must comply with federal standards of apprenticeship as published in Labor Standards for the registration of Apprenticeship Programs, 29 C.F.R. Sec. 29-1.13 (1977). Duties of the State Apprenticeship Coordinator shall include, but not be limited to:

1. Approving the initial and ongoing Registered Apprenticeship Programs and related training;

2. Approving individual apprenticeship agreements and related training, criteria for related training, the training component of new Registered Apprenticeship Programs, and advanced standing for School-to-Work apprenticeship linkage programs;

3. Monitoring and investigating compliance issues;

4. Compiling and maintaining records and agreements;

5. Issuing Certificates to sponsor Registered Apprenticeship Programs by business/industry/labor unions, and for completion of a Registered Apprenticeship Program;

6. Providing technical assistance to business and industry, and in the development of training for new registered apprenticeship programs; and

7. Providing liaison with Federal, State and governmental entities, as requested, on issues related to apprenticeship.

6:30-4.2 Approval of related training and instruction

Upon receipt of the Apprenticeship Agreement Joint Approval form from the Federal Bureau of Apprenticeship and Training, the Department ***of Education*** will evaluate the related training and instruction component of the apprenticeship. Within 30 days of receipt of the form, the Department shall notify the Federal Bureau of Apprenticeship and Training of its approval or disapproval of the related training and instruction.

HEALTH

(a)

DIVISION OF HEALTH CARE PLANNING, FINANCING AND INFORMATION SERVICES

Certificate of Need
Home Health Agency Policy Manual
Adopted New Rules: N.J.A.C. 8:33L

Proposed: February 22, 1994 at 26 N.J.R. 1065(a).

Adopted: April 25, 1994 by Len Fishman, Acting Commissioner of Health (with approval of the Health Care Administration Board).

Filed: May 10, 1994 as R.1994 d.279, **with technical changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: June 6, 1994.

Expiration Date: June 6, 1996.

Summary of Public Comments and Agency Responses follows:

The following commented on the proposal: Center for Perinatal Research and Family Support, Debra Pascali, President; Morristown Memorial Hospital, Rebecca Wolff, Director of Planning; Presbyterian Homes of New Jersey; Cohen, Shapiro, Polisher, Shiekman and Cohen, Ivan J. Punchatz, Esq.; St. Barnabas Medical Center, Donna B. Levison, Vice Pres., Planning.

General

COMMENT: The Center for Perinatal Research and Family Support provides documentation regarding the need for home visiting to be conducted on a routine basis to all women both prenatally and postpartally. They further request that this become a specified, licensed element of home health care.

RESPONSE: The Department recognizes the value of home visiting relative to positively influencing both birth and pediatric outcomes especially with new emerging issues such as early discharge. However, these rules are intended for the provision of the full range of comprehensive nursing care in the home along with all necessary therapy modalities. The commenter is directed toward exploring other alternatives with the maternal and child health consortia to coordinate these services and the local health departments which have the requirement for the provision of public health nursing services to improve pregnancy and child health outcomes.

N.J.A.C. 8:33L-2.1

COMMENT: Presbyterian Homes of New Jersey (PHNJ) objects to the geographic restrictions of the rules as they do not permit it, as a Statewide housing and health care system, to apply for a certificate of need to provide home health agency services to its residents in all of the PHNJ settings other than nursing facilities. PHNJ proposes that a separate section of the regulations be enacted to permit a Statewide housing/health care system to apply for and receive a certificate of need based solely on the needs and expectations of its residents on a Statewide basis. They further request a waiver to the geographic restriction.

RESPONSE: The rules are structured to promote services which will provide comprehensive services to all residents within a given community regardless of ability to pay. The Department will certainly consider all certificate of need waiver requests but within the context of the purpose of the regulations and also an agency's commitment to serve an entire population, including the indigent.

N.J.A.C. 8:33L-2.2

COMMENT: PHNJ requests a waiver to the 10,000 visits minimum and to be entitled to use the 2,000 visits minimum set forth in the proposed regulations for expansion of existing home health agencies in order to allow PHNJ to fulfill the needs and desires of its residents for PHNJ home health services.

RESPONSE: The minimum number of visits of 10,000 has been increased from 5,000 following a discussion by the Home Health Advisory Committee (convened by the Department in 1993). This is the very minimum an agency should be expected to provide in order to maintain financial viability and still contain costs. The previous regulations specified a nursing staff to patient ratio which the Advisory Committee conceded was outdated. Other issues for consideration in increasing this minimum:

- 51 of 59 licensed agencies Statewide achieved this minimum in 1992.
- Medicare costs in New Jersey ($80.00) per beneficiary are already higher than the national average ($71.00).

N.J.A.C. 8:33L-2.4(a)

COMMENT: St. Barnabas Medical Center is opposed to the proposed rules limiting the number of new home health agencies and proposes that they should be withdrawn from a fresh review since they were developed under a previous administration and philosophy. They further stipulate that regulations should not protect existing agencies from marketplace competition and that new agencies should be encouraged, not discouraged. Increasing the number of providers can improve consumer choice, medically indigent care coverage and continuity of care. Home health agencies should be licensed to address quality, spectrum of services and access issues without certificates of need as is currently being done for other services deregulated by the Legislature.

RESPONSE: In a changing health care environment vis-a-vis deregulation of reimbursement, the Department acknowledges the need for marketplace competition. However, cost, quality and access should still be determining factors for provision of specialized or tertiary care services. With early discharge, the provision of home health care is becoming increasingly complex. The Department maintains that, in these instances, competition has been addressed by increasing the number of providers per county or sub-area of a county to three while the minimum volume per provider has simultaneously been increased to address the issues of cost and quality. With respect to the review these rules received, the Department convened a Home Health Advisory Committee to examine these issues in 1993.

N.J.A.C. 8:33L-2.4(d)

COMMENT: Morristown Memorial Hospital strongly endorsed the requirement in the regulations that every county or sub-area of a county must be serviced by a minimum of three certified home health agencies. They further add that since access to Medicare/Medicaid certified home health care may be problematic for New Jersey's residents, existing home health agencies should be given the opportunity to apply for Medicaid/Medicare certification.

RESPONSE: The Department thanks the commenters for their endorsement. Existing agencies are certainly eligible to apply for a CON as long as access problems can be documented and the agency complies with all components of N.J.A.C. 8:33L regarding the direct provision of service.

Summary of Agency-Initiated Change:

N.J.A.C. 8:33L-2.6(b) through (h) concerning transfer of ownership of home health agencies were unintentionally included in the proposal. As such restrictions are clearly not in keeping with Department CN policy, they are being deleted upon adoption.

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

CHAPTER 33L
CERTIFICATE OF NEED
HOME HEALTH AGENCY POLICY MANUAL

SUBCHAPTER 1. GENERAL PROVISIONS

8:33L-1.1 Purpose and scope

(a) The Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq.) establishes as a policy of the State of New Jersey that health care services "of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health," N.J.S.A. 26:2H-1. This Act has given the State Department of Health the "central responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services and health care facility cost containment and all public and private institutions, whether state, county, municipal, incorporated, not incorporated, serving principally as residential health care facilities, nursing or maternity homes or as facilities for the prevention, diagnosis, or treatment of human disease, pain, injury, deformity, or physical condition," N.J.S.A. 26:2H-1.

(b) The statute goes on to stipulate that "no health care facility shall be constructed or expanded, and no new health care services shall be instituted ... except upon application for and receipt of a certificate of need" (N.J.S.A. 26:2H-7). Consequently, the rules which are detailed below specify the certificate of need requirements for all new or expanding home health agencies, or for home health agencies which are transferring ownership. These rules do not, however, apply to homemaker or temporary nursing agencies, which are not Medicare-certified and which do not propose to become Medicare-certified, or programs which are hospice only.

8:33L-1.2 Definitions

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

"Charity care" means home visits that are provided by a home health agency to medically indigent patients either at no charge to the patient or at a reduced charge.

"Coordination and standardization of care" means the provision of home health services in accordance with patients' need and with protocols established by a home health agency, so that all patients of the agency receive the following aspects of service in a standardized, consistent manner: screening for agency admission and discharge, case management, follow-up of health-related problems, and referrals to other agencies and service providers for care that can not be offered by the home health agency.

"Department" means the New Jersey State Department of Health.

"Home health agency" or "agency" means a facility which is licensed by the New Jersey State Department of Health to provide preventive, rehabilitative, and therapeutic services primarily to patients in their homes. All home health agencies shall provide nursing, homemaker-home health aide, and physical therapy services in the patient's home or place of residence.

"Hospice" means a comprehensive program of palliative/supportive services for dying persons and their families, utilizing an interdisciplinary team of professionals and volunteers. The program provides components of physical, pscyhological, social, and spiritual care, including bereavement counseling, institutional respite, inpatient care, and home care.

"Hospital-related home health agency" means a home health agency for which the license is held by a hospital, or by a subsidiary corporation of a hospital, or an agency which is a member of a corporate system which includes a licensed hospital in the service area proposed in the agency's certificate of need application.

"Low income municipality" means any municipality with a population of 30,000 or more where 15 percent of families are living below the Federal poverty level, according to the most recent U.S. Census Bureau data.

"Medically indigent patient" means a person who requires nursing care or other home health agency services but who lacks sufficient resources to pay either the full amount of agency charges or any portion of those charges for the care (that is, income at or below 250 percent of the Federal poverty guidelines, as published annually in the Federal Register) and who also lacks third party payment coverage for the full cost of the needed services.

"Reimbursable cost center" means a service such as nursing, physical therapy, occupational therapy, speech therapy, social work, and home health aide service, for which Medicare reimburses home health agencies.

"Seven-day-a-week, 24 hour-a-day service" means continuous nursing staff coverage which is available to the home health agency's new referrals (that is, patients for whom the agency has received written physician's orders) and current patients during evenings, nights, weekends, and holidays.

"Skilled nursing visit" means personal contact between an individual patient and a registered nurse or licensed practical nurse who is sent from a home health agency. The visit takes place in the patient's place of residence and is conducted for the purpose of providing preventive, rehabilitative, or therapeutic nursing care, including, but not limited to, health assessment, monitoring, counseling, and complex therapies such as total parenteral nutrition (TPN), central line infusions and ventilator care.

"Special needs populations" means those patients with diagnoses which continuously require comprehensive skilled nursing care including treatment modalities such as TPN and chemotherapy. For example, these can include pediatric, HIV-infected or medically indigent patients.

SUBCHAPTER 2. REQUIREMENTS

8:33L-2.1 Service area

(a) The service area of a home health agency shall be the county within which the agency's office is located, or a specified sub-area of that county, or two or more counties or the sub-areas of two or more counties. Each office of an agency shall be staffed and equipped in accordance with the Department of Health Standards for Licensure, as required by N.J.A.C. 8:42.

(b) Any proposed establishment of a new service area as described in (a) above, or any proposed expansion of or other change in an existing agency's service area, shall require Certificate of Need approval through a full review process, pursuant to N.J.A.C. 8:33.

(c) Due to the complexity inherent in successfully establishing a new home health agency, the maximum number of counties that any applicant for a new home health agency shall propose to serve is one county or the sub-areas of two contiguous counties.

1. An exception to (c) above may be considered by the Department of Health in the case where an applicant for a new agency proposes to serve no more than two contiguous counties, each with a population density of less than 300 persons per square mile, according to the most recent available U.S. Census data. For the purpose of this chapter, these counties are Cumberland, Hunterdon, Salem, Sussex, and Warren. The request for an exception to (c) shall be granted, provided that the application complies with all other applicable requirements contained in this chapter.

(d) Certificate of need applicants proposing to serve an area that extends more than 25 miles from the agency's chief office shall identify those strategies that will be implemented to assure coordination and standardization of home health care throughout the service area, including whether the agency will maintain branch offices in specified locations.

8:33L-2.2 Home health service utilization rates

(a) An applicant for a certificate of need to provide home health services shall demonstrate the capability to provide a minimum of 5,000 skilled nursing visits per year within the first two years of operation in the proposed service area, as described in N.J.A.C. 8:33L-2.1(a). In addition, the agency shall provide all other services required to comply with applicable licensure requirements pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be increased to 10,000 visits per year within five years after the date of the agency's Certificate of Need approval and shall be maintained annually.

(b) The following are exceptions to (a) above:

1. Agencies serving counties with a population density of less than 300 persons per square mile, according to the most recent available U.S. Census data. For the purpose of this section these counties are Cumberland, Hunterdon, Salem, Sussex, and Warren. In these low population density counties, a home health agency must demonstrate the capacity to provide a minimum of 4,000 skilled nursing visits per year within the first two years, in addition to all other services provided to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be increased to 8,000 visits per year within five years after the date of the agency's Certificate of Need approval and shall be maintained annually;

2. Existing agencies which receive Certificate of Need approval to expand their service area, in which case the agency shall demonstrate the capability to provide a minimum of 2,000 skilled nursing visits per year in each newly approved service area, in addition to providing all other services necessary to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually; and

3. Agencies proposing to serve a low income municipality or a special needs population, as described in N.J.A.C. 8:33L-2.4*[(g)]* ***(h)*** and *[(h)]***(i)***. For these agencies, the applicant shall demonstrate the capability to provide a minimum of 2,500 skilled nursing visits per year, in addition to providing all other services required to comply with the requirements for licensure pursuant to N.J.A.C. 8:42. The volume of skilled nursing visits shall be achieved within two years after the date of the agency's Certificate of Need approval and shall be maintained annually.

(c) Certificate of need approval for the expansion of an existing home health agency into a new service area shall only be granted if the existing agency is providing at least 5,000 skilled nursing visits per year if the agency is located in a low population density county as described in (b)1 above. This minimum volume of visits shall be maintained annually in addition to the visits approved for the new service area, as described in (b)2 above.

(d) If an agency receives certificate of need approval to offer services in a specified service area and, after five years from the date of certificate of need approval, is unable to demonstrate to the satisfaction of the Department of Health, the applicable volume of skilled nursing visits specified in (a) through (c) above, the Commissioner of Health may, in accordance with this chapter, revoke the agency's license or may institute other licensure penalties. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure rules (N.J.A.C. 1:1).

8:33L-2.3 Cost efficiency

(a) Applicants for certificate of need approval shall document that the least costly alternatives, either directly provided or subcontracted services, will be utilized, where the services meet applicable quality of care standards. However, because of the potential for problems with providing continuity of care, agencies proposing the full subcontracting of nursing services shall not receive certificate of need approval.

(b) Consistent with applicable licensure rules (N.J.A.C. 8:42), agencies shall be precluded from fully subcontracting for all nursing services. Violation of this condition at any time shall constitute a sufficient basis for the Commissioner of the Department, within his or her discretion, in accordance with this chapter, to revoke the agency's license or institute other licensure penalties. Any revocation procedure shall be conducted in accordance with the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

(c) To maximize productivity without compromising the quality of care, staffing should be adequate to meet the demands of patient volume in accordance with the provisions of N.J.A.C. 8:42.

8:33L-2.4 Certificate of need requirements

(a) In addition to all other applicable required items of documentation specified in this chapter, applicants proposing to expand an existing home health agency's service area or to institute a new agency shall submit all of the following with their application:

1. Documentation of proposed referral sources. Letters of support from community agencies and health care facilities shall be submitted indicating to the satisfaction of the Department of Health the number of referrals which can be expected annually and indicating a willingness to establish referral arrangements upon home health agency licensure;

2. Documentation of the financial feasibility of the project. Expense and revenue projections shall be submitted covering a period of at least two years beyond the point at which expenses are expected to no longer exceed revenues. Also required for submission is third party verification of the availability of sufficient capitalization to meet start-up costs for the period until revenues exceed expenses or for the first six months of operation, whichever is longer;

3. Documentation of home health care access problems in the service area. Certificate of need approval shall only be granted in those instances where there are one or more of the following documented access problems and where the applicant is able to provide compelling evidence, to the satisfaction of the Department of Health, that these specific problems will be substantially ameliorated by the new agency. Where data from annual surveys conducted by the Department of Health form the basis for identifying the service area's access problems enumerated in (a)3i through iv below, the most recent, annual home health agency survey data that are available at the time that the Certificate of Need applications are accepted for processing shall be utilized. Access problems to be considered include the following:

i. Absence of an existing home health agency providing care in the proposed service area which offers skilled nursing services on a seven-day-a-week, 24-hour-a-day basis, as defined at N.J.A.C. 8:33L-1.2 and as indicated by results from an annual survey conducted and reported by the Department of Health and by annual licensure inspection reports. For the purpose of this section, on-call staff are required to be responsive within one hour of attempted contact via an answering service or direct telephone contact. Tape answering machines are not considered sufficient for the provision of on-call coverage during evenings, nights, weekends, and holidays.

ii. Absence of existing home health agencies providing care in the proposed service area which, in addition to those forms of care required for agency licensure, offer speech pathology, occupational therapy, and social work services. These services may be made available either through direct provision or through sub-contracting by the home health agencies. Annual licensure inspection reports and results of an annual survey conducted and reported by the Department of Health shall be used to determine provision of the aforementioned services by home health agencies in service areas.

iii. Absence of existing home health agencies providing care in a proposed service area which offer complex treatment modalities. For the purpose of this rule, complex treatment modalities shall include mechanical ventilator care, intravenous and central line infusion therapies. These services shall be available to patients in the service area who require them, either through direct provision by one or more of the service area's home health agencies or through sub-contracting by the home health agencies with another licensed home health agency that provides the service directly. Annual licensure inspection reports and results of an annual survey conducted and reported by the Department of Health shall be used to determine provision of the aforementioned services by home health agencies in service areas.

iv. Absence of a Medicare-certified hospice program providing care for the terminally ill in the proposed service area. Agencies receiving Certificate of Need approval to correct this access problem shall be required to obtain Medicare certification as a hospice program and to maintain this certification continuously. Documentation of areas served by Medicare-certified hospice programs shall be reported by the Department of Health based on information

supplied by the Department's Division of Health Facilities Evaluation, supplemented by information from the New Jersey Hospice Organization;

4. Documentation of experience in the provision of preventive, rehabilitative and therapeutic services to patients;

5. Documentation on the volume of proposed visits by type and the number of staff who will be providing these visits; and

6. Documentation that the full range of services, for example, nursing, physical therapy, occupational therapy and speech therapy, will be provided in accordance with N.J.A.C. 8:42-3.1.

(b) Where there is more than one certificate of need application for a home health agency in a service area with documented access problems as identified in (a)3 above, priority shall be given to approving that application which proposed to correct all or the greatest number of identified access problems in the service area and which is in compliance with all other applicable criteria in this chapter. Additional prioritization criteria include the following:

1. The broadest range of services, including the provision of health promotion, chronic illness care, and illness prevention programs to the community;

2. The greatest amount of free (that is, no pay) care to medically indigent patients;

3. Patient volume of special needs populations;

4. The expansion of an existing agency, provided that the agency has been operational for a minimum of three years, has a track record of quality care as determined by the Department of Health's Division of Health Facilities Evaluation, and has a record of compliance with previous conditions of certificate of need approval;

5. The expansion of an existing agency with a documented history of a greater than average amount of care provided on a no pay basis to medically indigent patients; and

6. The ability to implement the project quickly.

(c) When a home health agency receives certificate of need approval to ameliorate a service area's access problems as specified in (a)3 above, that approved agency shall be given a two year period to correct the identified access problems. No additional agencies shall be approved in the service area for the purpose of addressing those same access problems during the two year period subsequent to the date of Certificate of Need issuance. The approval of an agency shall be conditioned such that the Commissioner of Health may revoke the agency's license if the applicant fails to demonstrate good faith efforts to ameliorate the access problems as specified in the certificate of need application. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

(d) To insure consumer choice, every county or sub-area of a county shall be served by a minimum of three home health agencies. If an area is served by only two home health agencies, and it exhibits none of the access problems identified in (a)3 above, an additional agency may still receive Certificate of Need approval to serve that area, provided that it complies with all other applicable requirements in this chapter.

(e) Applicants shall submit a copy of proposed staff education materials, including documentation regarding how universal precautions shall be instituted by all agency staff who are involved in direct patient care. As a condition of certificate of need approval, agencies shall agree not to deny care on the basis of diagnosis.

(f) Agencies receiving certificate of need approval shall be required to complete and return the Department of Health's survey of home health agencies and to submit a complete cost report on an annual basis, or more frequently, if requested by the Department. Unless otherwise specified by the Department, a separate survey shall be completed for each county served by the agency. This survey shall include, but not be limited to, questions regarding the number of clients served according to age groupings, types (for example, skilled nursing, occupational therapy and social work) and numbers of visits provided, number of visits according to reimbursement source (including no-pay visits to medically indigent patients), and agency charges for services rendered.

(g) Applicants shall agree to enter into and maintain a formal affiliation with the Department of Health's AIDS Division to assure follow-up and case management of patients who are or may be HIV-infected.

(h) To promote access to care for medically indigent patients, the Commissioner of Health shall give consideration to approving a new or expanding home health agency proposing to serve any low income municipality with a population of at least 30,000 or group of contiguous low income municipalities with a population of at least 30,000. Documentation shall be submitted by the applicant, to the satisfaction of the Department of Health, indicating that existing agencies serving the area are not offering adequate home health care access to the low income population. This criterion shall apply even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)3 above.

1. Documentation to be submitted by the applicant shall include a local community health care needs assessment/survey and letters from at least three referral sources (that is, health care facilities or social service agencies that are 100 percent corporately independent from the applicant) citing specific instances during the prior 18 month period when patients were denied timely access to needed services by existing home health care agencies in the service area.

2. In addition to meeting other applicable requirements of this chapter, the applicant shall submit a plan documenting how charity care for medically indigent patients shall be provided and paid for, in an amount that exceeds the average amount being provided by all other home health agencies already serving the proposed service area.

(i) To promote the availability of care for special needs populations that may have difficulty accessing needed home health services, the Commissioner of Health shall give consideration to approving a new or expanding agency, even if the proposed service area does not demonstrate an access problem in accordance with the criteria identified in (a)3 above.

1. As a condition of certificate of need approval, home health agencies approved to serve a special needs population shall be permitted to provide home health services only to members of the identified population; all other patients shall be referred to other home health agencies in the service area.

2. In addition to complying with all other applicable requirements of this chapter, the applicant for a home health agency proposing to service a special needs population shall submit the following forms of documentation, to the satisfaction of the Department of Health:

i. Evidence that none of the existing agencies serving the area is offering adequate home health care access to the identified special needs population;

ii. Letters from at least three referral sources (that is, health care facilities or social service agencies that are 100 percent corporately independent from the applicant) citing specific instances during the prior 18 month period when patients within the special needs population were denied timely access to needed services by existing home health care agencies;

iii. A detailed description of the unique programs and services that will be offered by the proposed agency to meet the special needs of the identified population and of how these program and services will be integrated within the area's existing health care system;

iv. Evidence that the health problems of the special needs population can be substantially ameliorated by the forms of care that are typically provided by a home health agency;

v. A description of staff qualifications and strategies that will be implemented by the agency to recruit and retain staff with expertise in the care of the special needs population; and

vi. Verification that the agency will be financially feasible and that reimbursement from third party payers will be available for the majority of services to be provided by the agency.

8:33L-2.5 Special requirements for hospital-related home health agency applicants

(a) In addition to the applicable documentation required by N.J.S.A. 8:33L-2.4, home health agencies which are hospital-related shall submit all of the following with their certificate of need applications:

1. Documentation describing the related hospital's existing discharge planning system, identifying improvements which will be effected as a result of establishment of the proposed agency, and explaining why these improvements could not be effected by making use of existing home health providers in the proposed service area;

2. Documentation that consumer choice of home health service providers shall be promoted within the related hospital. Evidence that referral relationships with other licensed home health service providers in the service area will be established and maintained shall be provided in the application. Hospital-related home health agencies receiving certificate of need approval shall be required to allow for the distribution of brochures from all licensed home health agencies in the service area to all patients in the related hospital. Arrangements shall be required to insure that referrals will be made to home care intake coordinators from other home health agencies in the service area, if this is desired by the patient or the patient's family; and

3. Documentation regarding home follow-up for patients discharged early due to managed care payment plans, for example, postpartum follow-up.

8:33L-2.6 Transfer of ownership for home health agencies

[(a)] The transfer of ownership of a home health agency shall require licensure approval in accordance with N.J.A.C. 8:42.

*[(b) The service area of an existing home health agency may not be modified in the certificate of need application for transfer of ownership.

(c) If two or more agencies are merged through the transfer of ownership, the resulting service area shall be that of the combined, pre-existing agencies.

(d) Conditions placed on the approval of certificate of need applications of home health agencies which are the subject of transfer of ownership shall be assigned to the transfer of ownership approval, unless these conditions are amended or deleted by the Commissioner of the Department of Health.

(e) An application for transfer of ownership shall not be approved if the agency which is the subject of the transfer application has not initiated the delivery of home health services, nor if it has ceased to provide these services, nor if it has substantially reduced services, nor if it has failed to achieve either the utilization rates for nursing visits specified in N.J.A.C. 8:33L-2.2 or the volume of nursing visits that was projected in the agency's most recently approved Certificate of Need application, whichever number of visits is greater.

(f) Applicants proposing the transfer of ownership to an entity that conforms with the definition of a "hospital-related home health agency" as defined in N.J.A.C. 8:33L-1.2 shall comply with all applicable requirements in N.J.A.C. 8:33L-2.5.

(g) As a condition of certificate of need approval of a transfer of ownership, the new agency shall provide a copy of a policy, including marketing materials, for the provision of services regardless of ability to pay, and for the provision of charity care at a minimum of three percent of its total annual home health reimbursable cost centers.

(h) No patient under treatment at the time of the transfer of ownership approval shall lose service or experience any increase in charges as a result of the change in ownership.]*

8:33L-2.7 Care for medically indigent patients

(a) As a condition of certificate of need approval, applicants proposing new agencies or expansion of existing agencies shall be required to provide a copy of a policy including marketing materials for the provision of services, regardless of ability to pay, and for the provision of charity care at a minimum of three percent of its total annual home health reimbursable cost centers.

(b) As a condition of certificate of need approval, applicants shall be required to maintain a sliding fee scale to be used for all proposed home health services. The sliding scale shall incorporate provisions for patients to receive care free of charge, if they meet the definition of "medically indigent," as stated in N.J.A.C. 8:33L-1.2. The proposed fee schedule shall allow for partial payment by patients who have incomes above 250 percent of the Federal poverty guidelines (see definition of "medically indigent") but below 300 percent of the Federal poverty guidelines. The sliding scale shall be submitted with the certificate of need application. Any changes in the schedule are subject to prior approval by the Department.

(c) Pursuant to the prioritization criteria identified in N.J.A.C. 8:33L-2.4(b)2, certificate of need applicants proposing to provide more than the required three percent charity care shall accept as a condition of approval that failure to provide the proposed percentage of charity care annually shall, at the discretion of the Commissioner of Health, and based on the applicant's compliance with this chapter, result in revocation of the agency's license or other licensure penalties. Any licensure revocation procedure shall be conducted in accordance with the Administrative Procedures Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedures Rules (N.J.A.C. 1.1).

(a)

DIVISION OF FAMILY HEALTH SERVICES

Chapter IV of State Sanitary Code

Operation of Clinical Laboratories; Reporting by Laboratory Supervisors

Adopted Amendment: N.J.A.C. 8:44-2.11

Proposed: January 18, 1994 at 26 N.J.R. 294(b) (see also 26 N.J.R. 1190(a)).

Adopted: May 9, 1994 by the Public Health Council, William Frascella, O.D., Chairperson.

Filed: May 10, 1994 as R.1994 d.275, **without change.**

Authority: N.J.S.A. 26:1A-7, 24:14A-1 et seq., specifically 24:14A-11, and 26:2-130 et seq., specifically 26:2-137.

Effective Date: June 6, 1994.

Expiration Date: April 20, 1995.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing was held on February 14, 1994. The hearing officer was Kevin McNally, Coordinator, Childhood Lead Poisoning Prevention Program. No one attended or sent written comments to be read at the hearing. No recommendations were made by the hearing officer. The hearing record may be reviewed by contacting Susan Eatis, Department of Health, CN 360, Trenton, NJ 08625.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

8:44-2.11 Reporting by laboratory supervisors

(a) (No change.)

(b) Laboratory supervisors shall immediately report to the State Department of Health, results of laboratory examinations indicating levels of hazardous substances in blood and urine equal to or greater than the following:

1. Lead:

i. Blood lead levels equal to or greater than 25 ug/dL in individuals greater than 16 years of age;

ii. Blood lead levels equal to or greater than 20 ug/dL in children up to and including 16 years of age;

iii. Urine lead levels equal to or greater than 80 ug/dL in individuals greater than 16 years of age.

2.-4. (No change.)

(c) (No change.)

HUMAN SERVICES

(a)

MENTAL HEALTH AND HOSPITALS

Screening and Screening Outreach Programs

Readoption: N.J.A.C. 10:31

Proposed: April 4, 1994 at 26 N.J.R. 1424(a).
Adopted: May 13, 1994 by the Department of Human Services, William Waldman, Commissioner.
Filed: May 13, 1994 as R.1994 d.291, **without change.**

Authority: N.J.S.A. 30:4-27.1 et seq., especially 30:4-27.5.

Effective Date: May 13, 1994.
Expiration Date: May 13, 1999.

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. 10:31.

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Community Residences for Mentally Ill Adults

Adopted Repeals: N.J.A.C. 10:37-5.37 through 5.43 and 10:39

Proposed New Rules: N.J.A.C. 10:37A

Proposed: June 21, 1993 at 25 N.J.R. 2672(a).
Adopted: May 13, 1994 by the Department of Human Services, William Waldman, Commissioner.
Filed: May 13, 1994 as R.1994 d.292, **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. 30:11B-1 et seq., specifically 30:11B-4.

Effective Date: June 6, 1994.
Expiration Date: June 6, 1999.

Summary of Public Comments and Agency Responses:

The Department received public comments from the Department of the Public Advocate (DPA), the Department of Community Affairs (DCA), the New Jersey State Nurses Association (NJSNA), the New Jersey Psychiatric Rehabilitation Association (NJPRA), the New Jersey Coalition of Residential Providers (NJCORP), SERV Centers of New Jersey (SERV), Delaware House Mental Health Services (DH) and Jean Paashaus. Their comments and the Department's responses are provided below.

COMMENT: The Public Advocate commented that there are no definitions in the proposal for the terms "residence" and "resident" and there should be.

RESPONSE: The term "residence" is synonymous with community residence for the mentally ill and appears next to that phrase in parentheses in the definition section in N.J.A.C. 10:37A-1.2. The term "resident" is synonymous with the term "client" and appears in the definition of the term "client" in the definition section in N.J.A.C. 10:37A-1.2.

COMMENT: The Public Advocate commented that in addition to the residence's license being available on the premises for inspection by the public, the entire application and affiliation agreement should be available to the public and residents of the facility along with all assurances and commitments made by the provider agency concerning the conditions that will prevail at the facility.

RESPONSE: Although the material cited in this comment often contains technical language difficult to understand by those unfamiliar with it, the material is available from the Division upon written request by any party.

COMMENT: The Public Advocate commented that the word "substantial" should be struck from the phrase "substantial compliance" at N.J.A.C. 10:37A-2.3(a) since the Appellate Division of the New Jersey Superior Court struck the word from the identical section of N.J.A.C. 10:39 now proposed for repeal.

RESPONSE: The Department responds that the inclusion of the word "substantial" in the proposal was an oversight and has deleted it upon adoption.

COMMENT: The Public Advocate commented that the waiver standards stated in N.J.A.C. 10:37A-2.6 are impermissibly vague and overbroad and that they should not apply to the admission and discharge procedures in subchapter 9, the clients rights provisions in subchapters 3, 4 and 7 and the Uniform Fire Code requirements incorporated in sections N.J.A.C. 10:37A-6.12 and 6.22.

RESPONSE: It is understood that the Department does not have the authority to waive Uniform Fire Code requirements or statutory rights and would never do so. The admission and discharge procedures were designed to obviate the need for waivers and the Department does not envision situations that would result in waivers being granted regarding these procedures. The paramount principle underlying each of the criteria is that waivers be available when the best interest of a resident would be promoted by granting a waiver. The Department believes the presence of this fundamental and consistent principle provides adequate guidance for the application of the criteria.

COMMENT: The Public Advocate commented that the waiver provisions within N.J.A.C. 10:37A-2.6 fail to provide and should provide the interested public with any notice or opportunity to comment regarding a provider agency's application for a waiver.

RESPONSE: The Department has concluded that prior opportunity for comment or waiver requests is simply not feasible since residential services are not redesignated on a regular basis. Additionally, the waiver criteria preclude the granting of waivers if the health, safety, welfare or rights of a resident would be adversely affected and only permit the granting of waivers when the Division concludes doing so is in the resident's best interest.

COMMENT: The Public Advocate commented that N.J.A.C. 10:37A-4.1(a)3 facially violates the scope of State and Federal anti-discrimination statutes by proscribing only discrimination on the basis of **physical** handicap, recommending that the word "physical" be deleted to make it clear that provider agencies may not discriminate on the basis of mental handicap.

RESPONSE: The Department does not understand exactly what the commenter intends by advocating that provider agencies not be permitted to discriminate on the basis of mental handicap since N.J.A.C. 10:37A-4.1(a) clearly establishes that "First priority for admissions into residences shall be given to persons with severe and persistent mental illness and in accordance with target populations as defined in N.J.A.C. 10:37-5.2." The Department believes this directive adequately communicates the intended beneficiaries for these programs.

COMMENT: The Public Advocate commented that N.J.A.C. 10:37A-4.2 fails to make it clear that services provided to residents must be consensual and that the "ongoing communication" between agencies cited in N.J.A.C. 10:37A-4.2(e) must comply with the confidentiality provisions of N.J.S.A. 30:4-24.3.

RESPONSE: N.J.A.C. 10:37A-4.2(a) states that these services shall be offered to clients, thereby communicating to provider agencies the voluntary nature of services and program enrollment. The Department is convinced that provider agencies fully understand that there exists no legal authority to compel clients to accept these residential services unless the clients are specifically court ordered to receive the services. The Department also believes that N.J.A.C. 10:37A-3.2, Confidentiality, clearly sets out the parameters within which the "ongoing communication" with all other providers must occur.

COMMENT: The Public Advocate commented that N.J.A.C. 10:37A-4.4(a)4 requires that client service agreements between residents and provider agencies make reference to the clients' rights and responsibilities but does not specify those clients' rights and it should.

RESPONSE: The Department believes that the client's rights are adequately specified in the proposal and that provider agencies are capable of indicating them in their client service agreements as they have been required to do under N.J.A.C. 10:39 since 1990.

COMMENT: The Public Advocate commented that the repeal of N.J.A.C. 10:37-5.37 through 5.43 makes it unclear whether the chapter 37 provisions are intended to apply to the services governed by this proposal.

RESPONSE: Generally, the provisions of N.J.A.C. 10:37 have not applied to licensed community residences for the mentally ill since

N.J.A.C. 10:39 went into effect, unless specific reference to provisions of N.J.A.C. 10:37 was made in N.J.A.C. 10:39. This recodification as N.J.A.C. 10:37A and repeal of N.J.A.C. 10:37-5.37 through 5.43 and 10:39 maintains that current status.

COMMENT: The Public Advocate commented that the last paragraph of Appendix A incorrectly refers to the repealed provisions at N.J.A.C. 10:39-8.1 et seq. and should be revised with the correct new citations.

RESPONSE: The Department agrees and has revised these two citations in Appendix A accordingly.

COMMENT: The Public Advocate commented that some sections of N.J.A.C. 5:27, which applies to boarding homes, should be similarly contained as part of this proposal.

RESPONSE: The Department disagrees and believes that the relationship between the resident and the provider agency for these programs is not analogous to that between a boarding home resident and operator. The provision of mental health services by the provider distinguishes these residences from boarding homes. Upon further review the Department is satisfied that the proposal adequately addressed the needs of residents.

COMMENT: Generally, NJPRA, SERV and NJCORP commented that the prohibition against discharging a resident to a shelter or a hospital may occasionally eliminate the best possible discharge alternative and violate a client's right to choose to move into a shelter.

RESPONSE: The Department clarifies that N.J.A.C. 10:37A-9.5(a)4 only prohibits discharges to hospitals for residents who have received the maximum clinical benefit of the residential services and is not intended to preclude hospitalizations of residents whose clinical condition has so deteriorated that transfer to inpatient hospital care is warranted. In such cases, N.J.A.C. 10:37A-9.7(c) applies and requires that the client's residential placement be maintained for up to 30 days from the date of the hospital admission.

Although provider agencies and the Department cannot legally prevent anyone from choosing to live in a shelter, the Department believes that the placing of former residents in shelters for the homeless by provider agencies is not an adequate enough alternative to residential treatment.

COMMENT: DH commented that to hold a bed for 30 days for a resident who leaves a residential program is unreasonable in all circumstances and would cause unreasonable financial deficit in rent income and would prevent appropriate referrals from utilizing the bed.

RESPONSE: The Department's experience is that temporary absences and brief hospitalizations occur sufficiently infrequently that the deficit in rental income does not pose a material financial risk for provider agencies. The Department believes that not to require provider agencies to hold placements for a short period of time in such situations could result in serious and undesirable consequences for residents experiencing only short term disruptions to their residential placements.

COMMENT: SERV and NJCORP commented that the proposed rules advance an unfortunate misrepresentation of community mental health residential treatment programs as housing as if the relationship between the parties was that of landlord and tenant.

RESPONSE: The Department disagrees. Simply because some safeguards have been built into these rules so as to ensure that residents are only discharged from these comprehensive services when clearly warranted by the circumstances, does not mean that the Department views the relationship between provider and resident as that of landlord and tenant. The relationship is not analogous to that of landlord and tenant and the services are not primarily housing services. However, provider agencies must also accept that residents develop a significant personal investment in these services and they should be involuntarily terminated from them only after all efforts at reconciliation have failed and the matter has been thoroughly reviewed.

COMMENT: SERV commented that the licenses issued by the Division should not limit the number, type or geographical locations of the residential programs, especially considering the changing healthcare reimbursement system. SERV further commented that specifying defined numbers of group homes, apartment spaces, and family care homes unnecessarily restricts agency growth and limits the usefulness of the license for reimbursement purposes.

RESPONSE: The Department does not believe it can responsibly discharge its licensing responsibility by authorizing unspecified numbers of residences. N.J.S.A. 30:11B-5 requires the Department to monitor the geographic location of community residences for the mentally ill and to grant or withhold licenses to ensure that such residences are available throughout the State, without unnecessary concentration in any area. Additionally, proposed new residences must be inspected and approved as meeting the requirements for licensure. Simply licensing provider agencies in advance to develop and operate unspecified numbers and types of residences would also not promote efficiency and effectiveness in the development of such residences. Provider agencies, however, may always request additional licensure for any new residences which they may plan.

COMMENT: SERV commented that the language at N.J.A.C. 10:37A-9.4(a) should be changed from "No client shall be prohibited from utilizing or residing in a residence unless:" to "No client shall be discharged from residential treatment services unless:". SERV stated that the current language perpetuates the false notion that these programs simply provide housing. Rather, the concept should be seen as analogous to discharge from a hospital. Clients do not "reside" in these programs any more than they "reside" in a hospital. They stay only as long as is clinically appropriate and justified by their treatment plan.

RESPONSE: The Department reiterates that these residences are not merely housing and notes that the cited phrase occurs in the context of a section entitled "General rule regarding the discharge of clients." The rule was only intended to refer to current residents and not to function more broadly as a statement about the rights or entitlements of individuals to become residents of these programs.

COMMENT: SERV commented that the administrative review of the discharge procedures contained in N.J.A.C. 10:37A-9.6 should result in a non-binding recommendation to the provider agency rather than potential sanctions including license revocation in the extreme case.

RESPONSE: While the Department does not envision that the adoption of these rules will result in the imposition of sanctions on a frequent or extreme basis, as the designated licensing authority for such residences, the Department is merely articulating the extent of its licensing authority regarding violations of these rules. To do less, would be to attempt to forecast future circumstances inappropriately.

COMMENT: SERV commented that extreme circumstances sometimes might necessitate the immediate and permanent removal of a threatening client in order to protect the safety of innocent clients and staff. SERV stated that the rule at N.J.A.C. 10:37A-9.7(b) dealing with the emergency removal of residents imposes an unnecessary bureaucratic process on a threatening situation.

RESPONSE: The Department does not believe N.J.A.C. 10:37A-9.7(b) imposes an unnecessary bureaucratic process on a threatening situation. Residents presenting a substantial immediate and emergent threat to the physical safety of others, or to the emotional or psychological health of other clients, may be removed immediately from the residence and provider agencies may prevent the client from returning until the immediate threat has been obviated. The rule only goes on to provide a formal process, analogous to other criteria for discharge, before that removal may be considered permanent. The Department believes this to be the reasonable course of action under these circumstances.

COMMENT: Several commenters criticized the proposed administrative review process for discharges in N.J.A.C. 10:37A-9.6 as either inappropriate, bureaucratic and regulatory overkill, costly, too time-consuming, a disincentive to admit potentially risky clients or likely to result in increased exposure to risky behavior by disruptive residents.

RESPONSE: Based upon experience, the Department believes that the vast majority, if not all, discharges by provider agencies are conducted in an appropriate, professional manner. However, in establishing the program parameters a delicate balance must be struck between the legitimate administrative structure necessary to enable provider agencies to operate efficient, effective, high quality residential programs, on the one hand, and the significant personal investment residents of these programs acquire over time, on the other. The goal is to provide adequate safeguards regarding discharging residents which are designed to protect residents for whom discharge may result in diminished treatment and quality of life while at the same time being careful that the safeguards do not produce the situations the commenter wants to avoid. The Department recognizes that providers of these services and advocates for these residents are often equally unconvinced that the balance has been struck most fairly and precisely. Given past practice, the Department believes that the discharge procedures will only need to be utilized in rare or very occasional instances. In the Department's experience, almost all problematic situations involving conflict between residents and provider agencies are routinely resolved without recourse to initiating formal discharge procedures. The Department is confident that practice will continue and has designed these procedures for only the most

intractable situations. Upon further review, the Department remains convinced that these discharge procedures are adequate to the purpose at hand.

Specifically, the Department notes that the rule permitting emergent removal of residents at N.J.A.C. 10:37A-9.7(b) should prevent any increased exposure to risky behavior by disruptive residents. These discharge procedures do not have costs other than staff time associated with them. Finally, the Department responds that discharging a problematic resident who is unwilling to leave, currently in the absence of these rules, poses considerable difficulties for provider agencies. The Department does not believe these rules appreciably add to that difficulty and, therefore, hopes they will not significantly alter provider agency's current admission practices.

COMMENT: SERV commented that the requirement at N.J.A.C. 10:37A-9.6(c)2 that the chief executive officer of the provider agency must uphold the basis for the discharge as determined by the clinical staff should be changed to permit the chief executive officer to utilize a designee for this purpose.

RESPONSE: The Department disagrees. Involuntary discharge from residential services is sufficiently infrequent an occurrence and important an issue to justify requiring the awareness and approval of the chief executive officer.

COMMENT: SERV was concerned that the reviewing officer designated by the Division Director in N.J.A.C. 10:37A-9.6(d) as part of administrative review of discharges has no specified credentials for this reviewing officer.

RESPONSE: The Department expects the Division Director to designate a Division employee sufficiently well experienced and skilled to be the reviewing officer. Depending upon the specific factor in each case, such as the location of the residence, the Division Director shall select an appropriate officer on a case by case basis.

COMMENT: SERV commented that the definition of "group home" as a structure of two or more units created concerns with regard to the Uniform Fire Code and programmatic issues.

RESPONSE: The current rules define a group home as three or more dwelling units, not two. Therefore, for agencies operating a structure with one or two units, each unit is considered an apartment. Single family residences, however, are considered group homes. The number of units in a dwelling does not determine the program/treatment model.

COMMENT: SERV commented that certain items at N.J.A.C. 10:37A-4.5, Recordkeeping, should be deleted because they do not reflect the full range of residential services that agencies provide and imply a landlord tenant relationship. SERV recommended specific language to accomplish this purpose.

RESPONSE: Generally, the Department agrees but has chosen a different amendment to accomplish the same purpose. The Department believes that residents are entitled to know what their fee is for but that the degree of itemization required by the proposal is unnecessary. The language at N.J.A.C. 10:37-4.5(d) has been amended accordingly.

COMMENT: The Public Advocate opined that N.J.A.C. 10:37A-2.8(f) should set forth a reasonable time frame within which the Division must issue its monitoring report.

RESPONSE: The Department agrees that a time frame should be included. Therefore, the Department has set a time limit of 90 days from the date of the site review for issuance of the formal report and has revised the rules accordingly.

COMMENT: The Public Advocate opined that N.J.A.C. 10:37A-2.8(i) should include an outside limit on the period of time within which deficiencies may be corrected.

RESPONSE: The rules at N.J.A.C. 10:37A-2.8(h) specify that the time frames for a correction of violations presenting an imminent threat to the health or safety of clients is immediate with written notification within 48 hours. Deficiencies which do not rise to the level of imminent threat to the health or safety of clients are handled by the Division on an individual case-by-case basis. The Division works with the provider agency on an ongoing basis to resolve these deficiencies.

COMMENT: The Public Advocate commented that clients should be allowed to review policies and procedures already in existence in addition to their input in drafting new policies and procedures.

RESPONSE: These rules at N.J.A.C. 10:37A-3.1(a)1 and (a)3 require annual review of all existing policies and procedures by the PA including consultation with consumers and their families.

COMMENT: The Public Advocate commented that the requirements of a bachelor's degree and two years of relevant experience for the Residential Clinical Specialists are inadequate and demand a higher clinical degree and inservice professional training.

RESPONSE: The Department believes that the requirement for two years of relevant experience in a mental health setting in addition to a bachelor's degree and supervision by a Residential Program Coordinator who is required to be a master's level clinician with three years experience is adequate to perform the functions delineated.

COMMENT: Jean Paashaus expressed concern that the first priority for the residences are persons with severe and persistent mental illness, "instead of clients more capable of unsupervised living."

RESPONSE: Although these clients have severe and persistent mental illness, they have progressed to the point where they have been assessed by hospital and clinical staff to be ready to live in the community. The Division's intent is to prioritize services to those persons most in need and individuals with a history of severe and persistent mental illness would be most at risk of requiring a more restrictive setting without these services.

COMMENT: Jean Paashaus commented that "recreation should include unmanaged periods of a client's life."

RESPONSE: Although these community residences provide structured programs, there are opportunities for residents to independently control much of their own leisure time.

COMMENT: SERV, NJCORP and DH commented that the proposed rules regarding termination will result in an increased unwillingness of provider agencies to give opportunities for placement to difficult or risky clients.

RESPONSE: The Department believes that the rules regarding termination are reasonable because they strike a balance between the PA's need to administer a program without unreasonable burdens and the fact that these are the clients' current residences. While the PA maintains the authority to terminate services where appropriate, the client is afforded due process rights under proposed procedures.

COMMENT: DCA commented that some of the building and fire safety provisions in the proposal are at variance with the Uniform Construction Code (UCC) and the Uniform Fire Code and should not be. Several examples were given.

RESPONSE: The Department agrees. The Department met with DCA officials to discuss and resolve this issue. As a result, all impermissible variances have been eliminated from the rules. The Department never intended to attempt to abridge DCA's authority on issues involving these codes. Generally, the variances resulted from the proposed rules utilizing outdated code provisions and outmoded code language. The proposed rules incorporated the provisions of the Uniform Fire Code at N.J.A.C. 10:37A-6.12. Specifically, the changes to the proposal are as follows:

The phrase "utilizing the physical and fire safety standards of N.J.A.C. 5:18" has been deleted from N.J.A.C. 10:37A-2.2(a). The phrase "based on physical and fire safety standards contained in N.J.A.C. 5:18" has been deleted from N.J.A.C. 10:37A-2.3(a). The phrase "based on physical and fire safety rules at N.J.A.C. 5:18" has been deleted from N.J.A.C. 10:37A-2.4(c). These deletions have been made to clarify that only the Department of Community Affairs can determine compliance with N.J.A.C. 5:18.

To reduce the likelihood for misunderstanding, the phrase "life hazard registration is initiated" has been explicitly added to N.J.A.C. 10:37A-2.2(d) even though the requirement is implicitly contained in the proposed requirement that all inspections are satisfactory. The word program has been inserted in N.J.A.C. 10:37A-2.6(a) and (b) to clarify that the Department does not have the authority to waive the physical and fire safety rules under the jurisdiction of the Department of Community Affairs.

N.J.A.C. 10:37A-6.1 has been amended to clarify at the beginning of subchapter 6 the source of the applicable physical plant requirements. N.J.A.C. 10:37A-6.2(c) has been deleted since this provision is no longer accurate and Divisional staff does not have the expertise to determine compliance with the provision. At N.J.A.C. 10:37A-6.3(b) and (c) the terms "water toilet" and "toilet" have been replaced by "water closet" and "closet" since those terms are in current usage in the Uniform Construction Code. At N.J.A.C. 10:37A-6.3(c) the requirements "for each six residents" has been changed to "for each eight residents" to accurately reflect the current standards.

At N.J.A.C. 10:37A-6.5(b), "No temporary wiring shall be used except extension cords which: 1. Run directly from portable electric fixtures to convenient outlets; 2. Do not lie under rugs or other floor coverings; and 3. Do not extend through doorways, transoms or other openings through structural elements." has been replaced by "Extension cords and

flexible cords shall not be used as a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, floors, under doors, or floor coverings, nor be subject to environmental damage or physical impact." The deleted text reflects obsolete code language whereas the substituted text now reflects current code language.

At N.J.A.C. 10:37A-6.6(a), the term "habitable room" has been deleted and replaced by "bedroom" since "habitable room" was not defined and the current code requirement is "bedroom." At N.J.A.C. 10:37A-6.6(d), the words "with an illumination of at least two lumens per square foot (two foot candles) in the darkest portions, and sufficient for safe use of the area for its intended purpose." and at N.J.A.C. 10:37A-6.6(e) the words "with an illumination of at least two lumens per square foot (two foot candles) in the darkest portion of the normally traveled stairs and passageways. Lighting must be sufficient to prevent accidents." have been deleted. These provisions no longer accurately reflect the current standard.

At N.J.A.C. 10:37A-6.6(f), the requirement that light be measured 36 inches from the floor at the center of the room has been modified to 30 inches to reflect the current standard. At N.J.A.C. 10:37A-6.7(a) and (b), sentences on form of ventilation have been deleted because they no longer accurately relfect the current standard. At N.J.A.C. 10:37A-6.8(a)3, the heating temperature requirements have been modified from 68 degrees and 0 degrees to 70 degrees and 14 degrees to reflect the current standard.

At N.J.A.C. 10:37A-6.11(e)1, the words "in accordance with a method approved by the Division" have been deleted because the Division lacks the expertise and authority to approve an appropriate method. N.J.A.C. 10:37A-6.11(h) has been deleted because the Division lacks the expertise and authority to make the determinations specified in the provision.

At N.J.A.C. 10:37A-6.13 to 6.16, a modification has been made to reflect the reality that the use determination by the Department of Community Affairs must be performed on a case-by-case basis with specific physical criteria and cannot be determined categorically based on the group home size or function. N.J.A.C. 10:37A-6.18 has been modified so that the smoke detector requirements are permissible under the applicable codes. N.J.A.C. 10:37A-6.22 has been modified to eliminate the appearance that the Department or the Division has the authority to permit variances to the codes under the jurisdiction of the Department of Community Affairs.

COMMENT: The NJSNA opined that the use of the proposed title of Residential Clinical Specialist may cause confusion because of its similarity to the title of Clinical Nurse Specialist which has a specific meaning pursuant to P.L. 1991. c.377. That law defines Clinical Nurse Specialists as requiring an advanced nursing educational level.

RESPONSE: The Department agrees that the similarity in titles might create confusion. Therefore, the Department has changed this title in the rules at N.J.A.C. 10:37A-5.4 to Residential Specialist.

Summary of Agency-Initiated Changes:

As part of the public comment process, the Department solicited comments regarding whether the rules at N.J.A.C. 10:37A-9.3(a) and 9.5(a)3, 5 and 6 should and can be more specific in those instances when the words "highest professional standards," "reasonable," "substantial period of time," and "unreasonable" are utilized in those subsections. No public comments, however, were received on this issue.

After considerable internal discussion, the Department has made the following changes to clarify the intent underlying the proposal.

At N.J.A.C. 10:37A-9.3(a), the words "with the highest professional standards of residential service, consistent with available resources" have been deleted and replaced by "if it categorically excludes certain types of clients where there is a clinically appropriate method of accommodating the agency's programs to the needs of those clients, consistent with available resources." The Department believes that the salient feature of an admission policy consistent with the highest professional standards of residential services is now expressed in the substituted language.

At N.J.A.C. 10:37A-9.5(a)3, the word "reasonable" has been modified to "which is reasonable both in itself and its application." The Department believes that specifying that the application of the rule is part of its reasonableness clarifies that each situation involving this provision needs to be assessed on a case-by-case basis.

At N.J.A.C. 10:37A-9.5(a)5, the words "to return within a reasonable time after the expiration of such 30 day period" have been deleted and replaced by "that he or she will return after the expiration of such 30 day period; provided, however, that continued absence beyond 30 days shall be a condition for discharge if such absence is not in the client's clinical best interest." The Department believes the replacement of the word "reasonable" in the proposal with the standard of "the client's clinical best interest" specifies more clearly the principle that should be operating in these situations.

N.J.A.C. 10:37A-9.5(a)6 has been modified from "The client has, for a substantial period of time, refused an unreasonable number of necessary and appropriate services offered by the PA pursuant to a properly developed treatment plan, the client has refused to offer any reasonable alternative plan of daily activity, and an alternative living arrangement other than a hospital is available" to "The client has refused necessary and appropriate services offered by the PA pursuant to a properly developed treatment plan; the refusal is contrary to his or her clinical interest; the client has failed to offer any alternate plan which would be consistent with his or her clinical interest; and an alternative living arrangement other than a hospital is available." The Department believes that by eliminating the phrases "for a substantial period of time" and "an unreasonable number" the rule is clearly not now impermissibly vague. Additionally, the Department has clarified that what was intended by the phrase "the client has refused to offer any **reasonable** (emphasis added) alternative plan of daily activity" was a refusal which was contrary to his or her clinical interest and a plan which would be consistent with his or her clinical interest.

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

CHAPTER 37A
COMMUNITY RESIDENCES FOR MENTALLY ILL ADULTS

10:37A-1.1 Scope and purpose

(a) Provider agencies (PA) operating community residences for mentally ill adults shall comply with the physical and program standards contained within this subchapter. These residences include group homes serving a maximum of 15 persons, PA apartments, and family care homes serving five or fewer persons with a services agreement with the PA. These residences shall be approved for a purchase of service contract pursuant to this chapter and Department contract rules, including N.J.A.C. 10:4, and shall not be considered health care facilities within the meaning of N.J.S.A. 26:2H-1 et seq.

(b) The PAs shall provide a residential care program to all enrolled clients. Such a program shall consist of the services described in this chapter and shall be provided in facilities owned or leased by the PA, or through services agreements with private operators.

(c) The major goal of the community residence program for mentally ill adults shall be to support and encourage the development of life skills required to sustain successful living within the community. Residential housing and services shall be organized around the principle of client responsibility and participation.

(d) The residential care program shall have a rehabilitation focus designed to develop and improve skills necessary for successful community integration. Programming shall focus on empowering the client's use of generic community supports to meet physical, psychological and social needs as a means to promote an improved quality of life and emotional well-being. Clients shall live in the most normalized, least restrictive environment possible to promote individual growth and safety.

10:37A-1.2 Definitions

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

"Assessment and evaluation" means activities that will analyze an individual client's desires, functioning, strengths, needs and environment to determine appropriate interventions. An opportunity will be given for the client to provide a self assessment and for any family member or significant other of the client's choice to provide an assessment of the client as well.

"Client" means a person suffering from a mental illness who is a resident of a community residence for mentally ill adults.

"Client service agreement" means a written agreement between the PA and client which includes responsibilities of both the PA and the client.

"Community residence for the mentally ill" (residence) means any community residential facility approved by the Division which provides food, shelter, and personal guidance under such supervision as required, to not more than 15 mentally ill persons who require assistance, temporarily or permanently, in order to live independently in the community. Community residences for the mentally ill have an approved purchase of service contract pursuant to the Department's contract rules and this chapter. These residences do not house persons who have been assigned to a State psychiatric hospital after having been found not guilty of a crime by reason of insanity or unfit to be tried on a criminal charge. These residences are not considered health care facilities, within the meaning of the "Health Care Facilities Planning Act", P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.) and include, but are not limited to, group homes, supervised apartment living arrangements, family care homes and hostels.

"Comprehensive service plan" (CSP) means the periodic formulation of goals, objectives, and interventions for residential services based on a functional assessment which shall include treatment recommendations and may include: psychological, medical, developmental, family, educational, social, cultural, environmental, recreational and vocational components.

"Crisis intervention counseling" means an attempt to facilitate crisis stabilization through the use of specific, time-limited counseling techniques. Crisis intervention counseling focuses on the present, providing pragmatic solutions to identified problems.

"Crisis intervention services" means the implementation of the PA's written emergency policies and procedures focusing primarily on client and staff safety. Examples include provision of residential counseling, crisis intervention counseling, behavior management techniques, and request for outside assistance. Behavioral management techniques exclude physical and chemical restraint, aversive conditioning and punishment. Crisis intervention services can be documented via crisis reports, for example, and can be supported by such policies which reflect adequate responses to emergent situations.

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health and Hospitals, within the Department of Human Services.

"Education" means instruction for clients in basic skills, including academics, and increasing learning capabilities, in the areas of psychoeducation and health.

"Family care home" means a private home or apartment in which an individual resides and provides services to as many as five clients who also reside in the home. The PA provides mental health services to the client and consultation to this individual, based on a services agreement.

"Group home" means any leased or owned single family residence or any structure containing three or more dwelling units, all of which are utilized for the provision of residential care services wherein staff reside or are stationed either on-site or in immediate close proximity and for which a contract exists with the Division. Group homes do not include family care homes nor apartment facilities where individuals may receive regular or periodic staff supervision and/or training visits, except where such apartment facilities include those contained in a structure of two or more units and all units are operated under contract with the Division.

"Individual services coordination" means those staff activities which are aimed at linking the client to the mental health and social service system and the arranging of the provision of appropriate services. Coordination activities include intake and referral, admission and acceptance, placement, termination and follow-up, individual services planning and treatment reviews, advocacy with non-mental health systems, and documentation of services provided.

"Initial service plan" means the initial formulation of goal(s), objectives, and interventions, based on initial assessments, which serve as a focus for staff and client activities.

"Life experience" means functioning in non-employment roles, such as a homemaker, whose requirements are comparable to those of a residential counselor.

"Life support services" means services which include, at a minimum, providing living environments which are safe, secure, and clean and in compliance with this chapter.

"Other life support services" means activities that provide basic personal support which are provided to maintain successful community living whenever possible. These services include, but are not limited to, providing transportation, providing prepared meals and performing household tasks, providing clothing, relocating client belongings, and providing direct assistance in securing household furnishings, utilities and other needed building services.

"Provider agency" (PA) means a public or private organization which has a mental health contract with the Division and has been licensed to provide residential services to individuals 18 years of age and older.

"PA apartment" means an apartment owned or leased by the PA in which clients reside and receive the services described in this subchapter.

"Recreation" means social or recreational activities of a relaxing or entertaining nature designed to promote the ability to socialize and manage leisure time.

"Residential counseling" means verbal interventions provided to clients and families to assist the client in accessing and utilizing all planned or assigned services. It may include problem-solving, advice, encouragement and emotional support to enhance stability in the living arrangement.

"Services agreement" means an agreement between a PA and another agency or service provider which describes the program or service provided to clients in the community residence including responsibilities for both the PA and the provider of the program or service. Only the governing body (or its official designee) of the PA makes such agreements with service or program providers.

"Staff support services" means interventions provided by on-site staff, which may include verbal support or behavior management, in accordance with the needs of the client(s).

"Training in daily living skills" means activities designed to develop and maintain the knowledge, behaviors, skills and attitudes needed to improve or maintain quality of life, for example, budget management and housekeeping skills training.

SUBCHAPTER 2. LICENSING, SITE REVIEW AND WAIVERS

10:37A-2.1 Initial licensing process

(a) All inquiries related to licensure of community residences shall be made to:

New Jersey Division of Mental Health and Hospitals
CN 727
Trenton, NJ 08625

(b) To become a licensed PA, an agency shall:

1. Demonstrate intent and capability to operate a community residence in accordance with this chapter; and

2. Be a mental health services provider with a service contract with the Division. Such a service contract shall include provisions for the operation of community residences.

(c) The PA shall be in compliance with this chapter.

(d) The PA shall apply for licensure to the Division. Applications shall indicate the type or types of community residences intended, the specific geographical location in which residences would be located, and the number of residents to be served. Such application shall be made to the Division at the address in (a) above. There shall be no fee charged to the PA regarding licensing or application for licensing.

10:37A-2.2 Licensing of group homes

(a) The Division shall inspect any proposed group home site, *[utilizing the physical and fire safety standards of N.J.A.C. 5:18,]* and shall review all program operations or descriptions for compliance with the provisions of this chapter.

(b) The Division shall notify the PA in writing of any violations.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent and capability to comply with all program requirements is demonstrated, inspections are satisfactory***, life hazard registration is initiated*** and there is reasonable assurance that the residence shall be operated in a manner required by this chapter.

(e) The license shall be issued by the Department through the Division.

(f) The license shall be limited to a specifically identified facility, issued for a period of one year, and shall indicate the maximum number of persons to be served within that facility.

(g) The license shall be available on the agency's premises, for review by the Division, or any interested members of the public, during normal business hours.

10:37A-2.3 Licensing PA apartments

(a) The Division may inspect any proposed apartment site(s), *[based on physical and fire safety standards contained in N.J.A.C. 5:18,]* and review all program operations or descriptions for *[substantial]* compliance with the provisions of this subchapter.

(b) The Division shall notify the PA in writing of any and all violations.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent and capability to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the apartment(s) shall be operated in a manner required by this chapter.

(e) The license shall be issued by the Department through the Division.

(f) The license shall be issued to the PA for a specific number of apartment spaces within a defined geographic area for a period of one year. The PA shall have the right to relocate apartment spaces within the defined geographic area, as needed. The new facilities shall comply with all requirements of this chapter.

(g) The license shall be available on the agency's premises for review by the Division, and any members of the public, during normal business hours.

10:37A-2.4 Licensing family care homes

(a) The PA shall develop a written services agreement with the individual who operates the family care home.

(b) The content of the services agreement between the PA and the individual who operates the family care home shall have been approved by the Division, based upon individual client needs and this chapter.

(c) The Division may inspect any proposed family care home *[based on physical and fire safety rules at N.J.A.C. 5:18,]* and review all program operations for compliance with the provisions of this chapter.

(d) The Division shall notify the PA in writing of any violations.

(e) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(f) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the family care home(s) shall be operated in a manner required by this chapter.

(g) The license shall be issued by the Department through the Division.

(h) The license shall be issued to the PA for a period of one year and shall be limited to a defined number of family care homes within a defined geographic area and shall indicate the maximum number of persons to be served. No family care home shall serve more than five clients at any one time.

(i) The license shall be available on the PA's premises for review by the Division, and any members of the public, during normal business hours.

10:37A-2.5 Provisional license

(a) A provisional license may be issued by the Department to a prospective PA which expresses interest in operating a residence, indicates in writing an intent to comply with the guidelines contained in this chapter, and who applies to the Division for such provisional licensing. The application shall indicate the type or types of residences desired, the specific geographical areas in which residences would be located, and the number of residents to be served.

(b) The Division shall review the application of the prospective PA, assess the fiscal, programmatic, and administrative capabilities of the PA, and determine whether a provisional license shall be issued. There shall be no fee charged for the issuance of a provisional license.

(c) The provisional license shall authorize a PA to secure a facility or facilities in which to provide services.

(d) A provisional license shall not authorize a PA to provide services to clients.

(e) The provisional license shall be issued for a time period not to exceed six months, and may be renewed in six month intervals by the Division if, in its judgment, the PA consistently made good faith efforts to establish the proposed residence(s).

(f) A PA issued a provisional license shall immediately make application for an annual renewable license under provisions specified in N.J.A.C. 10:37A-2.1 when facility(s) have been secured and services to residents are ready to be initiated.

10:37A-2.6 Waiver of standards

(a) Requests for ***program*** waivers shall be made to the Division, in writing, with supporting information justifying the request.

(b) Waivers of specific ***program*** rules shall be considered, at the discretion of the Division, provided that one or more of the following conditions have been met:

1. Where strict enforcement of the rule would result in unreasonable hardship on the clients; or

2. The waiver addresses a particular need of a client(s) but does not adversely affect the health, safety, welfare, or rights of the client; or

3. There is a clear clinical or programmatic justification for such a waiver that will enhance a PA's effectiveness or efficiency without an adverse effect on any client's health, safety, welfare or rights.

10:37A-2.7 License renewal

(a) The license shall be subject to an annual renewal.

(b) Determination of license renewal shall be based on the annual evaluation conducted by the Division's Bureau of Licensing and Inspections (BLI).

(c) The Division Director (or designee) shall make the determination of renewal.

(d) In the event that a license expires prior to the determination of renewal, the license shall remain in effect until such a determination is made.

(e) There shall be no fee charged to the PA for license renewal.

10:37A-2.8 Evaluation and monitoring

(a) The PA shall ensure, through its quality assurance program, that group homes, PA apartments, and family care homes meet the program and facility's requirements for licensure under N.J.S.A. 30:11B-4. Quality assurance visits to ensure health, and/or safety, and welfare standards shall be conducted quarterly, at a minimum. The Division will audit the process annually.

(b) All PA and residences shall be subject to site reviews in accordance with N.J.A.C. 10:37-10.

(c) All group homes shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(d) All PA apartments shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(e) All PA family care homes shall be evaluated annually by the BLI, and at the discretion of the Division, as needed.

(f) A written report of program and facility evaluations, including all deficiencies and violations, shall be provided to the PA by the Division ***within 90 days from the date of the site review*.**

(g) No later than 40 days after receipt of the report, the PA shall provide written notice to the Division that specific violations have

been corrected, or that actions have been taken to abate specific violations noted and that full correction is anticipated within the time frames noted in the report.

(h) For any violations cited by the Division as presenting an imminent threat to the health or safety of clients, the PA shall correct them or remove the threat created by such deficiencies immediately and shall provide written notice, within 48 hours, to the BLI that such action has been taken.

(i) If the Division report identifies violations other than those presenting an imminent threat to the health and/or safety of clients, representatives from the Division, as part of their ongoing monitoring responsibilities, shall visit the specified facility or program and provide a report to the Division on progress toward remediation of deficiencies every 60 days until compliance is achieved.

(j) When the PA is cited for a physical violation and the maintenance is the responsibility of another party, there must be documented evidence that the PA has informed the building owner and his or her agent of the need to correct any deficiencies. If such deficiencies are not corrected, the PA shall take further action as appropriate.

10:37A-2.9 Appeal of the Division's findings

(a) The PA may appeal findings of the Division, pursuant to N.J.A.C. 10:37A-2.12. In the case of life-threatening violations, such appeal shall be conducted pursuant to N.J.A.C. 10:37A-2.13.

(b) The appeal of findings shall be directed to the Division Director or designee within 20 days of receipt of the written report of findings.

(c) A response to the appeal shall be provided within 20 days of its receipt.

10:37A-2.10 Administrative sanction

(a) In the event that the PA does not submit the written notice specified in N.J.A.C. 10:37A-2.8(g) by the required date, or if violations have not been abated within time frames specified in the report, the Division shall have the option of suspension of payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the facility, revocation of the current license to operate the facility, or nonrenewal of the license to operate the facility.

(b) In the event that the Division requires the revocation or nonrenewal of the license and the relocation of the clients of the facility, a written order shall be directed to the PA's executive director or designee and to the President of the Board of Directors of the PA.

(c) Under the supervision of the Division, the PA shall be responsible for placement of clients when an order to vacate the premises and the revocation of a license has been issued by the Division.

10:37A-2.11 Review of administrative sanctions

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the Division Director or designee for a review, which shall be afforded and a decision rendered by the Division Director or designee within five working days of the receipt of the written request for a review.

10:37A-2.12 Administrative hearing of appeal

If the PA chooses to appeal a decision made pursuant to the provisions of N.J.A.C. 10:37A-2.11, the PA may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:37A-2.13 Emergency situation

The Division, when it determines that the health, safety or welfare of the clients warrant it, may immediately suspend the license of a PA, and take the necessary action to ensure the well-being of clients. Any hearing provided in such cases shall be on an expedited basis.

SUBCHAPTER 3. POLICIES AND PROCEDURES; CONFIDENTIALITY

10:37A-3.1 Written policies and procedures

(a) The PA shall develop and implement written policies and procedures to ensure that the service delivery system complies with applicable statutory and regulatory provisions governing community residences for the mentally ill.

1. The PA shall develop, maintain and revise, as is necessary, a program-oriented policy and procedures manual. Said manual shall be reviewed annually, as evidenced by dated signatures of the reviewer(s).

2. Policies and procedures shall promote the principles of normalization, age-appropriateness, client empowerment and least restriction, and shall be consistent with the PA's organizational structure and management philosophy.

3. The PA shall document that consumers and their families are consulted in the development and review of policies and procedures. Such documentation shall reflect that any suggestions so generated shall be seriously considered.

10:37A-3.2 Confidentiality

(a) N.J.S.A. 30:4-24.3 states:

"All certificates, applications, records, and reports made pursuant to the provisions of this Title and directly or indirectly identifying any individual presently or formerly receiving services in a noncorrectional institution under this Title, or for whom services in a noncorrectional institution shall be sought under this act shall be kept confidential and shall not be disclosed by any person, except insofar as:

(1) the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or

(2) disclosure may be necessary to carry out any of the provisions of this act or of article 9 of chapter 82 of Title 2A of the New Jersey Statutes (Section 2A:82-41); or

(3) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient's current medical condition to any relative or friend or to the patient's personal physician or attorney if it appears that the information is to be used directly or indirectly for the benefit of the patient.

Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health and Hospitals in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are defined in section 2 of P.L. 1987, c.116 (C.30:4-27.2) from disclosing information that is relevant to a patient's current treatment to the staff of another such agency."

(b) The PA shall maintain compliance with the provisions of N.J.S.A. 30:4-24.3 cited in (a) above and the provisions regarding information in client records in N.J.A.C. 10:37-6.79.

SUBCHAPTER 4. CLIENT SERVICES

10:37A-4.1 Population/admission priorities

(a) First priority for admissions into residences shall be given to persons with severe and persistent mental illness and in accordance with target populations, as defined in N.J.A.C. 10:37-5.2. However, persons who have been assigned to a State psychiatric hospital after having been found not guilty of a criminal offense by reason of insanity or unfit to be tried for criminal charges shall not be admitted.

1. The PA shall have a clear description of each level of service intensity provided, written inclusionary and exclusionary criteria for acceptance of clients into the residential program, and written criteria specifying client characteristics for determining the level of service to be provided to individual clients.

2. There shall be written procedures that describe how intakes and referrals are managed, to give priority to persons with severe and persistent mental illness, and in accordance with target populations, as defined in N.J.A.C. 10:37-5.2.

3. Pursuant to Title VI and VII of the Civil Rights Act of 1964 as amended and Section 504 of the Rehabilitation Act of 1973, discrimination in the provision of services, on the basis of race, sex, religion, national origin, age, or physical handicap in the provision of services is prohibited.

10:37A-4.2 Services to be provided

(a) Based upon the needs of the clients served, a range of services shall be offered, specifically addressing the maintenance or enhancement of client self-sufficiency. These services are intended to foster a sense of belonging, both within the residential setting and the greater community. They are designed to enhance the client's interest and participation in all spheres of community living (such as religious, social, political and cultural). The PA shall empower the client to use the full range of community services.

(b) The following services shall be directly provided by the PA to all enrolled clients and shall be documented in the clinical record:

1. Assessment and evaluation;
2. Individual services coordination;
3. Training in daily living skills;
4. Residential counseling;
5. Life support services; and
6. Crisis intervention services.

(c) Service agreements with local screening services shall be developed. These agreements shall address the timely sharing of information and procedures for follow-up on the care and disposition of the client.

(d) The PA shall document that it has the capability to provide or arrange the services listed below based on individual client need. This capability may be documented through such means as policies and procedures, schedules of services, and logs. In addition the PA shall document that such services were in fact provided. Provided services shall be documented in the clinical record, schedules, logs, or other means of documentation presented by the PA.

1. Staff support;
2. Other life support services;
3. Recreation; and
4. Education. Instruction shall minimally be provided or arranged in basic academics, learning techniques, formal academics, vocational and career development, physical and mental health maintenance, alcohol and drug abuse prevention, family planning, prevention of sexually transmitted diseases and education about self-help and recovery programs.

(e) The PA shall maintain ongoing communication with all other providers of needed treatment and generic human services, so that appropriate adjustments are made in the services provided to the client. Such services include, but are not limited to, partial care, hospitalization, out-patient treatment, vocational services, medical services, education programs, community activities (such as YMCA, church), clinical case management, substance abuse counseling, acute care services and entitlements.

1. Clinical records shall identify all relevant service providers serving the client.
2. The PA shall maintain policies for emergency and routine case conferences.
3. The PA shall document ongoing communication with other service providers in the clinical record.
4. The PA shall maintain service agreements as needed.
5. The PA shall participate in local systems planning activities as needed.
6. The PA shall have policies that describe the PA's actions on behalf of the client when needed services are unavailable in the community, or when the current level of functioning of the client temporarily precludes participation in more normalized activities. In these circumstances, the PA may elect to provide these services directly. The PA may also elect to provide these services directly when doing so best serves the client's clinical needs.

10:37A-4.3 Settings to provide residential programs

(a) Residential programs may be provided in a variety of settings which may include, but are not limited to, the following:

1. Group homes;
2. PA apartments; and
3. Family care homes.

10:37A-4.4 Client service agreements

(a) All clients enrolled in a residence shall have a written agreement which clearly articulates the roles and responsibilities of the PA and rules that apply to the client. This agreement shall provide acknowledgement by the client that he or she understands the following:

1. The services to be provided;
2. The expected duration of services;
3. The fees for services to be provided;
4. The client's rights (for example, civil) and responsibilities (including behavioral expectations of the program and an appeal or complaint process);
5. The rules which may apply to service provision; and
6. Service termination procedures, to include any behaviors that could lead to dismissal from the program.

(b) The agreement shall include the signature of the client and the PA representative, and in family care homes, the home owner or operator.

10:37A-4.5 Recordkeeping

(a) The PA shall maintain a record for each client enrolled in the program, marked with the individual's name.

(b) The PA shall maintain the confidentiality of all records and shall store such records in a manner as to provide access only to authorized persons.

(c) Each client record shall be maintained in an up-to-date, organized fashion containing all relevant information about the client.

1. An intake assessment shall be completed for each client. This assessment shall include: identifying information and presenting problem(s), social and family information, available medical and psychiatric history, and diagnosis, if such diagnosis can be obtained.
2. An initial service plan shall be developed from intake information and shall be completed by the tenth day of the client's enrollment in the program. The initial service plan is defined as a plan based on initial assessments, which serves as a focus for staff and client activities. This plan shall include the initial formulation of goals, objectives and interventions to guide services until a comprehensive service plan (CSP) is completed.
3. A comprehensive assessment shall be completed by the client's 45th day in the program. This assessment shall address the client's strengths and weaknesses in community living skills.
4. The CSP shall be formulated for each client by the 45th day in the program. This plan shall be based on the intake assessment, the comprehensive assessment, and all other relevant information.
5. The CSP shall include goals for the client's continued participation in the PA's services, measurable objectives, including short-term steps, to approach the goals, and specific motivational steps and interventions, such as methods and actions that the PA staff will employ to assist the client to achieve goals and objectives.
6. The CSP shall be developed with the client's active participation and input, and shall contain his or her signature indicating same.
7. The CSP shall be discharge oriented and shall include specific functional levels to be achieved for the reduction or termination of services, if possible.
8. The CSP shall be reviewed, and revised as necessary, by the 90th day of enrollment and then no less frequently than every 90 days thereafter during the first year of treatment and six months thereafter.
9. The PA staff shall document in progress notes the client's clinical course of treatment while enrolled in a residential program. Progress notes shall be written whenever services are provided. When services are provided more frequently than once a week, however, progress notes may be documented by a weekly summary. Such notes shall:

i. Describer interactive methods, clinical interventions and services provided;

ii. Describe no less frequently than monthly the progress, or the lack thereof, made towards identified goals and objectives;

iii. Record all significant clinical events;
iv. Reflect a discharge orientation as clinically appropriate;
v. Document reviews and revisions to the CSP;
vi. Provide justification for continued provision of services; and
vii. Be authenticated by staff signature, title and date.

(d) In addition to standard reporting to the Division, cited in N.J.A.C. 10:37-6.73 through 6.79, PAs who charge fees to clients shall keep appropriate financial records.

1. Financial records shall include, for each client, specific charges for all *[housing]* ***service*** related items *[including, but not limited to, rent, food, utilities and telephone, and payments for those expenses, including balances due]*.

2. Fees received from clients should be recorded separately for each housing facility for which the PA collects such fees.

SUBCHAPTER 5. STAFF

10:37A-5.1 Staffing requirements

(a) The PA shall employ a sufficient number of residential counselors and senior residential counselors to provide all needed residential services to all enrolled clients, based upon the numbers of clients served, the types of residences utilized, and the geographical distribution of residences. The staffing pattern approved by the Division shall be reflected in the purchase of service contracts with individual agencies. The staff requirements, qualifications and duties described within this subchapter shall only apply to PA staff hired after March 23, 1990.

(b) The PA shall employ at least one residential clinical specialist.

(c) The PA shall employ one residential program coordinator.

10:37A-5.2 Residential counselor requirements, qualifications and duties

(a) Residential counselors shall have one of the following:

1. A baccalaureate degree from an accredited college or university in a mental health related discipline;
2. A license as a registered nurse;
3. Two years of college plus two years of related work or life experience;
4. A license as a practical nurse plus two years of related work or life experience; or
5. A high school diploma or the equivalent, plus four years of related work or life experience.

(b) The duties of the residential counselor shall, at a minimum, include the following:

1. On-site client supervision;
2. Therapeutic training;
3. Functional assessment;
4. Supervising and organizing recreational and/or socialization activities;
5. Transportation;
6. Residential counseling; and
7. Crisis intervention services (but not including crisis intervention counseling).

10:37A-5.3 Senior residential counselor requirements, qualifications and duties

(a) A senior residential counselor shall have the qualifications as cited in N.J.A.C. 10:37A-5.2(a) plus one year of experience in a residential mental health setting.

(b) The duties of the senior residential counselor shall, at a minimum, include the following:

1. Any duty listed in N.J.A.C. 10:37A-5.2(b);
2. Development of initial and comprehensive service plans; and
3. Individual service coordination activities as defined in N.J.A.C. 10:37A-1.2.

10:37A-5.4 Residential *[clinical]* specialist requirements, qualifications and duties

(a) A residential *[clinical]* specialist shall have one of the following qualifications:

1. A master's degree from an accredited college or university in a mental health related discipline; or
2. A bachelor's degree, or be licensed as a registered nurse, plus two years of relevant experience in a mental health setting.

(b) The duties of the residential *[clinical]* specialist shall minimally include the following:

1. Any function cited in N.J.A.C. 10:37A-5.2(b) and 5.3(b);
2. Clinical assessment;
3. Individual group and family counseling;
4. Clinical supervision of staff;
5. Staff training; and
6. Crisis intervention counseling.

10:37A-5.5 Residential program coordinator requirements, qualifications and duties

(a) A residential program coordinator shall have the following:

1. A master's degree from an accredited college or university in a mental health related discipline; and
2. Three years relevant experience in a mental health setting.

(b) Previous supervisory and residential experience is desirable but not required.

(c) The duties of the residential program coordinator shall minimally include:

1. Program administration, supervision and direction;
2. Inter-agency coordination;
3. Program development and implementation;
4. Staff development and/or training and supervision;
5. Facility management; and
6. Quality assurance.

SUBCHAPTER 6. FACILITY

10:37A-6.1 Physical plant requirements

[The provisions contained within this subchapter shall apply to all licensed community residences for mentally ill adults.] ***All licensed community residences for mentally ill adults shall comply with all applicable provisions of the New Jersey Uniform Construction Code as specified in N.J.A.C. 5:23, and all applicable provisions of the New Jersey Uniform Fire Code, as specified in N.J.A.C. 5:18, 5:18A and 5:18B.****

10:37A-6.2 Water supply

(a) Every residence shall be provided with a safe supply of potable water meeting the standards as set forth in the Safe Drinking Water Act rules at N.J.A.C. 7:10.

(b) The source of such water supply shall be approved by the New Jersey Department of Environmental Protection and Energy or the local health agency.

[(c) The minimum rate of flow of hot or cold water issuing from a faucet or fixture shall not be less than one gallon per minute.]

10:37A-6.3 Residences

(a) Every residence shall contain a kitchen sink of non-absorbent impervious material.

(b) Every residence shall be provided with a minimum of one flush type water *[toilet]* ***closet***, bathroom sink and a bathtub or shower.

(c) There shall be at least one *[toilet]* ***water closet***, sink and one bath or shower for each *[six]* ***eight*** residents.

(d) The bathroom sink shall be located in or adjoining the toilet area.

(e) Every toilet, bathroom sink and bathtub or shower shall be:

1. Accessible from within the building without passing through any part of any other rooming unit; and
2. Contained in a room or rooms which are separated from all other rooms by walls, doors or partitions that afford privacy.

(f) No client shall be required to go farther than one floor above or below his or her rooming unit to the bathroom.

(g) No client shall be without ready access to a bathroom, bathtub or shower by reason of physical disability.

(h) Every plumbing fixuture shall be connected to water and sewer/septic systems approved by the New Jersey Department of Environmental Protection and/or the local health agency, and shall be maintained in good working condition. Plumbing systems shall be well maintained.

(i) Every kitchen sink, bathroom sink and bathtub or shower required by this section shall be connected to both hot and cold water lines.

(j) Every residence shall have water heating facilities which are installed and connected with the hot water lines.

(k) The water heating system must be capable of delivering water at a minimum temperature of not less than 120 degrees Fahrenheit and at a maximum temperature of not more than 140 degrees Fahrenheit at all times in accordance with anticipated needs.

10:37A-6.4 Garbage and rubbish disposal

Garbage, rubbish or other organic waste shall be stored in watertight receptacles. A sufficient number of garbage or rubbish receptacles shall be available, and shall conform to all applicable State regulations and local ordinances.

10:37A-6.5 Electrical system

(a) Every residence shall be provided with electrical service, which shall be adequately maintained. The electrical system shall be in working order and sufficient for the appliances and equipment used. Every outlet and lamp shall be maintained in a good and safe condition and shall be connected to the source of electric power.

(b) *[No temporary wiring shall be used except extension cords which:

1. Run directly from portable electric fixtures to convenient outlets;

2. Do not lie under rugs or other floor coverings; and

3. Do not extend through doorways, transoms or other openings through structural elements.]* ***Extension cords and flexible cords shall not be used as a substitute for permanent wiring. Extension cords and flexible cords shall not be affixed to structures, extended through walls, ceilings, floors, under drapes or floor coverings, nor be subject to environmental damage or physical impact.***

10:37A-6.6 Lighting

(a) Every *[habitable room]* ***bedroom*** shall have at least one window or skylight facing directly to the outdoors.

(b) The minimum glazed area of the total windows or skylights shall be eight percent of the floor area of each room.

(c) Every habitable room shall contain sufficient wall-type electric outlets and lamps or light fixtures to enable clients to use the room for its intended function. Lighting in habitable rooms must be sufficient to read by.

(d) Every portion of each staircase, hall, cellar, basement, landing, furnace room, utility room and all similar non-habitable space shall have either natural or artificial light available at all times *[with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portions, and sufficient for safe use of the area for its intended purpose]*.

(e) Every portion of any interior or exterior passageway or staircase shall be illuminated naturally or artificially at all times *[with an illumination of at last two lumens per square foot (two foot-candles) in the darkest portion of the normally traveled stairs and passageways. Lighting must be sufficient to prevent accidents]*.

(f) Every bathroom and water closet compartment shall have either natural or artificial light available at all times, with an illumination of at least three lumens per square foot (three foot-candles). The light shall be measured *[36]* ***30*** inches from the floor at the center of the room. Artificial lighting shall be controlled by a wall switch so located as to avoid danger of electrical hazard. There must be sufficient light to use the room and/or area for its intended purpose.

10:37A-6.7 Ventilation

(a) A means of ventilation shall be provided for every habitable room. *[The ventilation may be provided either by an easily operable window or skylight having an openable area of at least 50 percent of the minimum window area, or by other means acceptable to the Division, which will provide at least two air changes per hour.]*

(b) Means of ventilation shall be provided for every bathroom or water closet compartment. *[The ventilation may be provided either by an easily operable window or skylight having an operable area of at least 50 percent of the minimum window, or by other means acceptable to the Division, which will provide at least six air changes per hour.]*

(c) Ventilation shall be sufficient to remove odors.

10:37A-6.8 Heating

(a) Every residence shall have heating facilities which are:

1. Properly installed;

2. Maintained in good and safe working condition; and

3. Capable of safely and adequately heating all habitable rooms and bathrooms located therein to a temperature of at least *[68]* ***70*** degrees Fahrenheit when the outside temperature is *[zero]* ***14*** degrees Fahrenheit.

(b) The temperature shall be read at a height of three feet above floor level at the center of the room.

(c) There shall be heat adequate to maintain a minimum inside temperature of 68 degrees Fahrenheit in all habitable rooms and bathrooms from October 1 of each year to the next May 1, and when the outside temperature is 57 degrees or less.

(d) Every space heater, except electrical, shall be properly vented to a chimney or duct leading to outdoors.

(e) Unvented portable space heaters, burning solid, liquid, or gaseous fuels, shall be prohibited.

10:37A-6.9 Structural safety and maintenance

(a) Every foundation, floor, wall, ceiling, door, window, roof, or other part of a residence shall be kept in good repair and capable of the use intended by its design, and any exterior part or parts thereof subject to corrosion or deterioration shall be kept well painted.

(b) Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.

(c) Every stairway having three or more steps shall be properly banistered and safely balustraded.

(d) Every porch, balcony, roof, and similar place higher than 30 inches above the ground, used for egress or for use by clients, shall be provided with adequate railings or parapets which are properly balustraded and be not less than three feet in height.

(e) Every roof, wall, window, exterior door and hatchway shall be free from holes or leaks that would permit entrance of water within or be a cause of dampness.

(f) Every foundation, floor and wall of each residence shall be free from chronic dampness.

(g) Every residence shall be free from rodents, vermin and insects. A PA of a residence located in an area found by the Division to be infested by rats, insects or other vermin shall carry out such rodent and insect control or other means of preventing infestations of said dwellings as may be required by the Division.

(h) Every openable window, exterior door, skylight, and other opening to the outdoors shall be supplied with properly fitting screens in good repair from May 1st until October 1st of each year. Screens shall have a mesh of not less than No. 16.

(i) Every residence, including all exterior areas of the premises, shall be clean and free from garbage or rubbish and hazards to safety.

(j) Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly.

(k) Fences shall be kept in good repair.

(l) The ground maintenance shall be consistent with that of the neighborhood, unless the condition of the neighborhood does not generally meet the minimum standards for maintenance set forth at (j) above.

(m) The Division may require that the PA clean, repair, paint, whitewash or paper such walls or ceiling, when a wall or ceiling within a dwelling has deteriorated so as to provide a harborage for rodents or vermin, or when such a wall or ceiling has become stained or soiled, or the plaster, wallboard, or other covering has become loose or badly cracked or missing.

(n) Every water closet compartment floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to water and shall be kept in a clean condition.

(o) No PA shall cause or permit any services, facilities, equipment, or utilities which are required under this chapter to be removed from, shut off, or discontinued, in any residence or part thereof, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies, when discontinuance of service is authorized by the Division.

(p) In the event that any service or utility is discontinued, the PA shall take immediate steps to cause the restoration of such service or utility.

(q) All residences must be clean and sanitary prior to occupation by any resident, and shall be maintained in a clean and sanitary condition.

(r) The PA shall ensure the orderly maintenance of the premises. The storage of objects or materials shall be done in an orderly manner so as to not constitute a health, safety or fire hazard.

10:37A-6.10 Kitchen facilities

(a) Kitchen storage space shall be clean and well ventilated.

(b) Major kitchen appliances shall minimally include a refrigerator with freezer compartment and a permanently installed stove with oven and cooktop.

(c) Containers of food shall be covered and appropriately stored at least 12 inches above the floor on shelves or other clean surfaces.

(d) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit. Freezer compartments shall operate at no more than zero degrees Fahrenheit and must be maintained in good condition and without excessive ice build-up.

(e) All food and drink shall be safe for human consumption, clean, wholesome, free of spoilage and prepared and served in a sanitary manner. There shall be at least a two-day supply of food and drink in the residence at all times.

(f) All equipment and utensils used for eating, drinking, preparation and keeping shall be:

1. Kept clean and in good condition;
2. Thoroughly washed after each use; and
3. In sufficient quantity for the number of occupants.

(g) Floors, walls and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

10:37A-6.11 Occupancy and use of space

(a) Every rooming unit occupied for sleeping purposes by one client shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one client shall contain at least 60 square feet of floor space for each client. Doors for privacy shall be provided and maintained. Means of egress to the rest of the home shall be direct and not through any other bedroom.

(b) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(c) Sufficient closet space for storage shall be provided. The storage space shall be uncluttered and sufficient for clothing and supplies.

(d) Rooms shall be of adequate size for the number of people, types of activities and storage.

(e) A room located in whole or in part below the level of the ground may be used for sleeping, provided that the following requirements are met:

1. The walls and floor which are in contact with the earth shall be dampproofed*[, in accordance with a method approved by the Division]*; and
2. All requirements of this section and N.J.A.C. 10:37A-6.12 through 6.22 applicable to habitable rooms shall be satisfied.

(f) No client unable to walk without assistance shall occupy a rooming unit on other than the ground floor at any residence, unless provisions have been made to assure evacuation of the premises within two minutes.

(g) In family care homes, clients shall be allowed to share sleeping rooms/accommodations only with other clients.

[(h) Any matter or requirement essential for the structural safety of a residence or essential for the safety or health of the residents therein or of the public, and which is not covered by the provisions of this chapter, shall be the subject of determination by the Division Director (or designee) in specific cases.]

10:37A-6.12 Uniform Fire Code

The provisions of N.J.A.C. 5:18, the Uniform Fire Code, are incorporated herein by reference.

10:37A-6.13 Group homes with five or less residents not in multiple unit dwellings

[The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to group homes with five or less residents.] ***Group homes with five or less residents not in multiple unit dwellings are subject to the provisions of N.J.A.C. 5:18. Typically, the Department of Community Affairs has determined that these homes are an R-3 use.***

10:37A-6.14 Group homes with six to 15 residents not in multiple unit dwellings

[The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes with six to 15 residents.] ***Group homes with six to 15 residents not in multiple unit dwellings are subject to the provisions of N.J.A.C. 5:18. Typically, the Department of Community Affairs has determined that these homes are an R-2 use.***

10:37A-6.15 Group homes in multiple unit dwellings

[The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes in multiple unit dwellings.] ***Group homes in multiple unit dwellings are subject to the provisions of N.J.A.C. 5:18. Typically, the Department of Community Affairs has determined that these homes are an R-2 use.***

10:37A-6.16 Family care homes

[The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to family care homes.] ***Family care homes are subject to the provisions of N.J.A.C. 5:18. Typically, the Department of Community Affairs has determined that these homes are an R-3 use.***

10:37A-6.17 PA Apartments

The provisions of N.J.A.C. 5:18 which apply to apartments shall apply to PA apartments.

10:37A-6.18 Smoke detectors

(a) *[Single station smoke]* ***Smoke*** detectors shall be installed at locations as follows:

*[1. Living areas and bedroom;
2. Designated smoking areas;
3. The highest ceiling area in each stairwell; and
4. Basements, cellars and attics.]*

1. At least one on every level of the dwelling;
2. In stairwells; and
3. In each bedroom.

(b) Smoke detectors shall be tested monthly. The monthly tests shall be documented.

10:37A-6.19 Fire drills in group homes

(a) A minimum of one unscheduled fire drill shall be conducted per month.

(b) Fire drills shall be conducted at night or in the evening hours at least 50 percent of the time.

(c) Evacuation should be completed in less than two minutes.

(d) For each fire drill, the time, date, participants, problem areas, resolution of problems and timeliness of egress shall be documented.

(e) The Division's Bureau of Licensing and Inspections shall review agency compliance with this procedure annually during the onsite inspection.

10:37A-6.20 Kerosene heaters
The use of kerosene heaters is prohibited.

10:37A-6.21 Fireplaces
All operable fireplaces shall be cleaned and inspected annually.

10:37A-6.22 Variances
[(a) Variances from N.J.A.C. 5:18 shall be permitted, in accordance with N.J.S.A. 52:27D-200.]
[(b)] The PA shall provide the Division with a copy of all applications for variances ***from the codes cited in N.J.A.C. 10:37A-6.1*** and the action taken on them.

SUBCHAPTER 7. HEARINGS, APPEALS, COMPLAINTS

10:37A-7.1 Administrative hearing
Administrative hearings will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

10:37A-7.2 Development of residential complaint procedures
All PAs shall establish internal complaint procedures which will be subject to the Division's review and approval at the time of the initial licensing and annual licensing renewal. Complaint procedures shall allow for a client of the PA or his or her designee to make known a grievance regarding services provided or which failed to be provided; to seek appropriate redress related thereto; and to have corrective action taken, as might be warranted. The policy and procedure for client complaints shall be posted in a public place at the PA office site and a copy given to each client upon beginning the program. Any implementation of the complaint procedure shall be documented in the client's clinical record.

10:37A-7.3 Appeal process; ombudsman
The provision of N.J.A.C. 10:37-4.6 regarding client complaint agency ombuds and review procedures are incorporated by reference.

10:37A-7.4 Client protection
No client shall be subject to retaliation of any form by the PA because of the filing of any complaint.

SUBCHAPTER 8. QUALITY ASSURANCE

10:37A-8.1 Quality assurance
(a) The PA shall develop and implement policies and procedures for an ongoing quality assurance (QA) program that meet the QA requirements for community agencies as articulated in N.J.A.C. 10:37-9.
(b) Areas to be monitored and evaluated include, but are not limited to, the following:
1. Appropriateness of admissions;
2. Accuracy and completeness of assessments;
3. Effectiveness of treatment to include, at a minimum:
i. Individual service planning;
ii. Coordination and integration with all service providers;
iii. Duration and timeliness of services provided; and
iv. Appropriateness and outcome of services provided;
4. Treatment complications including unusual incidents;
5. Therapeutic environment and life safety to minimally include quarterly documentation of physical and fire safety inspections of facilities;
6. Adequacy of planning for termination and reduction of service intensity;
7. Clinical documentation;
8. Staff performance; and
9. Adherence to and adequacy of all PA policies and procedures.
(c) The PA's QA program shall coordinate, at least, the following residential specific activities:
1. Provision of on-site staff training, which is reflective of the staff's training needs and of the population served. This shall be organized with input from the QA program, who shall be responsible for monitoring such staff development activities. Evidence of such training can be documented through staff sign-in sheets or by an alternative method designed by the PA;
2. On-going clinical supervision of all direct care staff for the purpose of enhancing the quality of staff performance and minimizing staff burn-out. Such should be documented by the existence of supervisory notes or another acceptable format developed by the PA; and
3. Participation of all direct care staff in routine staff meetings to maximize the inclusion of the residential staff into the programmatic process. The PA shall develop a mechanism to afford all staff such opportunities for dialogue and communication when they are unable to be present at such meetings.

SUBCHAPTER 9. ADMISSION AND DISCHARGE

10:37A-9.1 Criteria for admission
(a) All PAs shall establish written admission policies and procedures which shall include, but not be limited to, the following:
1. First priority for admissions into the residences shall be given to persons with severe and persistent mental illness and in accordance with target populations as defined at N.J.A.C. 10:37-5.2;
2. The PA shall fully describe the level of service intensity which it provides in each residence which it operates, and shall identify all client characteristics which are inappropriate for such residence. All admission criteria must comply with all applicable laws against discrimination on account of race, ethnic origin, sex, age, religion and handicap.

10:37A-9.2 Additional criteria for admissions
PAs may establish additional admission criteria with respect to client characteristics, provided such criteria comply with the applicable laws against discrimination on account of race, ethnic origin, sex, age, religion and handicap.

10:37A-9.3 Procedures for admission
(a) All PAs shall submit all proposed admission policies to the Division for review prior to implementation. The Division shall disapprove any such policy if it fails to comply with law or *[with the highest professional standards of residential service, consistent with available resources]* ***if it categorically excludes certain types of clients where there is a clinically appropriate method of accommodating the agency's programs to the needs of those clients, consistent with available resources****. The Division shall insure also that such policy provides for the development of client services agreements and/or other documents which are individualized according to the clinical needs and reading comprehension abilities of each client, and which give*[s]* attention to the means by which each client's individual clinical needs shall be met.
(b) All PA admission policies shall ensure that the PA will provide a copy of the following documents to each client, review them with the client, and answer the client's questions regarding them:
1. The Statement of Clients' Rights set forth in Appendix A, to this subchapter;
2. The applicable client services agreement and/or other documents; and
3. All rules governing the client's conduct.
(c) All disclosure referred to in (b) above shall be made in a language sufficiently well understood by the client to assure comprehension.

10:37A-9.4 General rule regarding the discharge of clients
(a) No client shall be prohibited from utilizing or residing in a residence unless:
1. Such action is justified by one of the conditions specified in N.J.A.C. 10:37A-9.5; and
2. The PA follows all of the procedures set forth in N.J.A.C. 10:37A-9.6. A client may be discharged voluntarily if the PA has complied with the procedures set forth at N.J.A.C. 10:37A-9.6(b).

10:37A-9.5 Conditions permitting discharge
(a) A client of the PA may be discharged pursuant to written PA policies which may include only the following conditions for discharge:
1. The PA reasonably concludes that, because of the client's clearly inappropriate behavior, the client's continued presence in a residence creates a substantial, continuing and immediate threat to

the physical safety of other persons, or to the emotional or psychological health of other clients of the residence; provided, however, that the PA shall not discharge such client on this basis if the client has been civilly committed.

2. The PA reasonably concludes that the client's clearly inappropriate behavior renders the residence or the PA out of compliance with any agreements to which the PA is signatory as a lessee or with any applicable law or regulation.

3. The client repeatedly violates a *[reasonable]* rule governing client conduct***, which is reasonable both in itself and its application,*** after the PA delivers to him or her a written notice to cease violating such rule. No such rule shall be the basis for discharging a client unless it is reflected in a client services agreement and/or other documents in compliance with these rules.

4. The client has received the maximum clinical benefit of the services offered by the residence, an appropriate alternative living arrangement, other than a shelter or hospital, is available to him or her prior to discharge, and the PA reasonably determines that discharge would be in the client's best clinical interests.

5. The client absents himself or herself from the residence for a continuous period of 30 days without providing the PA with notice of intent *[to return within a reasonable time after the expiration of such 30 day period]* ***that he or she will return after the expiration of such 30 day period; provided, however, that continued absence beyond 30 days shall be a condition for discharge if such absence is not in the client's clinical best interest***.

6. *[The client has, for a substantial period of time, refused an unreasonable number of necessary and appropriate services offered by the PA pursuant to a properly developed treatment plan, the client has refused to offer any reasonable alternative plan of daily activity, and an alternative living arrangement other than a hospital is available.]* ***The client has refused necessary and appropriate services offered by the PA pursuant to a properly developed treatment plan; the refusal is contrary to his or her clinical interest; the client has failed to offer any alternate plan which would be consistent with his or her clinical interest; and an alternative living arrangement other than a hospital is available.***

10:37A-9.6 Discharge procedures

(a) The PA may discharge and remove a client from the residence only after complying with all of the procedures set forth in this chapter.

(b) The PA shall comply with the following procedures in all cases prior to discharge, except when the client cannot be located, or, despite the PA's effort to comply, the client is unwilling to participate:

1. The PA's assigned clinical staff shall fully inform the client of and discuss with the client the factual and clinical basis for discharge, and, if the client does not agree, approve the discharge;

2. The PA shall offer to utilize the Client Complaint/Agency Ombuds Procedure, N.J.A.C. 10:37-4, to attempt to resolve any problems; and

3. The PA's assigned clinical staff shall formulate a written discharge plan and document all efforts to obtain appropriate alternate living arrangements and appropriate alternate treatment modalities.

(c) If, after the procedures set forth in (b)1 through 3 above are completed, the client disagrees with the PA decision to discharge, the PA may discharge and remove the client from the residence only after complying with the following procedures and obtaining the approval of the Division's review officer as set forth below:

1. If the client has declined to utilize the Client Complaint/Agency Ombuds Procedure, the PA shall submit its decision for review by the chief executive officer of the PA;

2. If the chief executive officer upholds the basis for the discharge and the client disagrees, the PA shall deliver to the client a written notice of intent to discharge the client from the residence, and read and explain such notice to the client in the same language utilized on admission to explain documents as set forth at N.J.A.C. 10:37A-9.3(c); and

3. The PA shall then schedule a meeting for administrative review by the Division as set forth at (d) below on a date at least 10 days after the date upon which it delivered, read and explained the notice referred to in (c)2 above, if an alternate residence is available. If an alternate residence is not available, the meeting shall be scheduled at least 20 days thereafter.

(d) The administrative review referred to in (c)3 above shall be conducted by the designee of the Director of the Division, and such designee shall be an employee of the Division. The reviewing officer shall schedule at least one meeting between the PA representatives, the client and the reviewing officer, at which meeting or meetings the reviewing officer shall insure the following:

1. That the PA has engaged in all of the procedural steps required by this chapter, prior to the meeting date;

2. That the client has had fair notice of the factual and clinical basis for the PA's decision to discharge;

3. That the client is given a reasonable time within which to obtain the services of an advocate or attorney, if the client so desires;

4. That the client is present during all meetings conducted by the reviewing officer, unless the client waives his or her right to be present;

5. That the client is assisted and/or represented by any available individual of his or her choice during the meeting, if the client so desires;

6. That the client has a full opportunity to respond to everything stated during the meeting; and

7. That the client has a full opportunity to present any relevant documents, objects or statements of third persons. The officer must permit such persons to make such statements in person during the meeting, and may accept such statements in writing. The officer may base his or her decision in part upon written statements, if at least one person attends the meeting who has personal knowledge of the relevant facts.

(e) During or after the meeting or meetings described in (d) above, the reviewing officer shall make the following findings:

1. That the client has or has not been accorded the safeguards listed in (d) above;

2. That the factual basis for the PA's decision to discharge is or is not true, based upon a preponderance of the credible evidence; and

3. That one or more of the conditions justifying discharge, as specified in N.J.A.C. 10:37A-9.5, does or does not in fact exist at the time of the final review meeting, or that it is reasonable to believe that, if such condition does not exist at the time of the final review meeting, the condition will recur immediately upon disapproval of discharge.

(f) If the reviewing officer makes all of the findings set forth at (e) above in the affirmative, such officer may, in his or her discretion, approve the discharge and removal of the client from the residence in question, and set a reasonable date and reasonable conditions, if any, for discharge. If the reviewing officer does not approve such discharge, he or she shall make such recommendation as he or she may consider fair and appropriate.

(g) By letter, the reviewing officer shall notify the PA, the client and the client's representative, if any, of the officer's findings and decision. The PA staff shall read and explain such letter to the client in the same language utilized at admission to explain documents as set forth above at N.J.A.C. 10:37A-9.3(c).

(h) The decision of the reviewing officer shall be the final decision of the Department; the PA's noncompliance with such decision shall be grounds for revocation of licensure or other administrative sanction.

(i) If the reviewing officer approves the discharge, the PA may discharge and peaceably remove the client from the residence as directed by the reviewing officer, and in any event no sooner than seven days after the client receives the reviewing officer's written decision. Any such discharge must be to an appropriate form of living arrangement.

10:37A-9.7 Miscellaneous provisions regarding the discharge of clients

(a) A PA shall not discharge a client as a retaliation or reprisal for such client's attempt to assert his or her rights, desires or needs.

(b) Whenever a client's behavior presents a substantial, immediate and emergent threat to the physical safety of others, or to the

emotional or psychological health of other clients, the PA may remove the client immediately and temporarily, if necessary, and may prevent the client from returning until the immediate threat has been obviated. The PA may not discharge such client, however, unless a condition for discharge listed above at N.J.A.C. 10:37A-9.5 exists, and unless the PA follows all procedures for discharge set forth in this chapter. If the PA prevents the client's return for more than 24 hours, it must comply with the following procedures:

1. The proposed decision shall be submitted to the chief executive officer of the PA for his or her approval;

2. If the chief executive officer approves, the PA shall schedule an administrative review of such exclusion within the next 48 hours, before a reviewing officer appointed as set forth in N.J.A.C. 10:37A-9.6(d), and such review shall determine the propriety of the continuation of such exclusion. Such review shall be conducted pursuant to the procedures set forth at N.J.A.C. 10:37A-9.6(d), to the extent that such procedures are feasible and applicable. The reviewing officer shall make such order as he or she shall consider fair and appropriate.

(c) The PA shall maintain the client's residential placement during brief hospitalizations and temporary absences for up to 30 days from the date of such client's admission to a hospital, or from the date of such client's leaving the residence.

(d) The PA must exercise reasonable care to safeguard the client's property for a reasonable period of time after the client is discharged, and in any event for at least 30 days.

(e) A shelter for the homeless shall not be considered an appropriate alternative residence as required pursuant to this subchapter.

APPENDIX A
STATEMENT OF CLIENTS' RIGHTS

As a client in a Community Residence licensed by the *[N.J.]* ***New Jersey*** Division of Mental Health and Hospitals, you are protected from being discharged or excluded from the residence against your will and without sufficient cause. Also, specific procedures must be followed by the Agency before any discharge or exclusion can occur.

The reasons for discharge or exclusion and the procedures to be followed are as follows:

REASONS FOR DISCHARGE:

To be discharged or excluded from the residence, one of the following conditions must occur:

1. You have received the maximum clinical benefit offered by the program and another place (not a hospital or shelter) is available for you to live in, and discharge would be in your clinical best interests.
2. You behave in a manner which substantially threatens the physical safety or emotional or psychological health of others.
3. You repeatedly break a written rule of the residence after being given a written warning to stop.
4. You behave in a manner which is inappropriate and which breaks the law or causes the residence to violate its lease or other agreements.
5. You leave the residence for thirty days without informing staff that you will return soon.
6. You refuse to participate in many of the services listed in your previously agreed upon treatment plan, have not offered a reasonable alternative plan of daily activities, and there is another place available for you to live, other than a hospital.

PROCEDURES FOR DISCHARGE OR EXCLUSION:

A. The following procedures must be followed in the case of all discharges or exclusions from a Community Residence:
   1. Your assigned clinical staff must fully explain the reasons.
   2. If you wish, you must be offered the opportunity to speak with the Agency Ombudsperson and to follow the Client Complaint Procedure. If you wish more information about this procedure, the Agency which operates this Community Residence will give you the full details.
   3. In the case of discharge, clinical staff must make a discharge plan for you and attempt to locate another place for you to live and other appropriate treatment services.

B. If you disagree with the decision to discharge or exclude you, the following procedures must be followed:
   1. The Agency's Chief Executive Officer must review the decision and approve it.
   2. A representative of the Division of Mental Health and Hospitals must review the decision and you must be given the opportunity to meet with that representative.
      —You will receive at least ten (10) days notice before a meeting is scheduled.
      —You must be given the opportunity to bring a lawyer or another person to the meeting if you desire and to have other persons present to tell what they know.
      —You must be given the opportunity to say or show anything that helps the Division representative understand why you disagree with the plan to discharge or exclude you. You must also be read any letters or written statements made by others and be allowed to respond to them.
   3. The Division's representative may make any decision he or she reasonably considers to be fair and send the decision to you in writing. If the decision is made to approve the discharge or exclusion, you must be given at least seven (7) days from the date you receive the letter to move out of the residence. If the decision does not approve the discharge or exclusion, the Agency which operates this Community Residence will comply with the terms of the decision or otherwise be subject to administrative sanction.

OTHER PROCEDURES

1. In the event you are hospitalized or leave the residence temporarily, your place in the residence must be held for you for thirty (30) days.
2. In the event you are discharged or excluded and you have not taken all of your personal property with you, the Agency must safeguard that property for a reasonable period of time, at least thirty (30) days.
3. In the event of an emergency where your behavior endangers others and there is no other effective way of dealing with the situation, you may be removed from the residence temporarily without prior review by the Division. If that occurs, you must be given the opportunity to meet within three (3) days with a representative of the Division of Mental Health and Hospitals. As much as possible, the procedures set forth above will be followed.
4. You may not be discharged or excluded from a community residence as a retaliation or reprisal for trying to state or obtain your rights or anything you may want or need.

WHERE TO CALL FOR HELP

If you need assistance regarding your rights in a licensed Community Residence, you may call any of the following:

Agency Ombudsperson: (Name, Address & Phone #)

County Mental Health Administrator
(Name, Address & Phone #)

Bureau of Licensing and Inspections
Division of Mental Health and Hospitals
50 East State Street
CN 727
Trenton, New Jersey 08625
(609) 777-0700

Division of Mental Health Advocacy
Department of the Public Advocate
(Add Name, Trenton Address and Phone Number)

This statement is a summary of your full discharge rights, which appear at N.J.A.C. *[10:39-8.1]* ***10:37A-9.4*** et seq., and which shall be available at your request at the Agency. Nothing in this statement is intended to alter or interpret the provisions of N.J.A.C. *[10:39-8.1]* ***10:37A-9.4*** et seq.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Administrative Correction
Home Care Services
Covered Home Health Services
N.J.A.C. 10:60-1.4

Take notice that, effective January 18, 1994, N.J.A.C. 10:60 was adopted at 26 N.J.R. 364(c). The Division of Medical Assistance and Health Services, Department of Human Services has discovered an incorrect reference at N.J.A.C. 10:60-1.4(d)7. The reference to N.J.A.C. 10:60-1.7 should be to N.J.A.C. 10:60-1.10, concerning personal care assistant services. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(b).

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

10:60-1.4 Covered home health services

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

(d) The types of home health agency services covered include professional nursing by a public health nurse, registered professional nurse, or licensed practical nurse; homemaker-home health aide services; physical therapy; speech-language pathology services; occupational therapy; medical social services; nutritional services; certain medical supplies; and personal care assistant services, as defined in this section.

1.-6. (No change.)

7. Personal care assistant services shall be as described in N.J.A.C. 10:60-[1.7]**1.10.**

(e) (No change.)

CORRECTIONS

(b)

THE COMMISSIONER

Inmate Discipline
Inmate Prohibited Act; Failure to Keep a Scheduled Appointment
Adopted Amendment: N.J.A.C. 10A:4-4.1

Proposed: March 21, 1994 at 26 N.J.R. 1287(a).
Adopted: April 28, 1994 by William H. Fauver, Commissioner, Department of Corrections.
Filed: May 4, 1994 as R.1994 d.264, **without change.**

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Effective Date: June 6, 1994.
Expiration Date: May 7, 1996.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment from Mary C. Williams, Edna Mahan Correctional Facility for women.

COMMENT: The commenter stated that clarification is needed to determine if the scheduled appointment(s) concerns appointments within or outside the prison facility. The commenter further stated that since prisoners are dependent on staff and custody to relay appointment messages, procedures should be developed so the prisoner is notified in writing at least two days prior to a scheduled appointment with him or her signing an acknowledgment.

RESPONSE: The language "scheduled appointment" refers to all appointments, inside and outside correctional facilities. The request by the commenter to develop procedures mandating at least a two day prior written notice of a scheduled appointment is hereby declined by the Department. When appropriate, the internal management of correctional facilities may develop this type of regulation. However, security considerations may preclude giving an inmate(s) two days advance notice of scheduled appointments. Furthermore, the requirement that an inmate(s) be given advance notice and be aware of a scheduled appointment is implicit in a finding of guilt to this disciplinary charge. The intent of this disciplinary charge is to encourage an inmate(s) to become more responsible in his or her behavior regarding professional staff appointments.

Full text of the adoption follows:

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts).

*.001-.706 (No change.)

.707 failure to keep a scheduled appointment with medical, dental or other professional staff.

.708-.803. (No change.)

(b) (No change.)

(c)

STATE PAROLE BOARD

Parole Board Rules
Interstate Corrections Compact and Serving Time Out-of-State (S.T.O.S.) Cases
Adopted New Rule: N.J.A.C. 10A:71-3.51

Proposed: March 7, 1994 at 26 N.J.R. 1191(a).
Adopted: April 20, 1994 by the New Jersey State Parole Board, Mary Keating DiSabato, Chairman.
Filed: May 5, 1994 as R.1994 d.272, **without change.**

Authority: N.J.S.A. 30:4-123.48(d).

Effective Date: June 6, 1994.
Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The Honorable Sybil R. Moses, Presiding Judge of the Superior Court—Criminal Part, agreed with the new rule in that offenders serving New Jersey sentences in out-of-State or Federal correctional facilities must be governed by specific rules when being processed for parole consideration on their New Jersey sentences.

RESPONSE: The Board acknowledges and accepts the comments.

COMMENT: James V. Mulvihill, the Director of the Division of Criminal Justice, Department of Law and Public Safety, advised that the Division of Criminal Justice had no objections to the new rule.

RESPONSE: The Board acknowledges and accepts the comment.

COMMENT: An Assistant Prosecutor from the Warren County Prosecutor's Office, Michael McDonald, agreed with the new rule. The Assistant Prosecutor noted that teleconferencing when feasible should greatly reduce the costs incurred for returning offenders to New Jersey for hearings. Also, the new rule would alleviate the uncertainty expressed by defendants frequently in court regarding their parole eligibility status on their New Jersey sentence while confined out-of-state.

RESPONSE: The Board acknowledges and accepts the comments.

COMMENT: Deborah Hansen, Deputy Compact Administrator, Office of Interstate Services, Department of Corrections, noted that the Office of Interstate Services (O.I.S.) has provided for the coordination of services for the State Parole Board in a cooperative effort to give the Board effective/timely access to New Jersey inmates serving New Jersey sentences out-of-state pursuant to the Corrections Compact. If O.I.S. services in the area of Corrections Compact clients were maintained there would be no increase in resource/economic impact on O.I.S. However, in the area of non-Corrections Compact cases, O.I.S. could not assume the function of teleconferencing due to limited resources.

RESPONSE: The State Parole Board recognizes the additional burdens the servicing non-Corrections Compact cases would have on O.I.S. It is the intent of the Board to assume responsibility for teleconferencing hearings in said cases. The State Parole Board, therefore, adopted the new rule as published.

Full text of adoption follows:

10A:71-3.51 Interstate corrections compact and serving time out-of-state (s.t.o.s.) cases

(a) Upon notification being provided to the Board by the Department that an inmate has been transferred under the interstate corrections compact, N.J.S.A. 30:7C-1 et seq., to another state or Federal institution to continue the service of his or her custodial term, the Board shall continue to monitor the inmate's eligibility for parole.

(b) Upon notification being provided to the Board by the Department or an interested party that an offender had been sentenced to a custodial term which is to be served concurrent to an out-of-state or Federal sentence and that the offender is presently confined in an out-of-state or Federal institution, the Board shall:

1. Obtain from the Department or appropriate agency or court the necessary documentation, for example, judgement of conviction and adult presentence reports, in order to confirm the imposition of sentence and the applicable credits;

2. Compute the offender's parole eligibility date within 30 days of the receipt of the appropriate documentation;

3. Notify the Department and the offender in writing within 30 days thereafter of his or her primary parole eligibility date. Notification shall be forwarded to the offender at his present place of confinement; and

4. Monitor the offender's primary parole eligibility date while confined in the out-of-state or Federal institution.

(c) Five to seven months in advance of an offender's actual parole eligibility date, the Board shall notify the Department of those offenders who are eligible for parole consideration.

(d) In interstate corrections compact and s.t.o.s. cases, the Department within 30 days of notice being provided to the Department pursuant to (c) above shall request the out-of-state or Federal institutional authority to submit to the Board a report concerning the offender. The report shall consist of the information required in N.J.A.C. 10A:71-3.7(e)3 to 7.

(e) In interstate corrections compact and s.t.o.s. cases, public notice of parole eligibility shall be provided pursuant to N.J.A.C. 10A:71-3.8. Upon public notice of parole eligibility being issued, the Board shall notify the offender that his or her case will be reviewed for parole consideration. The offender shall be given 30 days to file with the Board a written statement and any other written information which the offender may wish the Board to review. In interstate corrections compact cases, the Board shall notify the offender that the out-of-state or Federal parole or release authority has been requested to conduct a parole hearing on behalf of the Board.

(f) Information, files, documents, reports, records or other written material submitted to the Board by an out-of-state or Federal institutional authority shall be deemed confidential as specified in N.J.A.C. 10A:71-2.1. The Board, however, shall maintain the confidentiality of any information, files, documents, reports, records or other written material as specified by the out-of-state or Federal institutional authority.

(g) The Department shall request the out-of-state or Federal institutional authority to provide the offender with a copy of the report, except information classified as confidential, at the time the report is submitted to the Board through the Department.

(h) In interstate compact cases, the Department on behalf of the Board shall request the appropriate parole or release authority to conduct a parole hearing and request that upon the conclusion of the hearing a copy of the record of the hearing, the report on the offender and any recommendation of the hearing official(s) be forwarded to the Board through the Department.

(i) Upon receipt of the offender's case records, report and relevant information, the Chairperson shall within 30 days assign the offender's case to a hearing officer for the conducting of an initial parole hearing which shall consist of an administrative review of the offender's case records, the report submitted by the out-of-state or Federal institutional authority and statements or information submitted by the offender and interested parties. At the conclusion of the initial parole hearing, the hearing officer shall comply with N.J.A.C. 10A:71-3.15 and a copy of the written case assessment shall be forwarded to the offender within seven days of the hearing date. The offender shall have 30 days to provide any additional comments or information for review by the Board.

(j) Upon expiration of the 30 days time period, the Chairperson shall assign a member(s) of the appropriate Board panel to review the recommendation of the hearing officer. The assigned Board member(s) shall comply with the provisions of N.J.A.C. 10A:71-3.16.

(k) Any case referred to a Board panel by a hearing officer pursuant to N.J.A.C. 10A:71-3.15 or by a Board member(s) pursuant to N.J.A.C. 10A:71-3.16 shall be scheduled by the Chairperson for a hearing by the appropriate Board panel.

(l) In interstate corrections compact and s.t.o.s. cases, the Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the Board panel hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the Board panel shall administratively review the offender's case records, the report submitted by the out-of-state or Federal institutional authority, the statements or information submitted by the offender and interested parties and, in interstate corrections compact cases, the recommendation and comments of the out-of-state or Federal parole or release authority.

(m) Upon conclusion of the Board panel hearing, the Board panel shall comply with the provisions of N.J.A.C. 10A:71-3.18.

(n) If a three-member Board panel hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.21(d) for the purpose of establishing a future parole eligibility date which differs from the provisions of N.J.A.C. 10A:71-3.2(a) or (b) and (c), the Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the Board panel hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the three-member Board panel shall administratively review the offender's case. Pursuant to N.J.A.C. 10A:71-3.2(d)3 or 6, the offender shall be provided written notice of the reasons for the establishment of a future parole eligibility date which differs from the provisions of N.J.A.C. 10A:71-3.21(a) or (b) and (c).

(o) If a Board hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.19, the Board shall request the Department in interstate corrections compact cases to make the necessary arrangements to return the offender to this State and to have the offender present at New Jersey State Prison on the hearing date. In s.t.o.s. cases, the Board shall request the cooperation of the out-of-state or Federal institutional authorities in arranging the conducting of the Board hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive such a hearing, the Board shall administratively review the offender's case.

(p) Upon the conclusion of the Board hearing, the Board shall comply with the provisions of N.J.A.C. 10A:71-3.20.

(q) If an annual review hearing is to be scheduled pursuant to N.J.A.C. 10A:71-3.21(f), the following shall occur:

1. The Board shall notify the Department that the offender will be scheduled for an annual review hearing. The Department upon notice being provided shall request the out-of-state or Federal institutional authority to submit to the Board a report concerning the offender. The report shall consist of the information required in N.J.A.C. 10A:71-3.7(e)3 to 7.

2. The Board shall notify the offender that his case will be scheduled for an annual review hearing before a designated Board panel. The offender shall be given 30 days to file with the Board a written statement and any other written information which the offender may wish the designated Board panel to review.

3. The Department shall request the out-of-state or Federal institutional authority to provide the offender with a copy of the report, except for information classified as confidential, at the time the report is submitted to the Board through the Department.

4. Upon receipt of the report, the offender's written statement and any other relevant information, the Chairperson shall within 15 days assign the offender's case to a designated Board panel for the conducting of an annual review hearing.

5. The designated Board panel shall request the cooperation of the out-of-state or Federal institutional authority in arranging the conducting of the annual review hearing by means of a teleconferencing system. If teleconferencing is not feasible or if the offender shall waive the conducting of such a hearing, the designated Board panel shall administratively review the offender's case.

6. The designated Board panel shall advise the offender in writing of its determination.

(r) The Board shall insure that written notice of any decision rendered is provided to the Department and the out-of-state or Federal institutional authority.

(a)

STATE PAROLE BOARD

Parole Board Rules
Certificate of Good Conduct
Adopted Amendment: N.J.A.C. 10A:71-8.2

Proposed: March 7, 1994 at 26 N.J.R. 1193(a).
Adopted: April 26, 1994 by the New Jersey State Parole Board, Mary Keating DiSabato, Chairman.
Filed: May 5, 1994 as R.1994 d.273, **without change.**

Authority: N.J.S.A. 30:4-123.48(d).

Effective Date: June 6, 1994.
Expiration Date: February 5, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: James V. Mulvihill, the Director of the Division of Criminal Justice, Department of Law and Public Safety, advised the State Parole Board that the Division of Criminal Justice had no objections to the proposed amendments.

RESPONSE: Acknowledged and accepted.

COMMENT: An Assistant Prosecutor from the Warren County Prosecutor's Office, Michael McDonald, advised that the requirement that one year elapse from the offender's date of parole release before a Certificate of Good Conduct may be issued will help in determining which offenders have made successful transitions to life outside prison. In addition, it creates an incentive to offenders to take some initiative on their own to prove to parole, and society, that they have changed their lives.

RESPONSE: The Assistant Prosecutor's comments are accepted.

The State Parole Board adopted the proposed amendments as published.

Full text of adoption follows:

10A:71-8.2 Eligibility

(a) An application for a Certificate of Good Conduct shall not be entertained unless the applicant meets all of the following requirements:

1. (No change.)

2. If the applicant is presently on parole, at least one year must have expired since release to parole supervision.

3. The applicant is not presently incarcerated.

4. (No change in text.)

INSURANCE

(b)

DIVISION OF ADMINISTRATION

New Jersey Automobile Full Insurance Underwriting Association
Claims Payment Deferral
Adopted Amendments: N.J.A.C. 11:3-2A

Proposed: February 22, 1994 at 26 N.J.R. 898(a).
Adopted: May 6, 1994 by Andrew J. Karpinski, Acting Commissioner, Department of Insurance.
Filed: May 9, 1994 as R.1994 d.274, **without change.**

Authority: N.J.S.A. 17:1C-6(e) and 17:33B-3b(2).

Effective Date: June 6, 1994.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on February 22, 1994. The proposal established the date of the public hearing to be held on March 14, 1994, by the Department of Insurance ("Department") for the purpose of receiving comments on the proposal. Only one commenter, an attorney representing the American Trial Lawyers' Association of New Jersey ("ATLA-NJ") presented comments during the public comment portion of the hearing.

In accordance with N.J.S.A. 52:14B-4(g), the Hearing Officer issued a report on April 15, 1994, making recommendations to the Commissioner. The report includes a summary of the public comments received at the hearing as well as the Hearing Officer's evaluation of the comments. The Hearing Officer's report is incorporated herein by reference and made a part of the rulemaking file.

Summary of Hearing Officer's Recommendations and Agency Responses:

The Hearing Officer's Report includes a brief review of the events which culminated in the public hearing on March 14, 1994. It also includes a brief review of the history of the New Jersey Automobile Full Insurance Underwriting Association (Association) and the testimony presented by representatives of the Association's Trustee and the Department as well as comments provided by the one commenter. The Hearing Officer noted in his report that the public comments, as in the prior public hearings, centered on the lack of effort undertaken by the Trustee and the Department to explore alternative means of financing the Association's cash flow shortfall by a loan or bond issue.

The Hearing Officer noted from his review of the record, including the testimony at the hearing, that no specific changes to the amendments were provided by the commenter. The Hearing Officer concluded that the extension of the current 18-month deferral plan is necessary and appropriate. The extension will continue the present deferral program until December 31, 1995. The extension is the preferred plan of the options examined. It assures that the Association's resources are not depleted and that the Association's ability to pay claims of higher priority, as designated in the Trustee's approved Plan of Operation, is preserved, notwithstanding that the Trustee anticipates the satisfaction of all deferred claims prior to December 31, 1995 if an acceleration of the payment of such claims is possible.

The Hearing Officer also concluded that the alternative methods suggested to finance the Association's cash flow short fall are contrary to the direction of the Fair Insurance Automobile Reform Act of 1990 (N.J.S.A. 17:33B-1 et seq.) and beyond the power of the Trustee and Commissioner to accomplish and may also be subject to other legal and practical difficulties. The Hearing Officer, therefore, recommended the adoption of N.J.A.C. 11:3-2A without change. As discussed below, the Department adopted the amendments as proposed without change.

The hearing record and public comments may be reviewed by contacting:

Donald Bryan, Acting Assistant Commissioner
Department of Insurance
Legislative and Regulatory Affairs
20 West State Street
CN-325
Trenton, New Jersey 08625-0325
(609) 984-3602

The written comment period on the amendments closed on March 24, 1994. The Department received one comment from the Prudential Property and Casualty Insurance Company of New Jersey.

COMMENT: The commenter suggested that N.J.A.C. 11:3-2A.3 should be amended to lower the current six percent interest rate paid on deferred claims. The commenter urged the Department to adopt the postjudgement interest rate used by the courts as set forth in the New Jersey Court Rules at R. 4:42-11. The commenter stated that it would be inequitable to charge insurers with an interest rate which exceeds the interest rates used by the courts.

RESPONSE: The Department disagrees with this commenter. While the Department recognizes that there has been a general decline in interest rates since the six percent rate was fixed, the Department in conjunction with the Trustee has determined that it is economically sound to maintain the current rate of interest. Unlike the earlier deferral programs and based on current projections, it is anticipated that deferred claims under this program may be paid earlier than the allotted 18 months. On claims which are paid before the 18-month period lapses, interest will only be paid on a pro-rated basis. Changing the interest rate at this time would not result in any significant savings because of the expense involved in changing the various systems used by Association servicing carriers.

Furthermore, if the interest rate were lowered, claimants may attempt to settle their claims early to take advantage of a higher interest rate. If so, the Trustee's cash flow projections would have to be changed. Finally, the commenter's suggestion is a substantive change to the rules which cannot be accomplished on adoption.

Full text of the adoption follows:

11:3-2A.2 Definitions

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

...

"Closing papers" means a release which includes the Association deferral language set forth in N.J.A.C. 11:3-2A.1(b)2 and which is signed by the claimant releasing the Association and its insured(s) from liability for the claim, or a warrant of satisfaction of judgement and/or other closing documents.

...

11:3-2A.3 Deferral of payment for residual bodily injury claims

(a) Payments by the Association of any residual bodily injury claims, including uninsured motorist claims and underinsured motorist claims, are deferred from payment for a period not to exceed 18 months, except such claims as may be granted a hardship exemption from deferral by the Trustee as provided in N.J.A.C. 11:3-2A.5.

(b) (No change.)

(c) Payment of a claim which has been deferred pursuant to this subchapter shall occur no later than the first day of the eighteenth month following the date of deferral, that is the date upon which closing papers are received in the office of the Association's servicing carrier.

(d) The deferral of claim payments as provided in this subchapter shall continue until December 31, 1995.

(e) When claims deferred pursuant to this subchapter are paid by the Association, the payment shall include simple interest at the rate of six percent per annum beginning on the date of deferral. If claims deferred pursuant to this rule are paid prior to the first day of the eighteenth month following physical receipt of the closing papers by the Association's servicing carrier, the payment of interest will be pro-rated to the date of payment.

(f) (No change.)

11:3-2A.4 Administrative provisions

(a) (No change.)

(b) The Trustee shall develop, review and, where necessary, amend, uniform operating procedures necessary to implement these rules consistent with this subchapter including procedures for the implementation of hardship exemptions as provided in N.J.A.C. 11:3-2A.5; servicing carrier procedures; and the uniform handling of deferred claim payments.

1.-2. (No change.)

3. Orders for Judgment shall include language similar to that in (b)2 above specifically referring to the deferral of any payment until the first day of the eighteenth month following physical receipt by the Association's servicing carrier of the Order, the inclusion of per annum, simple interest at six percent in any final payment, and the understanding that if any such payment is made early, the amount of interest will be pro-rated to the date of payment.

4. (No change in text.)

(c) (No change.)

(d) Servicing carriers shall not utilize their own funds to pay claims subject to deferral unless specifically authorized to do so by the Trustee. Regardless of the source of funds utilized, the Association shall not reimburse servicing carriers for the unauthorized payment of claims subject to deferral made on or after the effective date of these rules.

(e) (No change.)

11:3-2A.5 Hardship exemptions

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

(c) Applications for a hardship exemption may be obtained from the Association's servicing carriers or by submitting a written request to the Office of the NJAFIUA Trustee, 160 Avenue at the Commons, Suite 2, Shrewsbury, New Jersey 07702.

1. (No change.)

2. Completed applications shall be submitted directly to the Trustee at the address noted above and shall include a certified-to-be-true copy of the associated judgment or fully-executed deferral release, a copy of the written acknowledgment of receipt of the deferral release or order for judgment issued by the Association's servicing carrier, copies of all unpaid medical bills, insurance coverages, foreclosure notices, eviction notices, funeral bills and other appropriate documentation. Original documents shall be available for review upon the request of the Office of the Trustee.

(d)-(h) (No change.)

11:3-2A.6 Appeal to the Commissioner

(a) An appeal by an applicant of the decision of the Trustee denying a request for a hardship exemption as provided in N.J.A.C. 11:3-2A.5 or from the Trustee's decision regarding a dispute about the date of deferral as provided in N.J.A.C. 11:3-2A.4(c), shall be filed with the Commissioner within 20 days of receipt of the Trustee's written decision.

1.-2. (No change.)

(b) (No change.)

11:3-2A.7 Public records

(a) Pursuant to N.J.S.A. 47:1A-1, the following documents shall be considered public documents:

1. The Trustee's request to the Commissioner for approval of the deferral plan, or any extension, and the supporting analysis and data;

2.-3. (No change.)

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

(a)

DIVISION OF ADMINISTRATION

Market Transition Facility of New Jersey Suspension of Payments

Adopted Concurrent New Rules: N.J.A.C. 11:3-2B

Proposed: March 21, 1994 at 26 N.J.R. 1393(a).

Adopted: April 29, 1994 by Andrew J. Karpinski, Acting Commissioner, Department of Insurance.

Filed: April 29, 1994 as R.1994 d.261, **without change.**

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, and 17:33B-11.

Effective Date: April 29, 1994.

Expiration Date: January 4, 1996.

These rules were adopted on an emergency basis on March 1, 1994 and concurrently proposed on March 21, 1994 pursuant to N.J.S.A.

52:14B-4(c). This present adoption of the concurrent proposed new rules is effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(e)).

Summary of Public Comments and Agency Responses:

The concurrent proposed new rules were published on March 21, 1994 at 26 N.J.R. 1393(a). The concurrent proposal provided for a public hearing to be held on April 6, 1994 by the Department of Insurance ("Department") for the purpose of receiving comments on the proposal. Six persons presented public comments at the hearing. One commenter represented the Association of Trial Lawyers of America, New Jersey Chapter; one represented the New Jersey Head Injury Association; one represented Medical Resources, Inc.; two commenters appeared on behalf of the New Jersey Dental Association; and one represented the Monmouth/Ocean County Chiropractor Society. Additionally, two persons presented testimony on behalf of the Department and the Market Transition Facility of New Jersey ("MTF").

In accordance with N.J.S.A. 52:14B-4(g), the Hearing Officer issued a report on April 28, 1994 making recommendations to the Commissioner. The report also includes a summary of the public comments received at the hearing and submitted in writing after the hearing through April 20, 1994, as well as the Hearing Officer's evaluation of the comments. The Hearing Officer's report is incorporated herein by reference and made a part of this rulemaking file.

Summary of Hearing Officer's Recommendations and Agency Responses:

The Hearing Officer's Report includes a review of the events which culminated in the public hearing on April 6, 1994. It also includes a review of the MTF's history and a brief review of the testimony presented by representatives of the MTF and the Department as well as comments provided by the public. The Hearing Officer noted in his report that the public comments generally centered on the negative impact and burden imposed by the rules on MTF policyholders and claimants, including doctors and other health care providers/facilities and attorneys representing individuals with claims against MTF policyholders. The commenters also indicated that the Department should take all necessary steps to resolve the present situation so that the MTF may resume the payment of claims as soon as possible. Several commenters also indicated that if the present situation cannot be resolved, alternative methods of funding the MTF should be explored and implemented. One commenter questioned the Department's authority to suspend MTF claims payments.

The Hearing Officer concluded, upon his review of the record including the testimony at the hearing and the written comments received, that the current suspension of claims payments by the MTF pursuant to N.J.A.C. 11:3-2B, adopted on an emergency basis on March 1, 1994 and concurrently proposed on March 21, 1994, is necessary until the pending litigation is resolved or until such time as sufficient funds become otherwise available to pay such claims pursuant to a program for the orderly disposition of claims payments. The Hearing Officer, therefore, recommended that N.J.A.C. 11:3-2B be readopted without change.

The hearing record and public comments may be reviewed by writing to:

Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625-0325

The written comment period on the rule proposal closed on April 20, 1994. The Department recieved 13 timely written comments from MTF policyholders, health care providers, individuals who work for health care providers, and attorneys as follows:

1. Lisa Hudson;
2. Mary D. Hougardy;
3. Ballen, Gertel & DiCintio;
4. Capizola, Fineman & Lapham;
5. David M. Lipshutz, Esq.;
6. Children's Specialized Hospital;
7. Marlboro Physical Therapy;
8. Rayna Cerutti;
9. Ramon Gonzalez;
10. Jose Perez;
11. Maribelle Perez-Gonzalez;
12. Berlin Medical Associates; and
13. Theodosia A. Tamborlane, on behalf of Medical Resources, Inc.

COMMENT: Several commenters objected to or expressed concern regarding the suspension of claims payments by the MTF. Some commenters asserted that it is unfair to suspend payments to policyholders who had paid their premiums, obtained mandated private passenger automobile insurance coverage, and now expect the benefits to which they are entitled pursuant to such policies issued by the MTF. Other commenters stated that the suspension imposes a great financial burden on health care providers and may threaten the ability of certain health care providers to continue to operate in that they will not receive payment for services rendered. The commenters also stated that the suspension may require these entities ultimately to "lay off" employees, resulting in greater unemployment in this State and other attendant disruptions. In addition, several of the commenters noted that policyholders may not be able to obtain necessary medical treatment due to the suspension of payments for their medical bills. Several commenters noted that in many cases, the personal injury protection ("PIP") benefits provided by the MTF may be the only coverage available to pay these expenses.

Several of these commenters suggested alternatives to address these concerns or at least help minimize some of the burdens imposed by the suspension. Two commenters suggested that a portion of MTF funds be gradually released over a period of time beginning immediately so that medical providers may continue to operate and their staffs may avoid potential unemployment.

Another commenter inquired whether there is a surplus in the State Treasury for emergencies such as the funding of the MTF.

Another commenter additionally asserted that the MTF is a facility backed by the full faith and credit of the State of New Jersey and therefore may secure funding through borrowing on commercial markets. This commenter stated that if a similar situation occurred to an authorized insurer, the Property-Liability Insurance Guaranty Association (PLIGA) would provide coverage. The commenter does not believe that there should be a different result in the instant matter involving the MTF. The commenter therefore believes that the Commissioner should authorize the MTF to borrow funds and the Legislature should approve the guarantee of those funds.

Another commenter, a health care provider, requested that the Department place its office on a list of providers that have outstanding bills from the MTF to ensure that its bills would be paid when the suspension is lifted and before any "settlement money" runs out.

Finally, one commenter stated that it hopes that the MTF funds will be released and a stable mechanism found in the very near future for assuring resources to patients with no other means of paying their medical bills.

RESPONSE: The Department appreciates and recognizes the burdens imposed on MTF policyholders, claimants, health care providers and other parties due to the suspension of claims payments by the MTF. Indeed, the Department recognized that the suspension of claims payments by the MTF would impact MTF policyholders, claimants, doctors and other health care providers, hospitals, attorneys involved in litigation or representing claimants seeking recovery under a policy of private passenger automobile insurance issued by the MTF, etc. See Social Impact and Economic Impact statements to the concurrent proposed new rules at 26 N.J.R. 1395. However, as noted in the emergency adoption and concurrent proposal, and from the testimony from the Department staff at the public hearing, the Department found that there is no alternative at this time to the action since there is currently no alternative source for the MTF to meet its present obligations and, under present conditions in the absence of such action, the MTF would already be totally out of funds. If this had occurred, the MTF's infrastructure would be lost and the MTF would be unable to resume paying its claim obligations when the pending litigation (see below) is resolved or sufficient funds otherwise become available.

Moreover, as indicated in the Department staff's testimony at the public hearing, the Department raised virtually all of the concerns expressed by the commenters in defending against the litigation involving Order No. A-93-235 (the "Cash Call Order") in *In the Matter of Order No. A93-235 Apportioning Losses Among Member Insurers of the Market Transition Facility of New Jersey for the Fiscal Year Ending September 30, 1991,* Docket No. A-2515-93T5, and *In the Matter of the Commissioner of Insurance's December 29, 1992 Certification of Amendments to the Plan of Operation of the Market Transition Facility of New Jersey,* Docket No. A-2896-92T1, wherein the appellants requested on an emergent basis that the Cash Call Order be stayed. The Department restated these arguments in its motion to the Supreme Court of New Jersey to directly

certify the appeal and to vacate the stay of the Cash Call Order. In both instances, however, the Appellate Division and the Supreme Court denied the Department's requests.

In addition, the Department does not believe that the suggested alternatives to provide funding for the MTF are feasible or authorized by law. Payment of all PIP claims is not feasible at this time. PIP claims constitute approximately one-half of the total claim indemnity or loss costs for the MTF (about $12 to $15 million monthly). Therefore, adoption of such a procedure would accelerate the depletion of the MTF's already limited financial resources, and, based on current conditions, would result in the total depletion of the MTF's limited financial resources by approximately the end of May, 1994. The MTF's resources thus would be totally depleted before any decision could be rendered by the Court on the pending appeals, which are scheduled to be heard by the Appellate Division in June, 1994. Thus, payment of all PIP claims at this time would negate the purpose for which these rules were adopted on an emergency basis by impairing the ability of the MTF to promptly resume paying its claim obligations when the pending litigation is resolved or sufficient funds otherwise become available. Similarly, implementation of a procedure for the "gradual release of funds over time" would result in additional administrative costs in that it would require the MTF's servicing carriers to develop and implement new systems to determine and track which claims would receive full payment, which claims would receive partial payment, and the amount of any such partial payments. The Department does not believe that it would be appropriate to adopt a procedure at this time that would necessitate additional administrative costs, which would accelerate the depletion of the MTF's already limited financial resources. The Department also notes that the commenter suggested no standards with respect to the establishment of such a procedure. Moreover, the Department believes that the rules, through the hardship exemption procedure, address this issue by providing an administrative procedure by which individuals may request a hardship exemption to mitigate against the most extreme financial effects otherwise imposed by the suspension of payments of claims.

With respect to the suggestion that the Commissioner borrow funds to provide adequate funding for the MTF to pay its claims, the Department notes that there is presently no statutory authority for the Commissioner to borrow money for or on behalf of the MTF. The Legislature, through enactment of the Fair Automobile Insurance Reform Act of 1990 ("FAIR Act"), provided at N.J.S.A. 17:33B-11d the mechanism by which any losses in the MTF may be funded. In accordance with that statute, the Commissioner issued Order No. A93-235 on December 30, 1993, which ordered each member insurer of the MTF to pay to the MTF its apportioned share of the MTF losses for the first operating year no later than February 3, 1994. The statutory mechanism was temporarily suspended by the court's stay, thus precluding the ability of the MTF to utilize funds received pursuant to the Order pending the outcome of the appeal. Finally, with respect to the comment regarding the PLIGA, the Department notes that the MTF is not a "member insurer" of the PLIGA as that term is defined in N.J.S.A. 17:30A-5f.

With respect to the inquiry whether there is a surplus in the State Treasury for an "emergency such as this," the Department notes that there is no appropriation for the current fiscal year to fund MTF losses.

Finally, with respect to the request by the commenter that it be placed on a list of providers that have outstanding bills, the Department notes that all claims which are settled and owed, but which are deferred due to the suspension of claims pursuant to the rules, are being tracked by the MTF servicing carriers. It is anticipated that as funds become available, payments will be made on a "first-in first-out" basis.

In addition to the above, the Department wishes to stress that pursuant to the directive from the Governor, the Commissioner has entered into discussions with the various parties involved in the pending litigation with the goal of resolving this matter so that funds may become available and the MTF may resume paying at least a portion of claims to policyholders and claimants as soon as possible.

COMMENT: One commenter objected to the rules in that they differentiate between counsel for injured parties and counsel for the MTF by authorizing payment of defense costs during the suspension. The commenter does not believe there is a difference between defense counsel and plaintiff counsel in that both provide legal services pursuant to a contract, both incur loss on behalf of their client, and both are entitled to be paid for their services. The commenter also disagrees with the Department's position that without payments to defense counsel, default judgments could result against the policyholder and the MTF. The commenter believes that defense counsel could "operate as usual" performing their services and billing the MTF when funds are sufficient for their payment. The commenter believes that this would place all parties on an "equal footing." The commenter believes that the provision of the rules which allows defense counsel to continue to incur costs and be paid, while injured claimants are not, is unconstitutional, arbitrary and capricious.

RESPONSE: The Department believes that the rules which suspend payment of claims while continuing to provide for the payment of administrative expenses, including defense costs in litigation where an MTF policyholder has been sued, are reasonable and appropriate. As indicated in the Summary to the concurrent proposal and the response to the previous comment, the Department believes that continuation of payments to cover the MTF's administrative expenses is critical to ensure the future payment of claimants once the pending litigation is resolved or sufficient funds otherwise become available.

Moreover, as noted in the Summary to the concurrent proposal, the Department believes that failure to pay these costs could result in default judgments against the policyholder, posing the potentially substantial likelihood of increasing the MTF's liability on claims by or against its insured (and possibly the personal liability of the policyholder).

The Department also believes that there is a rational basis to differentiate between payment to plaintiff's counsel and to defense counsel which supports the distinction provided by the rules. Defense counsel are retained by and provide a service to the MTF and its policyholders. If these services were not provided, the MTF's liability on PIP claims, and that of the MTF and its policyholders on third party claims could increase exponentially if default judgments were entered.

Additionally, payments to defense counsel are fixed by contract. If the MTF ceases paying defense counsel, such counsel may institute suit against the MTF for breach of contract or may move to be replaced as counsel. In either case, additional costs due to such litigation may result in addition to the potential for default judgments, thereby increasing the potential costs not only to the MTF but to the MTF policyholder as well.

For these reasons, and in consideration of the limited remaining financial resources of the MTF, the Department believes that it is reasonable and appropriate to continue to pay defense costs as part of administrative expenses, and further believes that there is a rational basis to distinguish between plaintiff's counsel fees and defense counsel fees and that the relevant provisions of the rules are not arbitrary or capricious. The Department also notes that the commenter failed to provide any support for his assertions that the rules are unconstitutional, arbitrary and capricious.

COMMENT: One commenter stated that many claimants settled their bodily injury claims against the MTF prior to March 2, 1994, the date the suspension became effective. The commenter stated that in some cases, the claimant would agree to accept less than what he or she feels entitled to if the settlement moneys can be received quickly, either because of a financial emergency or wishing to avoid going through the litigation process. The commenter believes that it is unfair to convince a person to give up his or her rights, accept a lesser amount than desired, and then not pay that person. The commenter believes that many people may not have settled had they known of the suspension. The commenter therefore urged that payments for these claimants be released immediately.

RESPONSE: The Department recognizes and appreciates the commenter's position. However, for the reasons set forth in responses to previous comments, as well as the detailed discussions set fourth in the Summary and impact statements of the concurrent proposal of the emergency adoption of these rules, paying such claims is not feasible at this time.

The Department again notes that the rules provide an administrative process by which individuals may request a hardship exemption to mitigate against the most extreme effects which would otherwise be imposed by the suspension of payments of claims. The Department believes that this provision addresses the commenter's concerns with respect to those individuals suffering extreme financial hardship.

COMMENT: Two commenters generally objected to the hardship exemption provisions in N.J.A.C. 11:3-2B.4 as too stringent. One commenter specifically noted that the "hardship" criteria set forth in N.J.A.C. 11:3-2B.4 is similar to those used with respect to the deferral of claims payments by the New Jersey Automobile Full Insurance Underwriting Association ("NJAFIUA") pursuant to N.J.A.C. 11:3-2A.5. The commenter believes that these criteria are too stringent and difficult to meet. For example, the commenter cited the criterion in N.J.A.C.

11:3-2B.4(b)3, which provides as one of the circumstances in order to demonstrate a hardship: "unable to meet current financial obligations in order to sustain basic living requirements such as food and utilities due to total disability . . ." The commenter believes that the criterion should not require that the inability to meet current financial obligations be due solely to "total disability." The commenter believes that numerous causes, such as unemployment or family emergencies, can be just as devastating.

The commenter also stated that he had submitted several "hardship" applications for clients during the NJAFIUA deferral period. While some were approved, the commenter stated that the process of approval took an inordinately long period of time (in some cases, months). The commenter stated that since the process is intended to be for emergencies, resolution of the application should be expedited. The commenter urged a more streamlined process for deciding these applications and a less demanding set of hardship criteria.

RESPONSE: Upon review of the commenter's suggestions regarding revisions to the hardship criteria, the Department has determined not to change this provision. With respect to the comment that the hardship criteria are too narrow or "stringent," the Department notes that N.J.A.C. 11:3-2B.4(b)8 provides for "such other emergency or situation of an unusual nature which the Commissioner may deem appropriate . . .". Accordingly, to the extent a claimant may not qualify for a hardship exemption under one of the specific criterion, he or she may nevertheless qualify under the more general criterion.

The Department thus believes that the criteria provided are both reasonable and appropriate. The hardship exemption procedure set forth in N.J.A.C. 11:3-2B.4 is intended to ensure that those individuals in the most extreme of circumstances will receive payments for their claims, in consideration of the limited remaining financial resources of the MTF. Since the criteria have been in effect for only 60 days, the Department believes that it is premature to determine whether the procedure will operate as intended, and rather that it would be appropriate to allow a sufficient amount of time to determine whether the procedure is fulfilling its intended purpose. If the Department finds that the procedure does not provide payment to those individuals in the most extreme circumstances, the Department will consider whether it is appropriate to propose amendments to the rules at that time.

Finally, the Department notes that both the MTF and Department, in the case of appeals of denials of requests by the MTF, will undertake to act on hardship exemption requests as expeditiously as possible. However, the Department also notes that, in many cases, delays in processing hardship exemption requests from the NJAFIUA deferral were due to delays in applicants or their counsel responding to requests to submit all of the documentation required to accompany the request set forth in N.J.A.C. 11:3-2A.5. Moreover, as indicated by the testimony at the public hearing held March 14, 1994 to receive public comments on amendments to N.J.A.C. 11:3-2A, of the total amount of hardship exemption requests received in the NJAFIUA deferral program, 42 percent were abandonded for lack of prosecution on the part of the applicant and/or their counsel. See *In the Matter of a Public Hearing Regarding Proposed Amendment Deferring Certain Claim Payments by the New Jersey Automobile Full Insurance Underwriting Association,* Hearing Officer's Report, April 15, 1994, p. 9.

COMMENT: One commenter questioned why, if the Department was aware that a "financial crisis was building," all affected parties were not first notified and invited to meet to offer suggestions as to how to resolve the matter. The commenter believes that instituting a total suspension of payments without any notice is a "drastic remedy." The commenter stated that meetings with all interested parties would still be helpful even though the suspension is now in place. The commenter also stated that the root of the MTF's losses should be addressed so that this situation does not occur again.

RESPONSE: While the MTF experienced losses, N.J.S.A. 17:33B-11 provided a mechanism by which those losses could be funded. The Commissioner adhered to this statutory mechanism through the issuance of the Cash Call Order. The Court-imposed stay of this funding mechanism precluded the ability of the MTF to utilize these funds pending the outcome of any appeal. The Department also notes that the rules were adopted on an emergency basis in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-4(c), and were concurrently proposed for readoption in compliance with normal rulemaking requirements of N.J.S.A. 52:14B-1 et seq. A public hearing was held on April 6, 1994 to elicit public comments on these rules. In addition, the Department accepted written comments on these rules through April 20, 1994. Thus, all interested parties were provided notice and opportunity to comment in accordance with N.J.S.A. 52:14B-1 et seq.

Finally, with respect to the comment that the root cause of the "problem" should be addressed, the Department initially notes that the MTF no longer issues policies and is currently in "run-off" of claims. In addition, the Commissioner is continuing to examine claims handling functions with a view towards making appropriate adjustments to achieve greater efficiency in such operations.

Full text of the adopted new rules follows:

SUBCHAPTER 2B. MARKET TRANSITION FACILITY OF NEW JERSEY SUSPENSION OF CLAIMS

11:3-2B.1 Purpose and scope

(a) This subchapter provides for the suspension of the payment of any and all claims by the MTF to any person resulting from any coverage under a policy of private passenger automobile insurance issued by the MTF, until such time as sufficient funds are available to pay such claims pursuant to a program for the orderly disposition of claims payments.

(b) This subchapter shall apply to the MTF and the MTF's servicing carriers, former MTF policyholders and persons or entities having any unpaid claims against the MTF or former MTF policyholders.

11:3-2B.2 Definitions

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

"Assets" means any funds made available to the MTF through any payments received from a member insurer for its apportioned share of the MTF's operating losses pursuant to N.J.S.A. 17:33B-11d, monies, funds, accounts receivable, premium payments, payments collected on any and all private passenger automobile insurance policies, interest income, contracts, causes of action, books, records, and property of the MTF wherever located, including such property of the MTF that may be discovered hereafter.

"Claim" means a request for payment for a loss which arises out of and is within the coverage provided by the MTF to an insured pursuant to N.J.S.A. 17:33B-11.

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

"Infrastructure" means those items or components necessary for the MTF to operate and fulfill its obligations to policyholders and claimants, including MTF central staff, contracted servicing carriers, defense attorneys and certain independent consultants. Infrastructure costs include, but are not limited to, payroll expenses (including salaries, benefits and payroll taxes), rent, utilities, bank charges, investment charges, data processing, office and computer supplies, licensing fees for computer software, insurance coverages (such as workers' compensation coverages), legal fees (including defense of claims directly against the MTF), postage, telephone, consultant fees (including auditors and actuaries), MTF servicing carrier fees, and defense costs (that is, payments to defense counsel to protect the MTF's interests in litigation involving MTF policyholders for which the MTF is liable for payment under the MTF policy).

"Member insurer" means any insurer authorized to transact private passenger automobile insurance in this State.

"MTF" means the Market Transition Facility of New Jersey created pursuant to N.J.S.A. 17:33B-11.

"Person" means any individual, corporation, partnership, association or private or public entity which seeks payment of a claim.

"Private passenger automobile" is as defined at N.J.S.A. 39:6A-2.

"Private passenger automobile insurance" means direct insurance against injury or damage, including the legal liability therefor, arising out of the ownership, operation, maintenance, or use of private passenger automobiles, including, but not limited to, personal injury protection coverage (including extended medical expense coverage), bodily injury liability coverage, property damage liability coverage, uninsured motorists coverage (including underinsured motorists coverage), towing and labor coverage, rental reimbursement coverage, and collision and comprehensive (other than collision) coverage.

"Servicing carrier" means a member insurer or other entity that had or presently has a contract with the MTF to underwrite, process, and settle claims for the MTF pursuant to the MTF Plan of Operation approved by the Commissioner pursuant to N.J.S.A. 17:33B-11c.

11:3-2B.3 Suspension of payment of claims by the MTF

(a) Payment to any person by the MTF of any pending or future claims resulting from any coverage under a policy of private passenger automobile insurance issued by the MTF, shall be suspended effective 12:01 A.M., March 2, 1994, regardless of the date of receipt by the MTF or servicing carrier of the claim or disposition by settlement, judgment or otherwise. No servicing carrier shall issue any check or make other payment to any person for any claim on or after that date and time.

(b) The MTF shall notify all servicing carriers of the suspension of payment of any and all pending and future claims to any person, effective 12:01 A.M., March 2, 1994 as set forth in (a) above. Such notification shall also provide that no servicing carrier may issue any check or make other payment to any person for any claim on or after that date and time. The MTF is authorized to take any necessary administrative actions to implement the provisions of this subchapter.

(c) Any checks or payments which have been actually mailed by an MTF servicing carrier as of the effective date of suspension set forth in (a) above shall be honored, provided that those checks or payments are otherwise proper and in compliance with relevant law and procedures.

(d) Notwithstanding the provisions of (a) above, upon determination by the Commissioner that there are sufficient assets available for the payment of such claims pursuant to a program for the orderly disposition of claims payments, the Commissioner may order the resumption of payment of claims either in whole or in part, and/or may also order modification of the hardship exemption standards set forth at N.J.A.C. 11:3-2B.4, resulting from coverage under a policy of private passenger automobile insurance issued by the MTF.

(e) The MTF is authorized to pay appropriate interest on any claim that has been submitted and approved but, is deferred pursuant to this subchapter. No interest shall be paid on any personal injury protection coverage benefits that is not overdue, pursuant N.J.S.A. 39:6A-5.

(f) This section shall not be construed to prohibit other payments by the MTF as may be necessary to meet in whole or in part administrative expenses to maintain its infrastructure, to preserve its rights in any pending or future litigation, or to otherwise protect its interests.

11:3-2B.4 Hardship exemption procedure

(a) Notwithstanding the provisions of N.J.A.C. 11:3-2B.3, and subject to the availability of funds, an exemption from the suspension of a claim payment may be permitted in limited circumstances upon the filing of a written application with the MTF which:

1. Demonstrates, through a written statement and sufficient supporting documentation, the existence of extreme immediate financial or medical emergency and necessity; and

2. Includes a statement in which the applicant attests that the emergency cannot be resolved through use of any other reasonably available financial resources. "Reasonably available financial resources" includes, but is not limited to, resources such as reimbursement or compensation through other coverages or benefit plans, reasonable liquidation of assets to the extent that liquidation would not cause further economic hardship, or borrowing from commercial sources on reasonable commercial terms.

(b) Applicants for a hardship exemption shall demonstrate one or more of the following circumstances in order to receive payment:

1. Unable to pay for essential shelter and is being evicted from principal residence (provide foreclosure or eviction notice);

2. Has incurred at least $15,000 of unpaid medical expenses not covered by other insurance for self, spouse or dependents, and it is necessary to pay these bills in order to obtain continuing medically necessary treatment (provide copies of all medical bills, other insurance coverages, declinations from other insurers, if any, and a statement from treating doctor covering the necessity of further treatment);

3. Unable to meet current financial obligations in order to sustain basic living requirements such as food and utilities due to total disability (provide an attending physician's statement, a description of amounts of other sources of household income including disability payments, a list of basic living expenses and any relevant utility service notices);

4. Faces imminent removal from a hospital, nursing home or other medical care facility because of inability to pay (provide a supporting statement from the institution);

5. Suffers from a terminal illness resulting in a severely limited life expectancy (provide physician's documentation certifying the illness);

6. Inability to pay funeral expenses of spouse or dependent (provide copy of unpaid funeral bill);

7. Inability to pay Federal or State tax such that the tax authority has issued a Notice of Intent to Levy (provide Notice of Intent to Levy from Federal or state taxing authority); or

8. Such other emergency or situation of an unusual nature which the Commissioner may deem appropriate (Applicant shall provide written application on a separate sheet of paper and attach all supporting documents).

(c) Applications for a hardship exemption shall be available from the servicing carrier handling the claim and shall be submitted to the Market Transition Facility of New Jersey, Attention: Hardship Exemption, 293 Eisenhower Parkway, Livingston, NJ 07039, and shall include:

1. The name, address, telephone number and date of birth of the claimant;

2. The claim number and policy number;

3. A complete description of the basis upon which the claimant seeks a hardship as set forth at (b) above.

4. The documents required to be appended to the application as set forth at (d) below;

5. The amount of exemption being sought and the grounds for the exemption; and

6. An appropriate certification executed by the applicant.

(d) Completed applications shall be submitted directly to the MTF at the address noted above and shall include copies of all unpaid medical bills, insurance or other coverages, and any other appropriate documentation that is necessary to support or prove the request for an exemption.

(e) If a hardship exemption is granted, the amount paid shall not exceed the minimum amount required to meet the financial and medical emergency, nor the net amount due the claimant.

(f) The MTF shall establish appropriate procedures for obtaining additional information when required during the course of review.

(g) The burden of demonstrating that an exemption is warranted under this section shall be on the claimant requesting the exemption.

(h) The MTF's written decision shall be delivered to the applicant or his or her legal representative by certified mail, return receipt requested or by an express mail service of the MTF's choice.

1. Where an exemption is granted in whole or in part, the MTF shall notify the involved servicing carrier in writing, with instructions to make the appropriate payment either directly to and in the name of the claimant or to the service provider as required under the hardship circumstances. The servicing carriers shall proceed in accordance with procedures developed by the MTF.

2. The granting of a hardship exemption shall not be construed as a guarantee of payment of any future claim by the claimant. The hardship exemption shall apply to the claim set forth in the application submitted pursuant to this section in support of the hardship exemption request.

(i) Where an exemption is either denied or only partially granted, the MTF's decision shall include directions about how to appeal to the Commissioner.

11:3-2B.5 Appeal to the Commissioner

(a) An applicant may appeal the decision of the MTF denying a request for a hardship exemption within 20 days of receipt of the MTF's written decision by submitting to the Commissioner an appeal of the MTF's decision on the hardship request addressed to the

Residual Markets Unit, Department of Insurance, 20 West State Street, CN 325, Trenton, NJ 08625.

(b) The Notice of Appeal shall include those items presented in the initial hardship exemption request, pursuant to N.J.A.C. 11:3-2B.4(b), a written statement explaining why the decision of the MTF denying the request was incorrect, and any additional documentation in support of the exemption request.

1. A copy of the appeal shall be simultaneously filed by the claimant with the MTF.

2. The MTF, upon receipt of notice of the appeal, shall forward the claimant's file to the Commissioner for his or her review.

3. Upon request of the Commissioner, the applicant shall provide additional information required during the course of review.

(c) The Commissioner's determination on appeal shall constitute a Final Decision, which shall be provided to the MTF and shall be mailed to the applicant or his or her legal representative by certified mail, return receipt requested and by regular mail.

11:3-2B.6 Confidentiality of documents

The information provided by a claimant pursuant to N.J.A.C. 11:3-2B.4 or 11:3-2B.5 as part of an application for a hardship exemption or appeal from a decision of the MTF shall be confidential and not subject to public inspection or copying pursuant to the "Right to Know" law, N.J.S.A. 47:1A-1 et seq.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF MARRIAGE COUNSELOR EXAMINERS

Examination Fee

Adopted Amendment: N.J.A.C. 13:34-1.1

Proposed: March 21, 1994 at 26 N.J.R. 1301(a).
Adopted: May 12, 1994 by the State Board of Marriage Counselor Examiners, Ann Baran, President.
Filed: May 13, 1994 as R.1994 d.287, **without change.**

Authority: N.J.S.A. 45:8B-13.

Effective Date: June 6, 1994.
Expiration Date: October 22, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the adoption follows:

13:34-1.1 Annual license fees and charges

(a) There shall be paid to the State Board of Marriage Counselor Examiners the following fees:

1.-2. (No change.)

3. Examination fee $65.00 plus the fee charged by Professional Examination Service

4.-11. (No change.)

(b)

DIVISION OF CONSUMER AFFAIRS BOARD OF MORTUARY SCIENCE

Handling and Embalming of Bodies Dead of an Infectious or Contagious Disease

Adopted New Rule: N.J.A.C. 13:36-7.1

Proposed: March 21, 1994 at 26 N.J.R. 1302(a).
Adopted: May 6, 1994 by the Board of Mortuary Science, Michael Petrolle, President.
Filed: May 13, 1994 as R.1994 d.288, **without change.**

Authority: N.J.S.A. 45:7-38.

Effective Date: June 6, 1994.
Expiration Date: September 27, 1994.

Summary of Public Comments and Agency Responses:
One supportive letter was received from Wilson H. Beebe, Jr., Executive Director, New Jersey State Funeral Directors Association.

Full text of the adoption follows:

SUBCHAPTER 7. SPECIAL RULES OF PRACTICE

13:36-7.1 Handling and embalming bodies dead of an infectious or contagious disease.

(a) Except as otherwise provided by law, including, but not limited to, regulation, no person in the conduct of the practice of mortuary science shall:

1. Deny funeral services for any deceased person based upon the cause of death;

2. Place any condition upon the provision of funeral services for any deceased person based upon the cause of death; or

3. Represent that state or local law requires that any condition be placed upon the provision of funeral services for any deceased person based upon the cause of death.

(b) In the preparation for burial or transportation of a dead body, the funeral director, the embalmer and assistants shall use universal precautions according to the Centers for Disease Control recommendations (see Morbidity and Mortality Weekly Reports, including Volume 38, S-6, June 23, 1989, and subsequent volumes available from the Centers for Disease Control, Atlanta, Georgia 30333), incorporated herein by reference, which shall include taking due care to prevent any spread of infection in the handling of such body during transportation, in preparation and during embalming, and after contact with such body, and shall disinfect their hands and remove any soiled clothing. All instruments, gloves, coverings and utensils used in embalming or in handling the body shall be disinfected immediately after being used. All fluids or other matters removed from such body in the process of embalming shall be disposed of in accordance with all applicable State, Federal and local laws and regulations governing medical and infectious waste.

(c)

DIVISION OF CONSUMER AFFAIRS BOARD OF NURSING

Certification of Homemaker-Home Health Aides

Adopted New Rules: N.J.A.C. 13:37-14

Proposed: May 17, 1993 at 25 N.J.R. 1950(a) (see also 25 N.J.R. 3704(b)).
Adopted: February 15, 1994 by the Board of Nursing, Golden Bethune, President.
Filed: May 13, 1994 as R.1994 d.289, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and **with proposed amendment to N.J.A.C. 13:37-12.1 not adopted.**

Authority: N.J.S.A. 45:11-24.

Effective Date: June 6, 1994.
Operative Date: For N.J.A.C. 13:37-14.10, December 6, 1994.
Expiration Date: January 23, 1995.

The Board of Nursing afforded all interested parties an opportunity to comment on the proposed new rules for homemaker-home health aide certification, N.J.A.C. 13:37-14. The notice of proposal appeared in the New Jersey Register on May 17, 1993 at 25 N.J.R. 1950(a), and copies of the published proposal were forwarded to the Star Ledger, the Trenton Times and other interested parties.

Because the Board had received the advice and recommendations of a Home-Health Advisory Committee during the course of developing the proposed new rules, correspondence received during the comment period was primarily limited to the single issue of the competency examination, N.J.A.C. 13:37-14.10.

By letter dated June 4, 1993, Garabed "Chuck" Haytaian, Speaker of the New Jersey General Assembly, requested a public hearing on this

issue on behalf of the Assembly Health and Human Services Committee. Pursuant to N.J.SA.. 52:14B-4(a)3, a public hearing was held on September 15, 1993 (see 25 N.J.R. 3704(b)) and the Board continued to accept written submissions until that date.

The Board received 105 written responses (including identical letters submitted by 39 individuals) during the official and extended comment periods. The list of commenters follows:

Evelyn Dalton, HHA; Barbara A. Botelho, CHHA; Michelle Johnson, CHHA; Ruth V. Achilles, HHA, CMC; Kathleen Pochlir, HHA; Elizabeth Schwenke, RN, BSN; Michele Parch, RN; Lisa Apel; Terry Amon, RN; Carol J. Kientz, RN, MS; Lisa Greer; Margaret McCarthy; Victoria Westawski, HHHA; Annie B. Bogus; Rich & Daras Keough; Terri Narrotny; Jamie Thompson, CHHA; Morene Pennington; Theresa M. Hauck King, HHA; Anita Neuer, RN; Mary Ann Sean; Michael E. Anderson; Linda Overs, HHA; Marguerite C. Quinn; Elizabeth J. Hutchinson; Theresa Reynolds; Melanie Schmidt; Linda Bamberger; Wendy E. Wolf; Marion Core; Elizabeth S. Shumski; Linda Gullism, HHA; Karen Wilson; Donna L. Levin; Judith Stinson; Sister Francis P. Kirk; Nancy Stanley, HHA; Annie L. Hall, MS, RN; Mary Parker, HHHA; Patricia Crites; Dolores Pipolli, RN, BSN, MPA; Mary Feldman, RN; Kathlene Benson, BSN, RN; Patricia C. Bulwith; Emma A. Meister; Billiejean M. O'Brien, RN, MSN; Stachie Wair; Katherine Slavin, Director; Luis D. Lopez; Theresa Larosa; Barbara L. Burns, LPN; Joan Harris, RN; Paul E. Provost, Director; Laurie A. Provost, President; Vickie Hrabovecky, MSN, RN; Evelyn Reap, RN; Ken Wessel, MSW; Evelyn Stratton; Diane Dadd, RN, MSN; Ann M. Healy; Charlotte M. Honer; Jean A. Namorato, HHA; Genevieve West; Heidi Maggs, RN, BSN; Barbara Rutan, Director; Audrey Tice; Bessie A. Staley; Cauldia A. Hopewell; Carolyn Epstein; Joanne McDnough; Edie Forsythe; Jean Paashaus; Christena M. Provost, RN; Gail J. Collis, RN; Alice Burnett, RN, MPA; Kathy Fitzpatrick, RN; Nancy Fiedler, RN; Virginia Statile; Stafanie Kadin Fine; Lisa Pinto; Joan Lee Warren, RN, BS; Mary R. McNalley; E. Joyce Scheuerman, RN, MA; Marilyn (Lynne) Sacco, RN; Dorothy Flemming; James S. Cafiero; James M. Murray; Jean Alan Bestafka; Jean Alan; Vivian Switzer, RN, MPA; Gail S. Gordon, BSN, MPA; Wendy P. Weaver; Marion Core; Edith Jarsythe; Donna M. Eilbacher; Carol Ossi, RN, BSN; Saul M. Kilstein; John C. Gibson; Henry Parietti; Harvey Adelsberg; Kenneth Dolan; Lillian Flynn; Eileen Conway; Ruth S. Dollinger; Norma Hamilton.

On February 15, 1994, upon consideration of the public comment received and the public hearing officer's Report and Recommendation, as summarized below, the Board voted to adopt the proposed new rules. On May 6, 1994, the Board voted to stay the operative date of N.J.A.C. 13:37-14.10 until December 6, 1994 for the express purpose of resolving the details of how to administer the examination requirement. Pursuant to N.J.S.A. 45:11-24.2, in order to satisfy the examination requirement, an oral competency evaluation will be offered in English or Spanish, to each candidate for homemaker-home health aide certification.

A full record of this opportunity to be heard can be inspected by contacting the Board of Nursing, Post Office Box 45010, Newark, New Jersey 07101.

Proposed amendment to N.J.A.C. 13:37-12.1(c)

The notice of proposal included an amendment to N.J.A.C. 13:37-12.1(c) raising program sponsor fees. However, the Board included this increase when it subsequently proposed and adopted a general increase in its fee schedule. (see 25 N.J.R. 3928(a) and 5636(b).) Accordingly, the revised program sponsor fees are already in place and need not be adopted as part of this notice.

Summary of Public Hearing Officer's Recommendations and Agency Response:

Board president Golden Bethune served as the hearing officer at the September 16, 1993 public hearing held at the War Memorial Building, Trenton, New Jersey. The hearing was limited to the specific issue of whether homemaker-home health aide should be certified by a State Board examination or a competency evaluation which is part of the training process at the agency level. Following is the hearing officer's Summary of Testimony, Discussion and Recommendations:

Summary of Testimony:

Twenty-four individuals testified in opposition to the proposed "exam" rule; three individuals submitted opposing statements in lieu of testimony. Those testifying included home care service agency and association representatives, governmental officers and homemaker home health aides. The major objections to the proposed "exam" rule were as follows:

1. The competency exam requirement is inconsistent with the legislative intent of the Homemaker Home Health Aide Certification Act. The Act was intended to mirror the Federal requirements for competency evaluation which require that home health agencies conduct the competency evaluation of homemaker home health aides. The Act was not intended to impose any additional exam requirements upon the home care service agencies.
2. The proposed "exam" rule will hamper recruitment of homemaker home health aides and cause a shortage in home care services because trainees will find it difficult to arrange for transportation to/from the exam and will find it a financial burden to pay its fees. Trainees are not academically or emotionally prepared to pass a Board exam. Trainees will be unemployable until they pass the exam and become certified.
3. The proposed "exam" requirement is unnecessary and duplicative of the on-site competency evaluation presently being conducted by home care service agencies. The present competency evaluation conducted by the agencies is adequate to assure public safety.
4. The proposed "exam" requirement is not a fair measure of minimal competency. Many trainees may be unable to pass a Board exam but will perform competently in a patient's home. The best measure of minimal competency is on-going nurse supervision.

Three individuals testified in support of the Board exam rule, the Director of the Nurses' Aide Certification Program administered by the Department of Health and two homemaker home health aide training program instructors. The major reasons given for supporting the proposed rule include the following:

1. The New Jersey Department of Health, which has administered the Nurses' Aide Certification and Competency Evaluation Program for 13 years and certifies nurses' aides to work in long term care facilities has an "exam" requirement similar to the rule proposed by the Board of Nursing. Nurses' aides have much in common with homemaker home health aides in terms of their qualifications, duties, skills and employment and should be held to equivalent or similar standards.
2. The Health Department's exam consists of two parts; a skills evaluation test and multiple choice written/oral examination. There are 21 exam centers across the State which offer the exam four times a year. Currently, the skills and written examination fees are $54.00. The skills and oral exam fees are $64.00.
3. As demonstrated by the large numbers of nurses' aide trainees who pass the Health Department's exam, it is likely that homemaker home health aide trainees will be capable of passing an equivalent or similar exam. Homemaker home health aide trainees, like their nurse aide counterparts, will be able to travel to the exam provided it is given at convenient locations and a reasonable number of times per year.
4. For valid credentialling purposes, a competency exam must be performed by an objective and independent authority. Home care service agencies have a financial interest in seeing that the vast majority of their trainees become certified and cannot be relied upon to administer a valid, secure exam.

Discussion

At the public hearing, home care service agencies expressed their views about the financial effect that the proposed "exam" rule would have upon their agencies, homemaker home health aides and consumers. They believe that the exam requirement will hamper recruitment and cause a shortage of homemaker home health aides which may impact patient care.

There was also testimony presented to the contrary. The Department of Health and two instructors of nurses' aides/homemaker home health aide training programs expressed support for the proposed rule. They view the exam requirement as a necessary screening method to assure that homemaker home health aides have achieved a minimal level of competency and fitness as determined by an impartial objective entity.

Based upon all of the testimony, there are convincing reasons for the Board to adopt its proposed exam rule. While the home health service agencies have raised concern about the exam, most of their objections stem from misunderstandings and/or speculation about how the examination will be administered. The Board can minimize the perceived negative effect of the exam through reasonable accommodation.

The perceived disadvantages of the proposed rule are greatly outweighed by the need for a valid and reliable exam which has met accepted standards of test development, construction, security and implementation. The board cannot rely upon private entities—home care service agencies—as the sole judgment of homemaker home health aide competency and fitness since they have a financial interest in seeing that the vast majority of their trainees become certified. They lack objectivity

and cannot be relied upon to prepare and administer tests that will be legally defensible.

A Board exam is the most consistent, reliable and effective means of measuring standards of competency. The subject areas are neither complex nor technical. Homemaker home health aide trainees, like their nurses' aide counterparts, should have little difficulty passing the exam.

In summary, the benefits of the Board's proposed exam rule far outweigh its perceived disadvantages. The exam is a reasonable and effective way to provide public assurance that a homemaker home health aide has achieved the acceptable level of competency.

Recommendation

1. The Board should adopt its proposed exam rule because the advantages of the proposed rule far outweigh its disadvantages.

RESPONSE: The Board agrees with this recommendation. The Board's exam rule is a valid and reliable mechanism for determining basic skills competency. Health care consumers have a right to rely upon State certification as proof that the Board of Nursing examined and approved all HHA applicants before permitting them to practice in the homes of a vulnerable population. The Board's exam rule is needed to ensure that each HHA possesses basic skills competency to protect the public health, safety and welfare. The Board should not be forced to rely upon the competency evaluation conducted by over 200 different home care service agencies. These agencies have a compelling financial interest in seeing that the vast majority of their trainees become certified. It is the responsibility of the board not an individual business enterprise to properly screen trainees for basic competency.

Despite the Board's firmly held view as indicated above, the Board has adopted N.J.A.C. 13:37-14 with the proviso that the operative date of N.J.A.C. 13:37-14.10 will be stayed for six months to allow for further discussion about the administration of the examination in compliance with N.J.S.A. 45:11-24.2.

2. The Board should consult with the Department of Health with regard to administering the proposed exam via a cooperative arrangement. This would provide for consistency in nature and type of competency evaluation used to screen nurses' aides and homemaker home health aides, except for those minor areas where the skills and duties differ.

RESPONSE: The Board agrees with this recommendation and continues to meet with various interested groups and individuals including the Department of Health to work out the details of the test's administration.

3. The Board's competency exam should be conducted at multiple test sites throughout the State. The locations should be convenient to trainees via public transportation. The exam fees should be reasonable. The exam should be given at frequent intervals so that any disruption in employment can be minimized.

RESPONSE: The Board agrees with this recommendation. The Board is considering various options. All options include multiple test sites, reasonable fees and frequent testing.

As previously stated, the Board has stayed the operative date of N.J.A.C. 13:37-14.10 for six months to allow for further discussion about the exam's administration.

4. The Board should clarify the option that trainees may take an oral examination in lieu of a written exam upon request. This will help alleviate the concerns of trainees with a language or literacy problem.

RESPONSE: The Board agrees with this recommendation. Pursuant to N.J.S.A. 45:11-24.2, it is the Board's intent to offer all candidates an oral competency evaluation.

N.J.A.C. 13:37-14.10

COMMENT: The Division of Medical Assistance and Health Services objected to the provision of the rule which permits aides to be employed prior to successful completion of the Board's exam. Other commenters expressed concern that since the majority of home care is financed by Medicare and Medicaid which only allows the use of certified aides, few employment opportunities will be available for aides awaiting testing. Other commenters noted that if tests are given at three month intervals, an aide who fails the first test could work up to six months without certification.

RESPONSE: N.J.A.C. 13:37-14.10 permits applicants for HHA certification who have successfully completed an approved training program to work as a HHA while waiting to take the first available exam. This provision affords the HHA the ability to work pending the exam and its results. The fact that there may be few employment opportunities for uncertified aides is not something that the Board of Nursing has control over. In response to the possibility that an aide may practice up to six months without certification, the Board does not see this occurring. The Board plans to offer the exam on a frequent basis with the results to be known quickly. The details of administering exam are still being worked out, and, accordingly, the operative date of N.J.A.C. 13:37-14.10 has been stayed for six months.

COMMENT: One commenter objected to the Board's exam requirement. The commenter argued that the exam was unnecessary since aides have no independent scope of practice and must be supervised by RNs. The commenter also stated that the Department of Health previously issued certification to HHAs without a State exam so there is precedent for the Board to do the same.

RESPONSE: The Board disagrees. The Board believes that a valid reliable and legally defensible exam is essential in order to ensure minimum competency. There are over 200 different home care service agencies which offer training classes to HHAs. RN supervision over the HHA is not alone sufficient to ensure minimum competency. The RN is not on site at all times. In fact, the Home Care Aide Association of America guidelines indicate that a nurse must provide in home supervision only a minimum of every 62 days. The Department of Health administers the Nurses' aide certification program which requires all certified nurses' aides to have successfully completed a Department of Health approved standardized exam. The Board's exam rule mirrors the Health Department's requirements for certified nurses' aides. Even though HHAs function with much less direct supervision than their nurses' aide counterparts, their qualification requirements and duties are similar, and it is clear that HHAs should at their very least be held to equivalent standards.

COMMENT: One commenter complained that the curriculum has not been reviewed or updated since 1983 and is not standardized throughout the State. Many areas that need to be addressed with HHAs including infectious disease awareness, HIV and TB.

RESPONSE: The Board believes this comment supports the need for a standardized curriculum and valid exam.

COMMENT: A commenter asserted that training course sponsors have been successfully evaluating aides since 1990 with no known complaint or problem.

RESPONSE: During the past year alone, the Board has received complaints regarding alleged incompetence, patient abuse and theft committed by the HHA. The rationale, however, for having an impartial and unbiased, valid and reliable measure of minimal competency is to ensure the health, safety and welfare of the public. Health care consumers have a right to rely upon State certification as proof that the Board of Nursing examined and approved all HHA applicants before permitting them to practice in the homes of a vulnerable population.

COMMENT: One commenter expressed concern that the economic burden upon the aide will be too great and will discourage them from working for agencies.

RESPONSE: The Board does not believe the economic burden upon the aide is excessive. The exam will be administered at nominal cost to the aide.

COMMENT: One commenter expressed concern that testing will impose additional costs on the agency.

RESPONSE: The Board anticipates that the exam will be given on site at the conclusion of training courses at nominal costs.

COMMENT: One commenter stated that because agencies bear the ultimate responsibility and the legal liability for poor employee performance, they will continue to use their own exam and will not accept the judgment of an outside testing company.

RESPONSE: An agency may continue to give its own exam in addition to the exam requirement of N.J.S.A. 45:11-24.2.

COMMENT: One commenter believes one on one tutoring is required to enable prospective aides to pass a standardized test.

RESPONSE: The Board disagrees and believes this recommendation is not consistent with current testing research and experience.

COMMENT: One commenter stated that the following testing alternatives should be considered:

1. The Board should develop a test to be used by the sponsor with frequent random on site Board visits.

2. The Board should conduct unannounced monitoring of the training course.

3. The Board should develop guidelines for the agency to use proper test construction and administration.

4. The Board should hire evaluators to administer the test throughout the state.

5. The Board should administer a standardized exam to be given monthly in each county.

RESPONSE: The Board is studying all of these alternatives. The Board met tirelessly with representatives of the home care industry to resolve the details of how an exam would be administered. The Board has been very sensitive to the industry's concerns about test costs, location and frequency. The Board agrees that the exam should be administered in the most cost-efficient convenient and expeditious manner possible.

N.J.A.C. 13:37-14.4

COMMENT: One commenter argued that long term care facilities and nursing homes which meet other Board requirements for conducting a training program should be eligible to apply for Board approval. The commenter further stated that core skills for HHAs overlap with those prescribed for nurses' aides and suggested that it would be most cost effective if nurses aides were trained for multi competency functioning whether they work in hospitals, home health care or long term care.

RESPONSE: The Board supports the use of a multi disciplinary team for standardized training and procedures to avoid duplication. In order to implement those recommendations, new legislation needs to be in place so that all aides (nurses aides, home health aides and nurses assistants) are under the same administrative umbrella.

COMMENT: One commenter asserted that 16 hours of one on one supervision will be ineffective and impossible to schedule.

RESPONSE: Only one hour of direct supervision is required. The remaining 15 hours may be provided in a laboratory setting.

N.J.A.C. 13:37-14.6

COMMENT: One commenter asked the Board to consider an exemption for a program coordinator who does not meet the experiential requirement of two years of full time RN experience within the five year period immediately preceding application.

RESPONSE: The Board will study the implications of this recommendation.

COMMENT: Several commenters objected to the requirement that the program coordinator must have a BSN or be otherwise bachelor or masters prepared.

RESPONSE: The Board believes that a BSN prepared RN is the minimum educational level necessary to execute the functions of program coordinator.

N.J.A.C. 13:37-14.7

COMMENT: Two commenters objected to the requirement that all nursing instructors must have two years of home care nursing experience. One commenter argued that it may be enriching to have part of the course taught by various instructors who work in other fields. One commenter asked how anatomy and physiology are different in the home than they are in an institution.

RESPONSE: The Board disagrees and believes that all instructors of HHAs should have had experience in that area. It is not that science courses differ according to the setting, it is that all courses should be taught with specific reference to the problems and concerns which may arise in the home setting in order to be of optimum benefit to the HHA.

N.J.A.C. 13:37-14.11

COMMENT: One commenter recommended that the Board waive the training program requirement for aides who have one year of supervised employment experience and who pass the agency's own competency evaluation with a score of 70 percent.

RESPONSE: The Board is of the firm opinion that the course and the examination are necessary for consumer safety purposes in that they provide for a measure of minimum competency.

Miscellaneous Comments

COMMENT: One commenter complained that the most serious home care problem is thousands of aides who work independently of home care services agencies and not under the supervision of RNs. The commenter recommended that the Board implement requirements to ensure that certified HHAs do not work as independent practitioners including:

1. A statement on all certificates indicating that they are valid only if the aide is employed by a home care service agency and is performing delegated tasks under the supervision of a RN.

2. Certificates should not be mailed directly to aides since this may promote the perception that aides are independent practitioners. The home care agencies should issue the initial certificates and the current employer should issue renewal certifications.

3. Applications for renewal certificates should include an employer's attestation that the aide is currently working for that agency. A HHA registry should be established and should include basic information on each certified aide including: name, date of initial certification, social security number, training facility, certification status and employment history.

4. The employer should be required to update the registry via computer modem or in writing within five working days. Home care service agencies should have access to the above stated registry through computer modem on written request. Agencies should be able to purchase an access code for $50.00 and pay $5.00 for each inquiry. The Board should charge $10.00 for each request.

RESPONSE: The Board is currently trying to implement recommendation 1. As for recommendation 2, the Board's expectation is that all initial and renewal certifications should be mailed directly to the applicant/certificate holder. Recommendation 3 is not feasible for implementation as proposed because it will inhibit HHAs from changing employment. As for recommendation 4, the Board has a registry containing most of this information. The Board has no access to information concerning the HHAs' current or future employment. Also, according to Federal law, social security numbers are confidential. The Board will study recommendation 4 with regard to the feasibility of agency access via modem.

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

SUBCHAPTER 14. HOMEMAKER-HOME HEALTH AIDES

13:37-14.1 Purpose and scope

(a) The rules in this subchapter are designed to protect the health and safety of the public through certification of homemaker-home health aides, pursuant to N.J.S.A. 45:11-24(d)(20).

(b) This subchapter prescribes standards and curricula for homemaker-home health aide education and training programs which a homemaker-home health aide, as defined in this subchapter, is required to complete in order to work in this State. This subchapter also establishes standards and requirements for homemaker-home health aide certification and for the renewal, suspension or revocation of that certification.

13:37-14.2 Definitions

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

"Activities of daily living" mean the functions or tasks for self-care which are performed either independently or with supervision or assistance. Activities of daily living include at least mobility, transferring, walking, grooming, bathing, dressing and undressing, eating, and toileting.

"Homemaker-home health aide" means a person who is employed by a home care services agency and who, under supervision of a registered professional nurse, follows a delegated nursing regimen or performs tasks which are delegated consistent with the provisions of N.J.A.C. 13:37-6.2.

"Program coordinator" means the nurse responsible for the training program curriculum.

"Program sponsor" means the agency, hospital or educational institution or entity granted approval by the Board of Nursing to conduct a homemaker-home health aide training program.

13:37-14.3 Duties of a homemaker-home health aide; supervision

(a) The duties of a homemaker-home health aide may include, but not be limited to, providing personal care and homemaking services essential to the patient's health care and comfort at home, including shopping, errands, laundry, meal planning and preparation (including therapeutic diets), serving of meals, child care and assisting the patient with activities of daily living.

(b) A homemaker-home health aide shall not administer medications.

(c) The registered professional nurse who is supervising a homemaker-home health aide shall ensure that the patient care provided by the homemaker-home health aide does not exceed the tasks and procedures which the homemaker-home health aide has

satisfactorily demonstrated, as documented by the registered professional nurse.

13:37-14.4 Homemaker-home health aide training program

(a) A homemaker-home health aide training program may be conducted by a home care agency licensed by the Division of Consumer Affairs; a home health agency or hospital licensed by the Department of Health; an educational institution approved by the New Jersey State Department of Education or the Department of Higher Education; or a home care agency accredited by an independent national or state accrediting body which is without direct or indirect financial interest in the agency. Said accrediting body shall have prior approval of the Board of Nursing.

(b) A homemaker-home health aide training program shall consist of at least 76 hours, to include 60 hours of classroom instruction and 16 hours of clinical instruction in a skills laboratory or patient care setting. The student-to-instructor ratio for classroom instruction shall not exceed 30 students to one classroom instructor.

(c) The 16 hours of clinical instruction in a skills laboratory or patient care setting shall be supervised by a registered professional nurse. The supervision ratio shall not exceed 10 homemaker-home health aides to one registered professional nurse.

(d) The curriculum for a homemaker-home health aide training program shall include the activities described in N.J.A.C. 13:37-14.3 and shall be consistent with the laws governing the practice of nursing and the delegation of selected tasks by the registered professional nurse.

(e) Written approval of the Board of Nursing is required prior to commencement of the training program, which approval shall be granted for a 12-month period.

(f) At the discretion of the Board, program approval may be contingent upon a visit to the program site by a representative of the Board.

(g) The Board may deny or revoke program approval if the program sponsor does not meet the standards set forth in this subchapter.

13:37-14.5 Program sponsor; responsibilities

(a) The program sponsor shall provide an appropriately equipped classroom and skills laboratory with sufficient equipment and resources to provide for efficient and effective theoretical and clinical learning experiences.

(b) The program sponsor shall submit the following to the Board of Nursing at least two months prior to the commencement of the training program:

1. A Board of Nursing application for program approval. The application form requests the name and address of the agency or school, course offering dates and location, tentative number of trainees and name and address of program coordinator. Two supplemental forms which must accompany the application are a faculty approval application which requests the name of the instructor assigned to each session and an instructor personnel record which requests brief biographical and educational information for each instructor;

2. The annual program approval fee for each location at which the program will be offered, as set forth in N.J.A.C. 13:37-12.1(c)1; and

3. Resume(s) of nursing instructor(s). The resume shall include the instructor's name, address, education (institution, type of degree or diploma, month and year of graduation), work experience (employer's name and address, dates of employment, including month and year, job title, whether full-time or part-time, and New Jersey license or certification number, as appropriate.

(c) The program sponsor shall not, without prior notice to and approval by the Board, make additions to or deletions from a training program which has been approved by the Board of Nursing.

(d) The program sponsor shall notify the Board of Nursing, at least two weeks prior to each program session, of the location and the beginning and ending dates of the program session.

(e) Except in an emergency situation, the program sponsor shall notify the Board of Nursing in writing of any program session cancellation or change, such as a change in location, nursing instructor or dates, at least one week prior to any such cancellation or change. No cancellation or change shall be implemented without the written approval of the Board.

(f) The program sponsor's responsibilities shall include, but not be limited to, the following:

1. Establishing and implementing policies and procedures for the coordination of instruction, including designating a responsible program manager;

2. Maintaining on file a copy of the lesson plan for the curriculum;

3. Establishing methods or provisions to ensure that an absent student receives the required classroom and/or clinical instruction missed;

4. Establishing and maintaining records for each student. The student record shall include, at a minimum, the following:

i. The beginning and ending dates of the program session;

ii. An attendance record, including the dates of any makeup sessions; and

iii. Evaluation of the student's performance by the classroom instructor and by the registered professional nurse who supervised the student's clinical instruction; and

5. Developing, implementing and maintaining on file a plan for evaluating the effectiveness of the program. The evaluation plan shall include, at a minimum, the following:

i. The name of the person responsible for implementing the evaluation plan;

ii. An annual written training program evaluation report, including findings, conclusions and recommendations;

iii. A written evaluation of instructor(s) performance;

iv. Program, faculty and student data, which shall include, at a minimum, the following:

(1) The beginning and ending dates of each program session;

(2) The number of students enrolled;

(3) The number and percentage of students who satisfactorily completed the program;

(4) The number and percentage of students who failed the program;

(5) The number and percentage of students in each program who passed the New Jersey Homemaker-Home Health Aide Certification Examination; and

(6) The number and percentage of students in each program who failed the New Jersey Homemaker-Home Health Aide Certification Examination.

(g) The program sponsor shall not use the homemaker-home health aide training program as a substitute for staff orientation or staff continuing education programs.

13:37-14.6 Program coordinator; responsibilities

(a) The homemaker-home health aide training program shall be coordinated by a registered professional nurse licensed in New Jersey with:

1. A minimum of a bachelor's degree in nursing; and

2. At least two years of full-time or full-time equivalent experience as a registered professional nurse within the five-year period immediately preceding application, one year of which shall have been in community health, public health or home care.

(b) The program coordinator's responsibilities shall include, but not be limited to, the following:

1. Ensuring that the curriculum is coordinated and implemented in accordance with this subchapter.

2. Establishing job descriptions indicating the responsibilities of each instructor;

3. Ensuring that each instructor meets the qualifications specified in N.J.A.C. 13:37-14.7;

4. Ensuring that the program sponsor has available the resume of each instructor;

5. Ensuring that each student is supervised by a registered professional nurse during the student's clinical experience;

6. Ensuring that the registered professional nurse supervising the student evaluates the student's clinical performance and transmits the results of the evaluation to the classroom nursing instructor; and

7. Ensuring that patient care provided during the training period by the student is provided in a safe and competent manner and that

the tasks and procedures delegated to the student in accordance with N.J.A.C. 13:37-6.2 do not exceed the tasks and procedures which the student has satisfactorily demonstrated as documented by the registered professional nurse.

(c) Program coordinators who do not have a bachelor's degree in nursing but who are otherwise bachelor's or master's prepared and who began their employment on or before *[(the effective date of these rules)]* ***June 6, 1994*** may qualify for an exemption from the requirements of subsection (a) subject to Board approval.

13:37-14.7 Program instructor; responsibilities

(a) Except as set forth in (c) below, classroom instruction shall be provided by:

1. A registered professional nurse licensed in New Jersey with at least two years of full-time or full-time equivalent experience as a registered professional nurse within the five-year period immediately preceding application, one year of which shall have been in community health, public health or home care; or

2. A registered professional nurse who meets the qualifications set forth in (a)1 above and a multidisciplinary team of individuals which may include, but not be limited to, a registered dietician, licensed social worker, licensed psychologist, licensed physical therapist, mental health consultant, licensed speech-language pathologist, public health nurse, home economist, occupational therapist, and/or member of the clergy.

(b) Except as set forth in (c) below, supervised clinical experience shall be provided to the student by a registered professional nurse with:

1. At least two years of full-time or full-time equivalent experience as a registered professional nurse within the five-year period immediately preceding application, one year of which shall have been in community health, public health or home care; and

2. At least six months of full-time or full-time equivalent experience in the supervision of homemaker-home health aides.

(c) Program instructors who began their employment on or before *[(the effective date of these rules)]* ***June 6, 1994*** and who have been previously approved by the Board may qualify for an exemption from the requirements of (a) and (b) above.

(d) The program instructor's responsibilities shall include, but not be limited to, the following:

1. Developing a lesson plan for each content area prior to the starting date of the program. The lesson plan shall include:

i. The behavioral objective(s) of the lesson;

ii. The content of the lesson;

iii. A description of clinical activities for each lesson;

iv. The hours of instruction; and

v. Method(s) of presentation and teacher strategies;

2. Developing and implementing criteria for evaluating the classroom and clinical performance of students; and

3. Developing and implementing criteria to determine whether a student has satisfactorily completed the training program.

13:37-14.8 Homemaker-home health aides; training program requirement

Every applicant for certification as a homemaker-home health aide in this State shall be required to complete a training program approved by the Board of Nursing, except as provided in N.J.A.C. 13:37-14.11 and 14.13. The applicant shall have completed the training program no later than four months after commencing the program.

13:37-14.9 Application for certification; documents required

(a) An applicant for certification as a homemaker-home health aide shall submit the following to the Board:

1. Evidence of satisfactory completion of a homemaker-home health aide training program approved by the Board;

2. Evidence in such form as the Board may prescribe that the applicant is of good moral character, is not a habitual user of controlled substances and has never been convicted of or pleaded nolo contendere, non vult contendere or non vult to an indictment, information or complaint alleging violation of a Federal or state law; and

3. The application fee as set forth in N.J.A.C. 13:37-12.1(b).

13:37-14.10 Competency examination

(a) Upon successful completion of an approved training program, the applicant shall register for the next scheduled administration of the competency examination administered by the Board or a Board-approved testing service.

(b) The applicant may be employed by a home health care agency under the supervision of a registered professional nurse while waiting to take the next scheduled administration of the competency examination.

(c) The competency examination shall be an examination administered by the Board of Nursing or a Board-approved testing service at least four times a year.

(d) The passing score on the examination shall be established and reviewed annually by the Board.

(e) An individual who fails the competency examination may retake the examination provided that he or she registers for the next scheduled administration of the examination.

(f) An individual awaiting the next scheduled administration of the examination in accordance with (e) above may continue to be employed by a home health care agency under the supervision of a registered professional nurse.

(g) If the individual fails in the second attempt to pass the examination, he or she shall successfully complete another homemaker-home health aide training program approved by the Board before taking the examination again. This individual shall not be employed as a homemaker-home health aide until he or she passes the examination.

(h) Upon application to the Board, an individual may satisfy the examination requirement for certification as a homemaker-home health aide by passing an oral competency evaluation in English or Spanish.

13:37-14.11 Waiver of training program requirement

Current nursing students who have successfully completed a course in fundamentals/basic nursing may take the competency examination without first completing an approved training program.

13:37-14.12 Initial certification and renewal

(a) An individual who passes the competency examination may be eligible for certification by the Board as a homemaker-home health aide.

(b) Certification shall be renewed on a biennial basis unless disciplinary action against the certified person has been instituted by the Board.

13:37-14.13 Certification by endorsement

An individual certified as a homemaker-home health aide in another state who can verify successful completion of an equivalent homemaker-home health aide program and competency examination may be eligible for certification by endorsement.

13:37-14.14 Duties and powers of the Board

(a) The Board may deny or revoke training program approval if the program sponsor has failed to comply with N.J.S.A. 45:11-24(d)(20) to (24) or this subchapter.

(b) The Board may investigate complaints made against a program sponsor or certified homemaker-home health aide and may conduct hearings in connection with such complaints.

(c) The Board may suspend or revoke the certification of a homemaker-home health aide who has violated any provisions of N.J.S.A. 45:11-24(d)(20) to (24) or this subchapter.

(d) Any Board action for certification suspension or revocation or training program revocation shall take place only upon notice to the licensee and the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Decisions on violations shall be a public record maintained by the Board pursuant to N.J.S.A. 45:11-24(d)(20) and (24).

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Speed Limits
Route U.S. 202 in Somerset County
Adopted Amendment: N.J.A.C. 16:28-1.67

Proposed: March 21, 1994 at 26 N.J.R. 1316(b).
Adopted: April 29, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: May 2, 1994 as R.1994 d.262, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: June 6, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:28-1.67 Route U.S. 202[1]

(a) The rate of speed designated for the certain parts of State highway Route U.S. 202 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-x. (No change.)

xi. 50 miles per hour to a point 1,000 feet north of the intersection of Crestview Drive (Bernardsville) (milepost 36.15); thence

xii. 40 miles per hour between 1,000 feet north of Crestview Drive and Woodland Road (mileposts 36.15 to 36.83); thence

xiii. 30 miles per hour between Woodland Road and Finley Avenue (mileposts 36.83 to 37.70); thence

xiv. 35 miles per hour between Finley Avenue and Madisonville Road (mileposts 37.70 to 37.92); thence

xv.-xxi. (No change.)

[1](No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Lane Usage
Route N.J. 38 in Burlington County
Adopted New Rule: N.J.A.C. 16:30-3.11

Proposed: February 22, 1994 at 26 N.J.R. 908(a).
Adopted: April 29, 1994 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.
Filed: May 2, 1994 as R.1994 d.263, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-123 and 39:4-124.

Effective Date: June 6, 1994.
Expiration Date: May 7, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:30-3.11 Route 38

(a) Turning movements of traffic on certain parts of State highway Route 38 described in this subsection are regulated as follows:

1. In Burlington County:

i. Lumberton and Southampton Townships;

(1) Center lane for left turn only:

(A) Both directions of Route N.J. 38 (milepost 18.3) at Smithville Road—Smithville-Jacksonville Road, Lumberton and Southampton Townships.

(B) For westbound Route N.J. 38 (milepost 18.2) traffic at the driveway along the south side of Route N.J. 38 approximately 370 feet west of the Smithville-Jacksonville Road westerly curb line in the Township of Lumberton.

(C) For eastbound Route N.J. 38 (milepost 18.2) traffic at the driveway (to the Division of Motor Vehicles Inspection Station) located along the north side of Route N.J. 38 approximately 1,000 feet east of the Smithville Road easterly curb line in the Township of Southampton.

(c)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING
BUREAU OF AUTHORITY COORDINATION AND LOCAL TRANSPORTATION PLANNING
Notice of Administrative Correction
State Highway Access Management Code
Major Access Permits with Planning Review Checklist
N.J.A.C. 16:47-4.13

Take notice that the Department of Transportation has discovered an error in the current text of N.J.A.C. 16:47-4.13. N.J.A.C. 16:47-4.13(o) was proposed and adopted to be deleted effective November 1, 1993 (see 25 N.J.R. 3129(a) and 4915(b)). However, the deletion was not effected in the 11-15-93 Code update. Through this notice, in accordance with N.J.A.C. 1:30-2.7, this error is corrected.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

16:47-4.13 Major access permits with planning review process

(a)-(n) (No change.)

[(o) Major applications with planning reviews that propose alternative access to a street which intersects a State highway may lead to a significant increase in traffic on the street at its State highway intersection. This could cause the local agency's street intersection permit to expire.]

TREASURY-GENERAL

(d)

DIVISION OF PENSIONS AND BENEFITS
Public Employees' Retirement System
Election of Member-Trustees
Adopted Amendment: N.J.A.C. 17:2-1.4

Proposed: November 15, 1993 at 25 N.J.R. 5113(a).
Adopted: April 21, 1994, by Board of Trustees, Public Employees' Retirement System, Wendy Jamison, Secretary.
Filed: April 28, 1994 as R.1994 d.259, **without change.**

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

Effective Date: June 6, 1994.
Expiration Date: November 8, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

17:2-1.4 Election of member-trustee

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

(i) If there are at least three candidates in an election for member-trustee and the victorious candidate dies or declines to serve

as such member-trustee prior to the beginning of his or her term as trustee, the candidate who obtained the next highest number of votes in that election (that is, the first runner-up) may be selected, at the Board's discretion, to fill the Board vacancy caused by the death or inability or unwillingness to serve of the successful candidate. If the Board selects the first runner-up in such election and that person is unable or unwilling to accept the position, then the Board may, in its discretion, select the candidate who obtained the next highest number of votes in that election or may conduct a new election to fill the Board vacancy. For purposes of this provision, a member-trustee's term begins upon the taking of the oath of office.

(j) Only active members of the Public Employees' Retirement System may vote in the election of member-trustees of the Board of Trustees of the Public Employees' Retirement System.

COMMUNITY AFFAIRS

(a)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Substantive Rules

Adopted Amendments: N.J.A.C. 5:91-1.3 and 1.4, 5:92-1.1, and 1.3

Adopted New Rules: N.J.A.C. 5:93

Proposed: December 20, 1993 at 25 N.J.R. 5763(a).

Adopted: May 10, 1994 by New Jersey Council on Affordable Housing, Christiana Foglio, Chairperson.

Filed: May 13, 1994 as R.1994 d.290, **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. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: June 6, 1994.

Expiration Date: June 6, 1999.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing was held on the reproposed rules on January 19, 1994, in Trenton, with Art Bernard serving as the hearing officer. The hearing officer recommended, and the Council agreed, to the changes contained in the Summary of Agency-Initiated Changes. After reviewing the comments received, the Council has decided to adopt the rules as reproposed at 25 N.J.R. 5763(a), with the exception of a correction of an error in a formula at N.J.A.C. 5:93-5.12 and at N.J.A.C. 5:93-6.1, as described in comment 58 and in the Summary of Agency-Initiated Changes. The hearing record may be reviewed by contacting Art Bernard, Council on Affordable Housing, CN 813, Trenton, N.J. 08625.

The Council has also proposed a new rule, N.J.A.C. 5:93-3.6, which allows reductions for substantial compliance. (See the June 20, 1994 issue of the New Jersey Register.)

Summary of Public Comments and Agency Responses:

The list of commenters follows:

1. Alison Miller, West Windsor Township, Princeton Junction, NJ
2. Rick Sauer, Assistant Director, Affordable Housing Network, Trenton, NJ
3. Gerald J. Muller, West Windsor Planning Board, Princeton, NJ
4. Shirley Bishop, Housing Consultant, West Windsor Township, Princeton, NJ
5. Ronald R. Reisner, Esq., Tucci & Reisner, West Long Branch, NJ
6. Jill Sebest-Welch, John Rahenkamp Consultants, Inc., Philadelphia, PA
7. Patricia Shump, Housing Coalition of Central Jersey, New Brunswick, NJ
8. Joseph J. Miller, County Investment Director, Hudson County Association of Planning, Jersey City, NJ
9. Henry A. Hill, Esq., Hill Wallach, Princeton, NJ
10. Maia Wojciechowska, Council Member, Township of Mahwah, Maia Productions, Inc., Mahwah, NJ
11. William G. Dressel, Jr., Assistant Executive Director, New Jersey League of Municipalities, Trenton, NJ
12. Edward J. Buzak, Esq., Montville, NJ
13. Dean K. Boorman, Dean Boorman & Associates, Montclair, NJ
14. Diane Sterner, Executive Director, Affordable Housing Network, Trenton, NJ
15. David N. Kinsey, Kinsey & Hand, Princeton, NJ
16. Glenn S. Pattreson, Director, City of New Brunswick, New Brunswick, NJ
17. Joanne M. Harkins, AICP/PP, Director of Land Use & Planning, New Jersey Builders Association, Plainsboro, NJ
18. Robert A. Nasdor, Esq., Passaic County Legal Aid Society, Paterson, NJ
20. Robert Bzik, AICP/PP, Director, Somerset County Planning Board, Somerville, NJ
21. Joseph Odenheimer, Mayor, Township of Washington, Robbinsville, NJ
22. Sherry Sylvester, Executive Director & Wendy Crook, Research Assistant, Somerset County Coalition on Affordable Housing, Bound Brook, NJ
23. Marvin R. Reed, Mayor, Borough of Princeton, Princeton, NJ
24. Reverend Dr. Jeffrey Eaton, President, MIPH, Edison, NJ
25. Philip B. Caton, PP/AICP, Clarke & Caton, Trenton, NJ
26. Richard Dieterly, Esq., Gebhardt & Kiefer, Clinton, NJ
27. Thomas F. Carroll, Esq., Hill Wallack, Princeton, NJ
28. Robert L. Broughton, President, New Jersey Urban Counties Community Development Association, c/o Gloucester County Office of Government Services, Woodbury, NJ
29. Kenneth A. DiMuzio, Esq., Hoffman, DiMuzio & Hoffman, Woodbury, NJ
30. Jeffrey Kantowitz, Esquire, Greenbaum, Rowe, Smith, Ravin & Davis, Woodbridge, NJ
31. Melville D. Miller, President, David Sciarra, Kristin Mateo, Legal Services of New Jersey, Inc., Edison, NJ
32. Robert C. Shea, Shea & Novy, Toms River, NJ
33. Jeffrey R. Surenian, Esq., Lomell, Muccifori, Adler, Ravaschiere, Amabile & Pehlivanian, Toms River, NJ
34. Thomas A. Thomas, PP/AICP, & Richard S. Cramer, PP/AICP, T & M Associates, Middletown, NJ

Subchapter 1. General Provisions

N.J.A.C. 5:93-1.3

1. COMMENT: Is the unit of credit for a group home the number of bedrooms or the number of beds? Is there any income qualification for group homes or is it assumed that such facilities are for low and moderate income individuals?

RESPONSE: The unit of credit for a group home is the bedroom. To receive credit, there should be a control on affordability. However, the Council shall consider evidence indicating that group home residents are income qualified in assessing the need for an additional control. For example, a residential health care facility that must, by terms of its license, accept SSI residents would be eligible for credit.

2. COMMENT: The Council cannot provide credit for transitional housing because it has excluded the homeless from its calculation of need.

RESPONSE: The Council has certainly included at least some portion of the homeless population by including every low and moderate income household that formed between 1987 and 1993 and every low and moderate income household that is projected to form from 1993-1999.

3. COMMENT: The use of substandard housing as a surrogate for homeless households in need of housing is arbitrary and capricious inasmuch as homeless households are presently residing in motels, in shelters, in transitional housing, in psychiatric hospitals, in the streets, and in other temporary situations. While the Council concedes that those homeless households in shelters and on the street are excluded, it claims that homeless households are, to an extent, counted through this methodology because households in substandard transitional housing and substandard motels are counted. COAH's claim is false because its methodology relies on the regular census count of housing units. This count excluded homeless households in motels and transitional housing. The Census Bureau considers these households as residing in emergency shelters, and as such, they were counted as part of the Census S-Night count which is not used by COAH in its methodology.

RESPONSE: With regard to future need, the future homeless are included as part of the COAH need via the headship rate. The headship rate is affected by marriage and divorce rates, family changes, and other events that cause households to be formed. This is then linked with HUD

Section 8 income and all such low and moderate income households that will be formed in the future are included in the COAH methodology. If some of the households that are created for these reasons become homeless this is accounted for in the headship rate and is counted as need.

In determining present need, the homeless who live in the streets are not counted as part of the COAH need. They were counted as part of the U.S. Census S-Night count and numbered 1,100 in New Jersey in 1990. Other homeless that live in shelters and motels or hotels are considered in determining need. Those of Section 8 income who regularly live in motels or hotels are counted as part of the need using the overcrowding and incomplete kitchen variables. This applies to all who live in such accommodations except for predesignated homeless units in motels and hotels.

Since most of those living in temporary quarters are included in COAH need, it is absolutely consistent to allow housing that is to be used for temporary purposes to be included as a response to COAH-calculated housing need.

Subchapter 2. Municipal Determination Of Present and Prospective Need

4. COMMENT: The Council's estimate of need improperly excludes: those living in physically sound housing but obliged to pay more for housing than they can afford without giving up other necessities of life; those who have no permanent housing at all; those who have been obliged to double or triple up in existing housing units; those who are currently residing in institutions or group quarters because of the unavailability of safe, decent affordable housing; the mentally ill and the physically handicapped. By not including all of these households, the Council seriously misleads the public and our policy makers as to the reality of the State's housing problems. The State's Comprehensive Housing Assistance Strategy (CHAS) indicates that New Jersey has 660,000 households in need. Clearly, the Council's new need number of 118,000 units is too low.

RESPONSE: The Council on Affordable Housing (Counsil) was created by the Fair Housing Act to address the need for low and moderate income housing caused by municipal exclusionary zoning as defined in the *Mount Laurel* decisions, *Burlington County N.A.A.C.P.* v *Mount Laurel,* 67 *N.J.* 151 (1975) *(Mount Laurel* I) and *Southern Burlington County N.A.A.C.P* v *Mount Laurel,* 92 *N.J.* 158 (1983) *(Mount Laurel* II). In developing its estimate of need, the Council has included those low and moderate income households living in substandard housing, all low and moderate income households the Council believes have formed between 1987 and 1993 and all the low and moderate income households that are expected to form during a 1993-1999 projection period. The methodology developed by the Council is very similar to the one developed in Superior Court prior to the formation of the Council. The courts, which established the constitutional obligation that led to the formation of the Council, have upheld the Council's definition of need in *Calton Homes, Inc.* v. *Council on Affordable Housing,* 244 *N.J. Super.* 438 (App. Div. 1990), *certif. denied* 127 *N.J.* 326 (1991) and *In re Township of Warren,* 132 *N.J.* 1(1993).

It is not true that the Council's estimates of need exclude households in the various categories mentioned in the comment. For example, overcrowding is one of the surrogates of deficient housing used by the Council in estimating those low and moderate households living in substandard housing. The use of overcrowding in this methodology was adopted by the Council after the Superior Court, in *Countryside Properties, Inc.* v. *Borough of Ringwood,* 205 *N.J. Super.* 291 (Law Div. 1984), found this method of estimating low and moderate income households in substandard housing to be more reliable than other proposed methodologies. The Council's estimates also include, to a certain extent, the homeless, mentally ill and those paying a disproportionate share of their income on housing. While the Council's methodology has never counted households in dormitory shelters or people who have no means of shelter, it does include those living in motels or existing transitional housing if such shelter is substandard. The methodology also includes all low and moderate income households that have formed since 1987 and all future low and moderate income households expected to form between 1993 and 1999. These households include the homeless, mentally ill and those paying a disproportionate share of income on housing.

The commenter, the general public and State policy makers should not view the Council as the sole component of the State's comprehensive housing strategy. The State Comprehensive Housing Assistance Strategy (CHAS) was developed to allocate Federal dollars to respond to all households in need. The CHAS estimates that there are 660,000 households in need, including households living in standard housing. However, it does not conclude that New Jersey needs 660,000 new housing units. Rather, it develops a strategy of expansion and better integration of housing subsidy and social service programs for households in need. It speaks of program after program designed not only to supply housing, but to also supplement income and address the social service needs of all low and moderate income households. In mentioning the Council, the CHAS does so in the context of addressing the segment of need caused by municipal land use practices. As discussed above, the Council has developed criteria for quantifying that segment of need and has determined that municipal land use and development practices have created a need for the construction or rehabilitation of 118,000 low and moderate income units.

5. COMMENT: The Council should reduce its estimates of need because it is not likely that the State will be able to produce the housing to meet the need.

RESPONSE: The Council has included low and moderate income households living in substandard units and projections of low and moderate income household formation in its estimates of need. It has also adopted a cumulative approach to estimating need, establishing the principal that the need does not disappear if unaddressed. These estimates of need are not synonymous with what may actually occur during any six year planning period. However, by providing the opportunity, municipalities make it much more likely that the low and moderate income housing will actually be built. In addition, the commenter's remarks seem predicated on new construction activity by the private sector. Yet, there are several other ways to address much of the need. Approximately half of the need may be addressed through rehabilitation activity. A municipality may choose to enter into a regional contribution agreement, or create accessory apartments or construct its own housing through a non-profit corporation.

6. COMMENT: The Council's methodology grossly overstates the prospective need for the Ocean/Monmouth/Mercer housing region. First, the methodology inaccurately predicts that the rate of growth in the future will mirror the rate of growth in the past. Second, the methodology overstates the prospective need by failing to distinguish between the need for lower income senior families and lower income non-senior families. Third, the methodology makes the patently illogical assumption that for each new person in Monmouth County, two new households will be required. The Council's methodology also improperly allocates a greater share of the region's need to Monmouth County instead of Ocean County, thereby violating, instead of promoting, the objectives of the SDRP. The Council causes this improper allocation by directing 40 percent of the region's present and prospective need to Monmouth County when the Rutgers University Center for Urban Policy Research projected that only 10 percent of the population growth in the region would occur in Monmouth County.

To correct these flaws, the Council should:

(1) Prepare a revised determination of housing need which will delete or account for the low and moderate income retirement community households which occur predominately in the East Central Housing Region and primarily in Ocean and Monmouth Counties; and

(2) Reduce the 1987-1993 prior cycle prospective need on a county/housing region based upon actual building permit data for the period 1987-1993 instead of a 48 percent reduction which is applied uniformally throughout the state. The East Central Region is unfairly penalized by application of this Statewide figure. Most of the allocated need in the East Central Region was prospective need, based on projections which can now be documented to have been much too high, resultig in a concomitant high projected housing need. An adjustment to reflect actual growth is critical in terms of an equitable distribution of future prospective need on a regional basis.

RESPONSE: The projections used in the Council's methodology are substantially similar to the projections used in the Impact Assessment of the Interim New Jersey State Development and Redevelopment Plan, the New Jersey Comprehensive Housing Affordability Strategy (CHAS), and projections for the New Jersey Department of Transportation (NJDOT). They are of the same order of magnitude as these other projections in terms of population and households Statewide. However, the distribution of the population and households is different because of the requirements of *Mount Laurel.* This difference takes two definite forms.

In the first instance, in order to provide a close nexus between affordable housing need and job growth location, household projections are dividend into two categories: those with household heads below age 65 and those whose heads are age 65 and above. Those with household heads age 65 and above are projected by their region of growth. Those with household heads below age 65 are projected statewide and assigned to regions of the State according to nonresidential ratable growth in those regions. This is in accordance with the *Mount Laurel* mandate to create a link between employment and housing opportunities.

In the second instance, households are always "collected" at the regional level and "sent" to individual localities by allocation criteria, regardless of how the projections are undertaken. Thus, the degree to which any single community, group of communities, or county receives more or less need is determined by the allocation criteria. Local need numbers will, therefore, be larger to the degree that any area has created the need for affordable housing by historically accepting more nonresidential ratable growth, or to the degree that an area has more wealth present to implement affordable housing solutions or more vacant land to accommodate the housing. Local need numbers summed to the county level will also, therefore, be larger.

Affordable housing need is thus targeted through allocation criteria to regions where employment growth is taking place and to localities within regions that are more able to accommodate a solution. The Council believes this is an equitable way of distributing future affordable housing need within a region, and one that has been supported by the courts.

Additionally, Statewide population projections are consistent with State Plan projections. In fact, they are identical at the State level. Locally determined numbers similarly reflect State Plan objectives. The allocation criterion of vacant land is weighted to result in less housing need being allocated in areas of the state that lack infrastructure.

Also, projections of overall growth for New Jersey are now monitored by R/ECON, a New Jersey-specific, Wharton-like econometric model developed by the Center for Urban Policy Research at Rutgers. The COAH, CHAS, State Plan, and NJDOT projections all are controlled by the detailed estimates of future Statewide growth of this model. Both national and regional boom-bust growth cycles are taken into account. For example, the post-1987 downturn of the New Jersey economy is reflected in projections used by the Council for future growth.

In sum, the population and housing need projections undertaken by the Council are empirically based and carefully undertaken. They reflect the best procedures available to ensure that housing need is based on reasonable estimates of future growth and, as importantly, estimates of where that growth will most probably take place.

With regard to the recalibration of Prospective Need from the first round of COAH affordable housing need numbers (1987-1993), this was calcualted retrospectively using 1990 U.S. Census information and new projections using Census information to establish a new base year of 1993. The establishment of this new base year for Present Need allowed prior-cycle Prospective need to be analyzed and checked. Upon rechecking it was found that there was an overprojection of prior-cycle Prospective Need for the 1987 to 1993 period. This overprojection was taken into account so that the projections of the current cycle would not again overproject. Prior-cycle Prospective Need was then scaled down before it was included as part of the need for the second round. (See the justification for this new component of need in the Technical Appendix.) The scaling down used a percentage derived for the entire state, which was applied statewide. This was done because the 1987 to 1993 overprojection was documented using both 1990 U.S. Census data and a projection to determine the new 1993 base year. The fact that a projection to establish the 1993 base year, using 1990 Census data as an anchoring point, was required to evaluate the prior period, results in a statistically acceptable estimate that is more precise at the State level than at a regional level.

7. COMMENT: The Council's use of the land satellite is flawed and could be unfair to some municipalities. Although the land satellite is much better than previous efforts that relied on growth areas in the State Development Guide Plan, it should develop a process for municipalities to challenge its housing obligation without considering regional data on undeveloped land.

RESPONSE: As indicated in the reproposal Summary, the Council was very much aware of the flaws in using the growth areas in the State Development Guide Plan in allocating housing need. These growth areas had been used without any data related to the amount of undeveloped land within these growth areas. The Council explored several alternative ways to allocate housing need in a manner that was sensitive to the goals of the State Development and Redevelopment Plan and the amount of undeveloped land in each of the State Planning Commission's planning areas.

The Council believes the land satellite has developed the best solution to the goal of allocating need in a manner that is sensitive to the land characteristics of the municipality and the goals of the State Planning Commission. It believes that the land satellite develops reasonable regional shares even if its estimates of undeveloped land are not equal to the municipal estimates.

It must be emphasized that the Council does not base housing allocations on the satellite's estimate of undeveloped land in any municipality. The housing allocations are based on a municipal regional share of undeveloped land. Although the satellite cannot isolate undeveloped land that may have preliminary approval or that may be constrained by environmental factors, it presents estimates of undeveloped land throughout a housing region in a uniform manner. Thus, the satellite yields reasonable regional shares of undeveloped land. If the Council allowed each municipality to decrease its housing obligation due to a disparity between municipal estimates and land satellite estimates, without considering whether the land satellite's estimates of the regional share of undeveloped land in the municipality are reasonable, it would lead to an unconstitutional dilution of the obligation.

8. COMMENT: The Council's use of the land satellite is unfair. Although it is understood that the Council needs to utilize sources of data which are consistent and uniform, the accuracy of the satellite may vary from municipality to municipality. There are various factors that could lead to the satellite distributing an unfair housing allocation. These factors include the proportion of land that is undeveloped but unavailable for development and land that may appear undeveloped but has been developed as part of a large lot subdivision. Since the accuracy of the satellite may vary by municipality, the Council should develop a process for individual municipalities to appeal the vacant land calculation which is based primarily on municipal rather than regional data.

RESPONSE: The land satellite data is one of the factors used to distribute a regional housing need to each municipality within the housing region. None of the distribution factors are based on municipal data alone. Rather, the regional need is distributed based on a regional share of each factor. Thus any appeal must be based on the fact that the regional share used to distribute the regional housing need is incorrect. The Council does not believe that one can analyze the accuracy of the regional share without considering regional data.

The Council believes that its use of the land satellite was and is the best available alternative to distribute a regional housing need in a manner that is sensitive to the goals of the SDRP. It is certainly much more sensitive to the individual characteristics of municipalities than previous housing allocation attempts which distributed housing need based on regional shares of land in "growth areas" as determined by the State Development Guide Plan. These efforts at allocating housing need were totally insensitive to the amount of undeveloped land in the municipality.

9. COMMENT: Mercer County should not have been placed in a housing region with Monmouth and Ocean County.

RESPONSE: The Fair Housing Act provides direction, but also flexibility, in defining housing regions. After examining commuter patterns, the availability of vacant land as compared to the magnitude of the need and the goal of encouraging the construction, conversion and rehabilitation of housing in New Jersey's urban centers, the Council determined that it was both reasonable and desirable to include Mercer County within a housing region with Monmouth and Ocean Counties.

10. COMMENT: It is illogical to develop a cumulative approach to fair share when the Council has changed regions.

RESPONSE: It was not illogical to develop a cumulative approach even with a change in regions. The only part of the 1987-1993 housing obligation that was "carried forward" was the 1987-1993 prospective need. This need was reduced on a Statewide basis because the State did not grow as quickly as expected. Thus, the change in regions did not affect the recalculation of the 1987-1993 prospective need. The remaining parts of the housing obligation were calculated based on the realigned housing regions.

N.J.A.C. 5:93-2.14 and 3.1(b)

11. COMMENT: The Council should amend N.J.A.C. 5:93-2.14 and 3.1(b) to provide a published exhibit to the rule documenting the actual information the Council has relied on in providing the reduction to

calculated need based on the realistic opportunity created in response to 1987-1993 housing need. The rules should document concisely the actual information relied on by the Council, not just the total reduction in need given a municipality by the Council, as listed in Appendix A, Exhibit 3, Column 7 of the proposed rules. Although the rules provide a mechanism for the Council to modify calculated need if the information on reductions is incomplete or incorrect, the need to resort to this formal mechanism could be minimized by preparation of a published document.

RESPONSE: Before publishing rules, the Council checked all the numbers on numerous occasions. For example, for municipalities that had received repose from the courts, several inquiries were made to the masters associated with the case to verify various components of the municipal housing element. If those efforts did not result in accurate numbers, it is not at all clear that another effort will result in accurate numbers.

In examining the numbers associated with each example calculating the municipal housing obligation, it should be recognized that some of the numbers are more reliable than others. Most of the numbers that lead to the precredited need are based on census type data and are believed to be very reliable. The numbers for prior cycle credits are more reliable for municipalities that have received substantive certification than for municipalities that received repose through the Superior Court. All reductions are subject to change, but the public should be aware of some general principles:

1. The Council intends to provide a one for one credit for all units that were built and all units transferred by way of a regional contribution agreement. Municipalities that are eligible for a rental bonus shall receive a credit in excess of one to one.

2. Sites that were zoned for inclusionary development will be reviewed by the Council during the substantive certification process to determine if alterations are necessary in existing inclusionary sites. The Council's review of the adequacy of existing zoning will determine the extent of the reduction.

3. The Council is aware that some municipalities have received certification or repose after the examples were published. These municipalities will receive the same recognition as other municipalities in the Council's process.

Objectors to the municipal housing element must, by statute, have the ability to provide input in the credits and reductions provided by the Council. Thus, the need for objector input and the need for the Council to review reductions within the framework of substantive certification dilutes the usefulness of preparing the document sought by the commenter.

The Council will consider preparing such a document that will be available to the public upon request. However, it should be noted that no formal housing allocation may be determined outside of the substantive certification process.

N.J.A.C. 5:93-2.16

12. COMMENT: The 20 percent cap permits a full 100 percent of the 1993 housing stock to be dedicated to providing low and moderate income housing units. This would allow municipalities to rezone and double their housing stock in potentially six years. It would be more prudent to limit the housing obligation based on 25 to 35 percent of the existing housing stock.

RESPONSE: The rule referenced by the commenter was a response to the language in the Fair Housing Act that allows the Council to limit the municipal housing obligation to ensure against drastic alteration of a municipality. This rule has been challenged and upheld by the judicial system. The Council sees no reason to alter this rule at this time.

13. COMMENT: The 20 percent cap is not fair to municipalities that received a 20 percent cap on their 1987-1993 housing need. The proposed cap on the 1987-1999 housing obligation provides an additional allocation to municipalities that is disproportionate to any increase in the municipal housing stock.

RESPONSE: The intent of N.J.A.C. 5:93-2.16, as stated in the rule, is to cap the housing obligation at 20 percent of the municipal 1993 occupied housing stock. The Council believes that, in general, the rule is consistent with this intent. If the rule, as applied to a specific municipality results in a housing obligation in excess of 20 percent, the Council shall consider granting a waiver consistent with the intent of the rule.

Subchapter 3. Credits/Reductions

N.J.A.C. 5:93-3.2

14. COMMENT: The Council's rules should provide some credit for housing units that were built in the past and are still affordable to low and moderate income households.

RESPONSE: N.J.A.C. 5:93-3.2 provides credit for housing units constructed between April 1, 1980 and December 15, 1986, when the unit is in sound condition and is occupied by a low or moderate income household.

15. COMMENT: The criteria for eligibility should not be the current income of the head of household for units constructed between April 1, 1980 and December 15, 1986. It should be whether a new person moving in would have to meet the Council's income eligibility standards in order to live in the unit. The proposed rule would cause Section 8 project-based units or public housing units constructed during this period to be ineligible if the current occupant's income had risen above the Council's standards since initial occupancy of the unit. This is unfair and is not in accord with the Council's own affordability rules.

RESPONSE: N.J.A.C. 5:93-3.2 has been written in response to the Appellate Court's Decision in the *Bernards* case. The court ruled that the Council had exceeded its authority in requiring controls on affordability on low and moderate income units constructed prior to the Council adopting its rules in 1986. Housing units built subsequent to April 1, 1980 that are linked over time with Section 8 certificates would be eligible for credit.

N.J.A.C. 5:93-3.5

16. COMMENT: The proposed rules would allow the Council to require amendments to municipal ordinances because the private sector did not respond to zoning adopted pursuant to substantive certification. Such an amendment would be a violation of municipal home rule powers.

RESPONSE: The commenter should be aware that the review of previously zoned sites does not necessarily mean that the Council will require an amendment of previously approved zoning. However, the Council does have an on-going responsibility to determine if a realistic opportunity exists. As the Supreme Court said in *Mount Laurel II,* "it was never intended in Mount Laurel I that this awesome constitutional obligation designed to give the poor a fair chance for housing be satisfied by meaningless amendments to zoning or other ordinances." Given changes in facts during the past decade, including changes in environmental regulations and in the housing market, the Council believes a review of zoned inclusionary sites is appropriate and accessory.

Subchapter 4. Municipal Adjustments

N.J.A.C. 5:93-4.2

17. COMMENT: The attempt to focus upon realistic development potential of available land is a fair attempt to analyze development potential after it is determined how much land is truly available within a municipality. The attempt in subchapter 13 to coordinate site-specific relief within the structure of the SDRP is also an admirable goal. It makes good planning sense to identify which areas of the State are suitable for higher density development and which areas are not suitable. Equal weight should also be given to the municipal land use element of each municipal master plan. This is necessary to consider areas that municipalities consider unsuitable for higher densities.

RESPONSE: The Council believes that the SDRP and State rules protecting critical resources are adequate in assessing specific municipal sites. Where the municipality disagrees, the Council's administrative process provides opportunities for discussion and assessment.

18. COMMENT: In establishing the realistic development potential, will the Council compute it using gross or net density?

RESPONSE: The Council shall apply a density to the developable portion of the site. For example, it will allow the exclusion of wetland areas, floodplains, areas appropriately regulated by steep slope ordinance as permitted by the Council's rules and other areas that may be excluded as part of the Council's adjustment process. It will then apply a density of at least six units per acre and a 20 percent set-aside to the remaining portions of the site to determine a yield for the site.

19. COMMENT: In the response to Comment 79, published in the December 20, 1993 New Jersey Register, the Council states that a municipality can secure the benefits of a vacant land adjustment even if the number determined by evaluating the municipality's land capacity exceeds the municipality's post-credited need. This is commendable. However, in such a circumstance, the Council should allow the

municipality to implement the plan in two stages. In the first stage, the municipality would only have to address its housing obligation for the six year certification period. In the second stage, six years later, the municipality would address the shortfall.

RESPONSE: The reason the Council decided to allow a municipality to receive a vacant land adjustment if it decided to develop a plan that addressed more than the six year obligation was that the municipality would be implementing a plan that had the potential to produce more housing. Such a plan would capture a contribution as development and redevelopment occurs in the municipality. If the municipality is not going to implement the plan for housing in excess of its housing obligation, it does not make sense to grant a vacant land adjustment. Without ordinances in place that implement the plan, land would, in all likelihood, develop without addressing any of the regional housing obligation. A scarce resource would be dissipated without any benefit for low and moderate income households.

The public should be aware that vacant land adjustments granted in advance shall be reviewed every six years to determine if there has been a change in facts that warrant an amendment to the housing element and fair share plan. An example of such an amendment may be a change in the strategy for capturing a contribution toward the housing obligation as development or redevelopment occurs.

20. COMMENT: The Council's proposed rules do not expressly permit a municipality to exceed the three percent limitation on recreational land if the property is slated for preservation in the County Master Plan and if the property is the subject of a Green Acres application. The previous rules incorporated such language. The Council should reincorporate this language into the rules. In any event, the Council should clarify that it does not intend to undo a ruling that Council made under its old rules.

RESPONSE: Certainly, if a site has been purchased as a result of a Green Acres application, the Council is not going to require the site to be zoned for inclusionary development. In addition, the rule referenced by the commenter refers only to a process for reserving municipal recreation space. It does not preclude a county from purchasing land through a Green Acres application. Thus, the Council does not see the necessity for reincorporating the previous language in the proposed rules.

21. COMMENT: While the rules on reductions adequately describe environmental characteristics which render a site or a portion of a site unsuitable for inclusionary development, the Council should also consider what the SDRP calls "critical environmental sites" to make it clear that the Council would disqualify such sites from inclusionary development.

RESPONSE: The Council's general philosophy regarding the exclusion of land for environmental reasons is that a site may be excluded for low and moderate income housing if it is similarly prohibited from all other uses by DEPE regulation.

N.J.A.C. 5:93-4.3

22. COMMENT: In an apparent effort to facilitate the production of affordable housing, the Council requires municipalities to support sewer/water applications. There should be limitations on such cooperation. For example, if the developer has failed to pay property taxes or if the developer and municipality disagree on the most appropriate route to construct the sewer line, the municipality should not be forced to cooperate.

RESPONSE: The Council has provided guidance on the level of municipal cooperation expected in the rule proposal and in the December 20, 1993 New Jersey Register (see Comments 84 and 85). It is not appropriate to provide direction on the rather vague hypothetical scenarios offered by this commenter.

23. COMMENT: The Council should deny substantive certification unless the community is able to prove that it has done everything possible to facilitate the development of public sewers or water where necessary to achieve the development of the municipality's fair share of affordable housing.

RESPONSE: Municipalities shall be required to select sites that have water and sewer before the Council will consider sites that do not have such access. In SDRP planning areas 4 and 5, municipalities will be required to proceed through a center designation process that identifies a geographic area that can be served by sewer and water service. If infrastructure is unavailable, municipalities shall be required to cooperate with private sector efforts to make the infrastructure available. The Council has provided guidance on its expectations of municipal cooperation in the responses to Comment 99 and other comments regarding subchapter 4, published in the December 20, 1993 New Jersey Register.

Subchapter 5. Preparing A Housing Element

24. COMMENT: The reproposed rules do not provide enough planning options for municipalities to address their housing obligations.

RESPONSE: The list of acceptable approaches included in the rules is not all-inclusive. If the commenter has some ideas of other approaches that should be incorporated in the rules, the Council will certainly consider them.

N.J.A.C. 5:93-5.2

25. COMMENT: The Council should be commended in providing a waiver provision from its $8,000 rehabilitation standard. The Council could refine this waiver provision by requiring that municipalities submit proofs showing: that its rehabilitation program selects applicants on a random or first-come first-serve basis; that it addresses the need of each qualified household that takes advantage of the program in the order dictated by the selection method utilized; and that it imposes reasonable maximums on the amount of money to invest in the rehab of any unit. For example, it makes no sense to invest $40,000 on the rehabilitation on one unit when the municipality could spend its money more wisely by rehabilitating five units with the same $40,000.

RESPONSE: The commenter's suggestion will be considered in any waiver request to the $8,000 standard and may be the subject of future rule making.

N.J.A.C. 5:93-5.2(h)

26. COMMENT: The Council should eliminate the $8,000 threshold requirement for municipal rehabilitation activity. The amount of money spent on bringing a unit up to code standard is irrelevant.

RESPONSE: The $8,000 average requirement was established to allow municipalities to complete less expensive rehabilitation projects, provided they do not ignore the more expensive rehabilitation existing in the municipality. In reviewing rehabilitation activity around the State, the Council has determined that the standard is not excessive. The commenter should be aware that the Council has provided a specific waiver mechanism within N.J.A.C. 5:93-5.2 for municipalities that have experience in administering a rehabilitation program and can present sufficient case studies documenting that local housing conditions do not warrant the $8,000 standard.

N.J.A.C. 5:93-5.6

27. COMMENT: Requiring that a substantial percentage of the low and moderate income sites be zoned to include single family represents an inflexible planning mandate which intrudes upon municipal planning and zoning prerogatives and is inconsistent with sound planning. In addition, projections as to future housing market conditions are too tenuous a basis upon which to base a regulatory program. The single family mandate is short sighted and will produce fewer low and moderate income units over the long term. The Council must recognize that land is a scarce resource.

RESPONSE: N.J.A.C. 5:93-5.6(b) does not establish an inflexible standard that requires all sites to be zoned for a single family inclusionary product. The rule establishes criteria that should be considered by the municipality and will be considered by the Council in determining the appropriate zoning for a specific site. The factors to be considered include land use planning considerations and a consideration of the current market. After consideration of these factors, the Council may require that a substantial percentage of inclusionary sites be zoned to allow market units within an inclusionary development to be constructed as single family detached units.

However, the commenter will note that the rule does not require all sites to be zoned for small lot single family detached housing. The rule permits land to be zoned for higher densities, because planning considerations may dictate higher densities. Also, since housing markets change, the Council recognizes the need to retain some high density sites in the inventory of inclusionary sites.

The proposed rule is much more flexible than the Council's previous rule on presumptive densities, which presented the requirement of six units per acre and a 20 percent set-aside. The rule allows for inclusionary developments of different densities and set asides. It is also possible that after reviewing the information provided by the parties in a specific case, the Council would allow a mix of product types within the same inclusionary development.

The proposed rule does not prevent municipalities from exercising the zoning powers granted them by the Municipal Land Use Law (MLUL). These powers were granted within the framework of enhancing the general welfare. One of the considerations in determining the validity of municipal zoning pursuant to the MLUL is whether the municipality has created a realistic opportunity to satisfy the constitutional housing obligation established pursuant to the *Mount Laurel* Decisions and the Fair Housing Act. The Fair Housing Act empowers the Council to provide standards for the review of a municipal petition for substantive certification. Certainly, one of the factors in determining whether a municipality has created a realistic opportunity for the low and moderate income housing obligation is a consideration of the housing market. The Supreme Court, in its *Mount Laurel II* Decision, provides some guidance on this issue. The Court stated that "it was never intended in Mount Laurel I that this awesome constitutional obligation designed to give the poor a fair chance for housing, be satisfied by meaningless amendments to zoning or other ordinances." Thus the Council, as the administrative agency responsible for determining if a realistic opportunity exists, is responsible for reviewing sites that have not developed over the period of substantive certification or repose.

Regarding the commenter's concern about maximizing land as a scarce resource, the commenter should note that the availability of land is a major consideration of the proposed rules. When the Council determines that land is a scarce resource (based on the process outlined in N.J.A.C. 5:93-4), it will require a minimum density of six units per acre and a 20 percent set-aside.

28. COMMENT: Is it the intent of the rule proposal to substitute zoning that permits only a higher density housing type with zoning that permits only a lower density housing product? It is suggested that the benefit of this rule will only be realized if municipalities add single family detached housing to other forms of single and multi-family housing as permitted building types.

RESPONSE: The precise zoning requirements may vary, depending on the character of the area surrounding the site. However, the intent of the rule is to foster the development of low and moderate income housing. Thus, there may be sites where the density should be so high as to eliminate single family detached housing as a practical alternative. On many other sites, the Council may require that a diversity of housing types be included in the zoning ordinance as permitted uses. This would allow the developer greater flexibility in addressing the housing obligation within the framework of sound land use planning.

29. COMMENT: When a municipality is receiving a vacant land adjustment, is it the Council's intent to require each inclusionary site to be zoned at a minimum of six units per acre or will the Council determine the municipal realistic development potential based on a minimum density of six units per acre and allow the municipality to structure a plan based on the realistic development potential?

RESPONSE: This rule should be read and interpreted in conjunction with N.J.A.C. 5:93-4.2 (establishing the realistic development potential) and the responses to Comments 77 and 90 that were published in the December 20, 1993 New Jersey Register. The Council's intent is to calculate the municipal realistic development potential using a minimum density of six units per acre and a 20 percent of set-aside. Having established the realistic development potential based on this minimum density and set-aside, the rules provide municipalities with the flexibility to structure a realistic opportunity for the realistic development potential. If a municipality can provide a realistic opportunity, as determined by the Council, for the realistic development potential, it may zone a site or sites at a lower density than six.

30. COMMENT: The Council should provide municipalities the flexibility of presenting a plan without the Council having any preconceived notions as to how the municipal obligation should be satisfied. The general criteria with respect to minimum density and set-aside with N.J.A.C. 5:93-5.6(b) is acceptable, but there should not be provisions which require that a municipality satisfy its obligation in any preferred manner. A municipality should be free to utilize whatever mechanism it can justify, subject, of course, to review and approval by the Council. A municipality should not have to overcome any type of presumption that a single family detached inclusionary development is the superior way of providing a realistic opportunity for the construction of the appropriate housing.

RESPONSE: The Council is in general agreement with the commenter. A municipality is free to structure a housing element in a variety of ways. When a municipality zones or has zoned a site for inclusionary development, it is free to propose a variety of approaches that are subject to the Council's review. When the review described in N.J.A.C. 5:93-5.6(b) indicates that the lower densities referenced in the rule are appropriate, such densities will be required to ensure realistic opportunity.

31. COMMENT: N.J.A.C. 5:93-5.6 does not require, or even provide for, local participation in the planning process.

RESPONSE: There is nothing in the rule proposal that inhibits local participation in the planning process. The rule proposal merely provides criteria for the Council's review of municipal zoning for inclusionary development.

32. COMMENT: The proposed rule will result in uncertainty. It will not be possible for municipalities to predict whether or not the Council will require alterations in proposed densities and set-asides.

RESPONSE: The rule proposal provides for more flexibility than the Council's previous rule that presumptively required a minimum density of six units per acre. The Council could provide more direction, but it would be at the price of flexibility for municipalities preparing housing elements. The Council has tried to provide as much direction as possible by providing criteria for its review of municipal zoning.

33. COMMENT: The proposed rule is not equitable because municipalities will not be subject to it unless they petition for substantive certification or are sued.

RESPONSE: Unfortunately, pursuant to the Fair Housing Act, not all municipalities are required to petition for substantive certification. As a result, there are perceived inequities in implementing the low and moderate income housing obligation.

34. COMMENT: Emphasis on detached single family homes as the only kind of market rate unit to be built precludes towns from planning for a full range of housing types.

RESPONSE: The rule does not establish single family homes as the only kind of market rate unit to be built within an inclusionary development. The proposal Summary states that it is important to provide a diverse inventory of inclusionary zoning in order to respond to changes in the housing market.

35. COMMENT: The Council should encourage, or even require, that municipalities without a comprehensive affordable housing plan redefine all their single family residential zones to include a small percentage of affordable units. Densities would be increased only as much as necessary to allow for the extra units to be built on the same acreage. Allowances can be made for financial contributions instead from developers of small projects.

RESPONSE: The Council was established, in large part, to review a comprehensive planning approach to a housing obligation. Therefore, it would not be possible for the Council to take action where a municipality has not developed a comprehensive housing plan.

However, N.J.A.C. 5:93 does not preclude the Council from approving small set-asides in exchange for density bonuses. In addition, the Council's rules on development fees allow municipalities to exact a development fee from all municipal developments. Larger fees may be collected in exchange for density bonuses.

36. COMMENT: The Council should not determine densities of inclusionary sites. Such a determination is the equivalent of a "builder's remedy."

RESPONSE: The Council has an obligation to ensure a realistic opportunity. A determination of realistic densities, after a consideration of appropriate planning and market criteria, is an integral part of determining a realistic opportunity.

37. COMMENT: N.J.A.C. 5:93-5.6(b) is a step in the right direction. However, the Council should establish maximum densities for inclusionary sites and allow developers to build at lower densities and set-asides in response to market conditions. If units are lost as a result of building at lower densities and set-asides, the Council can require municipalities to plan for the lost units during the next round of *Mount Laurel* activity.

RESPONSE: The Council considered a similar approach but was not comfortable with an approach that fostered the loss of low and moderate income units. In addition, since land is a diminishing resource, there may not be enough land in specific municipalities to address units that were anticipated but not constructed because a developer found it was more profitable to build at a lower density and set-aside.

38. COMMENT: The single family emphasis in subchapter 5 undercuts municipal efforts and the constitutional obligation to provide a variety of housing types for all income levels.

RESPONSE: As indicated in a response to previous comment, the proposed rules do not require all inclusionary sites to be zoned for small

lot single family detached housing. Higher densities may be appropriate in some locations. A mix of housing types may also be appropriate.

39. COMMENT: Rather than requiring that a site that was zoned for inclusionary development at a relatively high density be zoned for a low density product, the Council should allow municipalities to eliminate the site and construct the housing themselves.

RESPONSE: The Council is hesitant to allow a site that has already been included in a municipal housing element to be eliminated, especially if there is a developer associated with the site expressing a willingness to construct low and moderate income housing. Such an elimination would be disruptive to the production of low and moderate income housing.

40. COMMENT: The Council should clarify that zoning of a substantial portion of sites to allow single family does not mean that the market units must be exclusively single family.

RESPONSE: Upon analysis of the facts, it may be quite reasonable for the market units to include a mix of housing types.

41. COMMENT: Municipalities should retain the planning power to determine which sites should be zoned for multi-family and which sites should be zoned for developments that are either exclusively single family or include a significant proportion of single family units.

RESPONSE: The Council has the responsibility for determining if the municipality has created a realistic opportunity. Certainly, the Council will give significant weight to the planning rationale for wanting to zone a specific site in a specific way. However, the Council also has a responsibility to consider all of the factors enumerated in N.J.A.C. 5:93-5.6(b).

42. COMMENT: Affordable housing plan elements of municipality should be disallowed after substantive certification just because they have not been built. If the reasons that an element has not been built is outside of the municipality's control, such as economic or market conditions, the municipality should not be penalized. Additionally, changes in density of a plan element should not be accepted without agreement of a municipality.

RESPONSE: It is not the Council's intent to penalize municipalities. The fact that a site has not been "built out" is not, in itself, a reason for the Council to require the removal of a site from a municipality's fair share plan. The Council's cumulative methodology credits municipal zoning for affordable housing from the prior cycle. Therefore, the Council, pursuant to the Fair Housing Act, must ensure that a municipality has created a realistic opportunity. Subsequent to the expiration of substantive certification, if a zoned site has not been developed the Council must determine the reason. The Council's review, does not mean that an alteration in the previously certified plan will be required. Moreover, no alteration will be considered without serious consideration of the position of the affected municipality.

N.J.A.C. 5:93-5.9

43. COMMENT: The Council could foster the creation of accessory apartments by requiring that if a property owner, who received a $10,000 subsidy from a municipality to create an accessory apartment, sells the subsidized property, he or she must return the subsidy to the municipality. Such language could serve as an incentive to municipalities to consider an accessory housing program.

RESPONSE: The Council does not believe it is necessary to require such a reimbursement. However, every municipality that chooses to enter into an accessory apartment program may choose to make such a requirement a condition of subsidizing an accessory apartment, provided the "recaptured" subsidy is recycled for other affordable housing.

44. COMMENT: The rules on accessory apartments should allow any municipality to incorporate more than 10 such units in their housing elements and fair share plans.

RESPONSE: As indicated in the responses to a number of comments published in the December 20, 1993 New Jersey Register, including comment 137, the Council's experience with accessory apartments has not demonstrated that permitting more than 10 accessory apartments is warranted.

45. COMMENT: The Council's rule on accessory apartments requires that the municipality demonstrate that the housing stock lends itself to accessory apartments. The rule says that in reviewing applications, the Council will favor a large and older housing stock. This is very subjective and arbitrary. The Council should provide better guidance or eliminate this section of the rule. In addition, the Council should eliminate the requirement for municipalities to provide a subsidy for the creation of accessory apartments.

RESPONSE: The Council has experimented with accessory apartments since it began reviewing housing elements. It has found little or no interest in accessory apartments when there is no subsidy available to augment their creation. The experience of the last seven years also indicates that there is more likely to be interest in accessory apartments in municipalities that have a large, older housing stock. Thus, the Council believes that the subsidy requirement and the general direction provided in the rule is appropriate. At this point, the Council cannot provide the more specific guidance sought by the commenter. If the commenter has some suggestions, the Council will consider them.

46. COMMENT: The Council's requirement that accessory apartments must be affirmatively marketed accessory apartments will discourage homeowners who are interested in creating accessory apartments. The requirement for a control on affordability on these units will also discourage housing activity. The Council should allow at least some credit for an accessory apartment reserved for a family member and should reduce or eliminate affordability controls on accessory apartments.

RESPONSE: The low and moderate income housing obligation is a regional obligation. The Supreme Court, in its *Warren* decision, has made it clear that any preference on a unit designed to address this regional need, not linked to the amount of need generated by the municipality, is invalid. In addition, the Fair Housing Act requires a control on affordability.

N.J.A.C. 5:93-5.10

47. COMMENT: The Council should reconsider its elimination of ECHO housing as an acceptable technique for addressing the housing obligation. It should provide at least a partial credit for these units because: the demographics show an expanded senior citizen population that would be interested in such units; when a senior moves into an ECHO unit, it frees up other rental housing and may free up places on affordable housing lists; when senior citizens move into ECHO units they avoid costly institutionalization; and municipalities need the support of the State in order to adopt ordinances allowing ECHO units.

RESPONSE: The elimination of ECHO units as an acceptable technique for addressing the constitutional housing obligation was not based on a determination that such units are not needed or are not valuable. The Council believes that ECHO units are valuable and the Council encourages municipalities to pursue this option in addressing the needs of New Jersey residents.

However, the Supreme Court, in its *Warren* decision, issued subsequent to the Council's March 15, 1993 rule proposal, has invalidated the Council's rule that permitted a residential preference and provided very specific guidance on any future residential preference. The Council, in reviewing *Warren*, realized that ECHO housing is a use that is almost exclusively reserved for a family member. The Council has determined that such a reservation is inconsistent with the direction provided by the Supreme Court.

N.J.A.C. 5:93-5.11

48. COMMENT: The proposed rule requires a developer seeking an amendment to the density requirements of a site to address how the full complement of affordable housing units specified by the municipality's substantive certification would be provided. After the expiration of substantive certification, the burden shifts to the municipality to create a compliance plan which meets all of the Council's requirements, including those which govern the permissible percentage of affordable housing set-aside. Thus, the affordable housing yield from a site under an expired first cycle plan has no particular relevance to the yield which that site must produce in a second cycle plan.

RESPONSE: The commenter is essentially correct. Once certification expires, the Council expects each municipality to reexamine all sites that were zoned for but did not produce affordable housing based on the criteria in N.J.A.C. 5:93-5.6. This review and/or the Council's review of the municipal housing element may result in zoning changes that decrease the potential yield of inclusionary sites that had been zoned as a result of a previous substantive certification.

N.J.A.C. 5:93-5.11(d)

49. COMMENT: The proposed rule would allow developers to initiate motions seeking higher densities from the Council. Motions seeking higher densities will alienate municipalities and exacerbate the sense of violation of municipal home rule powers.

RESPONSE: In developing this rule, the Council believed that it would be primarily used by developers seeking a lower density. The

commenter will note that the rule states that such a developer must plan to address the low and moderate income units required of the site as a condition of substantive certification. This language was inserted so that a developer seeking a lower density would understand that the obligation to construct low and moderate income housing would not be lessened by a decrease in density.

The rule could be used to seek an increase in density. However, the Council would certainly consider the character of the community and the municipal planning rationale before granting such a waiver. The Council would also want to know what change in facts necessitated such a change after the Council had already determined that the municipality had created a realistic opportunity on the site.

50. COMMENT: The proposed rule allows a developer to seek an amendment of the density requirements of an inclusionary site within the period of substantive certification. However, if a developer seeks such a change during substantive certification, the developer is still responsible for the full number of affordable units required of the site as a result of substantive certification. This is not realistic. If the market cannot support the established inclusionary density and set-aside, then the amendment process needs to allow for a reduction in density and set-aside to provide a realistic opportunity for the provision of affordable housing.

RESPONSE: When the Council grants substantive certification, it believes that the municipality has created a realistic opportunity. The Council recognizes that what seemed like a realistic opportunity six years ago may no longer be realistic for a variety of reasons. One of those reasons is a change in market.

However, the Fair Housing Act creates a land use planning process which culminates in the Council taking an administrative action on a municipal housing element. Once the Council has granted substantive certification, the Council believes the municipal plan should be given deference and time to be implemented. It should not be subject to immediate revision because a developer would rather build at a lower density than the one required of the certified housing element. If substantive certification has expired and a site has not developed for low and moderate income housing, the Council believes it has the responsibility to examine each site based on the planning and marketing criteria in N.J.A.C. 5:93-5.6(b) to determine if an amendment of the plan is warranted.

N.J.A.C. 5:93-5.12

51. COMMENT: The Council should increase the limits on senior citizen housing to at least 33 percent.

RESPONSE: The Council believes that the 25 percent requirement provides adequate protection to those low and moderate income senior citizen households that may be viewed as an at-risk population. It should be noted that senior citizens are eligible to occupy all low and moderate income units. The Council believes that increasing the limitation would have a negative impact on other segments of the low and moderate income population.

N.J.A.C. 5:93-5.13

52. COMMENT: The Council should clarify if it intends to provide a bonus that results in two units of credit for every rental unit that was constructed as part of the previous substantive certification when the rental unit is clearly available to the general public.

RESPONSE: It is the Council's intent to provide a bonus that results in two units of credit for rental units produced that address the municipal rental obligation.

53. COMMENT: The Council's rules are unfair in that they do not differentiate enough between those municipalities that constructed units, those municipalities that zoned sites but produced little or no housing and those municipalities that ignored their housing obligation. The Council needs to provide incentives to stimulate compliance. Such incentives might include: applying the increased rental bonus for families retroactively; providing a bonus for municipal construction; providing a bonus for regional contribution agreements that are at least 25 percent above the $20,000 threshold established in the proposed rules (this would facilitate new construction in the cities); and a bonus for having actually constructed a substantial percentage of the 1987-1993 fair share.

RESPONSE: The Council understands that there is a perception among municipalities that the implementation of the housing obligation has been unfair to municipalities that have addressed their obligations. This equity issue was one of the reasons the Council chose a cumulative approach to the housing obligation that provided: the opportunity for some credit for sites that were zoned for affordable housing but had not yet yielded housing; and at least one unit of credit for each unit actually constructed or transferred via a regional contribution agreement.

During the discussions of the "equity issue" the Council realized that most of the equity problems lie with provisions of the Fair Housing Act that do not require every municipality to file a plan with the Council and petition for substantive certification. Absent such a requirement and meaningful penalties for not addressing the constitutional obligation, it is often only municipalities who have been sued or feel they will be sued that respond to the obligation. Given this reality, municipalities often feel that they need additional incentives in order to do what the Supreme Court says they must do.

The Council believes its methodology is sensitive to the "equity issue" without being unfair to the low and moderate income households who are supposed to benefit from the Fair Housing Act. During the process of drafting the rules, the Council was approached with the issue of providing extra credit for units built as opposed to units zoned. In discussing the matter, the Council realized that it already provided credit for units built when the units are rentals. Since the Council relies on incentives to build any rentals, granting an extra bonus for sales units would severely weaken any incentive to build rental housing.

The Council had two other concerns. The first concern was that such a bonus would result in an unconstitutional dilution of the housing obligation. The Council was also concerned that such a bonus would not be fair to municipalities that zoned sites for inclusionary development when such sites have not yet yielded affordable housing. It is quite possible that municipalities that chose to zone for affordable housing and were not recognized by a bonus would feel that they were penalized due to the inaction of the private sector.

The Council is always interested in appropriate and efficient incentives to construct low and moderate income units. The Council is proposing N.J.A.C. 5:93-3.6, which will provide municipalities with an additional reduction. (See the June 20 issue of the New Jersey Register.)

54. COMMENT: Will a qualified alternative living arrangement, as determined by the Council, be an acceptable method for addressing the municipal obligation for rental housing? If so, can a municipality receive the two units of credit provided in N.J.A.C. 5:93-5.13?

RESPONSE: Such a facility must qualify as an alternative living arrangement as determined by the Council (in accordance with the definition pursuant to N.J.A.C. 5:93-1.3). The Council must also determine that the facility ensures affordability over time to income eligible low and moderate income households. Before granting a rental bonus, the Council will determine if the facility primarily serves senior citizens more than the general population. After such a determination, the Council shall determine if the facility should receive the rental bonus associated with senior housing or the larger bonus reserved for housing for the general population. As the rule indicates, the unit of credit will be the bedroom.

55. COMMENT: No serious effort to produce housing for truly low income households can be successful unless a significant proportion of the units produced are rental. It is recommended that municipalities be required to produce at least 50 percent of their units as rental housing, with no bonuses granted.

RESPONSE: The Council agrees that the production of rental housing is essential to any program designed for low and moderate income households. For that reason it has increased the rental obligation from 20 to 25 percent. It has also imposed it on all municipalities that have an obligation to provide new low and moderate income units, whereas N.J.A.C. 5:92-14 imposed the requirement only on municipalities that had a relatively large obligation to provide new low and moderate income units.

The Council has decided not to increase the rental requirement to 50 percent because it believes that home ownership opportunities are also important for low and moderate income households. Also, the Council believes that such a requirement would be too limiting on municipalities as they attempt to structure their housing elements.

The reasons for the rental bonus have been enumerated in the responses published in the December 20, 1993 issue of the New Jersey Register. The Council does not believe that municipalities can require developers to build rental units through municipal zoning powers. The Council does not believe it has the power to require municipalities to construct rental housing. The Council recognizes the need for rental units and the subsidies necessary to produce them are greater than the subsidies required to produce sales units. Therefore, given the limits of

the Fair Housing Act and Municipal Land Use Law and the subsidies necessary to produce rental housing, the Council has determined an incentive is necessary to produce rental housing.

Subchapter 6. Regional Contribution Agreements

56. COMMENT: The Council's rules fail to recognize a legitimate role for counties in the siting, funding and implementation of regional contribution agreements. It allows regional contribution agreements only among municipalities. As such, the rules fails to solicit the expertise of the county agency who is best positioned to focus on the regional housing needs and has the expertise to provide financing to implement satisfaction of these needs.

RESPONSE: The Council's rules on regional contribution agreements mirror the structure of the Fair Housing Act. The Fair Housing Act allows only municipalities to enter into regional contribution agreements. However, there is nothing in the Fair Housing Act or in the Council's rules that preclude a municipality from working with a county agency in developing a regional contribution agreement.

57. COMMENT: The Council should allow counties to facilitate regional contribution agreements.

RESPONSE: There is nothing in the proposed rules that precludes a county from facilitating regional contribution agreements. However, the Fair Housing Act requires that a regional contribution agreement be between two municipalities.

N.J.A.C. 5:93-6.1

58. COMMENT: The rule proposal includes a formula for a regional contribution agreement with a municipality that has received substantive certification and is not seeking a vacant land adjustment. Was the last parenthesis in the formula a mistake? If so, the formula allows a municipality to transfer fewer units than the formula published in the March 15, 1993 issue of the New Jersey Register, because it does not consider the prior cycle indigenous need.

RESPONSE: The last parenthesis was mistakenly included and is being deleted in the rule adoption. The formula is designed to allow a municipality to transfer up to half of the cumulative obligation. Since the prior cycle indigenous need is not included in the 1987-1999 housing obligation, it cannot be included in this formula without allowing a municipality to transfer more than half of its obligation. Of course such a transfer is not permitted under the Fair Housing Act. (See also the Summary of Agency-Initiated Changes which follows.)

N.J.A.C. 5:93-6.1(a)

59. COMMENT: The last sentence of N.J.A.C. 5:93-6.1(a) should be modified to state that the Council shall not review a regional contribution agreement without a draft contractual agreement between the two parties. This will clarify that a regional contribution agreement does not exist until the Council approves one. Also, a regional contribution agreement should not be executed until after the Council acts on the proposed regional contribution agreement. If the Council makes substantial changes to a contract already approved by a city council, the contract will have to go back to them for approval of amendments. This gives critics a second bite at the apple and is unfair to supporters of a regional contribution agreement.

RESPONSE: The Council envisions the following process for a proposed regional contribution agreement. The Council shall not review a municipal housing element unless the sending municipality has entered into a contractual agreement with a receiving municipality. Parties interested in standard contractual language for a regional contribution agreement should contact the Council. After the New Jersey Housing Mortgage Finance Agency and appropriate county planning board submit its recommendations to the Council, the Council may require changes to the contractual agreement. If the parties agree to the changes required by the Council, the Council shall be in a position to approve the regional contribution agreement as part of substantive certification. Therefore, municipalities may have to amend their original agreements to enter into a regional contribution agreement.

N.J.A.C. 5:93-6.4

60. COMMENT: The rules should require that the monetary obligation of a sending municipality should be completed within five years of the granting of its substantive certification. This time will assure a year long cushion, should the sending municipality encounter delays in providing the necessary funds and provide a year long cushion for the receiving municipality to use the funds to create the required units within the six year certification period.

RESPONSE: The Council has found that such a provision is necessary with scattered site rehabilitation projects and N.J.A.C. 5:93-6.4(e) provides such a requirement. Thus far, the Council has not determined that such a rule is required for other activities that may be pursued under a regional contribution agreement. The commenter should be aware that a sending municipality cannot obtain approval of its budget and may face an action from the Council if it does not transfer the monetary obligation to the receiving municipality in a timely manner. The Council also has monitoring responsibilities and enforcement powers to ensure the receiving municipality completes the regional contribution agreement.

61. COMMENT: The Council's proposed rules require a minimum regional contribution agreement payment of $20,000 per unit. If a receiving municipality does not spend $20,000 a unit, it may keep the difference and spend the extra money on more housing. If a receiving municipality does not spend $20,000 per unit, the money should be returned to the sending municipality or the sending municipality should receive extra credit.

RESPONSE: The Fair Housing Act recognizes the importance of New Jersey's urban centers and says the construction, conversion and rehabilitation should be encouraged. The Council, after a review of the criteria that have been incorporated in N.J.A.C. 5:93-6.4, has concluded that the $20,000 standard is a reasonable one that will enable the receiving municipality greater flexibility to create new units, convert existing structures and rehabilitate the existing housing stock. The Council believes that the urban centers should have the flexibility to use any money not needed on a particular housing unit to be used for additional housing. The Council believes that such flexibility is totally consistent with the Act.

Having established a reasonable standard that it believes is consistent with the Fair Housing Act, the Council will not permit extra credit if the receiving municipality can do extra units. Such a policy would encourage negotiations designed to rehabilitate the least expensive units and negate much of the benefits of the $20,000 standard.

62. COMMENT: There is an inconsistency in allowing municipalities to rehabilitate their housing stock for an average of $8,000 per unit and requiring a minimum contribution of $20,000 for a regional contribution agreement.

RESPONSE: The $8,000 standard relates only to municipal rehabilitation activity. The $20,000 standard for a regional contribution agreement is designed to foster the broader legislative goal of helping cities to revitalize their housing stock. The threshold standard, developed after considering all of the factors enumerated in N.J.A.C. 5:93-6.4, is designed to provide receiving municipalities with more flexibility in designing projects that might involve rehabilitation of occupied units, conversions of existing units and the construction of new units.

63. COMMENT: The Council should waive the $20,000 minimum regional contribution agreement standard for various reasons. For example, builders with small developments and set-asides cannot make such a large payment in South Jersey. Also, there should be some flexibility where a developer making a payment toward a regional contribution agreement is also constructing the unit in the receiving municipality. The Council should not forget that the purpose of a regional contribution agreement is to create a housing unit.

RESPONSE: The Council has included a waiver provision in the proposed rules which may be applied to regional contribution agreements. Although developers often contribute to regional contribution agreements, the responsibility to transfer dollars is a municipal obligation.

Municipalities have other resources (including development fees on non-inclusionary developments) to supplement what an inclusionary developer may contribute. In considering a waiver from the minimum contribution, the Council can certainly consider in-kind services a developer may be providing in light of the waiver criteria provided by the rules.

64. COMMENT: The minimum RCA contribution should be raised to $30,000, or more so that the contribution pays for more of or all of the subsidy necessary to build a new unit in a receiving municipality.

RESPONSE: In passing the Fair Housing Act, the Legislature established a State program responsible for funding housing activities related to municipal low and moderate income housing obligations. One of the activities specifically mentioned as eligible for funding was the regional contribution agreement. Therefore, the Legislature specifically acknowledged that the contribution from a sending municipality would not always be sufficient to create a unit in a receiving community.

In raising the minimum contribution from $10,000 to $20,000, the Council has tried to establish a realistic threshold that will allow New Jersey's urban centers to revitalize their housing stock without discouraging regional contribution agreements altogether. The rule proposal discusses some of the factors that were considered in doubling the minimum contribution.

N.J.A.C. 5:93-6.5

65. COMMENT: The Council should make it clear that so long as a sending municipality performs its obligation under the regional contribution agreement by transferring funds in a timely way, it should not be liable in any fashion nor shall its grant of substantive certification be revoked, regardless of a lack of performance by the receiving municipality.

RESPONSE: As long as a sending municipality addresses its obligations based on the final contract of the regional contribution agreement and any conditions that are part of its substantive certification, the receiving municipality's failure to perform will not affect the sending municipality's substantive certification.

Subchapter 7. Inclusionary Developments

66. COMMENT: If a development was part of a certified plan but has not been constructed, must it conform to the proposed set of rules?

RESPONSE: Upon the effective date of the rules, all developments will be governed by the new rules on affirmative marketing and cost generation. All developments that are being constructed will be subject to the new controls on affordability, unless there is specific language in the master deed or other documents governing the inclusionary development to preclude conformance with the new rules. Unless the development already has preliminary approval, it shall conform to the rules in subchapter 7.

N.J.A.C. 5:93-7.3

67. COMMENT: The Council should require more three bedroom units.

RESPONSE: The Council's rule proposal increases the requirements for three bedroom units. Although the rule does provide for flexibility in structuring the bedroom mixes within an inclusionary development, it does require at least 80 percent of the units to be constructed as two and three bedroom units. Therefore, the Council believes it has responded adequately to the needs of larger households. If the commenter has data that suggest otherwise, the Council will certainly consider it.

68. COMMENT: Why does the Council require some one bedroom or efficiency units? Also, why does the Council impose bedroom requirements on each inclusionary development rather than examining the bedroom mix within the entire municipality?

RESPONSE: The Council requires some bedroom and efficiency units because the data it has examined from the Affordable Housing Management Service (AHMS) demonstrates that there are a significant number of smaller households that can not afford a low or moderate income unit because of the way the two and three bedroom units are priced. The bedroom requirements are on individual projects to avoid marketing problems that could develop if one particular development was "saddled" with a disproportionate number of units of a specific size. For example, it could be a hardship for a developer to be required to market a development consisting primarily of one bedroom units because other developers were permitted to build their inclusionary developments without any smaller units.

69. COMMENT: Can a municipality include a developer's parcel in a housing element if the developer objects to the inclusion of his parcel?

RESPONSE: A developer's willingness and/or lack of willingness will be a factor that is considered by the Council in reviewing a housing element. Certainly, if a developer that is included in the plan objects to the inclusion of his or her site and another developer objects because his or her site has been excluded from the plan, the Council will consider the willingness to build along with the other criteria in N.J.A.C. 5:93-5.6.

N.J.A.C. 5:93-7.3 and 7.4

70. COMMENT: The Council should provide guidance on the terms "realistic market demands" and "realistic market information."

RESPONSE: N.J.A.C. 5:93-7.3 and 7.4 require a certain bedroom distribution and a certain pricing of low and moderate income units. In some cases, these rules may run counter to the market for housing. As an example, the rules allow the average low and moderate income unit within a sales development to be sold at 57.5 percent of median income. It is possible that the market for low and moderate income housing may not be able to sustain this average price. Therefore, although the rule allows one price, knowledge of the local market may dictate that the units should be priced lower.

In addition, the bedroom distribution requirements allow flexibility in establishing projects with a mix of efficiency, one, two and three bedroom units. In establishing the bedroom mix of a development, the developer should consider the demand for housing units of various sizes as reflected in the data generated by affirmative marketing efforts for previous inclusionary developments.

N.J.A.C. 5:93-7.4

71. COMMENT: Income stratification requirements should be developed that reach lower to target an acceptable mix of low and moderate income households. The Council's rules fail to require towns to meet the housing needs of households earning less than 43 percent of the area median income. With the current resources available, including Balanced Housing and HOME funds, low income housing tax credits, municipal developer fees etc. and the low level of interest rates, it is possible to meet the housing needs of households down to 25 percent of median income without rental subsidies.

RESPONSE: There is no language in the proposed rule that prevents municipalities from addressing the needs of households earning less than 43 percent of median income. Language that provided an example of price stratification that used 43 percent as the bottom tier was eliminated.

There is also nothing in the rule proposal that prevents municipalities from using subsidies to provide housing that addresses the needs of very low income households. However, the commenter should note that most of the inclusionary developments created as a result of the Council's administrative process do not receive the subsidies enumerated in the comment. Most inclusionary developments are constructed when the private market can support the subsidies necessary to construct the low and moderate income units.

72. COMMENT: The Council should require housing units to be priced to be more affordable to low income households. The Council's income stratification requirements do not reach low enough to target an acceptable mix of low and moderate income households. To improve in this area, the Council should lower the average affordability level from 57.5 percent to 50 percent.

RESPONSE: As has been indicated in previous responses, the Council is not empowered to force municipalities to subsidize affordable housing with municipal funds. A municipality that so chooses may require the private sector to build low and moderate income units. In fact, the private sector has built most of the low and moderate income units thus far constructed. While the Council shares the commenter's interest in making housing more affordable, the Council also recognizes that requiring deeper subsidies in order to produce low and moderate income housing, limits the ability to produce affordable housing. The Council has made a significant effort to make sale and rental units more affordable in the rule proposal. It has lowered downpayments. It has required that units of one, two and three bedrooms be priced for smaller households. It has lowered the maximum rents of rentals. The Council has determined that to lower the prices and rents further may be counterproductive and result in much less production.

73. COMMENT: The Council should require stratification of rentals in a manner similar to the stratification of sales units.

RESPONSE: The proposed rule allows, but does not require, the stratification of rentals. The stratification of sales units is required because it is essential to the mortgage qualification process.

N.J.A.C. 5:93-7.4(a)

74. COMMENT: The criteria for determining affordability of each bedroom size should be the same as that of the Low Income Housing Tax Credit program. It is important to eliminate inconsistencies in housing programs designed to produce low and moderate income housing.

RESPONSE: The Council considered the affordability standards of the low income tax credit program in developing these rules and decided that the standards proposed in these rules were more responsive to the needs of low and moderate income households. In addition, the rule proposal provides specific exceptions for tax credit developments at N.J.A.C. 5:93-7.2 and 9.15.

N.J.A.C. 5:93-7.4(b)

75. COMMENT: The Council's rule on price stratification allows the moderate income units to be priced very similarly as long as three

different prices are established. The same can be said of the low income units. Assuming this rule is designed to guarantee a meaningful stratification of prices, more precise direction may be helpful.

RESPONSE: The Council has tried to provide flexibility by establishing criteria for price stratification rather than one standard by its rule. The Council believes that it is common sense and good marketing strategy to provide a range of prices so that a larger universe of low and moderate income households can purchase low and moderate income housing. If the Council finds ordinances that allow a pricing scenario that does not comport with the purpose of the rule, it may deny approval of the ordinance and/or amend the rule to provide more specificity.

76. COMMENT: The Council's rule requiring five tiers of prices for low and moderate income housing should be waived if the average rent or sales price in an inclusionary development is less than 52.5 percent of median income. This would accomplish the Council's aim to ensure that at least some units are affordable to households in the lower income groups and it would reduce the need for additional scarce public subsidy (especially when the units are being developed by a receiving community as part of a regional contribution agreement).

RESPONSE: One of the primary purposes of price stratification of sales units is to ensure that as many low and moderate income households as possible may have access to low and moderate income units. If there is a problem in marketing housing units, even after prices have been reduced, the municipality and/or developer should contact the Council's staff to seek a solution.

77. COMMENT: It is overly cumbersome, especially in smaller inclusionary developments, to require each bedroom size to be subject to the Council's price stratification rules. The city or developer is forced to find a "needle in a haystack" applicant who meets the varying different criteria for units.

RESPONSE: Each bedroom distribution must conform to the rule on price stratification. The Council, in the rule proposal, has attempted to make the pricing of the units within each bedroom distribution less cumbersome by reducing the tiers within each stratification from nine to five. Also, in the rule proposal, the Council has tried to make it easier to place applicants into housing by making it clear that municipalities and developers need not find someone at a specific percentage of median income to purchase or rent a low or moderate income unit. Any moderate income household is eligible for a moderate income unit; and any low income household is eligible for a low income unit.

Subchapter 8. Development Fees

N.J.A.C. 5:93-8.8

78. COMMENT: N.J.A.C. 5:93-8.8(a)9 should be amended to foreclose a developer who obtained a density bonus in exchange for fees from securing a refund unless the developer surrenders that bonus.

RESPONSE: In its *Holmdel* decision, the New Jersey Supreme Court held that the Council should promulgate uniform standards for the municipal imposition of development fees. The Council has done this and its development fee rules, particularly those rules dealing with the retention of fees collected by municipalities prior to the issuance of the Holmdel decision, have been challenged and upheld. The Council's development fee rules provide, in general, that a municipality may retain development fees collected prior to the *Holmdel* decision to the extent that the collected fees do not exceed the amount of fees allowed by the Council's rules. Fees that were collected that exceed the Council's standards are to be returned to the developer from whom they were collected. There is, therefore, no need for the amendment sought by the commenter, since any fees ordered returned by the Council would be in excess of the Council's standards for any density bonus received.

N.J.A.C. 5:93-8.10

79. COMMENT: The Council should allow higher fees in municipalities that have historically maintained high real estate values.

RESPONSE: If the values of property have historically been higher in a municipality, it is likely that the municipality will be able to collect more money than a municipality that has lower property values. This is because the amount of money that can be collected is based on a percentage of value.

COMMENT: The Council should not require municipalities that have collected development fees in exchange for a density bonus to return those development fees. If developed, the land is forever gone from municipal control and the developer has received a benefit without adequately contributing toward affordable housing.

RESPONSE: Municipalities are able to retain development fees they collected prior to the Council adopting standards, insofar as the fees conform to the uniform standards adopted for development fees by the Council. A municipality's ability to retain these fees, the Council believes, is a result of the Council developing fair and reasonable standards and allowing municipalities to retain fees to the extent the fees conformed to the Council's standards. These standards allow municipalities to retain a substantial amount of money when a density bonus has been granted.

N.J.A.C. 5:93-8.10(d) and 8.11(b)

80. COMMENT: The Council's rules on development fees need to provide more guidance on fees that may be collected in exchange for density bonuses. Municipalities need to codify development fee options by ordinance to avoid violation of the legal principles enunciated in *Nunziato v. Edgewater Planning Board,* 255 *N.J. Super.* 124 (App. Div. 1988)

RESPONSE: The Council's rules do provide guidance on this issue. An increased development fee may be collected, but only if a municipality offers a developer a financial incentive for paying a higher fee and only if the Council approves the agreement. If municipalities, in response to *Nunziato,* wish to codify all available development fee options by ordinance there is nothing in the Council's rules that would prevent such an approach. However, when formulating its development fee rules the Council did not wish to limit municipal flexibility by quantifying in the rules the value of every possible *quid pro quo* or requiring municipalities to do the same. The Council believes that its rules as written are neither arbitrary nor capricious and provide developers with sufficient protection from municipal zealousness in the collection of excessive fees.

N.J.A.C. 5:93-8.12(d)

81. COMMENT: What does the Council mean by "a major change" as the term is used in N.J.A.C. 5:93-8.12?

RESPONSE: A major change would be a substantial alteration in site layout, development density or types of uses within the development.

N.J.A.C. 5:93-8.12(f)

82. COMMENT: The development fee rules allow municipalities the opportunity to exempt specific geographic areas from paying fees. There should be some indication that such exemptions must be afforded in a principled fashion. It would be unfortunate, indeed, if a municipality, in imposing development fees, distinguished between areas in a manner so that inferences could be drawn by certain property owners that they were being discriminated against because such property owners filed objections to the municipal housing element and fair share plan.

RESPONSE: As with all zoning provision, there should be rational planning decisions for discriminating between zones.

N.J.A.C. 5:93-8.17

83. COMMENT: The Council should strengthen its penalties section of the development fee rule. It should be clear that the municipality remains responsible for addressing its fair share obligation in the event it loses its development fees. Also, the rule should provide that the municipal ordinance should provide that there be no injunctive relief available for the municipality to prevent the Council's immediate expenditure of such revenues. Further, the burden of proof shall rest upon the municipality where it attempts to interfere with any kind of Council disciplinary action.

RESPONSE: N.J.A.C. 5:93-8.17(d) establishes that the loss of development fees does not alter the municipality's responsibilities pursuant to substantive certification. The Council believes that the current rules ensure that development fees will be spent on affordable housing.

COMMENT: There is no justifiable reason for not extending controls on affordability in New Jersey's urban centers to 30 years.

RESPONSE: One of the primary goals of the Fair Housing Act is to foster the revitalization of New Jersey's housing stock. This revitalization usually occurs neighborhood by neighborhood. The Council fears that requiring 30 year controls may be counterproductive to the revitalization of urban neighborhoods. The rule does not preclude New Jersey's urban centers from employing 30 year controls.

Subchapter 10. Cost Generation

84. COMMENT: Subchapter 10 is totally unnecessary and unwarranted. Municipalities are generally prompt in the review of development applications.

RESPONSE: One of the prime reasons for the spiraling cost of producing housing is the delay caused by the review of development

applications at all levels of government. The *Mount Laurel II* decision and the Fair Housing Act include specific language to expedite the review of development applications and the Council's rules provide guidance regarding expectations for local planning boards.

85. COMMENT: The Council's proposed rules relating to restriction of escrow fees for inclusionary developers is probably illegal under Sections 8(b) and 53.2 of the Municipal Land Use Law (N.J.S.A. 40:55D). The reviews paid for by the escrow fees focus on legitimate environmental and planning concerns. Inclusionary development should not be exempted from this process.

RESPONSE: The rule referred to by the commenter does not exempt inclusionary developers from professional review of development applications. It does provide a developer with a choice. It allows the developer to rely on a study by a professional chosen off a municipally prepared list. Under this option, the developer is not required to pay for both the study and for its review. The Council has determined that this option is totally consistent with the Mount Laurel obligation of eliminating unnecessary cost generating requirements. Nor does it conflict with the Municipal Land Use Law. N.J.A.C. 5:93-10.3(b) proposes stricter standards than Section 52.2 of the Municipal Land Use Law. However, these stricter standards are appropriate in the *Mount Laurel* context.

86. COMMENT: There are unnecessary cost-generating redundancies that result in having HUD low and moderate income units reapproved in accordance with duplicitous standards generated by the Council.

RESPONSE: The Council approves municipal housing elements. It does not approve or reapprove HUD low and moderate income units. The Council has developed standards for receiving credit for low and moderate income housing that it believes will result in most HUD units receiving credit from the Council.

87. COMMENT: The new rules on cost generation are very lengthy and burdensome. Increased regulation will make it more difficult for municipalities interested in developing affordable housing to actually produce it.

RESPONSE: Subchapter 10 refers to the rules being promulgated pursuant to N.J.S.A. 40:55D-40.1 through 40.7. The standards, once adopted, shall apply to all developments in New Jersey. Thus, the Council's rules reflect the law of New Jersey.

N.J.A.C. 5:93-10.1

88. COMMENT: The Council should strengthen the cost generation rule by suggesting a representative timetable to the expedited municipal review process of inclusionary development applications or require that the parties consult with the Council for its guidance on an appropriate review schedule. In addition, the Council should require that municipalities, municipal boards, their agents, employees and representatives shall cooperate with developers of inclusionary developments.

RESPONSE: The Council has provided a goal within the rule of receiving approval within time limits approximating those outlined in the Municipal Land Use Law. It does not believe that further direction is possible or appropriate. The Council agrees that the cooperation of municipal boards, their agents, employees and representatives are a requisite condition of substantive certification.

N.J.A.C. 5:93-10.4

89. COMMENT: The Council's rule says that it will act as an advocate for inclusionary applications before DEPE and DOT. There is no reason why the Council should not respond as an advocate for inclusionary development before other governmental agencies.

RESPONSE: The Council agrees with the comment and will consider responding affirmatively, based on the facts of the case, upon request.

N.J.A.C. 5:93-10.4(d)

90. COMMENT: N.J.A.C. 5:93-10.4(d), which says that the Council may act as an advocate for inclusionary developments that require permits from DEPE and DOT, is contrary to the express mandate of the Fair Housing Act and the Mount Laurel decisions. The Council should not be in the business of encouraging utilization of environmentally sensitive lands for inclusionary developments.

RESPONSE: One of the basic tenets of the Fair Housing Act and Mount Laurel decisions is to eliminate unnecessary cost generating standards and to expedite the approval process associated with inclusionary developments. The proposed rule is designed to foster an expedited review at the State level.

The Council's rules do not encourage the utilization of environmentally sensitive lands. The criteria for selecting sites, incorporated in the rules, should make that clear. However, once a site has been approved as part of a substantive certification, based on the criteria within the Council's rules, the Council believes it is sound public policy to foster an expedited review. Such a review would be based on the review criteria adopted by the agency responsible for reviewing the application.

N.J.A.C. 5:93-10.5

91. COMMENT: Any hearing revoking substantive certification should be conducted and completed as quickly as possible, particularly where there are salient consequences for a municipality and/or a developer.

RESPONSE: The Council will attempt to expedite such hearings, in accordance with its rules, which provide an opportunity for all parties to fairly participate in a hearing.

Subchapter 11. Affirmative Marketing

92. COMMENT: The Council should require a lottery method for tenant selection to ensure randomness and discourage local residency preferences inherent to chronological selection.

RESPONSE: Experience with lotteries as a method for occupant selection has shown that they are not a practical or efficient means for referring potential buyers or renters to affordable housing units. The process of determining if a low or moderate income household meets financial and occupancy standards is a long one. Lottery "winning" causes much time to be lost in the screening process for applications that cannot satisfy financial and occupancy standards and raises expectations unnecessarily.

The process outlined by the Council is designed to provide low and moderate income households throughout a region with opportunities to apply for available units. It is also designed to specifically discourage residential preferences inherent in limited outreach programs by requiring a regional outreach period of at least one month prior to the initiation of occupancy interviews. In addition, the rule requires a random selection methodology but allows for options, such as computerized random choice and random ordering by applicant response to requests for data and verifications. It does not rule out lotteries as one of these options.

93. COMMENT: Serious measures should be taken to ensure that units produced are actually being made available to low income and minority households. This includes both serious affirmative marketing on the front end and continual monitoring.

RESPONSE: The rules proposed include a redrafted rule on affirmative marketing. The rule requires much greater specificity from the municipality in structuring an affirmative marketing plan. The rules also provide for yearly monitoring of affirmative marketing efforts and alterations in the marketing effort if the Council determines that such changes are necessary.

94. COMMENT: It appears that subchapter 11 has been incorrectly codified at N.J.A.C. 5:92 instead of N.J.A.C. 5:93.

RESPONSE: The commenter is correct and the error has been corrected.

N.J.A.C. 5:93-11.6

95. COMMENT: The Council must strengthen and expand monitoring and reporting requirements established in N.J.A.C. 5:93-11.6. In particular, the Council must require ongoing reporting on race, income, sex, family size, prior municipalities of residence, etc.

RESPONSE: The Council is already in the process of requiring municipalities to report on much of the information sought by the commenter, as provided for at N.J.A.C. 5:93-11.6 and 12.

96. COMMENT: The Council must develop sanctions, such as decertification, for those municipalities which fail to comply with the affirmative marketing requirements.

RESPONSE: Affirmative marketing is an essential part of substantive certification. Failure to comply with any aspect of the certified plan may result in decertification or other appropriate sanctions. It is the Council's firm intent to monitor the various aspects of the housing element.

97. COMMENT: The Council must require immediate submission of municipal affirmative marketing evaluations to the Council upon the completion of tenant selection for each housing project. This will ensure timely identification of marketing strategy deficiencies and ensure that corrective measures are taken prior to the marketing of additional projects.

RESPONSE: The Council reviews the affirmative marketing plan prior to granting substantive certification. The Council believes that the yearly evaluation and monitoring report required by the Council's rules will

be as valuable a tool in assessing the effectiveness of municipal affirmative marketing efforts as an evaluation upon the completion of tenant selection for each housing project.

N.J.A.C. 5:93-11.7

98. COMMENT: The Council should allow residency preferences for accessory apartments and ECHO housing because they are necessary to make such implementation strategies effective. The Supreme Court would allow such a limited preference, if it understood that the preference was crucial to a specific compliance technique.

RESPONSE: In its *Warren* decision, the Supreme Court rejected the Council's argument that the residency preference was an effective incentive for assuring municipal compliance with the *Mount Laurel* obligation. Based upon this experience, the Council does not share the commenter's opinion that either ECHO units or accessory apartments would merit an exemption from the *Warren* requirement that affordable housing units be marketed to the region.

Subchapter 12. Monitoring

99. COMMENT: The Council must compile and disseminate information from municipal plans to the public in order to further understanding of how Mount Laurel's goals are being met.

RESPONSE: The Council has designed forms to collect information on the implementation of each municipal housing element. The forms will provide insight into municipal rehabilitation programs, sites zoned for low and moderate income housing, municipal construction projects, regional contribution agreements, the number of units actually produced, the applicants for affordable housing, the eventual occupants of affordable housing and data related to the collection and use of development fees. A computer system has been designed to accept this data. The data will be available to the general public and the public can expect the Council to generate reports based on these data.

Subchapter 13. Site Specific Relief and the State Development and Redevelopment Plan (SDRP)

100. COMMENT: Landowners outside centers should have greater rights to site specific relief in Planning Areas 3, 4 and 5.

RESPONSE: The Council and the State Planning Commission are linked by the *Mount Laurel II* decision and their respective enabling legislation. It is important for the organizations to work harmoniously in order to create affordable housing within the framework of sound comprehensive planning. Thus, the Council has entered into a memorandum of understanding with the State Planning Commission that provides municipalities a process for creating affordable housing in centers within the framework of sound land use planning. This process is outlined in N.J.A.C. 5:93-5.4 and 13.

N.J.A.C. 5:93-5.4 and Subchapter 13.

101. COMMENT: The rules relating to the SDRP are confusing and generally unworkable. If, in Planning Areas 4 and 5, centers have not been sufficiently designated, the proposed rules require interactive procedures with the Office of State Planning and/or State Planning Commission of such complexity that they appear to ensure that no inclusionary sites will be established in these areas. To the extent that municipalities have designated centers through the State planning process, it is perfectly acceptable for the Council to rely on those designations in the evaluation of fair share plans and objectors' sites. However, when designated centers prove to be inadequate or centers have not been designated, the Council must make its own determination of the suitability of a potential site.

RESPONSE: The *Mount Laurel II* opinion and the Fair Housing Act create a strong link between the Council and the State Planning Commission. The Council believes that the low and moderate income housing obligation should be addressed within the framework of sound comprehensive planning. The process outlined in the rule proposal is designed to foster the direction provided by the Supreme Court and the Legislature and sound planning principles. The Council will be working with the State Planning Commission to expedite the process. To indicate that this process will not work, or will take an inordinate amount of time, at this point is speculation.

The Council believes that the coordinated effort with the State Planning Commission described in the rules is also necessary in order to bring infrastructure to inclusionary sites outside of Planning Areas 1 and 2. To grant site specific relief to a site that will not be able to receive the infrastructure necessary to construct low and moderate income housing would not be productive.

102. COMMENT: It would seem that the Council's memorandum of understanding is premised on a lack of infrastructure within Planning Areas 3, 4 and 5. The Council should be aware that infrastructure does exist within these planning areas, and, therefore, the process outlined in N.J.A.C. 5:93-13 allows a municipality to exclude affordable housing by designating areas with infrastructure with an improper planning area designation.

RESPONSE: The Council's memorandum of understanding and the resulting rules embodied by N.J.A.C. 5:93-13 are based, in part, on the premise that infrastructure does not exist in Planning Areas 3, 4 and 5. If that premise is incorrect, the facts of a specific case may justify a waiver of N.J.A.C. 5:93-13.

103. COMMENT: There is no question that a new 1,000 unit planned development ought to be "centerable." However, there are dozens, if not hundreds, of small subdivisions in rural areas that will support a handful of affordable units in each. This level of development activity need not be in a center.

RESPONSE: The rule in question is the result of extensive discussions with the State Planning Commission. It is designed to foster the construction of affordable housing within the general framework of sound land use planning. Given the strong judicial and legislative link between the Council and the State Planning Commission, the Council believes it is important to develop policies that also foster the goals of the SDRP. If there is an opportunity to create housing in a manner that fosters the general goal of sound land use planning and, within that goal, housing in concert with the goals of the SDRP, the Council shall consider a waiver from the rule in accordance with N.J.A.C. 5:93-15.

104. COMMENT: Subchapter 13 fails to reflect the possibility that an objector could have a tract surrounded by an area that should be designated as a center. Thus a site within planning area one or two may be accepted as part of a municipal plan before a more worthy site in another planning area.

RESPONSE: The Fair Housing Act establishes the housing obligation within the framework of a municipal planning process. Initially, the municipality and, ultimately, the Council will determine which sites shall be incorporated within a housing element that receives substantive certification. The Council's rules establish criteria to provide guidance regarding which sites are "worthy" to be designated for inclusionary development. The Council believes that these criteria and the input received from municipalities and objectors provide the framework for the selection of realistic inclusionary sites.

105. COMMENT: Until a substantial number of centers are designated, the Council needs to provide relief to developer's sites in Planning Areas 3, 4 and 5 without respect to center, unless a municipality has made a reasonable effort to obtain such designations.

RESPONSE: The proposed rule outlines a process where the Council and State Planning Commission will work together to create centers when the municipality fails to create a plan to address the housing obligation in planning areas one or two or in a center. The Council has heard that this will be an unwieldy process, but believes these concerns are speculative. Working in concert with the State Planning Commission should help ensure that necessary infrastructure will be brought to these centers.

106. COMMENT: How much non-residential development must a developer be responsible for in order to obtain relief as a center?

RESPONSE: The rules for site specific relief in planning areas four and five do not require that the developer's site alone meet all the criteria of a center. It requires that the area surrounding the developer's site meet the criteria of a center. Thus, the developer is not responsible for constructing the entire center; nor is the developer responsible for building any nonresidential development.

N.J.A.C. 5:93-13.1

107. COMMENT: The Council should add language to this rule indicating that where the municipality does not petition, and is not sued, within two years of filing a housing element, it shall be subject to the Council granting site specific relief to one or more objectors. Similarly, such a municipality should have the burden of proof to convince the Council that a developer's site is not suitable for inclusionary development.

RESPONSE: Such language is not necessary in these rules. The situation raised by the commenter is addressed in N.J.A.C. 5:91 (the procedural rules).

Subchapter 15. Waiver Provisions

108. COMMENT: The Council should require that the party requesting a waiver bear the burden of proof by a preponderance of evidence. Also, the Council should provide guidance as to the meaning of unnecessary hardship as used in the waiver provision.

RESPONSE: The vast majority of waiver applications are not adversary proceedings. Therefore, the Council does not believe burden of proof issues are a major concern in this context. Similarly, in the waiver process, hardship issues are fact-specific and not easily amenable to generalization. However, since the rule only allows for waivers that foster the production of low and moderate income housing and the intent, if not the letter, of the Council's rules, the Council would only grant a hardship application that met these criteria.

Miscellaneous

109. COMMENT: The Council's rules could negatively impact on municipalities that are proceeding through the certification process based on the old rules, if the Council applies its new rules to the plan.

RESPONSE: The Council has developed procedural rules at N.J.A.C. 5:91-14 that deal with this scenario. If a municipality that is in the certification process believes that the application of the proposed rules would delay the certification process with little appreciable benefit for low and moderate income households, it may seek a waiver from specific provisions of the rule, in accordance with the provisions of N.J.A.C. 5:93-15.

Summary of Agency-Initiated Changes:

References in the amendments to N.J.A.C. 5:93-13.1 have been corrected to reference the waiver provisions at N.J.A.C. 5:93-15.1.

Subsequent to the rule proposal's publication in the December 20, 1993 New Jersey Register, the Council realized that it had misplaced some parentheses in the formulae regulating units restricted to senior citizens (N.J.A.C. 5:93-5.12) and regional contribution agreements (N.J.A.C. 5:93-6.1). The placement of these parentheses could create confusion and result in an interpretation of the formulae that is contrary to the Council's intent. By correcting this error, the Council is clarifying these formulae so that the 25 percent limitation for senior citizen units and the 50 percent limitation for regional contribution agreements are based on the cumulative housing obligation. This was the stated intent in the Summary of Changes between proposal and reproposal that was published with the reproposal. See 25 N.J.R. 5788.

Chapter 11 was incorrectly codified at N.J.A.C. 5:92; this has been corrected on adoption. The Council is also adopting amendments to portions of N.J.A.C. 5:91-14 in which references to the effective date of N.J.A.C. 5:93 are replaced with dates definite.

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

5:91-1.3 Waiver

Any party desiring a waiver or release from the express provisions of the rules in this chapter may submit a written request to the Council to the attention of the Executive Director, in accordance with the provisions of N.J.A.C. 5:93-*[13.1]***15.1***.

SUBCHAPTER 14. INTERIM PROCEDURES

5:91-14.1 Interim substantive certification

(a) A municipality that has received substantive certification from the Council for a housing element and fair share plan addressing the municipality's affordable housing obligation for 1987-1993 may move for an interim substantive certification if its certification expires prior to or *[within nine months after the effective date of N.J.A.C. 5:93]* ***by March 6, 1995***. If a municipality's judgment of repose has expired, the municipality may, *[within four months of the effective date of N.J.A.C. 5:93]* ***by October 6, 1994***, also file such a motion providing no exclusionary zoning lawsuit has been filed against the municipality. The motion seeking interim certification must:

1. Comply with the requirements of N.J.A.C. 5:91-12;

2. Be served upon all objectors and/or litigants that participated in the substantive certification or court settlement process; and

3. Be accompanied by:

i. The municipality's current housing element and fair share plan;

ii. A resolution of the governing body of the municipality expressing the intention to submit to the Council, *[within nine months following the effective date of N.J.A.C. 5:93]* ***by March 6, 1995***, a housing element and fair share plan addressing the municipality's fair share housing obligation;

iii. A proposed schedule for this submission;

iv. A statement as to the progress of the municipality's compliance with the terms of substantive certification; and

v. Any additional information the Council may require.

(b) The Council will issue interim substantive certification for a period of time not to exceed *[nine months following the effective date of N.J.A.C. 5:93]* ***March 6, 1995*** that responds to the submitted municipal schedule for filing its housing element and fair share plan if no objection is filed to the municipality's motion for interim substantive certification. The Council will condition its grant of substantive certification with any conditions it deems necessary or appropriate in order to insure continued compliance with the terms of substantive certification and the satisfaction of the municipal fair share obligation.

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

(e) If a municipality received a judgment of repose that expires *[up to nine months after the effective date of N.J.A.C. 5:93]* ***on or before March 6, 1995***, the municipality should apply to the Court that issued the judgment for relief prior to the expiration of its judgment of repose. The Council will consider a motion for interim certification if the Court transfers the request to the Council. In such cases, the procedures and criteria set forth above shall apply.

5:91-14.2 Municipalities that have not received substantive certification

(a) A municipality that has petitioned for substantive certification of a housing element and fair share plan designed to address its 1987-1993 obligation, but has not received a final determination of the Council on its plan by *[the effective date of N.J.A.C. 5:93]* ***June 6, 1994***, may either:

1. Move to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and repetition for certification of the amended plan; or

2. Choose to continue to seek substantive certification on its 1987-1993 obligation.

(b) A municipal motion to amend its housing element and fair share plan to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93 shall be accompanied by a resolution of the governing body of the municipality expressing the intention to submit to the Council, *[within nine months following the effective date of N.J.A.C. 5:93]* ***by March 6, 1995***, an amended housing element and fair share plan addressing the municipality's 1987-1999 obligation pursuant to N.J.A.C. 5:93; a proposed schedule for this submission; and the intention to repetition for substantive certification *[within the nine month period]* ***by March 6, 1995***.

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

5:91-14.3 Other municipalities

(a) A municipality that filed its housing element and fair share plan with the Council *[more than two years prior to the effective date of N.J.A.C. 5:93]* ***on or before June 6, 1992***, but did not petition for substantive certification prior to *[the effective date of N.J.A.C. 5:93]* ***June 6, 1994***, must file a new housing element and fair share plan addressing its 1987-1999 obligation pursuant to N.J.A.C. 5:93 and petition for substantive certification prior to an exclusionary lawsuit to re-enter the Council's process.

(b) A municipality that has filed a housing element and fair share plan *[less than two years prior to the effective date of N.J.A.C. 5:93]* ***after June 6, 1992*** may seek to extend the period of protection afforded by N.J.S.A. 52:27D-313 for up to *[nine months following the effective date of N.J.A.C. 5:93]* ***March 6, 1995*** in order to address its 1987-1999 obligation pursuant to N.J.A.C. 5:93. To seek such an extension, the municipality shall file a resolution of the governing body within whichever of the following dates occurs earlier: two years of the initial filing of the municipal housing element and fair share plan; or *[four months of the effective date of N.J.A.C. 5:93]* ***October 6, 1994***. In addition to a schedule for

submitting a housing element and fair share plan, the governing body's resolution shall state an intent to petition for substantive certification upon filing the housing element and fair share plan.

(c) The Council shall review the municipality's resolution of intent and grant a schedule for the municipal submission of the housing element and fair share plan conditioned on the municipality's petitioning for substantive certification upon filing its submission. The schedule for submitting the housing element and fair share plan shall require the filing and petition to occur *[within nine months of the effective date of N.J.A.C. 5:93]* ***by March 6, 1995***.

CHAPTER 92

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD AUGUST 4, 1986 THROUGH (THE EFFECTIVE DATE OF N.J.A.C. 5:93)

5:92-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the Period August 4, 1986 through the effective date of N.J.A.C. 5:93."

(b) The purpose of this chapter will be the crediting of past actions taken by municipalities in addressing their obligations to house low and moderate income households.

(c) These rules can be applied to all municipalities within the Council's jurisdiction.

CHAPTER 93

SUBSTANTIVE RULES OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING (THE EFFECTIVE DATE OF THESE RULES)

SUBCHAPTER 1. GENERAL PROVISIONS

5:93-1.1 Short title; purpose; scope

(a) The provisions of this chapter shall be known as the "Substantive Rules of the New Jersey Council an Affordable Housing for the Period Beginning on (the effective date of these rules)."

(b) The purpose of this chapter will be the provision of criteria to be used by municipalities in addressing their constitutional obligation to provide a fair share of affordable housing for moderate and low income households.

(c) All municipalities within the jurisdiction of the Council are subject to evaluation, in accordance with the provisions of this chapter, for the period beginning on the (effective date of these rules).

5:93-1.2 Severability clause

If any part of this chapter shall be held invalid, the holding shall not affect the validity of remaining parts of these rules. If a part of these rules is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

5:93-1.3 Definitions

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

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is created within an existing home, or through the conversion of an existing attached accessory structure on the same site, or by an addition to an existing home or accessory building.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq).

"Active recreation" means leisure time activities usually of a more formal nature and performed with others, often requiring equipment and taking place at prescribed places, sites or fields. Active recreation sites include swimming areas; playgrounds; tot lots; play fields; and tennis and other court game facilities. Active recreation shall not include areas designated for bike riding, hiking, walking and picnicking.

"Adjustment" means a modification and/or deferral of the municipal low and moderate income housing obligation, pursuant to N.J.S.A. 52:27D-307(c)(2) and N.J.A.C. 5:93-4.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

"Affordable" means a sales price or rent within the means of a low or moderate income household as defined in N.J.A.C. 5:93-7.4.

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangement includes, but is not limited to: transitional facilities for the homeless, Class A,B,C,D, and E boarding homes as regulated by the New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

"Approvable site" means a site that may be developed for low and moderate income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low and moderate income housing.

"Authority" means the entity designated by the municipality for the purpose of monitoring the occupancy, resale and rental restrictions of low and moderate income housing units.

"Available site" means a site with clear title, free of encumbrances which preclude development for low and moderate income housing.

"Calculated need" means the low and moderate income housing obligation resulting from the procedures in N.J.A.C. 5:93-2. It is the result of subtracting reductions, prior cycle credits and the 20 percent cap from the precredited need. To the extent that the Council has knowledge of prior cycle credits and eligible reductions, these credits and reductions have been applied to the municipal housing obligation.

"Census subregion" means a geographic subdivision of the State as determined by the United States Bureau of the Census.

"Center" means a compact form of development with a core or node (focus of residential, commercial and service development) and a community development area that ranges in scale from an urban center to a regional center, town, village, and hamlet. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Certified household" means a household determined to be income eligible for a low or a moderate income housing unit by a municipal authority after the authority has verified the household's gross annual income, credit history and compared the household's family size to the occupancy requirements delineated in N.J.A.C. 5:93-9.1(b)14.

"Community capacity" means an estimate based on 20 percent of a municipality's existing 1993 housing stock, pursuant to N.J.A.C. 5:93-2.17.

"Conversion" means the conversion of existing commercial, industrial or residential structures for low and moderate income housing purposes.

"Council" means the New Jersey Council on Affordable Housing established under the Act and which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

"DCA" means the New Jersey Department of Community Affairs.

"DEPE" means the New Jersey Department of Environmental Protection and Energy.

"Developable site" means a site that has access to appropriate water and sewer infrastructure, and has received water consistency approvals from the DEPE or its designated agent authorized by law to issue such approvals.

"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:93-8.

"DOT" means the New Jersey Department of Transportation.

"Durational adjustment" means a deferral of the municipal low and moderate income housing obligation based on the lack of in-

frastructure pursuant to N.J.S.A. 52:27D-307(c)(2) and N.J.A.C. 5:93-4.

"Environ" means that area of a municipality outside the development boundaries of a center. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal assessor.

"Exempt sales" means and shall include the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary; and the transfer of ownership by court order.

"Fair market value" means the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposed to satisfy its obligation to create a realistic opportunity to meet its fair share of low and moderate income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, addresses the development regulations necessary to implement the housing element, and addresses the requirements of N.J.A.C. 5:93-7 through 11.

"Gross density" means the total number of dwelling units existing or permitted on a housing site divided by the total area of the tract. The result is expressed as dwelling units per acre.

"Head of household" means a person under whose name a housing unit is owned or rented.

"Household" means the person or persons occupying a housing unit.

"Housing element" means that portion of a municipality's master plan consisting of reports, statements, proposals, maps, diagrams and text designed to meet the municipality's fair share of its region's present and prospective housing needs, particularly with regard to low and moderate income housing and which contains at least those items identified in section 10 of the Act.

"Housing market area" means the geographic region from which it is likely that buyers or renters would be drawn for inclusionary development. The housing market area is the "housing region" as determined by the Council, in which an inclusionary development is located.

"Housing Region" means a geographic area, determined by the Council, of no less than two nor more than four contiguous, whole counties, which exhibit significant social, economic and income similarities and which constitute, to the greatest extent practicable, the Primary Metropolitan Statistical Areas (PMSA) as last defined by the United States Census Bureau.

"Inclusionary component" means the result of subtracting the rehabilitation component, credits (granted pursuant to N.J.A.C. 5:93-3), the impact of the 20 percent cap (pursuant to N.J.A.C. 5:93-2.16) and the impact of the 1,000 unit limitation (pursuant to N.J.A.C. 5:93-14) from the precredited need, provided the result shall not be less than zero. For a municipality that receives a vacant land adjustment pursuant to N.J.A.C. 5:93-4, the inclusionary component shall be initially synonymous with the realistic development potential.

"Inclusionary development" means a development containing low and moderate income units. This term includes, but is not necessarily limited to, new construction, the conversion of a non-residential structure to a residential structure and the creation of new low and moderate income units through the substantial rehabilitation of a vacant residential structure.

"Indigenous need" means deficient housing units occupied by low and moderate income households within a municipality and is a component of present need. Municipal indigenous need, as a percentage of the total 1993 occupied housing stock, shall not exceed the percentage derived from dividing the deficient housing units occupied by low and moderate income households by the total 1993 occupied housing stock for the housing region in which the municipality is located.

"Initial occupancy" means the period beginning with the date on which the developer is granted permission by the local government to begin occupancy and ending on the date 95 percent occupancy is attained.

"Inventory" means that calculation undertaken by a municipality in accordance with the Fair Housing Act, N.J.S.A. 52:27D-329, in developing its housing element which accounts for its housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households in substandard housing capable of being rehabilitated, as provided for in section 10a of the Act.

"Judgment of repose" means a judgment issued by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

"Landsat" means a satellite that maps land cover by interpreting spectral information reflected from the earth's surface.

"Low income housing" means housing affordable according to Federal Department of Housing and Urban Development or the standards included in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to affordability controls promulgated by the Council.

"Low income tax credit" means an income tax credit granted for investing in a Federal program designed to produce low and moderate income rental units.

"Market rate units" means housing within an inclusionary development, not restricted to low and moderate income households, that may sell at any price determined by a willing seller and a willing buyer.

"Median aggregate household income above the floor" means the result of multiplying the number of households in the municipality as of 1990 by the 1989 municipal median household income above the floor.

"Median household income above the floor" means the result of subtracting the regional household floor income from the 1989 median municipal household income.

"Minority" means an individual who is a member of one of the following racial or ethnic groups:

1. Black: An individual having origins in any of the black racial groups of Africa, but not of Hispanic origin;

2. American Indian or Alaskan Native: An individual having origins on any of the original people of North America, and who maintains cultural identification through tribal affiliation or community recognition;

3. Hispanic: An individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race; or

4. Asian or Pacific Islander: An individual having origin in any of the original peoples of the Far East, southeast Asia, and the Indian subcontinent or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

"Moderate income housing" means housing affordable according to Federal Department of Housing and Urban Development or the standards in this chapter for home ownership and rental costs, occupied or reserved for occupancy by households with a gross household income in excess of 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located, and which is subject to the Council affordability controls in this chapter.

"Multifamily unit" means a structure contaning five or more dwelling units.

"Municipal estimated land capacity" means an estimate based on Landsat data, tax data and assumptions pertaining to density and set-asides used in developing the undeveloped land cap pursuant to N.J.A.C. 5:93-2.16 and assumptions pertaining to density and set-asides.

"Municipal need for new construction" means a calculation used to determine the 20 percent cap pursuant to N.J.A.C. 5:93-2.16.

"Municipal present need" means the sum of indigenous need and the municipal share of reallocated present need.

"Net density" means the total number of dwelling units within a designated portion of a tract divided by the total land area of the designated portion of the tract, including the open-space, roadways, parking areas and common facilities devoted exclusively to that portion of the tract. The result is expressed as dwelling units per acre.

"Open-space" means any parcel or area of water or land essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that such areas may be improved with only those buildings, structures, streets and offstreet parking and other improvements that are designed to be incidental to the natural openness of the land.

"Overlay zone" means a zoned area of a municipality in which low and moderate income housing may be built as a matter of right in addition to another use. In approving such a zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that when the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee.

"Petition for Substantive Certification" means that petition which a municipality files, or is deemed to have filed, which engages the Council's mediation and review process.

"Planning area" means an area defined by a set of common criteria which focus on the degree and type of development or natural resources. Planning areas serve as organizing mechanisms for growth and development planning throughout the State. This definition is in accord with and derived from the State Development and Redevelopment Plan.

"Pre-credited need" means the municipal low and moderate income housing obligation resulting from subtracting filtering, residential conversion and spontaneous rehabilitation from the sum of indigenous need, reallocated present need, prior cycle prospective, prospective need and demolitions.

"Present need" means the sum of indigenous need and reallocated present need as determined by N.J.A.C. 5:93-2.5.

"Price differential" means the difference between the controlled unit sale price and the fair market value as determined at the date of a proposed contract of sale, after reasonable real estate broker fees have been paid.

"Priority" means a system of selecting applicants.

"Prior cycle credits" means credits granted by the Council for low and moderate income units constructed after April 1, 1980 as part of granting substantive certification for the 1987-1993 housing obligation.

"Prior cycle fair share" means the responsibility for low and moderate income housing established by the Council when the Council granted substantive certification for the 1987-1993 housing obligation.

"Prior cycle prospective need" means that portion of the 1987-1993 prospective need included in the 1987-1999 low and moderate income housing need calculations.

"Prospective need" means a projection of low and moderate housing needs based on development and growth which is reasonably likely to occur in a region or a municipality. See N.J.S.A 52:27D-304(j).

"Qualified non-profit" means an organization granted non-profit status in accordance with section 501(c)(3) of the Internal Revenue Service code.

"Realistic development potential" means the municipal obligation as calculated pursuant to N.J.A.C. 5:93-4.2(e).

"Reallocated present need" means that portion of a housing region's present need that is redistributed throughout the housing region.

"Receiving municipality" means, for purposes of a Regional Contribution Agreement (RCA), a municipality which agrees to assume a portion of another municipality's fair share obligation.

"Reduction" means a one for one deduction of precredited need based on a fair share plan to construct low and moderate income units, transfer low and moderate income units via a regional contribution agreement and/or zone for low and moderate income housing that implements a housing element that has been certified by the Council or the Superior Court.

"Regional aggregate weighted median household income above the floor" means the result of adding the median aggregate household income above the floor for municipalities in the housing region.

"Regional household floor income" means 100 dollars less than the lowest municipal median household income in the housing region.

"Regional median household income above the floor" means the result of adding the median household income above the floor for each municipality in the housing region.

"Rehabilitated unit" means a previously deficient housing unit which has undergone significant renovation to meet municipal or other applicable housing code standards as further described in N.J.A.C. 5:93-5.2(b).

"Rehabilitation component" means the result of subtracting spontaneous rehabilitation from indigenous need. For a municipality where filtering and conversions exceed reallocated present, prior cycle prospective need, prospective need and demolitions, the rehabilitation component equals calculated need.

"Repayment clause" means the obligation of a seller exercising a repayment option to pay 95 percent of the price differential to a municipality at closing for use in the municipal housing plan.

"Repayment option" means the option of a seller of a low or moderate income unit to sell a unit pursuant to N.J.A.C. 5:93-12.7 at fair market value subject to compliance with the terms of a repayment clause.

"Resolution of Participation" means a resolution adopted by a municipality in which the municipality chooses to prepare a fair share plan and housing element in accordance with the Act.

"Section 8 income limits" means a schedule of income limits that define 50 percent and 80 percent of median income by household size. When used herein, Section 8 income limits shall refer to the "uncapped" schedule as published by the Council, in accordance with its rules.

"Sending municipality" means for purposes of a RCA, a municipality which transfers a portion of its fair share obligation to another willing municipality.

"Senior citizen" means a person who is 62 years of age or older.

"Set-aside" means the percentage of housing units devoted to low and moderate income households within an inclusionary development.

"State Development and Redevelopment Plan (SDRP)" means the State plan for development promulgated by the State Planning Commission pursuant to P.L. 1985, c.398 (N.J.S.A. 52:18A-196 et seq.).

"Substandard housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system.

"Substantive certification" means a determination by the Council approving a municipality's housing element and fair share plan in accordance with the provisions of the Act and the rules and criteria as set forth in this chapter. A grant of substantive certification shall be valid for a period of six years in accordance with the terms and conditions contained therein, in accordance with N.J.S.A. 52:27D-322.

"Suitable site" means a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

"Surrogate" means a census indicator of deficient housing used in the calculation of present need as defined in N.J.A.C. 5:93-2.

"Survey" means that independent determination of need undertaken by a municipality in preparing its housing element, which is developed and produced in a manner and in such form as is required by this chapter.

"Target group" means identifiable organizations that may aid in attracting low and moderate income households to inclusionary developments. Examples of target groups include: public housing authorities, non-profit organizations, departments of aging, Section 8 programs, religious organizations, urban community action groups and personnel departments of local employers.

"Total need" means the sum of present and prospective need.

"Vacant land" means undeveloped and unused land area.

SUBCHAPTER 2. MUNICIPAL DETERMINATION OF PRESENT AND PROSPECTIVE NEED

5:93-2.1 General provisions

(a) Municipal present need and prospective need shall be calculated by summing municipal indigenous need and the municipal share of the appropriate housing region's reallocated present need and prospective need. The resulting total shall be modified by: prior-cycle prospective need; secondary sources of supply and demand; reduction for 1987-1993 housing activities; prior-cycle credits; and the 20-percent cap (see Appendix A, incorporated herein by reference). The end product of this process is the determination of municipal calculated need. This is the figure municipalities shall address in their housing elements. An example for a hypothetical municipality in the Southwest Region (Region 5)—Johnsonville—is provided to illustrate each of the individual calculations. The following flow diagram summarizes the sequence of calculations en route to the determination of calculated need.

FLOW DIAGRAM FOR THE CALCULATION OF LOW- AND MODERATE-INCOME HOUSING NEED

Using the Johnsonville Example

INDIGENOUS NEED	+	REALLOCATED PRESENT NEED	=	PRESENT NEED		
33		95		128		
PRESENT NEED	+	PROSPECTIVE NEED	=	TOTAL NEED		
128		568		695		
TOTAL NEED	+	PRIOR-CYCLE PROSPECTIVE NEED	+	DEMOLITIONS		
695		248		9		
(-) FILTERING	(-)	RESIDENTIAL CONVERSION	(-)	SPONTANEOUS REHABILITATION	=	PRE-CREDITED NEED
89		16		8		839
(-) REDUCTION	(-)	PRIOR-CYCLE CREDITS	(-)	20% CAP	=	CALCULATED NEED*
439		101		0		299

*Prior-cycle vacant land adjustment communities are indicated by "VL" even though their number is calculated. This indicates that although there is not much vacant land left in these communities, the affordable housing number may be met in other ways and is retained as part of overall Calculated Need.

(b) Exhibit 1 in the Technical Appendix A provides municipal-specific base data that may be employed to determine municipal Present and Prospective Need. Data for a hypothetical municipality, "Johnsonville," precedes the municipal base data for illustrative purposes in both Exhibits 1 and 3. Exhibit 2 in Appendix A duplicates the base data for each housing region that is presented in Columns A through L herein. Exhibit 3 is included for the convenience of the user of this guide. It provides a variety of data for each community, often from the 1990 Census, which would otherwise have to be researched in the process of undertaking this calculation.

(c) Selected municipalities receiving State aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270-178 et seq.) as refined by the criteria in N.J.A.C. 5:93-2.3(b) shall calculate municipal calculated need as per the procedures delineated in N.J.A.C. 5:93-2.17.

5:93-2.2 Indigenous need—1993

(a) Indigenous need in a municipality is actual or capped deficient housing occupied by low- and moderate-income households as further defined in N.J.A.C. 5:93-1.3. Municipal indigenous need shall be determined from the total of deficient housing units occupied by low- and moderate-income households for the U.S. Census subregion in which the municipality is located. The data, derived from a multiple-index approach, are not available at the municipal level. To determine the municipal share of need from the U.S. Census subregion total, it is necessary to employ a single-index approach using surrogates of deficient housing available at both the municipal and U.S. Census subregion level. To calculate municipal indigenous need:

1. Locate the appropriate municipality in Exhibit 1 in Appendix A. Example: Johnsonville in Region 5 (Southwest).

2. Divide Column 2 (municipal single-index need) by Column 3 (subregional single-index need). The resulting percentage yields the municipal share of the U.S. Census subregion's total of deficient housing units occupied by low- and moderate-income households.

Example:

$$\frac{\text{Johnsonville single index need (Column 2)}}{\text{Subregional single index need (Column 3)}} = 410 \div 4544 = .090$$

(Municipal Share of Regional Need)

3. Multiply the result of the quotient obtained in (a)2 above by the number in Column 1 (subregional multiple index need).

Example:

Subregional Multiple Index Need (Column 1)		Municipal Share of Regional Need	
364	×	.090	= 33

This is the count of estimated low- and moderate-income deficient units in a municipality.

4. Column A from Appendix A, Exhibit 2, reproduced below displays the percentage for each housing region that is obtained

by dividing the actual deficient housing units occupied by low- and moderate-income households in the region by the estimated total of 1993 occupied housing units in the region.

TABLE 1
(COLUMN A, FROM APPENDIX A, EXHIBIT 2)
1993 REGIONAL AVERAGE PERCENT DEFICIENT HOUSING

Region	Percent Deficient
1. Northeast	.0290
2. Northwest	.0250
3. West Central	.0180
4. East Central	.0120
5. Southwest	.0150
6. South-Southwest	.0220

Multiply this percentage by the municipal projection of 1993 occupied housing stock in Exhibit 1, Column 4.

Example:

Johnsonville Total 1993* Occupied Housing Estimate (Column 4)		Region 5 Percentage of Low- and Moderate-Income Deficiency (Column A)		
12,695	×	.015	=	190

*Estimate as of July 1, 1993

5. Municipal Indigenous Need shall be the smaller number resulting from the calculations in (a)3 and 4 above.

Example: Johnsonville's Indigenous Need = 33.

6. If the calculation in (a)3 above is larger than (a)4 above, the difference between the two shall be distributed throughout the housing region as Reallocated Present Need as per N.J.A.C. 5:93-2.3 and 5:93-2.4. The results of this calculation are displayed for each housing region in Column B.

(b) Municipal indigenous need may also be determined through a survey of the municipality's housing stock as indicated in Appendix C incorporated herein by reference, when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

5:93-2.3 Distribution of need 1993; 1993-1999

(a) Distribution of need applies the concept of fair share to the portion of regional housing need that is not locally responsible housing deficiency. This differs somewhat for present and prospective need and is explained in the Appendix A. The distribution of each housing region's reallocated present need and prospective need shall be accomplished through use of economic and land-use factors expressed as a percentage representing the municipal share of the housing region's total for each factor. The factors employed to distribute the housing region's need are the municipality's share of regional undeveloped land (Appendix A, Exhibit 1, Column 5), equalized nonresidential valuation (Exhibit 1, Column 6), aggregate household income differences (Exhibit 1, Column 7), and change in equalized nonresidential valuation (Exhibit 1, Column 8). All but equalized nonresidential valuation change are summed (Exhibit 1, Columns 5, 6 and 7), averaged and displayed in Exhibit 1, Column 9. This is the average of the Present Need allocation factors. Three economic and land-use factors (Exhibit 1, Columns 5, 7 and 8) are also summed, averaged, and displayed in Exhibit 1, Column 10. Column 10 represents the average of the Prospective Need allocation factors.

(b) Reallocated Present Need and Prospective Need shall be distributed to municipalities unless the municipality received State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and exhibits at least one of the following (see Appendix A, Attachment, for a listing of selected urban aid cities):

1. A level of existing low- and moderate-income housing deficiency, according to the six housing deficiency criteria, that exceeds average regional low- and moderate-income housing deficiency for the region in which the urban aid municipality is located;

2. A population density of greater than 10,000 persons per square mile or 14.1 per acre; or

3. A population density of 6,000 to 10,000 persons per square mile or 9.4 to 14.1 per acre plus less than five percent of vacant, nonfarm, municipal land as measured by the average of vacant land valuation and vacant land parcels of all local land valuation/parcels in the *1990 Statement of Financial Condition of Counties and Municipalities* (obtainable from the Division of Local Government Services, Trenton, New Jersey: New Jersey Department of Community Affairs, Trenton, New Jersey 08625) incorporated herein by reference.

(c) Only those municipalities designated herein to receive reallocated present need and prospective need shall be included in the housing region totals of vacant land, equalized nonresidential valuation, change in equalized nonresidential valuation, and aggregate household income differences for purposes of distributing need.

5:93-2.4 Reallocated present need—1993

(a) Reallocated present need is the share of excess deficient housing that is distributed to non-urban aid municipalities in the region as delineated in N.J.A.C. 5:93-2.3(b). Table B below displays the Reallocated Present Need by housing region:

TABLE B
(Column B of Appendix A, Exhibit 2)
1993 REGIONAL POOL OF EXCESS DEFICIENT HOUSING UNITS

Region	Excess Deficient Housing Units
1. Northeast	7,002
2. Northwest	5,306
3. West Central	1,477
4. East Central	1,329
5. Southwest	1,751
6. South-Southwest	676
New Jersey	17,542

(b) To calculate reallocated present need, divide the municipal number in Appendix A, Exhibit 1, Column 9 by 100 and multiply the resulting quotient by the total reallocated present need for the housing region in which the municipality is located to yield municipal Reallocated Present Need.

Example:

Regional Pool of Excess Deficient Units (Region 5)		Average of Johnsonville's Present Need Allocation Factors (Column 9)		
1,751	×	$\frac{5,414}{100}$	=	95

5:93-2.5 Present need—1993

Present need is the sum of indigenous need and reallocated present need. To determine municipal present need, add indigenous need (as calculated in N.J.A.C. 5:93-2.2) and reallocated present need (as calculated in N.J.A.C. 5:93-2.4).

Example:

Johnsonville's Present Need = Indigenous Need (33) + Reallocated Present Need (95) = 128

5:93-2.6 Prospective need: 1993-1999

(a) Prospective need is the share of future households that are low and moderate income and as such require affordable housing not provided by the market except for secondary supply (see Appendix A). Prospective need for each housing region is projected in Table C below:

TABLE C
1993-1999 PROSPECTIVE NEED

Region	Regional Prospective Need
1. Northeast	4,787
2. Northwest	1,033
3. West Central	8,654
4. East Central	14,424
5. Southwest	8,993
6. South-Southwest	4,236
New Jersey	42,127

(b) To calculate municipal prospective need, divide the municipal number in Exhibit 1, Column 10 in the Appendix A by 100 and multiply the resulting quotient by the prospective need for the housing region in which the municipality is located to yield municipal Prospective Need.

Example:

1999 Prospective Need (Region 5) (Column C)		Average of Johnsonville's Prospective Need Allocation Factors (Column 10)	
8,993	×	$\frac{6,312}{100}$	= 568

5:93-2.7 Total need—1993; 1993-1999

Total need is the sum of present and prospective need. To determine municipal total need, add present need (as calculated in N.J.A.C. 5:93-2.5) and prospective need (as calculated in N.J.A.C. 5:93-2.6).

Example:

Johnsonville's Total Need = Present Need (128) + Prospective Need (568) = 695

5:93-2.8 Prior-cycle prospective need: 1987-1993

(a) Prior-cycle prospective need is the recalculated prospective need for the prior period. It is included in this chapter because it is part of the 1987-1999 need before reductions are taken. It is recalculated because procedures are more accurate since the 1990 Census has become available as a check against the original 1987-1993 projections.

(b) Recalculated prospective need is obtained by applying 0.52 to the prior-cycle prospective need. Before using the prior-cycle prospective need, it is adjusted for the effects of prior-cycle secondary sources of housing supply and demand. Recalculated demolitions are added to prior-cycle prospective need, and the sum is diminished by scaled-down prior-cycle secondary sources of supply. Each municipality's net (after secondary sources of supply and demand (demolitions) have been accounted for) prior-cycle prospective need is found in Appendix A, Exhibit 3, Column 1.

PRIOR-CYCLE PROSPECTIVE NEED = 248

Municipal Need Prior to Secondary Sources	=	Total Need	+	Prior-Cycle Prospective Need
944		695		248

5:93-2.9 Demolitions

(a) Demolitions are a source of secondary housing demand, as they eliminate housing opportunities for low- and moderate-income households. Therefore, a number representing demolitions affecting low- and moderate-income households shall be added to municipal need—total need plus prior-cycle prospective need—to this point, "Municipal need" or "municipal need to this point" refers to total need plus prior-cycle prospective need being altered serially by secondary sources of supply and demand, a reduction, pre-1987 credits, and undeveloped land and 20-percent caps up to the point that calculated need (the actual municipal obligation) is determined (see Appendix A). To determine this number:

1. Average 1988, 1989, and 1990 municipal demolitions as reported in New Jersey Residential Building Permits (1988, 1989 and 1990 Summaries) (available from the New Jersey Department of Labor, Division of Labor Market and Demographic Research, CN 388, Trenton, N.J. 08625).

Example:

Johnsonville averaged five demolitions per year for the three years.

2. Multiply the one-year average by six to estimate 1993-1999 demolitions (Exhibit 3, Column 2).

Example:

Johnsonville Average Demolitions	×	Number of Years Projected	
5	×	6	= 30

3. To determine the percentage of demolitions affecting low- and moderate-income households in a municipality, multiply the number of demolitions for six years by the 1990 subregional low- and moderate-income percentage for that municipality.

Number of Demolitions in Six Years	×	Low- and Moderate-Income Percentage (Exhibit 1, Column 11)	
30	×	.2402	= 7.2

4. Multiply the number of demolitions affecting low- and moderate-income households (calculated in (a)3 above) by 1.2 to reflect a greater proportion of overall demolitions affecting this income group. The number of demolitions affecting low- and moderate-income households shall be the result of this product or 95 percent of the total projected demolitions, whichever is lower. The resulting number shall be added to municipal need.

Example:

Demolitions Impacting Low- and Moderate-Income Households	×	Low- and Moderate-Income Factor	
7.2	×	1.2	= 9

(9 is lower than 95 percent of 30, or 28.5—so 9 is used.)

5:93-2.10 Filtering

(a) Filtering causes a reduction in municipal need (total and prior-cycle prospective) based on the recognition that the housing needs of low- and moderate-income households are partially met by sound housing units formerly occupied by the higher-income sector of the housing market (see Appendix A). Filtering is highly correlated with the presence of older and multifamily (five units or more) housing units. Table D, Column 1 displays regional filtering projections. Column 2 displays the total number of multifamily housing units in each region in 1990. Column 3 displays the total number of pre-1940 (older) units in each region.

TABLE D
FILTERING

Region	COLUMN 1 1993-1999 Filtering Projection	COLUMN 2 1990 Multifamily (5 Units or More) Unit Totals	COLUMN 3 1990 Pre-1940 Unit totals
1. Northeast	4,895	193,286	255,434
2. Northwest	4,535	156,893	206,403
3. West Central	2,830	70,199	61,647
4. East Central	3,550	74,459	93,848
5. Southwest	2,994	63,582	80,208
6. South-Southwest	1,382	41,231	58,521
New Jersey	20,185	599,650	756,061

(b) To determine the impact of filtering on municipal need after all the calculations up to and including N.J.A.C. 5:93-2.9:

1. Determine the municipal number of total multifamily units in 1990 as reported in the U.S. Census of Housing (Appendix A, Exhibit 3, Column 3).

Example:

Johnsonville had 2,719 total multifamily units in 1990.

2. Divide this number by the number of total multifamily units for the region (Table D, Column 2) in which the municipality is located.

3. Determine the municipal number of pre-1940 units in 1990 as reported in the U.S. Census of Housing.

Example:

Johnsonville had 272 pre-1940 units in 1990. (Appendix A, Exhibit 3, Column 4)

4. Divide this number by the total of pre-1940 units in 1990 for the region (Table D, Column 4) in which the municipality is located.

5. Weight the calculation resulting from (b)2 above by two, then average the above calculations. This yields the municipality's weighted share of older and multifamily housing units in the housing region.

Example:

Johnsonville's Multifamily Units, 1990		Total Multifamily Units in 1990 (Region 5) (Column E)		Johnsonville's Share of Multifamily Units
2,719	÷	63,582	=	.04276

Johnsonville's pre-1940 Units, 1990		Total Pre-1940 Units in 1990 (Region 5) (Column F)		Johnsonville's Share of Pre-1940 Units
257	÷	80,208	=	.00339

6. Average the shares in (b)5 above after weighting the first by two

(.04276 + .04276 + .00339) ÷ 3 = .02964 (Johnsonville's Weighted Share of Older and Multifamily Units)

7. Multiply this percentage by the filtering projections in Table D, Column 4 for the region in which the municipality is located to yield the reduction to municipal total need (plus prior-cycle prospective need) due to filtering.

Example:

Johnsonville's Share of Region 5 Older and Multifamily Units		Filtering Projection (Region 5) (Column D)	
.02964	×	2,993	= 89

5:93-2.11 Residential conversion

(a) Residential conversion is the creation of dwelling units from already existing residential structures. It is a significant source of housing supply to low- and moderate-income households and it causes a reduction to municipal need (see Appendix A). Residential conversion is highly correlated with the presence of two- to four-family housing units. Table E, Column 1 below displays projections of conversions for each housing region. Table E, Column 2 displays the total of two- to four-family housing units in each housing region in 1990.

TABLE E
RESIDENTIAL CONVERSION

Region	COLUMN 1 1993-1999 Conversion Projections	COLUMN 2 1990 2-4 Family Unit Totals
1. Northeast	2,649	218,392
2. Northwest	2,229	150,817
3. West Central	930	44,103
4. East Central	886	45,844
5. Southwest	881	27,265
6. South-Southwest	775	40,576
New Jersey	8,351*	526,997

*May not be equivalent to Appendix A figure because all secondary sources of supply may not be used; Appendix A displays what is used.

(b) To determine the impact of conversions on municipal need:

1. Determine the municipal number of total two- to four-family housing units in 1990 as reported in the U.S. Census of Housing (Detailed Housing Characteristics Part 32—New Jersey).

Example:

Johnsonville had 490 two- to four-family units. (Appendix A, Exhibit 3, Column 5)

2. Divide the number by the total number of two- to four-family housing units for the region (Table E, Column 2) in which the municipality is located to obtain the municipal share of two- to four-family housing units in the housing region.

Example:

Johnsonville's 1990 Total 2-4 Family Housing Units		Regional 1990 Total 2-4 Family Housing Units (Region 5) (Column H)		Johnsonville's Share of 2-4 Family Housing Units in Region
490	÷	27,265	=	.01797

3. Multiply this percentage by the conversion projection in Table E, Column 1 for the region in which the municipality is located to yield the reduction to municipal need due to conversion.

Example:

Johnsonville's Share of 2-4 Family Housing Units		1993-1999 Conversion Projections (Region 5) (Column G)	
.01797	×	881	= 16

5:93-2.12 Spontaneous rehabilitation

(a) Spontaneous rehabilitation measures the private market's ability to rehabilitate deficient low- and moderate-income housing units up to applicable state and local code standards; and shall cause a reduction to municipal need (see Appendix A). Spontaneous rehabilitation is highly correlated with income. A combination of income differences from $100.00 below the lowest municipal median household income in the region weighted by the number of households in a municipality ($100.00 below the lowest municipal median household income in the region is used that there will be no negative differences in the regional pool) and household income differences not weighted is used to develop this measure. The former is weighted twice; the latter once. Table F, Column 1 below displays spontaneous rehabilitation projections by housing region.

TABLE F
SPONTANEOUS REHABILITATION

Region	COLUMN 1 1993-1999 Spontaneous Rehabilitation Projections	COLUMN 2 1993 Regional Household Income Floor ($)	COLUMN 3 1993 Weighted Regional Income Differences ($)	COLUMN 4 1993 Unweighted Regional Income Differences ($)
1. Northeast	710	20,515	19,234,394,000	4,393,888
2. Northwest	597	23,705	16,299,646,900	3,698,545
3. West Central	249	31,008	8,828,753,140	1,835,119
4. East Central	237	22,719	11,539,122,100	2,526,644
5. Southwest	236	19,015	10,120,912,300	2,557,328
6. South-Southwest	207	18,343	3,422,312,000	1,234,261
New Jersey	2,237	—	69,445,140,000	16,245,786

(b) To determine the impact of spontaneous rehabilitation on municipal need to this point:

1. Determine the municipal 1993 median household income as adjusted from the 1990 Census of Population (Appendix A, Exhibit 3, Column 6).

Johnsonville's 1993 median household income is $55,927.

2. Subtract the regional floor income (lowest municipal median household income in the region in 1993—$19,015; Table F, Column 2) from the 1993 municipal median household income.

$55,927 - $19,015 = $36,913

3. Multiply this number by the number of occupied housing units (households) in the municipality as of 1993 (U.S. Census of Population—1990, update; Appendix A, Exhibit 1, Column 4). This yields municipal 1993 aggregate household income above the floor (weighted income).

Example:

Johnsonville's number of households in 1993 is 12,695.

Calculation:

$36,913 × 12,695 = $468,592,783

4. Divide 1993 municipal median aggregate weighted household income above floor by the 1993 summed regional aggregate weighted median household income above floor for the housing region in which the municipality is located (see Table F, Column 3) to obtain the municipal share of regional aggregate weighted household income above the floor.

Example:

Johnsonville's Aggregate 1993 Weighted Household Income (above the floor)		1993 Aggregate Weighted Household Income (above the floor) (Region 5) (Column K)		Johnsonville's Share of Aggregate 1993 Weighted Household Income (above the floor)
$468,592,783	÷	$10,120,912,300	=	.04630

5. Divide 1993 municipal median household income above the floor (unweighted) by the 1993 summed regional median household income above the floor (unweighted) for the housing region in which the municipality is located (see Table F, Column 4) to obtain the municipal share of regional household income above the floor (unweighted).

Example:

Johnsonville's 1993 Household Income (Unweighted) (above the floor) (Step 2 above)		1993 Aggregate Household Income (Unweighted) (above the floor) (Region 5) (Column L)		Johnsonville's Share of 1993 Aggregate Household Income (Unweighted) (above the floor)
$36,913	÷	$2,557,328	=	.01443

6. Multiply the weighted share of regional income times two and add it to the unweighted share. Divide this sum by three. Multiply the result by the spontaneous rehabilitation projections for the housing region in which the municipality is located (see Table F, Column 1). This yields the reduction to municipal total need (plus prior cycle prospetive need) due to spontaneous rehabilitation unless the result exceeds the indigenous need. In cases where the result exceeds the indigenous need, the reduction due to spontaneous rehabilitation shall equal the indigenous need.

Example:

Johnsonville's Weighted Share of 1993 Aggregate Household Income × 2 (Step 4 above)		Johnsonville's Unweighted Share of 1993 Aggregate Household Income (Step 5 above)		1993-1999 Region 5 Spontaneous Rehabilitation Estimate (Column I)	
[(.04630 + .04630	+	.01443)	+3]	× 236	= 8

5:93-2.13 Pre-credited need: 1987-1999

Pre-credited need is total need and prior-cycle prospective need modified by secondary sources of demand and supply.

Total Need	+	Prior-Cycle Prospective Need	+		-	Demolitions		Filtering
695		248				9		89

Residential Conversions	-	Spontaneous Rehabilitation	=	Pre-Credited Need
16		8		839

5:93-2.14 Reduction

(a) The Council shall allow a one-for-one reduction of cumulative 1987 to 1999 need for affordable housing activities undertaken from 1987 to 1993. It is a reduction for units zoned for or transferred, whether or not the units have been constructed, pursuant to Subchapter 3.

(b) Information for the reduction is derived from the Council, court, and other records of affordable housing activity. This information is specific to individual municipalities and is contained in Appendix A, Exhibit 3, Column 7. Municipal need at this point is pre-credited need minus the reduction. A municipality cannot take a reduction that will bring municipal need number below zero.

Pre-Credited Need	-	Reduction (Exhibit 3—Column 7)	=	Municipal Need After Reduction
839		439		400

5:93-2.15 Prior-cycle credits

A one-for-one credit shall be granted for low- and moderate-income housing constructed subsequent to April 1, 1980 that conforms to the criteria in N.J.A.C. 5:93-3.1. Municipal need at this point is pre-credited need after the reduction, minus prior-cycle credits. Prior-cycle credits cannot reduce a municipal need number below zero.

Municipal Need After Reduction	(-)	Prior-cycle Credits (Exhibit 3—Col. 8)	=	Municipal Need After Prior-cycle Credits
400	-	101	=	299

5:93-2.16 Twenty-percent (20%) cap

(a) A cap of 20 percent of the estimated 1993 occupied housing stock (community capacity) cannot be exceeded by a municipality's need for new construction. The need for new construction is the precredited need minus the reductions, prior-cycle credits, and the rehabilitation components. This is based on the premise that if the affordable housing was provided as a 20-percent set-aside of inclusionary housing, and if the planned affordable housing was more than 20 percent of existing units, then the new affordable housing and accompanying market units would exceed the number of existing housing units in the community.

(b) Community capacity is determined by multiplying the estimated 1993 occupied housing in the municipality (Appendix A, Exhibit 1, Column 4) by 0.20 and comparing this to the municipal need for new construction.

1. If the community capacity is larger than municipal need for new construction, the 20-percent cap is zero. This is the case for the present example.

2. If community capacity is smaller than municipal need for new construction, the difference between community capacity and the municipal need for new construction is subtracted from the latter to yield the 20-percent cap. The 20-percent cap is the difference between community capacity and the municipal need for new construction. Municipal need at this point equals pre-credited need minus the reduction, minus prior-cycle credits, minus the 20-percent cap.

Johnsonville's 1993 Occupied Housing Estimate		Twenty Percent (20%)	=	Community Capacity
12,695 units	×	0.20	=	2,539 units
Municipal Need for New Construction		Community Capacity	=	Twenty Percent (20%) Cap
274		2,539	=	0
Municipal Need After Prior-Cycle Credit	-	Twenty Percent (20% Cap)	=	Municipal Need After 20-Percent Cap
299		0		299

5:93-2.17 Calculated need: 1987-1999

Municipal calculated need is the sum of total need, prior-cycle prospective need, and demolitions; minus filtering, conversion, and spontaneous rehabilitation, yielding, pre-credited need; minus the reduction, prior-cycle credits, and 20-percent cap (see Appendix A).

Example:

Total Need	*plus*	Prior-cycle Prospective Need	*plus*	Demolitions
695	+	248	+	9

minus Filtering	*minus* Residential Conversion	*minus* Spontaneous Rehabilitation	*equals* Pre-Credited Need
- 89	- 16	- 8	= 839

minus Reduction	*minus* Prior-Cycle Credits	
- 439	- 101	-

minus 20% Cap	*equals* Calculated Need
0	= 299

5:93-2.18 Vacant land adjustment communities; prior cycle

Municipalities that received an adjustment from the courts or the Council due to undeveloped land in the first affordable housing cycle have received a calculated need number. However, the Council has developed a streamlined process for these communities to receive substantive certification. The calculated need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

5:93-2.19 Calculation of indigenous need: selected urban aid cities

(a) Selected municipalities receiving state aid (urban aid cities) pursuant to P.L. 1978, c.14 (N.J.S.A. 52:270-178 et seq.) that are exempt from the distribution of reallocated present need and prospective need as described in N.J.A.C. 5:93-2.3 (see Appendix A, Attachment shall determine their indigenous need as indicated below:

1. Follow the procedures delineated in N.J.A.C. 5:93-2.2(a)1 to 3. These calculations yield the count of actual low- and moderate-income deficient units in the selected urban aid city. This estimate of low- and moderate-income deficient units may also be determined through a survey of the municipality's housing stock when such survey is deemed adequate and accepted by the Council for identifying deficient housing units occupied by low- or moderate-income households.

2. Modify the number calculated in (a)1 above as instructed in N.J.A.C. 5:93-2.9, 2.10, 2.11, and 2.12 (demolitions, filtering, residential conversions and spontaneous rehabilitation.)

3. Perform the calculation required in N.J.A.C. 5:93-2.2(a)4.

4. Municipal Indigenous Need (for Urban Aid Cities) shall be the smaller number resulting from the calculations in (a)2 and 3 above.

5. If the calculation in (a)2 above is larger than the calculation in (a)3 above, the difference between the two shall be distributed throughout the housing region as reallocated present need (see Appendix A).

6. No additional calculations need be made by these cities at this point.

5:93-2.20 Low- and moderate-income split

The municipal calculated need obligation shall be divided equally between low- and moderate-income households.

Example:

Johnsonville's total obligation of 299 units would include 150 low-income and 149 moderate-income units.

(An odd number is always split in favor of the low-income unit.)

SUBCHAPTER 3. CREDITS/REDUCTIONS

5:93-3.1 General

(a) The Fair Housing Act provides that the Council determine municipal fair share, after crediting on a one for one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households. Given the approach the Council has developed for determining calculated need, the Council has determined that it is appropriate to allow credits for units constructed after April 1, 1980. Since it was not until December 15, 1986 that the Council established criteria for an eligible low and moderate income unit, the crediting criteria for housing units created between April 1, 1980 (the date of the census) and December 15, 1986 shall be different than the period subsequent to December 15, 1986.

(b) In determining calculated need, COAH has granted prior-cycle credits. These are credits that have been granted by the Council for the construction of low and moderate income units subsequent to April 1, 1980. In determining calculated need, the Council has also provided a reduction to the municipal housing obligation based on the realistic opportunity a municipality created in response to its 1987-1993 housing need through regional contribution agreements, plans for new construction or through its zoning powers. The source for this information includes data from the Council's records, county planning boards and Masters appointed by the court. To the extent that this information is incomplete or incorrect, the Council shall modify the calculated need, in accordance with this chapter.

(c) Municipalities shall not receive both a reduction and a credit for the same housing unit. The Council's intent with the reductions and the credits is to ensure that a municipality's obligation is lowered by one, provided: the municipality has created a realistic opportunity that resulted in a sound housing unit; or, if the unit has not yet materialized, the municipality continues to offer the realistic opportunity. A reduction shall be considered a credit when a low or moderate income unit is constructed (or in the case of a regional contribution agreement, constructed or rehabilitated) and appropriately restricted to a low or moderate income household.

(d) Unless otherwise stated, a municipality shall receive credits for housing activity prior to the date of the publication of its petition for substantive certification, provided such activity complies with criteria for credits in this subchapter. A municipality shall document eligible new construction with certificates of occupancy; eligible rehabilitation with final inspections; and transferred units with evidence of the required transfer of funds to the sending municipality.

(e) For units constructed after December 15, 1986, a municipality shall receive credits for housing activity that complies with the criteria in this subchapter and with the rules governing new construction, and transferred units (via a regional contribution agreement) between 1987-1993, in accordance with N.J.A.C. 5:92, a housing unit constructed under the auspices of a government funded, financed or otherwise assisted housing program designed specifically for households whose income does not exceed 80 percent of median shall also be eligible for a credit provided:

1. At least half of the units are affordable to households whose incomes do not exeed 50 percent of median income; and

2. The units are governed by controls on affordability that are substantially the same as those set forth in N.J.A.C. 5:92.

(f) A credit and/or a reduction in excess of the municipal precredited need shall be applied on a one for one basis against its future housing obligation.

5:93-3.2 Credits for units constructed between April 1, 1980 and December 15, 1986

(a) A housing unit created and occupied between April 1, 1980 and December 15, 1986 is eligible for a one for one credit when it has been developed specifically for households whose income does not exceed 80 percent of median income and the unit is governed by controls on affordability that are the same as those set forth in N.J.A.C. 5:92-12 and Appendix E, incorporated herein by reference.

(b) A municipality may receive a one for one credit for each unit satisfying the following criteria:

1. The unit shall have been constructed between April 1, 1980 and December 15, 1986. The municipality shall document the date of construction with a certificate of occupancy date;

2. The unit shall have been certified to be in sound condition as a result of an exterior inspection performed by a licensed building inspector; and

3. The unit is currently occupied by a low or moderate income household. The municipality shall document household income eligibility with a certification of household income in a form adopted by the Council. Such certification shall be signed by a head of household. It shall be reviewable only by the Council or its staff and shall not be a public record.

5:93-3.3 Credits for housing activity subsequent to December 15, 1986

(a) A municipality shall receive a one for one credit for every low or moderate income unit constructed within its borders or within a receiving municipality as a result of a regional contribution agreement that addresses its 1987-1993 housing need provided:

1. The unit has not been addressed in N.J.A.C. 5:93-14, Reductions; and

2. The unit complies with the criteria referenced in N.J.A.C. 5:93-3.1(e).

5:93-3.4 Rehabilitation subsequent to the 1990 census

(a) A municipality may receive credit for rehabilitation of low and moderate income substandard units performed subsequent to April 1, 1990.

(b) Units shall be eligible for crediting if:

1. They were rehabilitated up to the applicable code standard and that the average capital cost expended on rehabilitating the housing units was at least $8,000; and

2. The unit is currently occupied by the occupants who resided within the unit at the time of rehabilitation or by other eligible low or moderate income households.

(c) Credits for rehabilitation shall not exceed the rehabilitation component and shall only be credited against the rehabilitation component.

5:93-3.5 Reductions for unbuilt housing

Where land has been zoned for low and moderate income housing, the Council shall review sites for suitability and determine if the previously zoned sites present a realistic opportunity for low and moderate income housing before granting a reduction. In its review, the Council shall include but not be limited to a consideration of environmental factors, the location of existing infrastructure and the likelihood of the current zoning to result in the creation of low and moderate income housing during the period of substantive certification. Such a review shall result in a determination of the appropriate reduction and may result in requirements for zoning amendments.

SUBCHAPTER 4. MUNICIPAL ADJUSTMENTS

5:93-4.1 Purpose and background

(a) Subchapters 2 and 3 delineate the criteria for determining the municipal housing obligation. However, there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing as determined by the Council. This subchapter outlines standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer. The procedures in this subchapter shall not be used to reduce or defer the rehabilitation component.

(b) Where a municipality attempts to demonstrate that it does not have the capacity to address the housing obligation calculated by the Council, the municipality shall identify sites that are realistic

for inclusionary development in order to calculate the realistic development potential of the community, in accordance with N.J.A.C. 5:93-4.2. Where the realistic development potential is less than the municipal calculated need minus any credits granted pursuant to N.J.A.C. 5:93-3.4, the municipality shall provide a response toward the obligation not addressed by the realistic development potential. Examples of such a requirement include, but are not necessarily limited to, a redevelopment ordinance, an ordinance permitting apartments in developed areas of the municipality and a mandatory development fee ordinance.

(c) With the concept of realistic development potential, the Council is recognizing that some sites are more realistic and/or appropriate than others for the location of inclusionary development. For example, some sites may lack infrastructure or be surrounded by incompatible land uses. However, these sites and others have the potential to develop or redevelop over time and, as such development takes place, the Council has determined that such sites shall contribute toward the housing obligation.

(d) A municipality seeking an adjustment due to available land capacity shall base the number of units that may be restricted to senior citizens and the number of units that may be transferred via a regional contribution agreement on the realistic development potential. The realistic development potential shall equal the calculation pursuant to N.J.A.C. 5:93-4.2(e). If additional low and moderate income housing opportunities develop pursuant to N.J.A.C. 5:93-4.2(g) (describing the municipal response in addition to the realistic development potential), the municipality may seek a plan amendment, pursuant to N.J.A.C. 5:91-13 to age restrict or transfer more units, based on a demonstrated increased realistic development potential.

5:93-4.2 Lack of land

(a) Municipalities that request an adjustment due to available land capacity shall submit an existing land use map at an appropriate scale to display the land uses of each parcel within the municipality. Such a map shall display the following land uses: single family, two-to-four family, other multi-family, commercial, industrial, agricultural, parkland, other public uses, semipublic uses and vacant land.

(b) Municipalities that request an adjustment due to available land capacity shall submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot.

(c) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites, that are devoted to a specific use which involves relatively low-density development would create an opportunity for affordable housing if inclusionary zoning was in place. Such sites include, but are not limited to: golf courses not owned by its members; farms in SDRP planning areas one, two and three; driving ranges; nurseries; and nonconforming uses. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.

(d) Municipalities may present documentation that the Council shall use to eliminate a site or part of a site from the inventory of sites described in (c) above. Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable. Municipalities may seek to eliminate sites from the inventory described in (c) using the criteria set forth below. Municipalities shall submit transparent overlays drawn to the same scale as the existing land use map depicting those sites which the municipality maintains are inappropriate for development.

1. Agricultural lands shall be excluded when the development rights to these lands have been purchased or restricted by covenant.

2. Environmentally sensitive lands shall be excluded as follows:

i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the DEPE and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C. 7:50; the Coastal Permit Program Rules, N.J.A.C. 7:7-1, Coastal Resource and Development Rules, N.J.A.C. 7:7E-1; and the Zoning Regulations of the Hackensack Meadowlands District, N.J.A.C. 19:4.

ii. In the areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEPE, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent, as determined from the U.S.G.S. Topographic Quadrangles, which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.

iii. Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.

3. Historic and architecturally important sites may be excluded as follows:

i. Municipalities may apply to exempt a buffer area to protect sites listed on the State Register of Historic Places. The Council shall forward such request to the Office of New Jersey Heritage for a recommendation pertaining to the appropriateness and size of a buffer.

ii. Upon receipt of the Office of New Jersey Heritage's recommendation, the Council shall determine if any part of a site should be eliminated from the inventory described in (c) above.

iii. Within historic districts, a municipality may regulate low and moderate income housing to the same extent it regulates all other development.

4. Recreational lands may be excluded as follows:

i. Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing. However, all sites designated for recreation must be designated for recreational purposes in the municipal master plan. In determining developable acreage, municipalities shall calculate their total vacant and undeveloped lands and deduct from that total number the lands excluded by the Council's rules regarding historic and architecturally important sites, agricultural lands and environmentally sensitive lands. Municipalities shall also exclude from this calculation of total vacant and undeveloped lands, those owned by nonprofit organizations, counties and the State or Federal government when such lands are precluded from development at the time of substantive certification. Municipalities shall submit appropriate documentation demonstrating that such lands are precluded from development. Existing active municipal recreation areas shall be subtracted from the three percent calculation of total developed and developable acreage to determine additional land that may be reserved for active municipal recreation.

ii. Sites designated for recreation must be purchased and limited to recreational purposes within one year of substantive certification. Sites that are not purchased and limited to recreational purposes shall, if determined necessary by the Council, be zoned to permit inclusionary development.

5. Individual sites that the Council determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (c) above.

(e) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in (c) above, for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory. The minimum presumptive density shall be six units per acre and the maximum presumptive set-aside shall be 20 percent. The density and set-aside of each site shall be summed to determine the realistic development potential of each municipality. Example: Lowmod Borough has three suitable sites. The sites are 10 acres, five acres and one acre. The larger sites may accommodate eight units/acre. The one acre site may accommodate six units/acre. All sites are assigned a 20 percent set-aside. The realistic development potential equals 25 low and moderate income units.

10 acres × 8 units/acre × .2 = 16
5 acres × 8 units/acre × .2 = 8
1 acre × 6 units/acre × .2 = 1
25

A municipality that received an adjustment due to lack of vacant land in addressing its 1987-1993 need obligation shall be presumed to have addressed its realistic development potential, provided the municipality continues to implement the terms of its previous substantive certification.

(f) The municipality may address its realistic development potential through any activity approved by the Council, pursuant to N.J.A.C. 5:92-5. The municipality need not incorporate into its housing element and fair share plan all sites used to calculate the realistic development potential if the municipality can devise an acceptable means of addressing its realistic development potential. The realistic development potential shall not vary with the strategy and implementation techniques employed by the municipality.

(g) If the realistic development potential described in (e) above is less than the municipal calculated need minus credits, pursuant to N.J.A.C. 5:93-3.4, the Council shall review the existing municipal land use map for areas that may develop or redevelop. Examples of such areas include, but are not limited to: a private club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; and properties that may be subdivided and support additional development. After such an analysis, the Council may require a least any combination of the following in an effort to address the housing obligation:

1. Zoning amendments that permit apartments or accessory apartments;

2. Overlay zoning requiring inclusionary development or the imposition of a development fee consistent with N.J.A.C. 5:93-8; in approving an overlay zone, the Council may allow the existing use to continue and expand as a conforming use, but provide that where the prior use on the site is changed, the site shall produce low and moderate income housing or a development fee; or

3. Zoning amendments that impose a development fee consistent with N.J.A.C. 5:93-8.

5:93-4.3 Lack of water and sewer

(a) When a community has sufficient land, but insufficient water and/or sewer to support inclusionary development, the Council shall review each possible site for inclusionary development to determine if it is realistic for the site to receive the required water and/or sewer during the period of substantive certification. The Council shall require sufficient information to determine the site's prospects of receiving infrastructure, and the site's prospects of inclusion in a 208 plan amendment, developed in accordance with the rules of the New Jersey Department of Environmental Protection and Energy. If the site had been zoned for inclusionary development, the Council shall consider how long the site had been zoned and if the developer had filed a development application.

(b) If the Council determines that a site may receive water and/or sewer during the period of substantive certification, it shall require the site to be zoned for inclusionary development, or, if the site had already been zoned for inclusionary development, it shall require the continuation of that zoning. If the Council determines that a site may not receive water and/or sewer during the period of substantive certification, the Council shall not require inclusionary zoning, but may require overlay zoning requiring inclusionary development (if water and sewer become available) and/or the imposition of a development fee consistent with N.J.A.C. 5:93-8.

(c) The lack of adequate capacity, in and of itself, shall constitute a durational adjustment of the municipal housing obligation. The requirement to address the municipal housing obligation shall be deferred until adequate water and/or sewer are made available. In order to provide water and/or sewer on sites the Council determines are realistic for inclusionary development, municipalities shall adhere to the following:

1. Notwithstanding the lack of adequate water and/or sewer at the time a municipality petitions for substantive certification, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis;

2. Municipal officials shall endorse all applications to the DEPE or its agent to provide water and/or sewer capacity. Such endorsements shall be simultaneously submitted to the Council;

3. Where the DEPE or its designated agent approves a proposal to provide infrastructure to a site for the development of low and moderate income housing identified in the housing element, the municipality shall permit such development; and

4. Where a municipality has designated sites for low and moderate income housing that lack adequate water and/or sewer and where the DEPE or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low and moderate income housing. The amended housing element and fair share housing ordinance shall be submitted to the Council within 90 days of the site's approval by the DEPE or its agent. The Council may waive these requirements when it determines that the municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.

(d) Municipalities may demonstrate that the cost of providing water and/or sewer to realistic sites identified in (a) and (b) above, is prohibitive by completing "The Costs of Providing Infrastructure" application provided by the Council (see Appendix D, incorporated herein by reference) and submit it to the Council for its review. The Council shall forward "The Costs of Providing Infrastructure" application to the DCA Division of Local Government Services for review. The Council shall consider the report of the Division of Local Government Services in determining whether to permit an adjustment due to prohibitive costs associated with providing water and/or sewer to inclusionary sites. Where the Council determines the cost associated with providing water and/or sewer to inclusionary sites is prohibitive, it shall limit the municipality's fiscal responsibility of providing water and/or sewer. However, notwithstanding any limits placed on the municipality's fiscal responsibility to provide water and/or sewer, the Council may require the municipality to designate and zone appropriate sites to accommodate the municipal housing obligation or to adopt other approaches consistent with N.J.A.C. 5:93-4.2(g). The municipality shall also adhere to the requirements outlined in (c)1 to 4 above.

5:93-4.4 Application for grants

A municipality that has demonstrated that land, water and/or sewer limits its ability to address the municipal rehabilitation component may be required to address its rehabilitation component by submitting an application for Federal and/or State housing programs. Such a municipality shall be required to apply for a county, State

and/or Federal grant if the Council determines that the success of such a grant application is realistic and necessary to address the rehabilitation component.

5:92-4.5 Waivers

(a) The Council shall entertain waiver requests by motion, in accordance with N.J.A.C. 5:91-12, from municipalities seeking relief from the following requirements:

1. The use of an entire resource (land, water, sewer) in addressing the municipal housing obligation; and

2. The requirement to impose development fees on all development within the municipality.

(b) The criteria for evaluating such a waiver request shall include one or more of the following:

1. Past inclusionary practices, measured by the following criteria: jobs to housing ratio; municipal median income as compared to regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region;

2. A demonstration of hardship. To demonstrate hardship related to the imposition of development fees, the municipality shall, at a minimum, document that the imposition of development fees would retard necessary economic development within the municipality. To demonstrate hardship related to utilizing all available land, water and sewer capacity, the municipality shall (where applicable), at a minimum, document prospects for obtaining additional capacity and the public good realized by allowing competing land uses a reservation of the limited capacity; or

3. A demonstration that the municipality has actively pursued its municipal housing obligation by petitioning for certification prior to litigation.

SUBCHAPTER 5. PREPARING A HOUSING ELEMENT

5:93-5.1 Overview of a housing element

(a) Once a municipality has subtracted its credits (pursuant to N.J.A.C. 5:93-3) from its calculated need, and/or received an adjustment pursuant to N.J.A.C. 5:93-4, it shall develop a plan to address the municipal housing obligation. In addressing the need, a municipality may address its rehabilitation component through a rehabilitation program or by creating new units. The remaining portion of the municipal housing obligation may be addressed through a combination of techniques, including, but not necessarily limited to: municipally sponsored construction; inclusionary zoning; regional contribution agreements; alternative living arrangements; the purchase of ECHO housing; the creation of accessory apartments; the purchase of housing units that have never been occupied; and the purchase of housing units that have been vacant for at least 18 months. (The Council has determined that if a housing unit has been vacant for 18 months or more, it is reasonable to conclude that such a unit is not "filtering down" to low and moderate income households and that encouraging the purchase of the unit for low and moderate income households may prevent the unit from deterioration or vandalism.) This subchapter shall discuss the standards and, in some cases, limitations, of each implementation technique. It shall outline standards for senior citizen housing and rental housing. This subchapter shall also discuss the status of sites included in the housing element that addressed the 1987-1993 municipal housing obligation.

(b) A municipality's housing element shall be designed to achieve the goal of providing affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing. The housing element shall include the municipality's strategy for addressing its present and prospective housing needs and shall contain the following:

1. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;

2. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the six years subsequent to the adoption of the housing element, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;

3. An analysis of the municipality's demographic characteristics, including, but not limited to, household size, income level and age;

4. An analysis of the existing and probable future employment characteristics of the municipality;

5. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing;

6. If a development fee is imposed pursuant to N.J.A.C. 5:93-8, a copy of the spending plan as required in (c) below;

7. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;

8. A map of all sites designated by the municipality for the production of low and moderate income housing and a listing of each site that includes its owner, acreage, lot and block;

9. The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;

10. Copies of necessary applications for sewer service and water quality management plans submitted pursuant to Sections 201 and 208 of the Federal Clean Water Act, 33 U.S.C. §1251, et seq.;

11. A copy of the most recently adopted municipal master plan and, where required, the immediately preceding, adopted master plan;

12. For each designated site, a copy of the New Jersey Freshwater Wetlands maps where available. When such maps are not available, municipalities shall provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service;

13. A copy of appropriate United States Geological Survey Topographic Quadrangles for designated sites; and

14. Any other documentation pertaining to the review of the municipal housing element as may be required by the Council.

(c) If a municipality intends to collect development fees, it shall prepare a plan to spend development fees that includes the following:

1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;

2. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;

3. A description of the anticipated use of all development fees;

4. A schedule for the creation or rehabilitation of housing units;

5. If the municipality envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and

6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan.

5:93-5.2 Rehabilitation

(a) Each municipality shall be provided with the Council's estimate for substandard units occupied by low and moderate income households. This estimate shall be the municipality's indigenous need, unless the municipality or an objector performs the Council's Structural Conditions Survey (see Appendix D, incorporated herein by reference). Where the municipality or objector performs the Structural Conditions Survey, the Council shall review the results of the data collected and shall modify the indigenous need if it determines a modification is warranted.

(b) The purpose of a rehabilitation program is to rehabilitate substandard housing units occupied by low and moderate income households. A substandard housing unit is defined as a unit with health and safety code violations that require the repair or replacement of a major system. A major system shall include a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system.

Upon rehabilitation, housing deficiencies shall be corrected and the house shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or, if none is available, the BOCA National Existing Structures Code. The rehabilitation activity shall not include luxury improvements, the purchase of appliances (with the exception of stoves) or improvements that are strictly cosmetic.

(c) A municipality that chooses to rehabilitate units shall designate an entity to administer the rehabilitation program. The municipality may designate an employee to administer the program or may enter into an agreement for a governmental agency or private consultant to administer all or some of the program.

(d) The municipality shall prepare a marketing plan for its rehabilitation program, subject to the Council's approval. The rehabilitation program shall be marketed through a combination of some, though not necessarily all, of the following: brochures; posters in prominent locations; cable television and radio announcements; notices included in utility bills; notices in municipal tax bills; notices included in municipal publications; and informational meetings with welfare organizations, urban action community groups, personnel departments of local employers, social workers, civic and religious leaders, senior citizen groups and fraternal organizations.

(e) A municipality that chooses to administer a rehabilitation program shall maintain files on each program applicant. The files may be used in responding to monitoring requests and to protect the municipality against charges of irregularity. The files shall include:

1. The name of each applicant;
2. If the applicant is not approved, the reasons for the disapproval; and
3. If the applicant is approved:

i. Proof of income eligibility (Federal tax return);
ii. The initial inspection by the building inspector;
iii. Bids by contractors;
iv. The final contract to do the work;
v. Progress reports;
vi. A copy of the final inspection; and
vii. The lien on the property.

(f) Rental units may not be excluded from a municipal rehabilitation program.

(g) The Council shall require six year controls on affordability on owner-occupied units and 10 year controls on affordability on rental units. The controls on affordability may be in the form of a lien filed with the appropriate property's deed. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:93-9.15.

(h) A municipality that chooses to rehabilitate its rehabilitation component shall be responsible for funding its program. This requirement includes administrative and actual rehabilitation activities. A municipality shall provide $2,000 per unit of its rehabilitation component towards administration and $8,000 per unit for rehabilitation activity to total $10,000 per unit of its rehabilitation component. Given this requirement:

1. Municipalities shall provide sufficient dollars to fund one-third of the municipal rehabilitation component within one year of substantive certification. In each subsequent year of the substantive certification period, the municipality shall provide sufficient dollars to fund one-sixth of the municipal rehabilitation component.

2. Municipalities may rehabilitate substandard units that require less than $8,000 of work, provided they also rehabilitate substandard units that require more than $8,000 of work. Municipal rehabilitation activity shall average at least $8,000 per unit for each two year period of substantive certification.

3. The Council may waive part or all of the funding required for administration if there is an agreement with an agency to administer the program at reduced cost.

4. Municipalities that seek a waiver from the $8,000 rehabilitation standard may do so by presenting case studies documenting local housing conditions.

(i) Financing of rehabilitation programs shall be structured to encourage rehabilitation and continued occupancy. Low interest rates and forgivable loans are encouraged. Leveraging of private financing is also encouraged if the result is low interest loans that encourage rehabilitation. If a housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit.

(j) If the municipality structures a loan program to recapture money, recaptured money shall be used for another low and moderate income housing purpose or to repay a municipal bond issued to finance a low and moderate income housing activity.

(k) The municipality, as a condition of certification, shall develop a rehabilitation manual that complies with COAH's rules and summarizes the administration of the rehabilitation program. The manual shall include a copy of the lien to be used and shall describe:

1. The rehabilitation program's staff and their responsibilities;
2. Procedures for program marketing;
3. Eligible repairs and improvement;
4. The amount of money available for rehabilitation;
5. Financing terms;
6. Income qualification criteria;
7. Procedures for application intake;
8. Procedures for review and approval of work (such procedures should require interim inspection of work); and
9. The length of affordability controls.

(l) Municipalities that administer rehabilitation programs shall complete annual monitoring reports required by the Council (See N.J.A.C. 5:93-12). After reviewing the progress of rehabilitation activity, the Council may require technical assistance meetings to identify implementation techniques designed to increase rehabilitation activity. Failure to submit monitoring reports or respond to direction designed to increase rehabilitation activity may result in further Council action.

(m) A municipality receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one six year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in six years and/or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in six years.

5:93-5.3 New construction; site criteria and general requirements

(a) Municipalities may create new low and moderate income units within its borders by sponsoring their construction, with or without a non-profit corporation, or by zoning sites for inclusionary development.

(b) Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. In reviewing sites, the Council shall give priority to sites where infrastructure is available. All sites designated for low and moderate income housing shall receive approval for consistency review, as set forth in Section 208 of the Clean Water Act, 33 U.S.C. 1251 et seq., prior to substantive certification. Where a site is denied consistency review, the municipality shall apply for an amendment to its Section 208 plan to incorporate the denied site.

(c) For each site designated for new construction of low and moderate income units, the municipality shall provide the following minimum documentation:

1. A general description of each site to be used for inclusionary development, including, but not limited to, the following: acreage, current zoning, surrounding land uses, and street access. Maps shall be submitted showing the location of all sites;

2. A description of any environmental constraints, including steep slopes, wetlands and flood plain areas. The municipality shall include calculations of the amount of acreage that is environmentally constrained and any remaining buildable acreage. Documentation shall include the appropriate wetland and flood plain maps required pursuant to N.J.A.C. 5:93-5.1;

3. Information shall be submitted regarding location, size and capacity of lines and facilities within the service area, as well as the status of the 201/208 plans. Documentation shall include maps showing the location of the sewer and water facilities; and

4. For each site, the total number of housing units; the gross and net density of the proposed development; the total number of low and moderate income units; and the number of low and moderate income units that will be for sale and for rent.

(d) Municipalities shall structure plans for new construction, conversion and gut rehabilitation (including new construction, conversion and gut rehabilitation that is part of a regional contribution agreement) that conform to the Council's rules pertaining to bedroom mix, age restriction, price stratification, rental housing, controls on affordability and affirmative marketing.

(e) Unless otherwise permitted, the Council shall not provide credit for housing that is restricted in occupancy to any specific group.

5:93-5.4 New construction; conformance with the State Development and Redevelopment Plan (SDRP)

(a) In Planning Areas 1 and 2, as designated in the SDRP, the Council shall encourage inclusionary development within centers. However, municipalities may locate inclusionary developments within the environs as defined in the SDRP.

(b) In Planning Area 3, the Council shall encourage inclusionary development within centers. Where a municipality proposes an inclusionary site within Planning Area 3 outside of a center, the Council may permit such a site if infrastructure is available or can be easily extended from Planning Area 2.

(c) In Planning Areas 4 or 5, as designated in the SDRP, the Council shall require inclusionary development to be located in centers. Where the Council determines that a municipality has not created a realistic opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, the Council shall require the municipality to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation.

(d) In municipalities that are divided by more than one Planning Area, the following principles shall apply:

1. The Council shall encourage and may require the use of sites in Planning Areas 1 and 2 prior to approving inclusionary sites in Planning Areas 3, 4 and 5 that lack sufficient infrastructure;

2. The Council shall encourage and may require the use of sites within Planning Area 3 prior to approving inclusionary sites in Planning Areas 4 and 5 that would require the expansion of existing infrastructure; and

3. The Council shall encourage and may require the use of sites to which existing infrastructure can easily be extended prior to approving inclusionary sites that require the creation of new infrastructure in an area not presently serviced by infrastructure.

5:93-5.5 Municipally sponsored construction and gut rehabilitation

(a) A municipality may elect to provide low and moderate income units through a municipally sponsored construction program. A municipally sponsored construction program shall address four major areas of concern. It shall document that there is municipal control of the site(s); an administrative mechanism to construct the proposed housing; a funding plan and evidence of adequate funding capacity; and timetables for construction of the units. More specifically, the following minimum documentation shall be submitted:

1. The municipality shall demonstrate that it has control or has the ability to control the site(s). Control may be in the form of outright ownership or an option on the property;

2. An administrative mechanism shall be submitted for the development indicating who will monitor construction, income qualify applicants and administer the units once they are occupied. The municipality may contract with an outside agency to provide these functions, provided a written agreement between the administrative agency and the municipality is submitted to the Council.

3. The municipality shall submit detailed information demonstrating that it has adequate funding capabilities. The documentation shall include:

i. A pro forma statement for the project; and

ii. Evidence that the municipality has adequate and stable funding. If State or Federal funds will be used, the municipality shall provide documentation indicating the funding available to the municipality and any applications still pending. In the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal resources; and

4. A construction schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The construction schedule shall provide for construction to begin within two years of substantive certification.

5:93-5.6 Zoning for inclusionary development

(a) Municipalities that choose to provide zoning for inclusionary development shall select sites that conform to the criteria in N.J.A.C. 5:93-5.3 and shall submit the information required in N.J.A.C. 5:93-5.3.

(b) The Council's review of municipal plans to zone for inclusionary development shall include, but not necessarily be limited to: the existing densities surrounding the proposed inclusionary site; the need for a density bonus in order to produce low and moderate income housing; whether the site is approvable, available, developable and suitable pursuant to N.J.A.C. 5:93-1.3; the site's conformance with the State Development and Redevelopment Plan pursuant to N.J.A.C. 5:93-5.4; the existence of steep slopes, wetlands and floodplain areas on the site; the present ability of a developer to construct low and moderate income housing at a specific density; the length of time an inclusionary site has been zoned at a specific density and set-aside without being developed; and the number of inclusionary sites that have developed within the municipality at specific densities and set-asides.

1. When a municipality is receiving an adjustment pursuant to N.J.A.C. 5:93-4.2, the municipality shall be required to zone inclusionary sites at a minimum gross density of six (6) units per acre with a 20 percent set-aside.

2. In all other municipalities, when the review described in (b) indicates that such densities are appropriate, the Council shall require that a substantial percentage of inclusionary sites be zoned to allow market units within an inclusionary development to be constructed as single family detached units. For these sites, the Council shall generally favor a gross density of four units per acre with a 15 percent set-aside. Municipalities may also seek to zone sites for a gross density of five (5) units per acre or more with a 20 percent set-aside. The Council shall determine set-asides for densities between four (4) and (5) and between (5) and (6) through a process of interpolation.

(c) The Council may require higher densities in circumstances including, but not limited to:

1. Where the existing zoning exceeds the density proposed by the municipality; or;

2. When the Council determines that higher densities are required to provide an opportunity for inclusionary development in a specific municipality, based on the particular circumstances of that municipality.

(d) Municipalities zoning for inclusionary development shall require low and moderate income housing units to be built in accordance with the following schedule:

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	90
	100

(e) The Council encourages a design of inclusionary developments that integrates the low and moderate income units with the market units.

5:93-5.7 Regional contribution agreements

A municipality may address its housing obligation by entering into a regional contribution agreement in accordance with N.J.A.C. 5:93-6.

5:93-5.8 Alternative living arrangements

(a) Municipalities may receive credit against the municipal housing obligation for alternative living arrangements by entering into an agreement for the location of such a facility with the provider of the facility or by granting preliminary approval to a developer of an alternative living arrangement.

(b) The unit of credit for an alternative living arrangement shall be the bedroom.

5:93-5.9 Accessory apartments

(a) Municipalities may seek credit for up to 10 accessory apartments. A municipality seeking credit for accessory apartments shall:

1. Demonstrate that the housing stock lends itself to accessory apartments. The Council will favor a large (measured in square feet), older housing stock;

2. Provide at least $10,000 per unit to subsidize the creation of the accessory apartment;

3. Demonstrate that rents of accessory apartments will average 57.5 percent of median income, including utilities. The rent shall be based on the number of bedrooms in accordance with N.J.A.C. 5:93-7.4; and

4. Demonstrate that accessory apartments will be affirmatively marketed, in accordance with N.J.A.C. 5:93-11.

(b) Accessory apartments shall be exempt from Council bedroom mix requirements (N.J.A.C. 5:93-7.3).

(c) Accessory apartments reserved for senior citizens shall be included with the 25 percent that may be reserved for senior citizens pursuant to N.J.A.C. 5:93-5.13.

(d) Controls on affordability on accessory apartments shall remain in effect for at least 10 years. To be eligible for a rental bonus (pursuant to N.J.A.C. 5:93-5.13), controls on affordability shall remain in effect for at least 30 years.

5:93-5.10 Purchase of housing units that have never been occupied and vacant housing units

(a) Municipalities may receive credit against the municipal housing obligation by purchasing housing units that have never been occupied and offering them in sound condition at affordable prices and/or rents to low and moderate income households. The sales price or rent of affordable units shall conform to the standards in N.J.A.C. 5:93-7. Municipalities that propose to purchase more than 30 percent but less than 100 percent of the business units in any one development and restrict them to low and moderate income households shall consider the impact of such a purchase on the value of the market units within the development. Municipalities shall also consider the impact of the purchase on the economic viability of any condominium or homeowners association.

(b) Municipalities may receive credit against the municipal housing obligation by purchasing housing units that have been vacant for at least 18 months and offering them in sound condition at affordable prices and/or rents to low and moderate income households. To receive such credit, the municipality shall demonstrate to the Council's satisfaction, that the housing has been vacant for at least 18 months. The sales price or rent of the affordable units shall be consistent with the standards in N.J.A.C. 5:93-7.

(c) The Council shall review plans to purchase housing units that have never been occupied and housing units that the Council has determined to be vacant for at least 18 months in a manner similar to its review of municipally sponsored construction, conversion and gut rehabilitation. Affordable low and moderate income housing created pursuant to this section shall, as best as practicable, conform to the Council's bedroom mix rules (N.J.A.C. 5:93-7.3) and shall be affirmatively marketed pursuant to N.J.A.C. 5:93-11.

5:93-5.11 Status of sites addressing the 1987-1993 municipal obligation

(a) Municipalities that received substantive certification for their 1987-1993 obligation based, in part, on the municipal choice to sponsor the construction of low and moderate income housing are responsible for constructing the low and moderate income housing. Failure of the community to satisfy the conditions of substantive certification and construct the housing shall not absolve the municipality from its responsibility.

(b) Sites zoned for inclusionary development in addressing the 1987-1993 housing obligation shall retain such zoning if:

1. The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court; or

2. The developer of the site has filed a development application with the municipality;

(c) A municipality seeking to amend its plan to replace or delete a site used in addressing the 1987-1993 housing obligation shall follow the procedures set forth in N.J.A.C. 5:91-13.

(d) A developer seeking an amendment to the density requirements of an inclusionary site shall follow the procedures set forth in N.J.A.C. 5:91-13. In submitting such requests, the developer shall demonstrate:

1. An ability to construct low and moderate income units within a defined period of time; and

2. A plan to address the low and moderate income units required of the site as a condition of substantive certification.

5:93-5.12 Senior citizen housing

(a) Municipalities may restrict housing for senior citizens based on the following formulae:

1. For municipalities that have received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

senior citizen units = .25 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:93-3.4 – the impact of the 20 percent cap – the impact of the 1***,***000 unit limitation pursuant to N.J.A.C. 5:93-14) – any units restricted to senior citizens in addressing the 1987-1993 housing obligation.*****[])*****

2. For municipalities that receive a vacant land adjustment:

senior citizen units = .25 (prior-cycle fair share + realistic development potential + rehabiliation component – credits pursuant to N.J.A.C. 5:93-3.4***)*** – any units restricted to senior citizens in addressing the 1987-1993 housing obligation.*****[])*****

(Municipalities that have not received substantive certification or a judgment of repose shall have a prior-cycle fair share of zero for this calculation. Municipalities that received a vacant land adjustment with a previous substantive certification or judgment of repose shall have a realistic development potential of zero for this calculation.)

3. For municipalities that have never received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

senior citizen units = .25 (municipal precredited need – credits pursuant to N.J.A.C. 5:93-3 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14.)

(b) If the municipality is transferring housing units via a regional contribution agreement, the maximum amount of age restricted units in the sending municipality shall not exceed 25 percent of the newly constructed low and moderate income units to be created in the sending municipality. Housing units transferred via a regional contribution agreement may include senior citizen housing units provided that the sum of the newly constructed senior citizen units created in the sending and receiving municipalities does not exceed the total permitted above. This restriction shall not apply to the rehabilitation of existing age restricted units in either the sending or receiving municipality.

*****[(b)]******(c)***** A receiving municipality may seek a waiver to restrict more low and moderate income units to senior citizens than permitted by (a) above. In reviewing such a request, the Council shall consider the municipality's past inclusionary practices, measured by objective criteria, such as: jobs to housing ratio;

municipal median income as compared to the regional median income; and the percentage of low and moderate income households in the municipality as compared to the percentage in the housing region. The Council shall also consider the waiver request within the context of the objectives of the receiving municipality's project plan.

5:93-5.13 Rental housing

(a) In addressing the 1987-1999 housing need, every municipality shall have an obligation to create a realistic opportunity to construct rental units. For a municipality not receiving an adjustment pursuant to N.J.A.C. 5:93-4.2, the rental obligation shall equal .25 (calculated need – the impact of the 1000 unit limitation pursuant to N.J.A.C. 5:93-14 – the rehabilitation component). For a municipality that receives an adjustment pursuant to N.J.A.C. 5:93-4.2, the rental obligation shall equal 25 percent of the realistic development potential.

(b) Any rental obligation (pursuant to N.J.A.C. 5:92-14.4(a) and (b)) that was a condition of substantive certification in addressing the 1987-1993 municipal fair share shall be considered as an ongoing obligation in addressing the 1987-1999 housing need.

(c) The municipal approach to addressing the rental obligation may include, but not necessarily be limited to, any combination of the following:

1. Tax credits administered by the Agency and other funding administered by the Federal government, DCA and the Agency;

2. A municipally sponsored rental development;

3. Agreements with developers for the municipality to purchase low and moderate income units and maintain them as rental units;

4. The creation of accessory apartments pursuant to N.J.A.C. 5:93-5.9;

5. Permitting inclusionary sites to be developed as sales or rental housing with a density increase if the developer chooses to build rental housing. The Council shall presumptively require a minimum density of ten units per acre and a maximum set-aside of 15 percent for rental housing. Municipalities that choose a zoning response to all or part of the rental obligation shall permit such densities and set-asides on all inclusionary sites until the requirement for rental housing has been addressed.

(d) The Council shall grant a rental bonus for rental units that are constructed and conform to the standards contained in N.J.A.C. 5:93-7. The Council may also grant the rental bonus prior to construction when it determines that the municipality has provided or received a firm commitment for the construction of rental units. A municipality may lose the benefit of the rental bonus granted in advance of the actual construction of the rental units if the municipality has not: constructed the rental units within the time periods established as a condition of substantive certification; or granted preliminary or final approval for the construction of the rental units (where a developer agreed to construct the rental units). A municipality may also lose the benefit of a rental bonus if the preliminary or final approval is no longer valid or if the developer has abandoned the development.

1. A municipality shall receive two units (2.0) of credit for rental units available to the general public.

2. A municipality shall receive one and one-third (1.33) units of credit for rental units restricted to senior citizens. However, no more than 50 percent of the rental obligation defined in (a) and (b) shall receive a bonus for rental units restricted to senior citizens unless

i. The rental units have been constructed prior to the effective date of this rule;

ii. The development has a valid preliminary or final approval from the municipality and the developer remains committed to building rental housing as of the effective date of this rule; or

iii. The time limit for constructing the rental units as per the conditions of substantive certification has not expired.

3. No rental bonus shall be granted for rental units in excess of the rental obligation defined in (a) and (b).

(e) Municipalities that choose to transfer the rental obligation via a regional contribution agreement shall do so by creating new rental units in the receiving municipality. Municipalities that transfer the rental obligation shall receive a one unit credit for each rental unit transferred.

SUBCHAPTER 6. REGIONAL CONTRIBUTION AGREEMENTS

5:93-6.1 General provisions

(a) Municipalities may propose the transfer of up to 50 percent of their housing obligation based on the following formulae:

1. For municipalities that have received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – prior cycle credits – credits pursuant to N.J.A.C. 5:9-3.4 – the impact of the 20 percent cap – the impact of ***the*** 1,000 unit limitation to N.J.A.C. 5:93-14) – any units transferred as a result of a previously approved regional contribution agreement.*[)]*

2. For municipalities that receive a vacant land adjustment:

RCA = .5 (prior-cycle fair share + realistic development potential + rehabilitation component – credits pursuant to N.J.A.C. 5:93-3.4***)*** – any units transferred as a result of a previously approved regional contribution agreement.*[)]*

Municipalities that have not received substantive certification or a judgment of repose shall have a prior-cycle fair share of zero for this calculation. Municipalities that received a vacant land adjustment with a previous substantive certification or judgment of repose shall have a realistic development potential of zero for this calculation.

3. For municipalities that have never received substantive certification or a judgment of repose and are not seeking a vacant land adjustment:

RCA = .5 (municipal precredited need – credits pursuant to N.J.A.C. 5:93-3 – the impact of the 20 percent cap – the impact of the 1,000 unit limitation pursuant to N.J.A.C. 5:93-14)

(b) However, a municipality may not transfer any portion of its rehabilitation component. A municipality may propose such a transfer to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter. The Council shall not review a regional contribution agreement without a contractual agreement between the two municipalities.

[(b)]**(c) Notwithstanding the contractual agreement that initiates the review of a regional contribution, described in (a) above, the Council may require any contractual amendments it deems necessary upon reviewing the regional contribution agreement.

[(c)]**(d) The Council shall maintain current lists of municipalities which have stated an intent to enter into RCAs as receiving municipalities and shall provide copies of such lists to potential sending municipalities as requested.

5:93-6.2 Terms

(a) At least 50 percent of the units accepted by a receiving municipality shall be affordable to low income households. The Council may modify this requirement if it determines that the sending municipality has adequately provided for its low income housing obligation elsewhere in its housing element. In the same case of regional contribution agreements for scattered site rehabilitation of occupied units, the receiving community shall ensure, as best as practicable, that 50 percent of the rehabilitated units are occupied by low income households.

(b) A receiving municipality may use revenues collected as a result of a regional contribution for any activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93-5.

(c) All RCAs shall specify payment schedules which conform to a construction or rehabilitation schedule and which relate to the receiving municipality's ability to deliver housing units in a timely fashion.

(d) All RCAs shall require that a receiving municipality submit a proposed project plan which shall be in such form and contain such information as the Agency may require.

(e) Sending and receiving municipalities shall, as part of their contract negotiations, determine the use of transferred funds that may be in excess of the amount necessary to implement the RCA. Such funds shall either be returned to the sending community and/or utilized by the receiving community to produce additional low and moderate income housing units or for a capital expenditure ancillary to or benefiting low and moderate income households. However, if a receiving municipality can accomplish the housing activity approved as part of its project plan for less than the minimum per unit transfer pursuant to N.J.A.C. 5:93-6.4(b), the difference between the cost of the housing activity and the minimum per unit transfer shall be used within the receiving municipality. The specific use of excess funds by the receiving community need not be specified in the RCA contract, but shall be subject to Council approval.

5:93-6.3 Credits

No receiving municipality shall receive credit towards its fair share obligation for units provided pursuant to a RCA, where credit for such units has been awarded to a sending municipality.

5:93-6.4 Amount and duration of contributions

(a) In negotiating RCAs, cosmetic improvements may be included in determining the negotiated price of rehabilitating a housing unit. However, to be eligible for rehabilitation, a housing unit shall be substandard as defined in N.J.A.C. 5:93-1.3. Upon rehabilitation, housing deficiencies shall be corrected and the unit shall be brought up to code standard. The standard for evaluating rehabilitation activity shall be the local property maintenance code, or if none is available, the BOCA National Existing Structures Code (available from Building Officials and Code Administrators, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795)

(b) A sending municipality shall transfer at least $20,000 to a receiving municipality for each unit transferred as part of a regional contribution agreement. This threshold has been established after consideration of:

1. The housing stock in New Jersey's urban municipalities;
2. The average cost of a regional contribution since 1986;
3. The maximum subsidies available under the Neighborhood Preservation Balanced Housing Program established pursuant to N.J.S.A. 52:27D-320; and
4. The average internal subsidization required for a developer to provide each low and moderate income unit within an inclusionary development.

(c) The receiving municipality may spend less than $20,000 per unit in implementing the regional contribution agreement, provided the remaining funds are used for an activity approved by the Council for addressing the low and moderate income obligation. Eligible activities shall include, but are not necessarily limited to, those activities outlined in N.J.A.C. 5:93-5.

(d) RCAs shall run concurrent with the sending municipality's period of substantive certification, not to exceed six years. Contributions may be prorated in municipal appropriations concurrent with the certification period, not to exceed six years.

(e) All RCAs that include a scattered site rehabilitation program shall be structured so that the final transfer payment occurs within five years of the approval of the regional contribution agreement. All rehabilitation activity shall occur within the sending community's period of substantive certification. Rehabilitation schedules shall be structured for completion within five years of the approval of a regional contribution agreement. Rehabilitation schedules shall be subject to Council approval and shall not be structured to require a disproportionate share of rehabilitation during the latter portion of the five year period.

5:93-6.5 Monitoring and enforcement

(a) All RCAs shall require receiving municipalities to file annual reports with the Agency setting forth the progress in implementing the project to be produced under an RCA. This report shall be in such form as the Council and the Agency may from time to time require.

(b) The Council shall take such actions as may be necessary to enforce a RCA with respect to the timely implementation of a project by the receiving municipality. In implementing its enforcement responsibilities, the Council may:

1. Initiate or join a lawsuit to enforce a RCA;
2. Bar a delinquent receiving municipality from entering into further RCAs for a specified period of time;
3. Recommend that the Agency and the Department of Community Affairs withhold further assistance available under the Act; and/or
4. Take such other actions as the Council may determine necessary, including ordering a sending municipality, for good cause, to temporarily or permanently cease payment to a receiving municipality.

SUBCHAPTER 7. INCLUSIONARY DEVELOPMENTS

5:93-7.1 Purpose and scope

The purpose of this chapter is to provide standards that pertain to the creation of low and moderate income housing units. The rules that follow shall pertain to all inclusionary developments, including those created as part of a regional contribution agreement. This subchapter provides standards on: the distribution of low and moderate income units; bedroom distribution; and establishing the rents and prices of low and moderate income units.

5:93-7.2 Distribution of low and moderate income units

(a) With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at least half of all units within each inclusionary development shall be affordable to low income households.

(b) With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at least half of all rental units shall be affordable to low income households.

(c) With the exception of inclusionary developments constructed pursuant to low income tax credit regulations, at least one-third of all units in each bedroom distribution (pursuant to N.J.A.C. 5:93-73) shall be affordable to low income households.

5:93-7.3 Bedroom distribution

(a) Inclusionary developments that are not restricted to senior citizens shall be structured in conjunction with realistic market demands so that:

1. The combination of efficiency and one bedroom units is at least ten percent and no greater than 20 percent of the total low and moderate income units;
2. At least 30 percent of all low and moderate income units are two bedroom units; and
3. At least 20 percent of all low and moderate income units are three bedroom units.

(b) Low and moderate income units restricted to senior citizens may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of senior citizen low and moderate income units within the inclusionary development. The standard can be met by creating all one bedroom units or by creating a two bedroom unit for each efficiency unit. Applications to waive this standard shall be made in accordance with N.J.A.C. 5:93 and shall be referred by the Council to the DCA Division on Aging for review and recommendations.

5:93-7.4 Establishing rents and prices of units

(a) The following criteria, in conjunction with realistic market information, shall be used in determining maximum rents and sale prices:

1. Efficiency units shall be affordable to one person households;
2. One half of all one bedroom units shall be affordable to one person households; and one half of all one bedroom units shall be affordable to two person households;
3. One half of all two bedroom units shall be affordable to two person households; and one half of all two bedroom units shall be affordable to three person households; and

4. One half of all three bedroom units shall be affordable to four person households and one half of all three bedroom units shall be affordable to five person households.

(b) Median income by household size shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the households within the county. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households in each housing region. This quotient represents the regional weighted average of median income for a household of four. This regional weighted average is adjusted by household size based on multipliers used by HUD to adjust median income by household size. The maximum average rent and price of low and moderate income units within each inclusionary development shall be affordable to households earning 57.5 percent of median income. The municipal ordinance shall require moderate income sales units to be available for at least three different prices and low income sales units to be available for at least two different prices.

(c) In averaging 57.5 percent under (b) above, developers and/or municipal sponsors of rental units may establish one rent for a low income unit and one rent for a moderate income unit for each bedroom distribution.

(d) Municipal ordinances regulating owner occupied and rental units shall require that low and moderate income units utilize the same heating source as market units within the inclusionary development.

(e) Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of five percent, the monthly principal, interest, insurance, property taxes (property taxes shall be based on the restricted value of low and moderate income units) and condominium or homeowner fees do not exceed 28 percent of the eligible gross monthly income. Municipalities shall, by ordinance, require that master deeds of inclusionary developments regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those paid by market purchasers. The percentage that shall be paid by low and moderate income purchasers shall be at least one-third of the condominium or homeowner association fees paid by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

(f) Municipalities shall require that gross rents, including an allowance for utilities, be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size referenced in (a) above. The allowance for utilities shall be consistent with the utility allowance approved by HUD for use in New Jersey.

(g) Low income housing units shall be reserved for households with a gross household income less than or equal to 50 percent of the median income approved by the Council. Moderate income housing units shall be reserved for households with a gross household income less than 80 percent of the median income approved by the Council. For example, a household earning 48 percent of median income may be placed in any low income unit; however, a household earning 53 percent may not qualify for a low income unit. A household earning 67 percent of median may be placed in any moderate income housing unit. A household earning less than 50 percent of median may be placed in a moderate income housing unit. Low and moderate income units shall not be offered to households that are not income eligible without Council approval pursuant to N.J.A.C. 5:93-9.16.

SUBCHAPTER 8. DEVELOPMENT FEES

5:93-8.1 Purpose

(a) The New Jersey Supreme Court, in *Holmdel Builder's Ass'n v. Holmdel Township,* 121 *N.J.* 550 (1990) (issued December 13, 1990), determined that mandatory development fees are both statutorily and constitutionally permissible. The Court further anticipated that the Council would promulgate appropriate development fee rules specifying, among other things, the standards for these development fees. The purpose of this subchapter is to provide such guidance.

(b) Except as otherwise provided in these rules, a municipality may only collect and spend development fees through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of repose. The exceptions to this rule are set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive. These exceptions are permitted because some communities have already received substantive certification; others have achieved a judgment of repose; and still others are litigating exclusionary zoning cases. Some of these municipalities have already collected fees. The Council has created a process for these municipalities to collect and/or retain fees. However, in the future, the ability to collect and spend development fees shall be limited to municipalities that petition for substantive certification. Urban aid municipalities are also considered a special case. These municipalities have historically housed a disproportionate share of New Jersey's poor and, as a result, may have exceedingly high fair share obligations that would be extremely difficult to address in a six year period. Therefore, the Council will allow these municipalities to collect fees outside of substantive certification provided the municipality adheres to the rules in this subchapter. The rules that follow provide basic requirements for collecting and spending development fees. They then provide additional requirements for municipalities in various categories.

(c) While the rules that follow shall govern those municipalities that petition for substantive certification and urban aid cities, the Council will review development fee ordinances and plan to spend money upon the request of the court with jurisdiction in an exclusionary zoning lawsuit.

5:93-8.2 Basic requirements

(a) Except as set forth in N.J.A.C. 5:93-8.3 through 8.6 inclusive, the Council shall not review or approve any development fee ordinance unless the municipality has petitioned for substantive certification.

(b) No municipality shall collect development fees unless the municipality has adopted a housing element and the Council has approved its development fee ordinance.

(c) No municipality shall spend development fees unless the Council has approved a plan for spending such fees. With the exception provided for in N.J.A.C. 5:93-8.3, municipalities that have not received substantive certification or a judgment of repose shall not spend development fees until they have received substantive certification or a judgment of repose.

5:93-8.3 Urban aid municipalities

Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) shall not collect or spend development fees without conforming to the requirements set forth in N.J.A.C. 5:93-8.2. Council approval of the municipal development fee ordinance shall allow the municipality to collect development fees for a period specified by the Council, not to exceed six years, commencing with the Council's approval of the development fee ordinance. Notwithstanding any other provision of this chapter, these municipalities shall have one year from the Council's approval of their development fee ordinance to submit a plan for spending development fees. These municipalities may collect and spend development fees without petitioning for substantive certification.

5:93-8.4 Municipalities that collected fees and received certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have received substantive certification. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinance, provided it conforms to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without comforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, the municipalities in this category shall submit plans to spend the development fees (regardless of when these fees were collected) prior to the expiration of their substantive certification periods.

5:93-8.5 Municipalities that collected fees and are proceeding toward certification

(a) This rule deals with the category of municipalities that have collected development fees prior to December 13, 1990 and have petitioned for substantive certification. These municipalities may petition the Council to review and approve an ordinance regarding development fees collected prior to December 13, 1990. The Council may approve such ordinances provided they conform to the procedures in N.J.A.C. 5:93-8.8, Development fee ordinance review, and N.J.A.C. 5:91-15, Procedures for retaining development fees.

(b) The municipalities in this category shall not resume collecting development fees or spend development fees without conforming to N.J.A.C. 5:93-8.2.

(c) Notwithstanding any other provision of this chapter, municipalities in this category shall submit plans to spend the development fees and receive approval of these plans prior to receiving substantive certification.

5:93-8.6 Municipalities that have not collected fees that have received substantive certification, or are proceeding toward substantive certification

(a) This rule deals with municipalities that have not collected development fees and that have received substantive certification or are proceeding toward substantive certification. Municipalities in this category shall not collect fees until they have adopted a housing element and received the Council's approval of its development fee ordinance. No municipality in this category shall spend development fees unless the Council has approved a plan for spending such fees.

(b) Municipalities that have not received substantive certification shall submit plans for spending the development fees and receive approval for these plans prior to receiving substantive certification.

(c) Notwithstanding any provision of this chapter, municipalities in this category that have received substantive certification shall submit plans for spending the development fees prior to the expiration of the substantive certification period or period of repose.

5:93-8.7 Other municipalities that have not collected fees

(a) Except as provided for in N.J.A.C. 5:93-8.3 through 8.6 inclusive, municipalities that have not collected fees shall not collect fees until they have adopted a housing element, petitioned for substantive certification and received the Council's approval of its development fee ordinance.

(b) No municipality in this category may spend development fees unless the Council has approved a plan for spending such fees and granted substantive certification. Municipalities shall submit these plans when they petition for substantive certification. Municipalities that have petitioned for substantive certification prior to the effective date of this rule shall submit plans for spending development fees prior to receiving substantive certification.

5:93-8.8 Development fee ordinance review

(a) The Council shall not review a development fee ordinance unless the municipality has submitted:

1. A copy of an adopted housing element that complies with the Municipal Land Use Law, N.J.S.A. 40:55D et seq.;

2. A copy of the proposed ordinance designed to collect development fees;

3. A description of any changes to the municipal zoning ordinance during the previous two years;

4. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance;

5. If the municipality has received a court ordered judgment of repose, a copy of the compliance plan, implementation ordinances and information regarding the period of time encompassed by the judgment of repose;

6. A description of the types of developments that will be subject to fees;

7. A description of the amount and nature of the fees imposed;

8. A statement regarding the use of density bonuses or other devices to counterbalance development fees; and

9. If development fees have been collected prior to December 13, 1990 and the municipality wishes to retain some or all of these fees, the following information must be submitted to the Council within 90 days of the effective date of this rule:

i. A copy of the ordinance pursuant to which the fees were collected; and the proposed ordinance, if any, designed to reimpose some or all of these fees;

ii. A request in the form of a resolution by the governing body for the Council to review the development fee ordinance used to collect the fees;

iii. The name of each developer that paid a development fee;

iv. The amount paid by each developer and the formula for the amount collected;

v. The equalized assessed value of each development at the time of collection;

vi. An accounting of all money collected and identification of the municipal account that houses all development fees;

vii. If any money collected through a development fee ordinance has been spent, an accounting of the expenditure; and

viii. Any other information the Council may require.

(b) Municipalities that collected fees prior to December 13, 1990, shall be able to retain such revenues or reimpose such fees to the extent that the fees collected by the municipality do not exceed the amount permitted by this chapter. Municipalities interested in retaining development fees collected prior to December 13, 1990 shall also conform to the procedures outlined in N.J.A.C. 5:91-15, Procedures for retaining development fees.

5:93-8.9 Content of plans to spend development fees

Plans to spend development fees shall consist of the information required in N.J.A.C. 5:93-5.1(c).

5:93-8.10 Development fees; residential

(a) Residential development fees shall be a maximum of one-half of one percent of the equalized assessed value for residential development, provided no increased density is permitted.

(b) Where there is a zoning change that permits increased residential development, the municipality may impose a development fee of up to six percent of the equalized assessed value for each additional unit that may be realized as a result of the rezoning.

Example: If a rezoning allowed two extra units to be constructed, the fees could equal one-half of one percent of equalized assessed value on the first unit and six percent of equalized assessed value on the two incremental units.

(c) Municipalities may allow developers of sites zoned for inclusionary development to pay a fee in lieu of building low and moderate income units, provided the Council determines the municipal housing element and fair share plan provides a realistic opportunity for addressing the municipal fair share obligation. The fee may equal the cost of subsidizing the low and moderate income units that are replaced by the development fee. For example, an inclusionary development may include a 20 percent set-aside, no set-aside and a fee that is the equivalent of a 20 percent set-aside or a combination of a fee and set-aside that is the equivalent of a 20 percent set-aside.

(d) Municipalities may collect fees exceeding those permitted in this section, provided they enter into agreements with developers that offer a financial incentive for paying higher fees. The financial incentive may be in the form of a tax abatement. No agreement may provide for a voluntary developer fee without also providing for a comparable off-setting incentive. All agreements are subject to Council approval.

5:93-8.11 Development fees; non-residential

(a) Non-residential development fees shall be a maximum of one percent of the equalized assessed value for non-residential development.

(b) Municipalities may collect fees exceeding those permitted in this section provided they enter into agreements with developers that

offer a financial incentive for paying higher fees. Such agreements may include, but are not limited to, a tax abatement, increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage in return for an increased fee. The fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received. All agreements are subject to Council approval.

5:93-8.12 Eligible exactions, ineligible exactions and exemptions

(a) Except as provided for in N.J.A.C. 5:93-8.10, inclusionary developments shall be exempt from development fees. All other forms of new construction may be subject to development fees.

(b) Development fees may be collected when an existing structure is expanded or undergoes a more intense use. The development fee that may be collected shall be calculated on the increase in the equalized assessed value of the improved structure.

(c) Municipalities shall not reduce densities from pre-existing levels and then require developers to pay development fees in exchange for an increased density.

(d) Developments that have received preliminary or final approval prior to the imposition of a municipal development fee shall be exempt from development fees unless the developer seeks a major change in the approval. Municipalities that collected development fees prior to December 13, 1990 may not retain any fees imposed subsequent to granting preliminary or final development approval, unless the developer seeks a major change in the approval.

(e) Municipalities may exempt specific types of development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. For example, all retail development may be exempt from fees.

(f) Municipalities may exempt specific areas of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality.

5:93-8.13 Collection of fees

Municipalities may collect up to 50 percent of the fee on any specific development at the time of issuance of the building permit. The remaining portion may be collected at the issuance of the certificate of occupancy.

5:93-8.14 Housing trust fund

All development fees shall be deposited in a separate interest bearing housing trust fund. In establishing the housing trust fund, the municipality shall provide whatever express written authorization that may be required by the bank to permit the Council to direct the disbursement of development fees pursuant to N.J.A.C. 5:93-8.17 and 8.18.

5:93-8.15 Use of money

(a) A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, new construction, regional contribution agreements, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element. Municipalities are encouraged to use development fee revenues to attract other funds such as, but not limited to, available public subsidies and funds from private lending institutions.

(b) Funds shall not be expended to reimburse municipalities for past housing activities.

(c) At least 30 percent of the revenues collected from development fees shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, downpayment assistance, low interest loans, and rental assistance. Development fees collected pursuant to N.J.A.C. 5:93-8.10(c) shall be exempt from this requirement. This requirement may be waived in whole or in part when the municipality demonstrates the ability to address the requirement of affordability assistance from another source.

(d) Municipalities may contract with a private or public entity to administer the implementation of any part of its housing element, including the requirement for affordability assistance.

(e) No more than 20 percent of the revenues collected from development fees shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement: a rehabilitation program; a new construction program; a regional contribution agreement; a housing element; and an affirmative marketing program. Administrative funds may be used for: income qualification of households; monitoring the turnover of sale and rental units; and compliance with Council monitoring requirements. Development fees shall not be used to defray the costs of existing staff.

5:93-8.16 Monitoring

Municipalities that collect development fees shall complete and return all monitoring forms related to the collection of fees, expenditure of revenues and implementation of the plan certified by the Council or approved by the court. Quarterly financial reports, and annual program implementation and auditing reports shall be completed on forms designed by the Council.

5:93-8.17 Penalties

(a) The municipality's ability to collect fees and the Council's approval of an ordinance and spending plan shall be conditioned on compliance with all requirements of this subchapter. Occurrence of the following may result in the Council taking an action pursuant to (b) below:

1. Failure to submit a plan pursuant to N.J.A.C. 5:93-5.1(c) within the time limits imposed by the Council;

2. Failure to meet deadlines for information required by the Council in its review of a housing element, development fee ordinance, or plan for spending fees;

3. Failure to proceed through the Council's administrative process toward substantive certification in a timely manner;

4. Failure to address the Council's conditions for approval of a plan to spend development fees within the deadlines imposed by the Council;

5. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;

6. Failure to submit accurate monitoring reports within the time limits imposed by the Council;

7. Failure to implement the plan to spend development fees within the time limits imposed by the Council, or within reasonable extensions granted by the Council;

8. Expenditure of development fees on activities not permitted by the Council;

9. Revocation of certification; or

10. Other good cause demonstrating that the revenues are not being used for the intended purpose.

(b) Consistent with this rule, any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event that any of the conditions described in N.J.A.C. 5:93-8.17(a) occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all development fees collected pursuant to that ordinance shall be expended. Such revenues shall immediately become available for expenditure once the Council has notified the municipal clerk and chief financial officer that such a condition has occurred. In furtherance of the foregoing, any such municipality shall, in establishing a bank account pursuant to N.J.A.C. 5:93-8.14, ensure that the municipality has provided whatever express written authorization may be required by the bank to permit the Council to direct the disbursement of such revenues from the account following the delivery to the bank of the aforementioned written notification provided by the Council to the municipality's clerk and chief financial officer.

(c) The Council may, after a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., revoke development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such

municipality to collect development fees for the remaining period of the substantive certification period or judgment of repose. With regard to municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) the Council shall not approve any ordinance permitting such municipalities to collect development fees for the remainder of the approval period (of up to six years) following a Council determination that they failed to comply with this subchapter.

(d) Neither loss of development fees, nor loss of the municipality's ability to collect development fees shall alter the municipality's responsibilities pursuant to substantive certification or a court ordered judgment of repose.

5:93-8.18 Designation of entities to receive development fees

(a) The Council shall solicit plans from public sector entities and non-profit agencies to create or rehabilitate affordable housing.

(b) The Council shall designate such agencies to receive revenues from development fees when the Council takes an action pursuant to N.J.A.C. 5:93-8.17.

(c) To the extent practicable, when the Council takes an action pursuant to N.J.A.C. 5:93-8.17, the Council shall assign development fee revenues to projects planned within the municipality that generated the revenues or within close proximity to the municipality (such as within the county or region).

5:93-8.19 Ongoing collection of fees

(a) Municipalities that qualify for State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) and have received Council approval to collect development fees, shall not collect such fees for more than the period specified by the Council, not to exceed a six year period, unless the municipality has refiled an adopted housing element with the Council and received the Council's approval of its development fee ordinance. These municipalities shall submit a plan for spending development fees within one year of the Council's approval of their development fee ordinance. Municipalities that fail to renew their ability to collect development fees within the six year period may resume the collection of development fees by complying with the requirements of this section.

(b) Except as provided for in (a) above, the ability for all other municipalities to collect development fees shall expire with their substantive certification or judgment of repose, unless the municipality has filed an adopted housing element with the Council; petitioned for substantive certification; and received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to collect development fees prior to the expiration of their substantive certification or judgment of repose may resume the collection of development fees by complying with the requirements of this section.

5:93-8.20 Severability

If any part of this subchapter shall be held invalid, the holding shall not affect the validity of the remaining parts of this subchapter. If any part of this subchapter is held invalid in one or more of their applications, the rules shall remain in effect in all valid applications that are severable from the invalid application.

SUBCHAPTER 9. CONTROLS ON AFFORDABILITY

5:93-9.1 Purpose and scope

(a) This subchapter is designed to provide assurances that low and moderate income units are created with controls on affordability over time and that low and moderate income people occupy these units. To that end, municipalities shall designate a municipal authority with the responsibility of ensuring the affordability of sales and rental units over time. The authority shall also be responsible for: affirmative marketing; income qualification of low and moderate income households; placing income eligible households in low and moderate income units upon initial occupancy; placing income eligible households in low and moderate income units as they become available during the period of affordability controls; and enforcing the terms of the deed restriction and mortgage loan. Municipalities shall establish a municipal authority or contract with the Department of Community Affairs Affordable Housing Management Service (AHMS).

(b) In placing households in low and moderate income units, municipalities shall utilize the following verification and certification procedures:

1. Every household member 18 years of age or over who will live in the affordable unit and receives income shall be required to provide income documentation as applicable and determined by the reviewer for the Authority. This includes income received by adults on behalf of minor children for their benefit. Household members 18 years of age or over not receiving income must produce documentation of current status.

2. Verification may include, but is not limited to, the following:

i. Four consecutive pay stubs including overtime, bonuses, or tips dated within 120 days of the interview date or a letter from employer stating present annual income figure as projected annually;

ii. A copy of regular IRS Form 1040 (Tax computation form) 1040A, or 1040 EZ as applicable and State income tax returns filed for each of the three years prior to the date of interview;

iii. A letter or appropriate reporting form verifying benefits such as Social Security, Unemployment, Welfare, Disability or Pension income (monthly or annually);

iv. A letter or appropriate reporting form verifying any other sources of income claimed by the applicant such as alimony and child support;

v. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, certificates of deposit, stocks or bonds;

vi. Evidence or reports of income from assets such as real estate or businesses that are directly held by any Household Member;

vii. Evidence or reports that verify assets that do not earn regular income such as non-income producing real estate or savings that do not earn interest; and

viii. A notarized statement of explanation in such form as to be satisfactory to the reviewer.

3. Generally, sources of annual income shall be based on regular income reported to the IRS and which can be utilized for mortgage approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.

4. Income includes but is not limited to wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, AFDC, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, CDs, money market, mutual funds, stocks and bonds and imputed income from non-income producing assets such as equity in real estate.

5. Assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate. Assets not earning income includes present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference will be treated as the monetary value of the asset and the imputed interest added to income.

6. Income from assets that have delayed earnings, such as IRA's or annuity programs shall not be included in current income until such payments are being received. However, these assets must be reported and verified.

7. Net rent from real estate is considered income after the monthly mortgage payment including real estate taxes and insurance is deducted. Other expenses are not deductible. In addition, the equity in the rented real estate is considered an asset and will have the imputed interest income on the calculated value of equity added to income.

8. Income does not include payments, rebates or credits received under Federal or State low income home energy assistance programs, Food Stamps, payments received for care of foster children, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to family assets such as inheritances, one-time lottery winnings, and insurance settlements except for additional income earned from these additions, and casual, sporadic or irregular gifts and bonuses.

9. Standard credit information services that provide conventional credit and tenant reports may be utilized when certifying a household with required written permission from the household. An unsatisfactory credit history or credit information that demonstrates a disproportionate debt to income ratio may result in a denial of certification. Court-ordered payments for alimony or child support to another household shall be considered a regular monthly debt whether or not it is being paid regularly.

10. Households whose total Gross Annual Income is measured at 50 percent or below 50 percent of the authorized median income guideline shall be certified as low income households and referred to units designated for low income households.

11. Households whose total gross annual income is measured above 50 percent but below 80 percent of the authorized median income shall be certified as moderate income households and referred to units designated for moderate income households.

12. Generally, households will be referred to units where predetermined total monthly housing costs correspond to the household's calculated ability to pay using 28 percent of gross monthly income as a standard for homeownership and 30 percent of gross monthly income as a standard for rental units.

13. At the discretion of the Authority, households may also be required to produce documentation of household composition for determining the correct unit size and the applicable median income guide.

14. Generally, households will be referred to available units using the following standards for occupancy:

i. A maximum of two persons per bedroom;

ii. Children of same sex in same bedroom;

iii. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and

iv. Children not in same bedroom with parents.

15. Households may be considered for units other than as above, but in no case shall a household be referred to a unit that provides for more than one additional bedroom per household occupancy standards as stated in (b)14 above.

16. A form for certification shall be prepared and signed by the Authority. Only households receiving certification shall be referred to Affordable Housing units.

17. Certified Households who reject an opportunity for affordable housing may be replaced on the referral list at their request and may be reinterviewed for certification when their name appears on a listing for a subsequent unit.

18. Certification shall be valid for no more than 120 days unless a valid sales contract or lease has been executed within that time period. In this event, certifications shall be valid until such time as the sales contract or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a Certified Household for no more than an additional period of 120 days at the discretion of the Authority.

19. Households who are denied certification may make a written request for a redetermination. Households shall be required to produce additional documentation to support their claim. Households who are denied certification a second time may request a hearing by forwarding a written request to the Authority within 30 days following the household's receipt of a denial notification. If a written request has not been received within the 30 day time period, the ineligible determination will be final. The hearing decision shall be final.

5:93-9.2 Length of controls

(a) In developing housing elements, municipalities shall determine measures to assure that newly constructed low and moderate income sales units remain affordable to low and moderate income households for an appropriate period of not less than 20 years. The authority shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act, to contain the deed restriction and mortgage lien adopted by the Council. (See Appendix E)

(b) Municipalities receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:93-2.3(b) shall adopt measures to assure that newly constructed low and moderate income sales units remain affordable to low and moderate income households for a period of not less than 10 years. The authority shall do so by requiring all conveyances of newly constructed low and moderate income sales units subject to the Act to contain the deed restriction and mortgage lien adopted by the Council. (See Appendix E)

(c) Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for at least six years.

(d) Rehabilitated renter-occupied housing units that are improved to code standard shall be subject to affordability controls for at least 10 years.

(e) Municipalities shall adopt measures to assure that newly constructed low and moderate income rental units remain affordable to low and moderate income households for a period of 30 years. Municipalities receiving State aid pursuant to P.L. 1978, c.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:93-2.3(b) shall adopt measures to assure that newly constructed low and moderate income rental units remain affordable to low and moderate income households for a period of at least 10 years. Affordability controls on rental units may exceed the prescribed periods if the developer agrees to a longer period.

(f) Housing units created through conversion of a non-residential structure shall be considered a new housing unit and shall be subject to controls on affordability as delineated in (a), (b) and (e) above.

(g) Affordability controls on accessory apartments shall be for a period of at least 10 years. However, in order to be eligible for a rental bonus, (pursuant to N.J.A.C. 5:93-5.13) controls on affordability shall extend for a period of 30 years.

(h) Alternative living arrangements shall be controlled in a manner, suitable to the Council, that provides assurances that such a facility will house low and moderate income households for at least 10 years.

5:93-9.3 General provisions concerning uniform deed restriction liens and enforcement through certificates of occupancy or reoccupancy on sales units

(a) No municipality shall issue a certificate of occupancy for initial occupancy of a low or moderate income sales unit unless there is a written determination by the authority that the unit is to be controlled by a deed restriction and mortgage lien as adopted by the Council. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien. Amendments to the deed restriction and lien shall be permitted only if they have been approved by the Council. A request for an amendment to the deed restriction and lien may be made by the authority, the municipality or a developer.

(b) No municipality shall permit the initial occupancy of a low or moderate income sales unit prior to issuance of a certificate of occupancy in accordance with (a) above.

(c) Municipalities shall, by ordinance, require a certificate of reoccupancy for any occupancy of a low or moderate income sales unit resulting from a resale and shall not issue such certificate unless there is a written determination by the authority that the unit is to be controlled by the deed restriction and mortgage lien prior to issuance of a certificate of occupancy, regardless of whether the sellers had executed the deed restriction and mortgage lien adopted by the Council upon acquisition of the property. The authority shall make such determination within 10 days of receipt of a proposed deed restriction and mortgage lien.

(d) The certificate of reoccupancy shall not be required in sales for which controls are allowed to expire or in which the repayment option is being exercised pursuant to N.J.A.C. 5:93-9.4.

(e) The mortgage lien and the deed restriction shall be filed with the records office of the county in which the unit is located. The lien and deed restriction shall be in the form adopted by the Council, as delineated in the Appendix E, unless amendments have been approved by the Council, for a specific municipality.

(f) The deed restriction, including the repayment clause, and the mortgage lien shall have priority over all mortgages on the property except for a first mortgage placed on the property by the mortgagee prior to the expiration of resale controls.

5:93-9.4 Option to buy sales units

(a) The deed restriction governing the deeds of low and moderate income units shall include an option permitting purchase of the affordable housing unit at the maximum allowable restricted sales price at the time of the first non-exempt sale after controls on affordability have been in effect on the unit for the period, specified in N.J.A.C. 5:93-9.2. The option to buy shall be available to the municipality, the Department of Community Affairs, the Agency, or a qualified non-profit as defined in this chapter.

(b) All deed restrictions governing low and moderate income units shall require the owner to notify the authority and the Council by certified mail of any intent to sell the unit 90 days prior to entering into an agreement for the first non-exempt sale after controls have been in effect on the housing unit for the period specfied in N.J.A.C. 5:93-9.2.

(c) Upon receipt of such notice, the option to buy the unit at the maximum allowable restricted sales price or any mutually agreeable sales price that does not exceed the maximum allowable restricted sales price shall be available for 90 days. The authority shall notify the municipality, the Department of Community Affairs, the Agency, and the Council that the unit is for sale. If the municipality exercises this option, it may enter into a contract of sale. If the municipality fails to exercise this option within 90 days, the first of the other entities giving notice to the seller of its intent to purchase during the 90 day period, shall be entitled to purchase the unit. If the option to purchase the unit at the maximum allowable restricted sales price is not exercised by a written offer to purchase the housing unit within 90 days of receipt of the intent to sell, the owner may proceed to sell the housing unit (pursuant to N.J.A.C. 5:93-9.8). If the owner does not sell the unit within one year of the date of the delivery of notice of intent to sell, the option to buy the unit shall be restored and the owner shall be required to submit a new notice of intent to sell 90 days prior to any future proposed date of sale.

(d) Any option to buy a housing unit at the maximum allowable restricted sales price shall be exercised by certified mail and shall be deemed exercised upon mailing.

5:93-9.5 Municipal option; sales units

(a) Any municipality that elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:93-9.4 may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the maximum allowable restricted sales price or rent provided the unit is controlled by a deed restriction in accordance with Exhibit E or an alternative approved by the Council; or;

2. Convey the unit at fair market value subject to the provisions of (c) below.

(b) Municipalities that purchase low income housing units shall maintain them as low income housing units.

(c) Municipalities that elect to purchase low or moderate income housing units and convey them at a fair market value shall:

1. Notify the Council of any proposed sale and sales price 90 days before closing;

2. Notify the Council of the price differential as defined in N.J.A.C. 5:93-1.3; and

3. Deposit the price differential in an interest bearing housing trust fund devoted solely to the creation, rehabilitation or maintenance of low and moderate income housing.

(d) Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan in accordance with N.J.A.C. 5:93-5.1(c). Money deposited in housing trust funds shall be subject to the restrictions, monitoring requirements and penalties outlined in N.J.A.C. 5:93-8.15 through 17.

5:93-9.6 State option; sales units

(a) When the Department of Community Affairs or Agency elects to purchase a low or moderate income unit pursuant to N.J.A.C. 5:93-9.4, it may:

1. Convey or rent the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental; or

2. Convey the unit at fair market value and utilize the price differential to subsidize the construction, rehabilitation or maintenance of low and moderate income housing within the appropriate housing region.

5:93-9.7 Non-profit option; sales units

(a) Non-profit agencies may apply to the Council at any time for the right to purchase low or moderate income units subsequent to the period of controls on affordability provided the unit remains controlled by a deed restriction in accordance with Appendix E, or an alternative approved by the Council.

(b) Non-profit agencies that have been designated by the Council shall be eligible to purchase low or moderate income units pursuant to N.J.A.C. 5:93-9.4 for the sole purpose of conveying or renting the housing unit to a low or moderate income purchaser or tenant at a price or rent not to exceed the allowable restricted sales price or rental. Low income units shall be made available to low income purchasers or tenants and the housing unit shall be regulated by the deed restriction and lien adopted by the Council, and included in Appendix E, incorporated herein by reference. The term of the controls on affordability shall be the same as those required by N.J.A.C. 5:93-9.2.

5:93-9.8 Seller option; sales units

(a) An eligible seller of a low or moderate income unit which has been controlled for the period established in N.J.A.C. 5:93-9.2, who has provided notice of an intent to sell, may proceed with the sale if no eligible entity as outlined in N.J.A.C. 5:93-9.4(c) and 9.7 exercises its option to purchase within 90 days.

(b) Subject to N.J.A.C. 5:93-9.9, the seller may elect to:

1. Sell to a qualified low and moderate income household at a price not to exceed the maximum permitted sales price in accordance with existing Council rules, providing the unit is regulated by the deed restriction and lien adopted by the Council and included in Appendix E, incorporated herein by reference, for a period of at least 20 years; or

2. Exercise the repayment option and sell to any purchaser at market price, providing that 95 percent of the price differential is paid to the authority, as an instrument of the municipality, at closing.

(c) If the sale will be to a qualified low and moderate income household, the authority shall certify the income qualifications of the purchaser and shall ensure the housing unit is regulated by the deed restriction and lien required by the Council, which has been included in Appendix E, incorporated herein by reference.

(d) The authority shall examine any contract of sale containing a repayment option to determine if the proposed sales price bears a reasonable relationship to the housing unit's fair market value. In making this determination, the authority may rely on comparable sales data or an appraisal. The authority shall not approve any contract of sale where there is a determination that the sales price does not bear a reasonable relationship to fair market value. The authority shall make a determination within 20 days of receipt of the contract of sale and shall calculate the repayment option payment.

(e) The authority shall adopt an appeal procedure by which a seller may submit written documentation requesting the authority to recompute the repayment obligation if the seller believes an error has been made, or to reconsider a determination that a sales price does not bear a reasonable relationship to fair market value. A repayment obligation determination made as a result of an owner's appeal shall be a final administrative determination of the authority.

(f) The repayment shall occur at the date of closing and transfer of title for the first non-exempt transaction after the expiration of controls on affordability.

(g) Repayment proceeds shall be deposited in a housing trust fund (see N.J.A.C. 5:93-8.14) and may be used as per N.J.A.C. 5:93-8.15. Money deposited in housing trust funds may not be expended until the municipality submits and the Council approves a spending plan (See N.J.A.C. 5:93-5.1(c)).

5:93-9.9 Municipal rejection of repayment option; sales units

(a) A municipality shall have the right to determine that the most desirable means of promoting an adequate supply of low and moderate income housing is to prohibit the exercise of the repayment option and maintain controls on lower income housing units sold within the municipality beyond the period required by N.J.A.C. 5:93-9.2. Such determination shall be made by resolution of the municipal governing body and shall be effective upon filing with the Council and the authority. The resolution shall specify the time period for which the repayment option shall not be applicable. During such period, no seller in the municipality may utilize the repayment option permitted by N.J.A.C. 5:93-9.8.

(b) Municipalities that exercise the option outlined in (a) above shall:

1. Provide public notice in a newspaper of general circulation; and
2. Notify the authority and Council of its governing body's action.

(c) The authority shall ensure that the deed restriction on all affected housing units reflects the extended period of controls.

5:93-9.10 Continued application of options to create, rehabilitate or maintain low and moderate income units; sales units

When a housing unit has been maintained as a low or moderate income unit after controls have been in effect for the period specified in N.J.A.C. 5:93-9.2, the deed restriction governing the housing units shall allow municipalities, the State, non-profit agencies and sellers of low and moderate income units to again exercise all the same options as provided in this subchapter.

5:93-9.11 Eligible capital improvements prior to the expiration of controls; sales units

(a) Property owners of single family, owner-occupied housing may apply to the authority for permission to increase the maximum price for eligible capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household. In no event shall the maximum price of an improved housing unit exceed the limits of affordability for the larger household. Property owners shall apply to the authority if an increase in the maximum sales price is sought.

(b) At resale, all items of property which are permanently affixed to the units and/or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable resale price. Other items of property may be sold to the purchaser at a reasonable price that has been approved by the authority at the time of signing the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price has been approved by the authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at resale.

5:93-9.12 Subsidy to ensure affordability prior to the expiration of controls; sales units

If the use of median income data adopted by the Council to index the cost of housing renders a unit unaffordable to a low or moderate income household at the time of resale, a municipality shall not lose credit for the housing unit, provided that adequate controls on affordability remain in place, but the municipality may subsidize the housing unit to maintain affordability.

5:93-9.13 Impact of foreclosure on resale while controls are in place; sales units

A judgment of foreclosure or a deed in lieu of foreclosure to a financial institution regulated by State and/or Federal law or to a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:93-9.14. Notice of foreclosure shall allow the authority, the municipality, the Department of Community Affairs, the Agency or a non-profit entity to purchase the affordable housing unit at the maximum permited sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and propective fair share obligation. Failure of the financial institution to provide notice of a foreclosure action to the authority shall not impair any of the financial institution's rights to recoup loan proceeds; shall not negate the extinguishment of controls or the validity of the foreclosure; and shall create no cause of action against the financial institution.

5:93-9.14 Excess proceeds upon foreclosures; sales units

In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the authority responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the maximum price permitted at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.

5:93-9.15 Annual indexed increases while controls are in place; sales and rentals

(a) The price of an owner-occupied housing unit and the rents of affordable housing units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the authority be lower than the last recorded purchase price.

(b) With the exception of rentals constructed pursuant to low income tax credit regulations, the rent of a low or moderate income housing unit may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income tax credit regulations shall be indexed pursuant to the regulations governing low income tax credits.

5:93-9.16 Procedures for initial sales, resale prior to the expiration of controls, and rentals

(a) Low and moderate income sales units shall not be offered to non-income eligible households at initial sale without Council approval. Parties that petition the Council for such approval shall document efforts to sell housing units to income eligible households and shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

(b) Persons wishing to sell affordable units shall notify the authority responsible for assuring affordability of the intent to sell. If no eligible buyer enters a contract of sale for the unit within 90 days of notification, the authority shall have the option to purchase the unit for a negotiated price that shall not exceed the maximum price permitted based on the regional increase in the median income as defined by HUD or other recognized standard adopted by the Council. If the authority does not purchase the unit, the seller may apply for permission to offer the unit to a non-income eligible household at the maximum price permitted. The seller shall document efforts to sell the unit to an income eligible household as part of this application. In reviewing the request, the authority shall consider the specific reasons for any delay in selling the housing unit and the hardship to the seller in continuing to offer the affordable unit to an income eligible applicant. The inability to sell a unit for the maximum permitted resale price shall not, in itself, be considered an appropriate reason for allowing a housing unit to be sold to a non-income eligible household. If the request is granted, the seller may offer a low income housing unit to a moderate income household and a moderate income housing unit to a household earning in excess of 80 percent of median. In no case shall the seller be permitted to receive more than the maximum price permitted. In no case shall a sale pursuant to this section eliminate the resale controls on the unit or permit any subsequent seller to convey the unit except in full compliance with the terms of this subchapter.

(c) Owners of low and moderate income rental units shall not offer rental units to non-income eligible households without prior

approval of the Council. Parties that petition for such approval shall document all efforts to rent to income eligible households and demonstrate to the satisfaction of the Council that alternatives, such as a reduction in rent, is not feasible. Parties that petition the Council shall adhere to the procedures outlined in N.J.A.C. 5:91-12.

SUBCHAPTER 10. COST GENERATION

5:93-10.1 Purpose and scope

(a) Section 14(b) of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) incorporates the need to eliminate unnecessary cost generating features from municipal land use ordinances as a requirement of substantive certification. In order to receive and retain substantive certification, municipalities shall eliminate development standards that are not essential to protect the public welfare and to expedite (or "fast track") municipal approvals/denials on inclusionary development applications. In order to expedite the review of development applications, municipalities shall cooperate with developers of inclusionary developments in scheduling pre-application conferences. Municipal boards shall schedule regular and special monthly meetings (as needed) and provide ample time at these meetings to consider the merits of the inclusionary development application. The goal of such a schedule is to act on a development application within time limits approximating those outlined in the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) Failure to expedite the approval/denial of an inclusionary development application shall be considered a reason for revoking substantive certification.

(b) Inclusionary developments that are included in a housing element and fair share plan have proceeded through a very public process. Therefore, the focus of municipal review shall not be whether the sites are properly zoned. Rather, the focus shall be whether the design of the inclusionary development is consistent with the zoning ordinance and the mandate of the Fair Housing Act regarding unnecessary cost generating features. Municipalities shall be expected to cooperate with developers of inclusionary developments in granting reasonable variances necessary to construct the inclusionary development.

5:93-10.2 Standards

(a) In reviewing the fair share plans, the Council shall use the standards promulgated pursuant to N.J.S.A. 40:55D-40.1 through 40.7 (P.L. 1993 c.32) as a frame of reference. Municipalities that wish to impose more stringent standards shall bear the burden of justifying the need for such standards. In its review of municipal ordinances, the Council shall give special attention to:

1. The combined impact of requirements that cumulatively prevent an inclusionary development from achieving the density and set-aside necessary to address the municipal fair share. Examples of such requirements include but are not limited to: building setbacks, spacing between buildings, impervious surface requirements and open space requirements;

2. Requirements to provide oversize water and sewer mains to accommodate future development without a reasonable prospect for reimbursement;

3. Excessive road width, pavement specifications and parking requirements;

4. Excessive requirements for sidewalks and paved paths;

5. Excessive culvert and pumping station requirements; and

6. Excessive landscape, buffering and reforestation requirements.

(b) Municipal housing elements and fair share plans shall allow for phased construction and phased bonding of on-site, off-site and off-tract improvements required of inclusionary developments.

(c) The Council shall not permit restrictions on the bedroom mix of the market rate units within an inclusionary development.

5:93-10.3 Special studies/escrow accounts

(a) It is common for municipalities to require inclusionary developers to conduct special studies related to the fiscal, traffic and environmental impacts of proposed inclusionary developments. These studies are then reviewed by municipal professionals who are paid from escrow accounts funded by the inclusionary developer as a requirement of the municipal review of the development application. The Council has determined that these studies shall not be used to alter the density of sites that are part of the municipal substantive certification. Such studies may be used to foster proper design and to determine pro-rata off-site and off-tract improvements. The Council has also determined that it is unnecessary for developers of inclusionary developments to pay for the initial preparation of such a study and for its review. Therefore, municipalities that receive substantive certification shall offer inclusionary developers the option of preparing fiscal, traffic and environmental impact studies or choosing a consultant from a list of at least three professionals (prepared by the municipality) to prepare the studies. If the developer chooses a consultant from the municipally prepared list, the developer and municipality shall rely on the consultant's recommendations.

(b) Fees to review development applications shall be estimated prior to payment of filing fees. Developers shall be entitled to review all charges against any escrowed fees and be provided with monthly accounting reports upon request.

5:93-10.4 Relief subsequent to substantive certification

(a) Developers may provide notice to the Council of the date they filed their development application with the municipality. The municipality need not have deemed the application complete for the developer to provide such notice.

(b) Developers and/or municipalities that cannot agree on specific standards that apply to a specific inclusionary development may request the Council to provide a mediator to resolve the dispute. The resulting mediation shall not require a transfer to the Office of Administrative Law pursuant to the Administrative Procedures Act.

(c) Inclusionary developers may seek an administrative order to expedite the municipal review of a development application by filing a motion pursuant to N.J.A.C. 5:91-12. Developers need not request mediation pursuant to (b) above in order to file such a motion; and the Council may hear such a motion concurrent with any such mediation.

(d) Inclusionary developers may request the Council to act as an advocate for inclusionary developments that require permits from DEPE and DOT.

5:93-10.5 Revocation of substantive certification

A Council determination, after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., that a municipality has delayed action on an inclusionary development application, required unnecessary cost generating standards or obstructed the construction of an inclusionary development may result in Council action revoking substantive certification.

SUBCHAPTER 11. AFFIRMATIVE MARKETING

*[5:92-11.1]***5:93-11.1*** The affirmative marketing plan; definition and contents

(a) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by a developer or sponsor of affordable housing. It is a continuing program and covers the period of deed restriction.

(b) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;

2. The number of units, including the number of sales and rental units;

3. The price of sales and/or rental units;

4. The name of the rental manager and/or sales agent;

5. A description of outreach efforts to groups that are not readily reached by commercial media efforts (See N.J.A.C. 5:92-11.3 for advertising program details); and

6. A description of the random selection method that will be used to select occupants of low and moderate income housing.

(c) The affirmative marketing plan shall be a part of the fair share plan and shall be referenced by ordinance.

*[5:92-11.2]***5:93-11.2*** Training and general responsibilities

(a) The municipality shall assure the affirmative marketing of low and moderate income units. Municipalities shall designate a municipal authority to be responsible for implementing the affirmative marketing plan. A representative of the municipal authority shall attend an affirmative marketing training program approved by the Council. The municipality may contract with other agencies to administer the affirmative marketing program and the actual sales and rentals of the units. Where a municipality contracts with another agency to administer the affirmative marketing program, the municipality shall appoint a housing officer that shall act as a liaison to the contracting agency. In addition, where the contracting agency is not responsible for the entire affirmative marketing program, the municipality shall outline who or what municipal agency is responsible for the remaining portion of the affirmative marketing program.

(b) In implementing an affirmative marketing program, a municipality may delegate specific tasks to a developer of an inclusionary development provided that all applicant and sales records of low and moderate income units are returned to the municipality for reporting purposes and to aid with future resales.

(c) In implementing the affirmative marketing plan, municipalities shall be responsible for providing counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements, and landlord/tenant law.

*[5:92-11.3]***5:93-11.3*** Marketing program

(a) The advertising program shall be designed to reach all segments of the eligible population within the housing region.

(b) The plan shall describe the media to be used in advertising and publicizing the availability of housing. In developing the plan, the municipality shall consider the use of language translations. The plan shall include the following:

1. The names of specific newspapers with circulation throughout the housing region;

2. The names of specific radio and television stations broadcasting throughout the housing region;

3. The names of other publications circulated within the housing region that are likely to be read by low and moderate income households, such as neighborhood oriented weekly newspapers, religious publications and organizational newsletters;

4. The names of employers throughout the housing region that will be contacted to post advertisements and distribute flyers regarding available low and moderate income housing;

5. The names of specific community and regional organizations that will aid in soliciting low and moderate income applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations.

(c) The marketing process for available low and moderate income units shall begin at least four months prior to expected occupancy. In implementing the marketing program, there shall be at least one paid advertisement in a newspaper of general circulation within the housing region during the first week of the marketing program. Such advertisement shall include at least the following:

1. The location of the units;

2. Directions to the housing units;

3. A range of prices for the housing units;

4. The size, as measured in bedrooms, of the housing units;

5. The maximum income permitted to qualify for the housing units;

6. The location of applications for the housing units; and

7. The business hours when interested households may obtain an application for a housing unit.

(d) Applications for low and moderate income housing shall be available in several convenient locations, including, at a minimum, the municipal administrative building(s), the municipal library and at the developer's sales office. Applications shall be mailed to prospective applicants upon request.

(e) If the cost of advertising low and moderate income units are to be a developer's responsibility, the requirement shall be a condition of the municipal planning board's approval.

*[5:92-11.4]***5:93-11.4*** Marketing for initial sales and/or rent up; composition of marketing pool

(a) Households that apply for low and moderate income housing shall be screened for preliminary income eligibility by comparing their total income to the low and moderate income limits adopted by the Council. Applicants shall be notified as to their eligibility status.

(b) Having screened applicants for preliminary income eligibility, the municipal authority may analyze the income and household sizes of applicants to determine which applicants have the assets and/or income necessary to purchase or rent each available low or moderate income unit.

(c) The municipal authority shall interview each applicant and utilize the procedures outlined in N.J.A.C. 5:93-9.1 to: verify the applicant's income and household size; determine the applicant's asset availability; and review the applicant's credit history. Applicants shall be required to submit income vertification for each household member 18 years or older. This process shall be utilized in establishing the final certified applicant group.

(d) The process described in (a) through (c) above may begin no sooner than one month after the advertising program outlined in N.J.A.C. 5:93-11.3 begins. Households shall be selected to proceed through the process described in (a) through (c) above through a method of random selection. Households shall be certified for low and moderate income units using the procedures outlined in N.J.A.C. 5:93-9.1. The process described in (a) through (c) shall be continued until all the low and moderate income units are occupied.

*[5:92-11.5]***5:93-11.5*** Continuing marketing activities

(a) The types of activities to be undertaken after the completion of initial occupancy of sales and rental units in order to fill vacancies resulting from normal turnover shall include:

1. Insuring a sufficient supply of income eligible applicants by continuing to implement the marketing plan throughout the housing region, as outlined in N.J.A.C. 5:93-11.3. At a minimum, the municipality shall maintain a current pool of at least five income eligible applicants for each low and moderate income unit.

2. Contacting each income eligible applicant annually to request updated information regarding income and family size.

(b) As units become available, the municipal authority shall select eligible applicants for the units, as described in N.J.A.C. 5:92-11.4(b) through (d) until the units are occupied by low and moderate income households.

*[5:92-11.6]***5:93-11.6*** Monitoring and reporting requirements

(a) Municipalities shall collect information on each applicant for low and moderate income housing on forms approved by the Council.

(b) Municipalities shall evaluate the results of their affirmative marketing activities and file a report with the Council by August 30 of each year. Such report shall include:

1. Monitoring forms approved by the Council;

2. An evaluation of the income and demographic characteristics of each applicant of low and moderate income housing, as well as the occupants of the units; and

3. An evaluation of any necessary adjustments in the affirmative marketing program as a result of the evaluation in (a) above.

(b) The Council shall review and assess the effectiveness of the municipal affirmative marketing program. If it is deemed that the affirmative marketing program is not effective, the municipality shall be required to amend the program.

*[5:92-11.7]***5:93-11.7*** Residency preference

(a) Municipalities may provide an occupancy preference for low and moderate income units created within the municipality that responds to the municipal rehabilitation component.

(b) Municipalities may provide an occupancy preference to low and moderate income households that reside or work in the housing region. Such a preference may apply to all low and moderate income units created within the municipality.

SUBCHAPTER 12. MONITORING

5:93-12.1 Completion of monitoring forms

(a) A municipality that has received substantive certification shall complete monitoring forms adopted by the Council and submit them to the Council no later than August 30 of each year. Failure to submit monitoring forms in a timely manner may result in a Council action, including:

1. The revocation of substantive certification;

2. The revocation of the certification required to collect development fees; and/or

3. Such other action as the Council may determine necessary.

SUBCHAPTER 13. SITE SPECIFIC RELIEF AND THE STATE DEVELOPMENT AND REDEVELOPMENT PLAN (SDRP)

5:93-13.1 Purpose and scope

(a) The Fair Housing Act allows municipalities two years following the filing of a housing element to petition for substantive certification. Municipalities that file housing elements with the Council prior to an exclusionary lawsuit and petition or are sued within two years of such filing shall not, except in extraordinary situations (see N.J.A.C. 5:91-4.5) be subject to the Council granting site specific relief to an objector of the municipal housing element. Municipalities that do not petition or are not sued within two years of filing a housing element may be subject to the Council granting site specific relief to one or more objectors. The process of granting such relief is outlined in N.J.A.C. 5:91.

(b) The Fair Housing Act at N.J.S.A. 52:27D-307 directs the Council to "give appropriate weight" in carrying out its duties to the implementation of the SDRP. It is the purpose of this subchapter to outline the way in which the goals and policies of the SDRP will be considered by the Council in awarding site specific relief to an objector to a municipal housing element. This process relies upon the SDRP's definitions of "Planning Areas" and "Centers." The principles outlined in the subchapter are illustrated in Appendix G.

5:93-13.2 Site-specific relief in Planning Areas 1 and 2

When considering granting site-specific relief to an objector in Planning Area 1 or 2, the Council shall grant such relief if the Council determines that the objector's site is available, approvable, developable and suitable.

5:93-13.3 Site-specific relief in Planning Area 3

(a) When considering granting site-specific relief to an objector in Planning Area 3, the Council shall determine if the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component:

i. The Council shall grant relief to sites that are suitable if it determines the site lies within a center or Planning Area 1 and/or 2; has access to infrastructure; or that infrastructure can be easily extended from Planning Area 2;

ii. Where the objector's site does not lie within a center or Planning Area 1 and/or 2, does not have access to infrastructure or where infrastructure cannot be easily extended from Planning Area 2, the Council shall render a decision on granting relief after consideration of:

(1) A report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation; and

(2) The presence of other suitable sites serviced by infrastructure or to which infrastructure can easily be extended from Planning Area 2.

5:93-13.4 Site-specific relief in Planning Areas 4 and 5

(a) When considering granting site-specific relief to an objector in Planning Areas 4 and 5, the Council shall determine if the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component.

1. If the objector's site is located within a center, the Council shall presumptively grant relief if the site is available, approvable, developable and suitable.

2. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is adequate to address the municipal inclusionary component, and the objector's site is not located in a center, the Council shall deny relief to the objector.

3. If the realistic development potential within the development boundaries of centers and Planning Areas 1 and/or 2 is not adequate to address the municipal inclusionary component, the Council shall render a decision on granting relief after consideration of a report from the Office of State Planning that contains recommendations pertaining to the appropriateness of the area surrounding the objector's site for center designation.

SUBCHAPTER 14. ONE THOUSAND UNIT LIMITATION

5:93-14.1 General

No municipality shall be required to address a fair share beyond 1,000 units within six years from the grant of substantive certification, unless it is demonstrated, following an objection and an evidentiary hearing, based upon th fact and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within the six year period. The facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the six year period preceding the petition for substantive certification.

SUBCHAPTER 15. WAIVER PROVISIONS

5:93-15.1 Waiver

(a) Any party may request a waiver from a specific requirement of the Council's rules at N.J.A.C. 5:91, 5:92 and 5:93 at any time. Such a waiver may be requested as part of a municipal petition, by motion in conformance with N.J.A.C. 5:91-12, or in such other form as the Council may determine, consistent with its procedural rules at N.J.A.C. 5:91.

(b) The Council will grant waivers from specific provisions of its rules if it determines:

1. That such a waiver fosters the production of low and moderate income housing;

2. That such a waiver fosters the intent of, if not the letter of, its rules; or

3. Where the strict application of the rule would create an unnecessary hardship.

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APPENDIX A
METHODOLOGY

INTRODUCTION

The section that follows details the procedures required to calculate the municipal low- and moderate-income housing obligation in New Jersey. Included here are procedures to calculate affordable housing need as well as the changes in these procedures that are included in the second round of affordable housing numbers. These changes emerge as a result of: (1) housing data that is no longer available in the 1990 U.S. Census; (2) improvements in methodological approaches that have emerged during the first round of implementation; and (3) a desire to hone the methodology so that it better interprets the *Mount Laurel* affordable housing mandate.

The procedures reflect the work of three primary groups:

1. The consultants at Rutgers University, Center for Urban Policy Research (CUPR);

2. The Methodology Subcommittee of the New Jersey Council on Affordable Housing (COAH), including participating COAH staff; and

3. The Working Group of professionals experienced in low- and moderate-income housing who have met regularly and provided input at several critical steps.

The basic method of housing need determination has been continued despite its complexity because it is fair and impartial and because it embodies the most up-to-date and sophisticated procedures for housing need determination and allocation. It has been accepted by field practitioners, its procedures are understood and used by these individuals, and the method's results are both internally consistent and intuitively correct. The existing system's procedures have been challenged in numerous court cases and have prevailed in almost every instance due to their accuracy and thoroughness.

The revised 1987-1999 procedures have evolved over a year-long period in which every aspect of the methodology has been reviewed and either retained or reworked. The procedure, while accepted and understood, will continue to be reviewed for its currency and adequacy as the second round of numbers unfolds and is discussed.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH)
AFFORDABLE HOUSING NEED NUMBERS—1987-1999

A.	Indigenous Need	42,739			
B.	Reallocated Present Need	17,542			
C.	Present Need		60,281		
D.	Prospective Need		42,127		
E.	Total Need			102,408	
F.	Prior-Cycle Prospective Need			38,202	
G.	Secondary Sources of Supply (–) and Demand (+)				
	1. *Demolitions*			8,037	
	2. *Filtering*			–20,185	
	3. *Conversions*			– 8,143	
	4. *Spontaneous Rehabilitation*			– 2,116	
H.	Pre-Credited Need				118,203
I.	Reduction			– 27,846	
J.	Pre-1987 Credits			– 3,166	
K.	20-Percent Cap			– 883	
L.	Calculated Need				86,308
M.	Calculated Need By Region				

Region	Indigenous Need	Reallocated Present and Prospective Need*	Total
Northeast	14,307	5,394	19,701
Northwest	11,050	– 347	10,703
West Central	4,755	3,938	8,693
East Central	4,575	17,628	22,203
Southwest	4,332	8,683	13,015
South-Southwest	3,720	8,273	11,993
STATE TOTAL	42,739	43,569	86,308

*These numbers are net of reduction, prior-cycle credits, and the 20-percent cap.

PROCEDURES: DEVELOPING HOUSING REGIONS

Housing subregions related to journey-to-work have historically been constructed using travel times on various categories of roads during prime commuting periods. The first formal procedure for the accomplishment of this was published by the American Society of Planning Officials in 1951, following planner-economist, J.D. Carroll's work on journey-to-work analysis and its importance in planning. Points on roads outward from an *employment center* representing travel times would be connected to each other in the same fashion as if one were to weave together points in the spokes of a wheel. These zones of potential residence, emanating outward from the center of an employment zone, would take on an amoeba-like form as various gradations of roadways (collectors, arterials, freeways, and so on) would allow different distances to be traveled for the same travel time. The "isotime zones," as they were called, represented an estimate of all places accessible from the employment center within the time specified on the outer edge of the zone. These were termed local markets or submarkets.[1]

While this procedure may have gained acceptance for the delineation of a submarket, clearly for data presentation purposes a more recognizable and permanent market area has had to be constructed. The market area, while keyed to journey-to-work, had to take into account the availability of employment and U.S. Census data to isolate centers of employment. Historically, this was available only on a county basis in the form of *County Business Patterns,* an annual tabulation of jobs by category in the United States published by the U.S. Department of Commerce. Recognizing the expanding scope of the market, *FHA Techniques of Housing Market Analysis* lists the prerequisites for housing market delineation:

> The location of actual and prospective employment centers and the availability of transportation facilities of all types underlie the selection of general locational alternatives as places of residence for the working population.

The housing market area usually extends beyond city limits regardless of the magnitude of the market under consideration. In the larger markets, the market area may extend into several adjoining counties through the outward growth of the primary metropolitan area.

The actual delineation of a housing market area and submarket areas is determined primarily by Census area definitions.[2]

Housing Regions in New Jersey

Information on journey-to-work for New Jersey counties may be obtained from the 1990 Census to modify the 1980 Public Use Microdata Sample (PUMS) for New Jersey—a five-percent sample of all New Jersey households.[3] Information can be crafted to scrutinize times traveled one-way to work (in minutes) for all those employed in households as of April 1990. Also a part of the data set are the origin and destination of the worktrip. The information to be used in the initial grouping procedure concerns worktrip origin and destination. This information is used only at the county level, i.e., for each employed member of the household, worktrip county of origin and county of destination. All modes of travel are included: automobile, bus, rail, and miscellaneous (walking, biking, and so on).

The program chosen to group counties is the CLUSTER procedure for the Statistical Analysis System (SAS) package. CLUSTER is a grouping procedure designed to help identify groups of observations that have similar attributes. It partitions the data into a smaller number of groups such that data units belonging to one group are "similar" in a certain sense, while data units belonging to different groups are "dissimilar" in the same sense. The procedure is dependent upon "distance" (value separation) between variables. It is unique in that it assumes no conceptual associations or distance values *a priori.* CLUSTER computes its own distance matrix and standardizes the matrix across the data set.[4]

Certain controls are placed on the grouping mechanism. Counties that could be grouped based on similar commuting ties have to be contiguous. In addition, no less than two nor more than four counties are allowed to cluster as part of any group. These are the requirements of the *Fair Housing Act.* The lower threshold is to ensure that no single county appeared "left over"; the upper threshold was chosen to avoid large commuting distances within any one identified region.[5]

After including certain judgmental decisions regarding the size of a region and its capacity to handle need, as well as the necessary inclusion in each region of at least one central city, the journey-to-work sorting of counties takes the following form:

Group 1	Group 2	Group 3	Group 4	Group 5	Group 6
Bergen	Essex	Middlesex	Monmouth	Camden	Atlantic
Passaic	Morris	Somerset	Ocean	Gloucester	Cape May
Hudson	Union	Hunterdon	Mercer	Burlington	Cumberland
Sussex	Warren				Salem

(SEE MAP ON FOLLOWING PAGE)

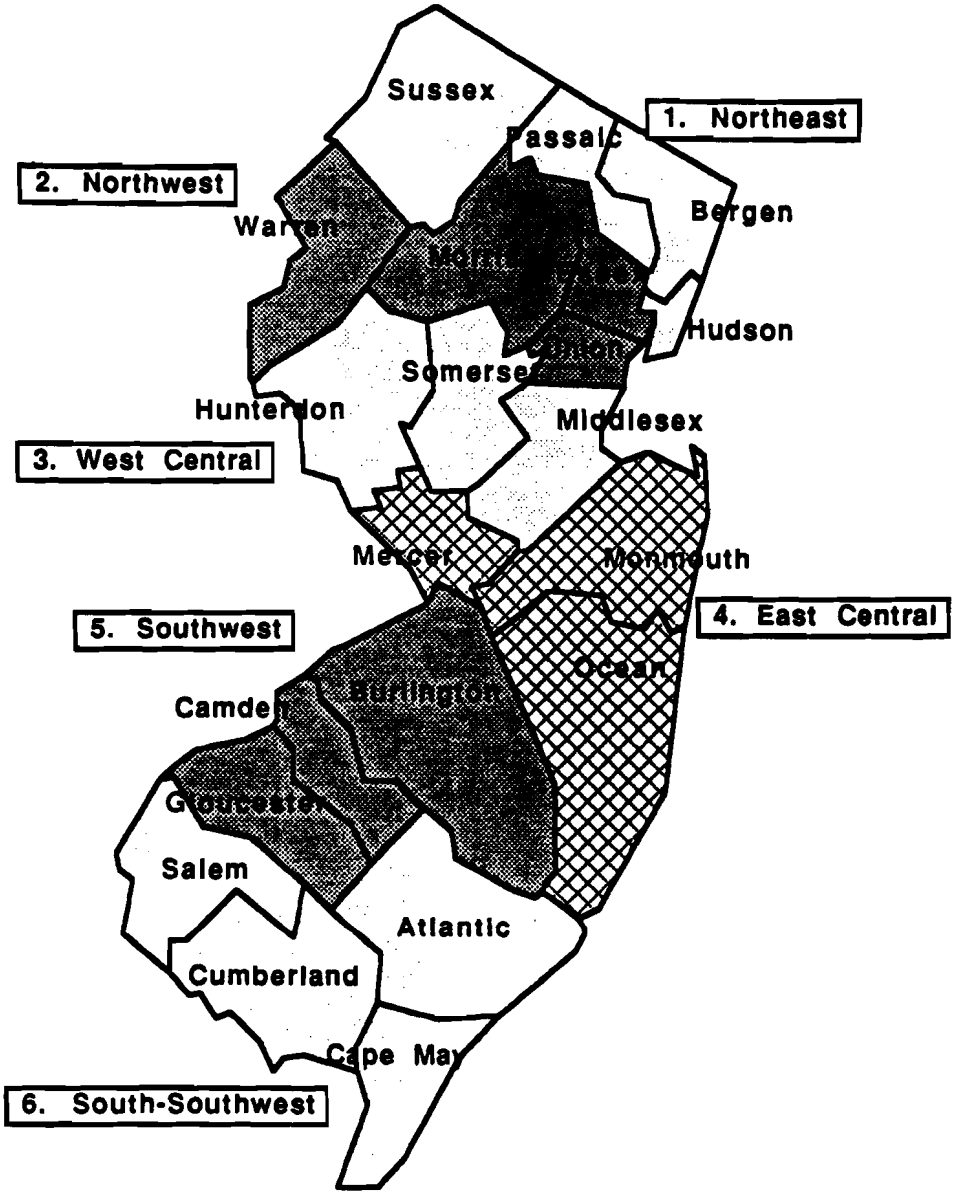
The above distribution of counties reflects vacant land concentrations and growing commuting ties between Sussex and the remaining counties in Group 1, Warren and the remaining counties in Group 2, and Mercer and the remaining counties in Group 4. Within each grouping, there are sufficient vacant land and established or growing commuting ties; also, each region has at least one established central city. This enables affordable housing need to be absorbed by regions and regional contribution agreements (RCAs) to be effected within regions.

In most cases, the commuting ties between counties of these groups are stronger among each other than between a single county of the group and another group as a whole. There may be selected instances where a single county of one group is related more intensely to a single adjacent county of another group than to members of its own group; yet overall, there are usually weaker commuting ties with the other group as a whole. The above listings provide the necessary sort of constituent New Jersey counties on both commuting ties and land sufficiency to implement affordable housing goals.

INCOME QUALIFICATION OF THE LOW- AND MODERATE-INCOME POPULATION

Data from the 1990 U.S. Census modifying the 1980 New Jersey Public Use Microdata Sample (PUMS) is again used to qualify a household according to HUD Section 8[6] family-income requirements. The PUMS tapes contain records for a sample of housing units with information on the characteristics of each unit as well as on the people who reside in these units. Information from this file makes it possible initially to eliminate all individuals living in institutions, group quarters, or as boarders/lodgers from potential low- and moderate-income housing demand. This removes from direct count those people who comprise prison/sanitarium, college, nursing home, boarders/boarding homes, and other related populations.[7] Sub-households and sub-families are not separately distinguished as this would double-count existing housing deterioration, and no information is available on how or if sub-families/sub-households would choose to separate in the future. Thus, one household per unit is counted. Applications for low- and moderate-income housing built under the first round of *Fair Housing Act* compliance (1987-1993) indicate unit sharing—parts of families and unrelated individuals seeking to reside together. This partially confirms continued, shared, or unrelated household use of new low- and moderate-income housing units.

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
HOUSING REGIONS (1993–1999)



GROUP 1 *NORTHEAST*	GROUP 2 *NORTHWEST*	GROUP 3 *WEST CENTRAL*	GROUP 4 *EAST CENTRAL*	GROUP 5 *SOUTHWEST*	GROUP 6 *SOUTH-SOUTHWEST*
BERGEN	ESSEX	MIDDLESEX	MONMOUTH	CAMDEN	ATLANTIC
PASSAIC	MORRIS	SOMERSET	OCEAN	GLOUCESTER	CAPE MAY
HUDSON	UNION	HUNTERDON	MERCER	BURLINGTON	CUMBERLAND
SUSSEX	WARREN				SALEM

Once these selection procedures are undertaken, the PUMS may be employed to array all households by size and income status. HUD median family income for a region is determined, and 80 percent and 50 percent are assigned to household sizes of four for the upper limits of moderate and low incomes, respectively. Each household size of more or less than four is allowed a positive or negative adjustment of the 80 percent or 50 percent of median figure to qualify for moderate- or low-income designation.[8] (This is based on the philosophy that if you have more children/dependents or household members you can earn more and still qualify for moderate/low income; in reverse fashion, if you have fewer dependents or members, it is more difficult to qualify by establishing a lower income for qualification.)

The procedure spelled out above separates low- and moderate-income households, adjusted for household size, from all other households in the region. This relative selection of a population qualifying for housing need forms the basis of all need estimates. In subsequent steps, the housing units occupied by these households are initially checked for deterioration to determine Present Need. The number of income-defined households is then projected into the future to determine Prospective Need. The detailing of these steps is explained below.

PRESENT NEED

Indigenous Need

Indigenous Need is a component of Present Need which is the total deficient housing signaled by surrogates unique to each community. Where communities' deficient housing as a percentage of all occupied housing units exceeds the regional average, their excess need is sent to a housing pool for subsequent redistribution in the region. Housing from the pool is reallocated to all communities in the region with the exception of designated Urban Aid Cities. The Indigenous Need for communities below the regional average of housing deficiency is their tabulated deficient units. For those above the regional average, their Indigenous Need is their deficient housing capped by the regional average percent deterioration.

Recognizing the evolution of the concept of deteriorated housing from 1960 and earlier where enumerators attempted to physically identify bad housing from field survey, to the current period where deficient housing is isolated through housing-quality surrogates, information provided by the 1990 Census is used to signal housing deficiency via surrogates.[9]

Surrogates do not themselves confirm that a unit is deficient. They indicate that if a unit has these characteristics, it most likely would be independently found via field survey as deficient. Surrogates are developed by listing the characteristics of units found as deficient and viewing which characteristics consistently are associated with field-confirmed deficiency. Six housing quality surrogates are used with structure age to signal housing deficiency. The bulk of these indices represent the culmination of numerous empirical studies on factors indicative of inferior versus superior housing quality; the remainder are clear surrogates of inferior housing.[10] *They represent the full range of information available on housing quality from the 1990 Census.* No index is slighted, and all are simultaneously employed. They include:

(a) *Year Structure Built.* A distinction is made between units built before 1940 and from 1940 to 1990. This pre-World War II cutoff is the classic differentation point of new versus old housing in the literature.[11]

(1) *Persons per Room.* 1.01 or more persons per room is an index of overcrowding.

(2) *Plumbing Facilities.* Inadequate plumbing is indicated by either a lack of exclusive use of plumbing or incomplete plumbing facilities.

(3) *Kitchen Facilities.* Inadequate kitchen facilities are indicated by shared use of a kitchen or the non-presence of a sink with piped water, a stove, or a refrigerator.

(4) *Heating Fuel.* Inadequate heating is use of coal, coke, wood or no fuel for heating.

(5) *Sewer.* Inadequate sewer services are indicated by a lack of public[12] sewer, septic tank, or cesspool.

(6) *Water.* Inadequate water supply is indicated by a lack of either city water, drilled well, or dug well.

A unit has to have at least two characteristics to be isolated as deficient once it qualifies as housing a low- or moderate-income family. Since age is so highly correlated with structure deterioration and loss, if in 1990 the unit was more than fifty years old and had at least one other negative housing characteristic, it is selected as deficient. If, on the other hand, it was a newer unit in 1990, in the absence of the unit-age qualification, two or more negative structural characteristics signal housing deficiency. Multiple deficient characteristics in a single housing unit is an important concept. Using multiple indicators in a high probability of isolating bad housing, yet a very low probability of classifying good housing as bad.

Three variables originally used to determine inadequate housing have been replaced by three additional variables. Lack of central heat, four or more stories with no elevator, and indirect access (passing through another unit to get to one's own) are no longer reported by the U.S. Census.

Three other variables related to both structural conditions and inferior or superior housing condition replaced the indicators that are no longer reported. These are:

(1) The use of nonstandard heating fuels or no fuel, indicating in most cases temporary or marginal housing;

(2) Lack of public sewer, septic tank, or cesspool, indicating unsanitary sewage disposal; and

(3) Lack of city water, a drilled well, or a dug well, also indicating a less-than-adequate water supply.

It should be realized that any of these characteristics need not signal deficiency on their own. The unit must be occupied by a poor household; be more than 50 years old and contain a single deficiency; or be similarly occupied, be 50 years old or less, but contain an additional detrimental condition, to signal deficiency. Even then, the unit may not be actually deficient, but there is a high probability that it will be subsequently lost from the stock.

This procedure for establishing housing deficiency: (1) is drawn from the literature of the field; (2) encompasses a broad array of physical insufficiency including such items as incomplete or inadequate kitchen and plumbing, crowding, inadequate heating fuels, and insufficient sewer and water resources; (3) ensures against erroneous inclusion of good units; and (4) provides a very high probability that the housing identified, at least in relative terms, is clearly less than adequate.

Due to confidentiality protection and data availability, the procedure to specify Indigenous Need can be estimated only to each of 52 subregions of the state.[13] It is taken down to the community level by six housing quality variables available at both the subregional level and the community level. These are:[14]

(1) *Plumbing Facilities*—nonexclusive use of complete plumbing
(2) *Persons per Room*—space inadequacy, i.e., 1.01 or more persons per room
(3) *Age of Housing*—housing built in 1939 or earlier
(4) *Water or Sewer Problem*—deficiency in one or the other, whichever is greater
(5) *No Telephone*—absence of telephone in unit
(6) *Nonstandard Heating Fuel*—use of coal, coke, or wood for heating, or no fuel

The pool of low- and moderate-income families living in deficient housing once calculated at the subregional level is distributed to individual communities on the basis of their share of six indices of deficient housing at the local level to the total deficient at the regional level, also measured by these indices. At the local level, these latter variables cannot be cross-tabulated with income in the same way as information at the subregional level can. Thus, the best available information and the most rigorous procedures are used to isolate the poor living in deficient housing at the subregional level, and this is taken to the municipal level through other housing quality variables less complete in terms of isolating the income of those who live in these units, but found comparably at these two geographic levels.[15]

In order to address present need with some lead time appropriate for planning and implementation, present need is actually projected to be estimated as if July 1, 1993 were the 1990 period and the sample of housing deficiencies was taking place at this time. This is done by reproducing the incidence rates of deterioration associated with certain age groups and household types in 1990, and projecting these households and their associated housing conditions to the 1993 period. The new array and number of households in 1993 carry with them the deterioration noted in 1990.

As noted earlier, for communities with severe housing deficiencies, their deficiencies are capped at the regional average percentage of deficiencies as a proportion of total occupied housing. The excess over this regional percentage is distributed to all communities in the region. This is covered below.

Municipal surveys to determine Indigenous Need may be presented to the Council as an alternative method to this procedure. (See Section 10—Fair Housing act.) The Council will provide guidance as to the appropriate form and scale of such surveys.

INDIGENOUS NEED BY REGION†

NORTHEAST	14,307
NORTHWEST	11,050
WEST CENTRAL	4,755
EAST CENTRAL	4,575
SOUTHWEST	4,332
SOUTH-SOUTHWEST	3,720
STATE TOTAL	42,739

†See earlier figure for mapped display of regions

Reallocated Present Need

Reallocated Present Need is the share of excess deterioration in a region transferred to all communities of the region with the exception of selected Urban Aid Cities. (See Attachment.) Urban Aid Cities, almost all of which are densely populated and have a higher-than average proportion of low- and moderate-income families living in deteriorated housing, are not expected to have this regional burden reinforced by future low- and moderate-income housing requirements.[16] Therefore, when the Reallocated Present Need pool for the region is computed from an average deficiency percentage for the entire region, Urban Aid Cities are not expected to share in that pool. Instead, *the excess* of deficient units over the regional percentage of deficiencies *is redistributed* to the region to no more than the level that would bring them to the regional average. The exact procedure for redistribution is covered under Distribution of Low- and Moderate-Income Housing Need.

REALLOCATED PRESENT NEED BY REGION

NORTHEAST	7,002
NORTHWEST	5,306
WEST CENTRAL	1,477
EAST CENTRAL	1,329
SOUTHWEST	1,751
SOUTH-SOUTHWEST	676
STATE TOTAL	17,542

Present Need

Present Need is the sum of Indigenous and Reallocated Present Need in a municipality. It represents individual municipal housing responsibility reflective of its own housing inadequacy/deficiency (except where it is regionally excessive) and regional responsibilities in terms of its share of the pool of housing replacement/repair that must be undertaken by primary suburban communities due to excess deterioration found in more urban communities.

PRESENT NEED BY REGION

NORTHEAST	21,309
NORTHWEST	16,356
WEST CENTRAL	6,232
EAST CENTRAL	5,904
SOUTHWEST	6,083
SOUTH-SOUTHWEST	4,396
STATE TOTAL	60,281

DISTRIBUTION OF LOW- AND MODERATE-INCOME HOUSING NEED

Low- and moderate-income housing need is distributed to each community using three of the four economic and land-use factors listed below. These factors in the first two cases represent measures of *responsibility,* i.e., the labor force either existing in the community or drawn to the municipality in the future—in both cases needing housing. In the second two cases, they represent measures of *capacity,* i.e., the physical (land) and fiscal (income) capacity to absorb and provide for such housing.[17] The last three factors are used to distribute excess *Present Need* (Reallocated Present Need); the first, third, and fourth factors are used to distribute Prospective Need. All factors operate individually, are equally weighted, and involve all municipalities in the region except Urban Aid municipalities. All allocations on the below variables reflect the fraction representing the community's share of the regional total.

1. *Change in equalized nonresidential valuation from 1980 to 1990.* This is reported in the *Annual Report of the Division of Local Government Services* 1980 (43rd Annual Report) and 1990 (53rd Annual Report). Change in equalized nonresidential property valuation is used in place of employment change for the reasons indicated below.

2. *Equalized nonresidential valuation (commercial and industrial).* This is by municipality and is also reported in the *Annual Report of the Division of Local Government Services* 1990 (53rd Annual Report).

Nonresidential property valuation is used as a replacement for actual employment in a municipality to avoid the zip code problem associated with the Covered Employment data. This refers to situations where the zip code address of a firm does not reflect actual location of its employment. This is true when an employer's mailing address is different from its actual location. It is assumed that where a firm pays its taxes is a good indicator of the location of the facility and thus its employment. Real property valuation (absent business personal property), through regression analysis, has been found to be an excellent surrogate for the intensity of use or number of employees in the structure. Equalized valuation through the application of an assessment-to-sales or equalization ratio is used to standardize for the differing levels of assessment relative to true or market values that exist in an individual community.

3. *Undeveloped Land*—Undeveloped land in the community that can accommodate development. All undeveloped land in the community is estimated through use of land satellite imagery (LANDSAT). The undeveloped land inventory is compiled via LANDSAT information prepared for the Council on Affordable Housing by the Department of Environmental Resources of Cook College at Rutgers University. It reflects photoimagery as of March 1991.

Undeveloped land is further refined by the State Development and Redevelopment Plan's Planning Areas. To be sensitive to the State Planning Commission's goals for each Planning Area, undeveloped land is weighted as follows:

PLANNING AREA	WEIGHTING	RESULT
1	1	Full count of undeveloped acres
2	1	Full count of undeveloped acres
3	0.5	Half count of undeveloped acres
4	0.0	Zero count of undeveloped acres
5	0.0	Zero count of undeveloped acres

Undeveloped land in the Pinelands growth areas (Regional Growth Areas and Pinelands Towns) are treated equivalently to Planning Area 3; all other Pinelands areas are treated equivalent to Planning Area 4 or Planning Area 5. CAFRA has regular State Plan territorial designations and is treated accordingly. Hackensack Meadowlands undeveloped acreage is treated equivalent to Planning Areas 1 and 2 within growth areas, and equivalent to Planning Areas 4 and 5 in protected or open space areas.

Vacant land by municipality has been checked with an independent source of information, the New Jersey Department of Treasury.[18] This second source of information found LANDSAT to be an excellent and comprehensive source of land-use information. The LANDSAT data file, however, is the source of undeveloped land for every municipality in New Jersey. Its strengths and weaknesses apply to most municipalities alike and, accordingly, make it a very comprehensive and important source of undeveloped land information especially good for *relative* comparisons.

4. *Aggregate Income Difference*—This is an average of the following two measures:

a. Municipal share of the regional sum of the differences between median 1993 municipal household income and an income floor ($100 below the lowest average household income in the region)[19], and

b. Municipal share of the regional sum of the differences between median 1993 municipal household incomes and an income floor ($100 below the lowest 1993 median household income in the region) weighted by the number of the households in the municipality.

This procedure replaces the unaltered share of aggregate income that tended to give large middle-class municipalities an overabundance of low- and moderate-income housing need because they had a lot of households with reasonably healthy incomes. The new procedure employs not income but income differences (household) which exist in municipalities from the municipality with the lowest average household income in the state.

Since this new income measure is also skewed in certain municipalities, both the straight difference from the median of the lowest municipality to the median of each other municipality, as well as this difference weighted by the number of households in the municipality, are used. The latter factor taken twice tends to dampen the extremes of the straight-difference income allocation index.

A variety of procedures were tried (including no income variable) to make the income factor both more equitable and more responsive to

locations of existing income capacity. It is believed that this procedure achieves both equity and more incisive income targeting.

Reallocated Present Need and Prospective Need shall be distributed to municipalities unless the municipality received state aid pursuant to P.L. 1978, C.14 (C.52:27D-178 et seq.) and exhibits at least one of the following (see Attachment for a listing of selected Urban Aid Cities:[20]

1. Level of existing low- and moderate-income housing deficiency, according to the six housing deficiency criteria, that exceeds average regional low- and moderate-income housing deficiency for the region in which the Urban Aid municipality is located;

2. Population density of greater than 10,000 persons per square mile, or 14.1 per acre;

3. Population density of 6,000 to 10,000 persons per square mile or 9.4 to 14.1 per acre *plus* less than 5 percent of vacant, non-farm, municipal land as measured by the average of the percentage of vacant land valuation and vacant land parcels of all local land valuation/parcels in the *53rd Annual Report of the Division of Local Government Services 1990—Statements of Financial Condition of Counties and Municipalities* (Trenton, NJ: New Jersey Department of Community Affairs, 1991).

PROSPECTIVE NEED

Population Projections

Population projections are derived from two different models from the New Jersey Department of Labor. Both of these models project population by county (21 counties) and age cohort (13 declensions) for 30 years into the future. These population models are termed the Historic Migration Model and the Economic Demographic Model.[21] The major differences between these models are the overall levels of projected growth and the assumptions used for migration. Relatively, both the Economic Demographic Model and the Historic Migration Model project about the same level of statewide population. Their main difference is how this population is distributed to counties. In the Historic Migration Model, future migration is related to past employment growth; in the Economic Demographic Model, future migration is related to projected employment growth.

The Historic Migration Model allocates growth in a very purposeful way to places of historic growth. Counties like Bergen, Middlesex, Somerset, Ocean, and Gloucester tend to be overprojected. The Economic Demographic Model projects growth more evenly to the state's various locations, including an adequate share to the central-city counties.

The procedure employed in this analysis uses the output of both models and averages their results. Thus, the locational differences of their population distributions are dampened by the averaging procedure. Retrospectively, averaging has given the most accurate results over time. This is intuitively probable in that locations of growth depart from history in the direction of future projections but never seem quite to attain these directions. There is tug of war between historical locations of growth and new locations of growth: Neither appears to be dominant. The Historic Migration Model, by definition, represents history. The Economic Demographic Model captures the future. Their average is the reality of not achieving either, or in another view, partially achieving each. The averaged projection dampens the distribution of this growth by allocating shares to central-city counties as well as suburban and rural counties. Each of the individual models allocates growth too regularly in one direction. The averaged projection seems to be much more on target in terms of the distributional realities of growth.

The CUPR Econometric Model is used to control the averaged population projections at the Labor Area level. The national to regional, to state, to Labor Area population step-down of a macroeconomic model sets the bounds for Labor Area totals, which thus affect county population totals. National population growth is stepped down to the state of New Jersey and then to its Labor Areas. Each of these stepdowns is a zero-sum game. If one entity increases, another must decrease to meet the result of the projection. Within Labor Areas, the New Jersey Department of Labor model projections are adjusted and then taken to the county level. Projections at the county level are undertaken using eight different age cohorts. The projections employed here are purposefully chosen to be similar to those used for the New Jersey Department of Community Affairs Comprehensive Housing Affordability Strategy (CHAS), the Impact Assessment of the New Jersey State Development and Redevelopment Plan, and the most recent transportation modeling efforts of the New Jersey Department of Transportation.

Household Projections

Household projections follow from population projections by age cohort. Household projections are accomplished by applying a headship rate (the propensity to form a household) to population growth in an age grouping. Headship rates increase with age. The growth in headship rate, however, is greatest in the younger age groups. Household headship rates vary indirectly with household size. As household size decreases, headship rates increase. This relates directly to marriages and divorces, causing households to shrink in size by forming two smaller households from a single larger household. Household growth, like population, is projected by county. Headship rates are determined by age group and county in New Jersey in 1990 and extended into the future at one-half the rate of change observed from 1980 to 1990. The aggregate growth in low- and moderate-income households is summed at the county level and sent to a regional pool to be subsequently distributed to municipalities via allocation factors.

Prospective Need

Prospective Need is the share of the total projected households that will qualify for low- and moderate-income housing. Prospective low- and moderate-income housing need is derived by projecting the population by age cohort from 1993 to 1999 and converting this to households. This takes the following steps:

1. A 1993 base is established by bounding it at one end by the age cohort distributions of the 1990 U.S. Census for New Jersey. The other end is bounded by the distribution of the projected population for 1995 by age cohort under CUPR's use of the two averaged NJDOL projections for 1995. Three-fifths of the distance from 1990 to 1995 is used to establish the 1993 age cohort distribution.

2. A July 1, 1999 projection-year end is also arrayed by age distribution. This is done in the following way:

Population by age distribution for CUPR's Model projection to the year 2000 is modified, as explained herein. One-fifth of the population change from 1995 to 2000 is subtracted from year 2000 totals to obtain a new population projection by age cohort for 1999. The age cohorts are:

Less than 25 years
25-29 years
30-34 years
35-44 years
45-54 years
55-64 years
65-74 years
75 years and over

3. Both the population age cohorts for the base year (1993) and the projection-end year (1999) are multiplied by 1990 New Jersey county-specific headship rates by age cohort.[22] Two distributions of total households emerge: one for 1993 and another for 1999.

4. Total households for each period are converted to low- and moderate-income households by carrying forward the income characteristics of all households in 1990 to 1993 and 1999 by age cohort. Low- and moderate-income households are sorted by applying the Section 8 household size/income qualification criteria that were used in 1992 to a different number of households that exist in each cohort in 1993 and 1999. Thus, to the degree that age cohorts are differently composed and growing differently, the low- and moderate-income population will also change as it ages into the future.

5. Low- and moderate-income households for 1993 are subtracted from low- and moderate-income households in 1999 to obtain the change in low- and moderate-income households from 1993 to 1999. This is done for eight age cohorts specific to each of 21 counties.

6. As a change from the 1987-1993 procedure, the growth of households below age 65 is put into a statewide pool and allocated to regions of the state according to the proportional share of nonresidential ratable growth that took place in these regions from 1980 to 1990. Thus, growth in the working-age component of low- and moderate-income households was assigned to regions where jobs previously grew. On the other hand, growth in the elderly and presumably non-working population was retained in the original region where this growth took place. This procedure creates a demand to house low- and moderate-income families of working age in locations where jobs grew and a similar demand to house the elderly where their growth occurred naturally.

PROSPECTIVE NEED BY REGION

NORTHEAST	4,787
NORTHWEST	1,033
WEST CENTRAL	8,654
EAST CENTRAL	14,424
SOUTHWEST	8,993
SOUTH-SOUTHWEST	4,236
STATE TOTAL	42,127

TOTAL NEED

Total Need 1987-1999 is composed of Indigenous Need, Reallocated Present Need, and Prospective Need. It is the total municipal need number before demand increases for demolitions and demand reductions for secondary sources of supply are introduced. In a very few cases, negative Prospective Need in a community, reflective of reduced housing demand due to employment loss, lessens Present Need demand and, as such, reduces Total Need.

TOTAL NEED (PRESENT AND PROSPECTIVE) BY REGION

NORTHEAST	26,096
NORTHWEST	17,389
WEST CENTRAL	14,886
EAST CENTRAL	20,328
SOUTHWEST	15,076
SOUTH-SOUTHWEST	8,632
STATE TOTAL	102,408

PRIOR-CYCLE PROSPECTIVE NEED (1987-1993)

Affordable housing need of the prior cycle is composed of Indigenous Need, Reallocated Present Need, and Prospective Need. The 1990 U.S. Census provides the most current information on housing deficiency. Thus, Present Need, or deteriorated housing (as determined in 1993) is the actual need as it is viewed today; no need is carried over. This applies to Indigenous Need and Reallocated Present Need of the prior cycle.

In the case of Prospective Need, where the need has been projected for the forthcoming period, if it is not met people are forced into more crowded housing or are obliged to pay more than 28 percent of their income for housing. Housing need is falsely reduced, and simultaneously the affordable housing situation worsens if no new housing is built. A new calculation period could ignore the inactivity that characterized the prior cycle. This should not be allowed to happen. The current affordable housing method accounts for this by bringing forward Prior-cycle Prospective Need after it has been recalculated to reflect the most current projection information available, and after it has been netted down to true new construction need by altered secondary sources of supply, also reflecting the most current information available. The most current projection for that period allows 1990 U.S. Census figures to dampen the prior projection by 48 percent by providing a mid-period (1990) correction to prior 1987-1993 projections. Recalculated (1987-1993) demolitions are added to Prior-cycle Prospective Need before the sum is netted down by reduced secondary sources of housing supply. Secondary sources of supply, limiting prior Prospective Need, are scaled down accordingly by the ratio of lower new-period (1993-1999) to higher old-period (1987-1993) secondary source incidence rates.

PRIOR-CYCLE PROSPECTIVE NEED BY REGION

NORTHEAST	3,259
NORTHWEST	5,040
WEST CENTRAL	5,802
EAST CENTRAL	13,529
SOUTHWEST	5,865
SOUTH-SOUTHWEST	4,706
STATE TOTAL	38,202

SECONDARY SOURCES OF HOUSING SUPPLY AND DEMAND

Secondary sources of housing supply and demand reflect the adjustments of the housing market to the uneveness and spontaneity of primary supply and demand. As housing ages or as it falls prey to accident, natural disasters, or publicly/privately initiated changes in land use, it may become obsolete and be removed from the stock. The term for this selective pruning is *demolition.* Demolitions occur regularly and affect various markets differently. In strong markets, demolitions are low; in weaker markets, they are proportionally higher. In both situations, demolitions add to future housing demand.

As housing is added by private developers to the upper and middle price categories of the stock, a large share of consumers who already occupy housing within the market are attracted to this housing. When they occupy the new housing through purchase or rental agreements, they release sound housing within the local market that is inferior to the new housing that has been built. This causes the housing that they once occupied to be available to a lower round of consumers, often at a reduced price. The process is termed *filtering.* Filtering reduces future housing need as a greater proportion of formerly higher priced housing is now available at potentially lower prices. Filtering takes place in active housing markets, especially those receiving a significant influx of new housing.

In selected submarkets, a demand may exist for smaller units, and this need may not be responded to by normal market operations. The market adjusts to this need by creating additional smaller units from larger ones. This is termed *residential conversion* and most often occurs in housing stocks containing larger structures that can be adapted to smaller units yet not destroy or significantly alter the value of adjacent units in the process. The older, urban two- to four-family home is an ideal conversion unit. Four or six units may be created where only one-half this number may have existed in this type of structure previously. Often these units are termed illegal conversions, not because they are not safe, sound housing, but rather because the enlarged structure no longer conforms to the unit restrictions of the zoning ordinance.

Another characteristic of the housing market is for deficient units to be upgraded privately. This also lessens housing need as a deficient unit is replaced by a sound unit. This happens usually because a market exists for the renovated structure, usually at a higher occupancy cost than when the structure fell into disrepair. *Spontaneous rehabilitation,* as it is called, occurs in stronger (as measured by income), growing markets and affects only a very small proportion of the low- and moderate-income housing stock.

Procedures

In the earlier-discussed allocation and reallocation procedures, only non-Urban Aid municipalities participated. *In the reductions or increases to housing need due to secondary supply and demand, all muncipalities, including Urban Aid locations, participate.* This is true because all municipalities have some type of housing need, and reductions apply to housing need no matter how the need is generated. Thus, when demand reductions due to filtering are calculated, the reduction for a particular location is based on the share of *all* multifamily units in the region.

For Urban Aid Cities, the demand reductions are taken before these areas send excess need to the reallocation pool; for all other locations, demand reductions are taken after this point. This is to prevent other less-dense, less-deteriorated, inner-ring cities from receiving a large share of reallocated need without an equivalent chance to participate in secondary demand reductions due to specific characteristics of their housing stock.

Demolitions

Demolitions are a secondary source of housing demand in that demand is created by households requiring housing because units are lost from the stock. Housing units are lost due to fire, structure abandonment, road improvements, community renewal, land-use change, and other reasons.[23] It is estimated that units lost from the low- and moderate-income stock (both reported and unreported demolitions) are about on a par with those added to the stock due to conversion. For the *entire* housing stock, the ratio of demolitions to conversions may be even higher.[24] It is also true that the level of demolitions is falling in New Jersey. In 1980, total reported demolitions for New Jersey municipalities were 4,000-5,000 per year; in 1985 the total was above 3,000 annually; and by 1990, the total was just over 2,200.[25]

In order to estimate the scale of demolitions, reported demolitions for each municipality for the years 1988, 1989, and 1990 are averaged and multiplied by six to obtain a six-year demolition estimate by municipality. These are the three latest indicators of demolitions for communities.[26]

Demolitions are adjusted for each municipality to the share of all demolitions that affect the low- and moderate-income housing sector by 120 percent of the subregional share of low- and moderate-income housing. This percentage share of all demolitions that affects low- and

moderate-income families is capped at 95 percent. Total demolitions are thus tallied by individual community and the share affecting low- and moderate-income housing is estimated by a multiple of the subregional low- and moderate-income housing deficiency percentage. This latter factor recognizes that demolitions take place at a much higher rate in the low- and moderate-income housing sector than for all housing locally. Demolitions at a statewide level are essentially offset by conversions for low- and moderate-income households. This latter relationship is covered more fully in a subsequent section.

DEMOLITION HOUSING NEED BY REGION

NORTHEAST	1,986
NORTHWEST	1,976
WEST CENTRAL	343
EAST CENTRAL	1,369
SOUTHWEST	738
SOUTH-SOUTHWEST	1,625
STATE TOTAL	8,037

Filtering

Filtering is a downward adjustment of housing which recognizes that the housing requirements of lower-income groups can be served by supply additions to the higher-income sectors of the housing market.[27] During the course of normal market operations, middle- and upper-income households vacate existing housing for new, more desirable units, leaving their units vacant for households of lesser income. Filtering is predicated on the existence of housing surpluses, which cause housing prices to drop because of the excess of housing supply over demand.

Filtering is measured using the *American Housing Survey* over the four-year period 1985 to 1989. The *American Housing Survey* is particularly useful in that the same unit is measured at various intervals. By specifying HUD Section 8 income eligibility by household size for the years in question, two components of the household population can be specified: those that meet *Mount Laurel II* income requirements, and those that are above these requirements. Given these two income determinations at the two periods in time, a specific unit can be tracked according to the income of the household that occupied it. If it was not occupied by a *Mount Laurel* income-eligible family in the first period and was in the second period, it filtered down. If the reverse is true, it filtered up. If it was similarly occupied for both periods, it did not filter.

Viewing the same housing units, it is found that the net filtering (units moving down minus units moving up) to the lower-income population in New Jersey is about 1.1 percent over the course of the *four*-year observation period 1985-1989.[28] About 12.5 percent of the stock moves down, and 11.4 percent moves up. The gross figure for *six*-year net filtering is 1.65 percent of the non-deteriorated, non-low- and moderate-income housing stock, or 150 percent of the amount observed over the *four*-year period. A derivative 1.22 percent figure is the one used in the filtering calculation. It is determined by multiplying the 1.65 percent, six-year rate by 0.75. The latter accounts for those units that filtered down over the period and do not have the same range of affordability as those units that were continuously occupied by low- and moderate-income families. In other words, only three-quarters of the potential units available for filtering are counted, assuming that 25 percent of the units that filter down to low- and moderate-income households are beyond what these houdholds can reasonably afford. Further, by using the non-deteriorated portion of the housing stock, the units that are counted as moving downward are assumed to be of adequate housing quality. Thus, both affordability and housing condition of the resulting units are controlled for in the filtering estimate.

Through cross-tabulation analysis, and taking into account the dominance of single-family homes in New Jersey, filtering is found to be more active in those locations that have higher percentages of older multifamily units (five units or more in a structure), and much less active in locations where there are small percentages of multifamily units, or even newer multifamily units.[29] Even though filtering takes place to some degree in all locations, it is much more of an urban, or older suburban (i.e., locations of older and multifamily housing), than a new suburban or exurban housing phenomenon.

Filtering for the period 1993 to 1999 is estimated by taking 1.22 percent of the 1993 non-deteriorated, non-low- and moderate-income housing stock by region and assigning this need reduction to communities within the region according to a weighted average of: (1) their share of multifamily housing units (five or more units) of the region; and (2) their share of the pre-1940 units of the region. The former is weighted times two, and the latter times one, to avoid crediting excessive filtering to locations of older, predominantly single-family housing.

The use of multiple variables to assign the filtering credit is new for this round of numbers. It reflects more extensive analysis of the filtering phenomenon than was the case for the 1987-1993 period. The age of housing stock was added to the regression equation and showed considerable explanation power.

FILTERING HOUSING SUPPLY† BY REGION

NORTHEAST	-4,895
NORTHWEST	-4,535
WEST CENTRAL	-2,830
EAST CENTRAL	-3,550
SOUTHWEST	-2,993
SOUTH-SOUTHWEST	-1,382
STATE TOTAL	-20,185

†Secondary supply sources are shown as negative demand contributors.

Residential Conversion

Conversion is the creation of dwelling units from already existing structures. Almost all conversion consists of additional dwelling units being created from other residential units, and very rarely from nonresidential units. This type, termed residential conversion, is a significant and recognized source of housing supply to low- and moderate-income families. According to the U.S. Department of Housing and Urban Development, as family size has decreased over the past two decades, residential conversion creating multiple smaller units from larger units has also increased.[30]

Converted units are measured using the *Decennial Census* over the period 1980 to 1990. Conversions are the difference between the net change in total housing units (end minus beginning of period), minus the net of housing units constructed and demolitions lost over the period. The housing stock is always characterized by having more units measured as present at the end state versus the beginning than can be accounted for by building permits minus demolitions. This unexplained difference is termed "conversion," most of which takes place from larger residential units.

U.S. Census information indicates that residential conversion is equivalent to 15 percent of total units constructed over the decade 1980-1990. On a percentage basis, a greater share of residential conversion units flows to the low- and moderate-income population than to the population as a whole.

Residential conversion is closely related and distributed to municipalities on the basis of their percentage of two- to four-family structures.[31] Residential conversions influence housing supply at the regional level according to an observed share of Indigenous Need. They are distributed to municipalities within regions according to the presence of structure types conducive to conversion, i.e., two- to four-family units.[32]

Residential conversions to low- and moderate-income housing in normal markets are often on a par with demolitions for the low- and moderate-income sector. In stronger markets, conversions are more than demolitions; in weaker markets, less.

RESIDENTIAL CONVERSION HOUSING SUPPLY BY REGION

NORTHEAST	-2,530
NORTHWEST	-2,180
WEST CENTRAL	- 930
EAST CENTRAL	- 847
SOUTHWEST	- 881
SOUTH-SOUTHWEST	- 775
STATE TOTAL	-8,143

Spontaneous Rehabilitation

Spontaneous rehabilitation is the unsolicited private market reduction of housing need by structure rehabilitation sufficient to render the unit free of deficiencies.[33] Using the *American Housing Survey,* over four interim years between 1985 and 1989, spontaneous rehabilitation can be measured by using as a surrogate more than $500 spent on each of three of four categories of additions, alterations, replacements, or repairs during the course of a single year.[34] This spontaneous rehabilitation

happens to about 1.0 percent of the deficient units occupied by low- and moderate-income households annually. For a six-year period, the figure is estimated to be 6.0 percent applied to Indigenous Need at the regional level.

The key factor associated with rehabilitation of deteriorated units is wealth of the area as interpreted through a combination of weighted and unweighted income measures. Reductions for spontaneous rehabilitation are given to each municipality according to the municipality's share of a regional average income measure. In this case it is the same measure used as one of the allocation factors.[35] Larger, less wealthy—and smaller, more affluent—communities will experience a larger incidence of rehabilitation because in the first case, there is more opportunity for it to happen, and in the second, there is more money to support it.[36] Spontaneous rehabilitation cannot exceed indigenous need locally and is capped at this level.

Spontaneous rehabilitation at this juncture should not be confused with rehabilitation as a meliorative housing strategy once Calculated Need is determined. Spontaneous rehabilitation of low- and moderate-income need is a reduction before Calculated Need is tallied due to the workings of the private market. Public, publicly assisted, or private rehabilitation as a housing strategy, once need is determined, is one of several means of response to that need and has nothing to do with the need reduction determined here.

SPONTANEOUS REHABILITATION HOUSING SUPPLY BY REGION

NORTHEAST	- 652
NORTHWEST	- 542
WEST CENTRAL	- 249
EAST CENTRAL	- 235
SOUTHWEST	- 229
SOUTH-SOUTHWEST	- 208
STATE TOTAL	-2,116

PRE-CREDITED NEED

Pre-credited Need is Total Need plus Prior-cycle Prospective Need after being adjusted by secondary sources of supply and demand. It is thus the sum of Indigenous Need, Prospective Need, Prior-cycle Prospective Need, and demolitions; and net of filtering, residential conversion, and spontaneous rehabilitation. Pre-credited Need is municipal affordable housing need prior to the reduction, pre-1987 credits, and undeveloped land and 20-percent caps, to be discussed subsequently.

PRE-CREDITED NEED BY REGION

NORTHEAST	23,264
NORTHWEST	17,148
WEST CENTRAL	17,022
EAST CENTRAL	30,595
SOUTHWEST	17,576
SOUTH-SOUTHWEST	12,597
STATE TOTAL	118,203

REDUCTION FOR PRIOR-CYCLE ACTIVITIES

The Council on Affordable Housing (COAH) recognizes affordable housing efforts of communities before COAH or those affordable housing efforts that have resulted from court settlements. This recognition involves a one-for-one deduction for affordable housing units zoned or transferred by these communities. This procedure views a cumulative 1987-1999 need calculation for new housing accomplished by including prior-cycle Prospective Need, which must be decreased by prior-cycle affordable housing zoning or transfer activity. In order to estimate the level of zoning or transfer activity of the prior cycle, information has been obtained from COAH records via staff, county planning boards, and from court records via the assigned Masters (planners appointed by the courts to mediate and oversee the settlement).

The reduction for prior-cycle activities is subtracted from Pre-credited Need; it cannot reduce Pre-credited Need below zero. Any unexpended reduction is carried over to the next cycle.

REDUCTION BY REGION

NORTHEAST	- 3,070
NORTHWEST	- 5,397
WEST CENTRAL	- 7,718
EAST CENTRAL	- 8,075
SOUTHWEST	- 3,149
SOUTH-SOUTHWEST	- 437
STATE TOTAL	-27,846

PRIOR-CYCLE CREDITS

The *Fair Housing Act* provides that the Council on Affordable Housing determine municipal fair share after crediting on a one-for-one basis each current unit of low- and moderate-income housing of adequate standard constructed subsequent to April 1, 1980, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low- and moderate-income households.

A municipality may receive a one-for-one credit for each unit satisfying the criteria in *N.J.A.C. 5:92-3.* Prior-cycle credits are subtracted from municipal need after the reduction.

Prior-cycle credits cannot reduce an obligation below zero. Unexpended credits are carried over to the next affordable housing calculation cycle.

PRIOR-CYCLE CREDITS BY REGION

NORTHEAST	- 223
NORTHWEST	-1,049
WEST CENTRAL	- 611
EAST CENTRAL	- 212
SOUTHWEST	-1,070
SOUTH-SOUTHWEST	- 0
STATE TOTAL	-3,166

TWENTY-PERCENT (20%) CAP

The 20-percent cap is a limitation of affordable housing activities for the period being projected for up to 20 percent of the existing (1993) occupied housing stock. This is termed the *community capacity.* The derivation of this limitation reflects a desire by COAH not to overwhelm local communities with affordable housing activities such that the community would experience "drastic alteration" from these activities. "Drastic alteration" has been defined as the doubling of a community's housing stock due to the presence of both inclusionary affordable housing units and simultaneously delivered market units at a ratio of 1:4. If the affordable housing component, or the "1", was more than 20 percent of existing housing units, the "4" would be more than 80 percent of existing housing units.

The sum of the inclusionary and market units would be greater than the 100 percent of existing housing units, and the community could more than double merely by meeting its affordable housing obligation through an inclusionary program.

To avoid this situation, the concept of community capacity has been instituted, which limits affordable housing production in a municipality to 20 percent of the existing local occupied housing stock. The percentage cap thus limits affordable housing differently according to the size of the community.

Community capacity is compared to municipal need for new construction, and the difference (if community capacity is less than the municipal need for new construction), is the 20-percent cap. The 20-percent cap is subtracted from municipal need, minus prior-cycle credits. If community capacity is more than the municipal need for new construction, the 20-percent cap is zero.

20-PERCENT CAP BY REGION

NORTHEAST	-271
NORTHWEST	0
WEST CENTRAL	0
EAST CENTRAL	-105
SOUTHWEST	-341
SOUTH-SOUTHWEST	-167
STATE TOTAL	-883

CALCULATED NEED

Calculated Need is the municipality's estimated obligation under the *Mount Laurel* mandate for the period 1987 to 1999. It is municipal

affordable housing need *after* the prior-cycle reduction, prior-cycle credits, and the 20-percent cap. Relative to other municipalities, and taking into account existing jobs and job growth, undeveloped land, aggregate income, and what affordable housing activity has been undertaken locally this is the need that the municipality must address.

CALCULATED NEED BY REGION

NORTHEAST	19,701
NORTHWEST	10,703
WEST CENTRAL	8,693
EAST CENTRAL	22,203
SOUTHWEST	13,015
SOUTH-SOUTHWEST	11,993
STATE TOTAL	86,308

PRIOR-CYCLE VACANT LAND ADJUSTMENT COMMUNITIES

Communities that received a vacant land adjustment in the first affordable housing cycle (1987-1993) from COAH or the courts are indicated with both a Calculated Need number and a "VL" designation for the second round (1993-1999). The VL designation indicates that the Council has developed a streamlined process for these communities to receive certification. The Calculated Need is retained in the system as a goal for future affordable housing efforts as development and redevelopment occur in the community.

ATTACHMENT

URBAN AID CITIES BY COUNTY THAT MEET THE CRITERIA SPECIFIED UNDER DISTRIBUTION OF NEED*

(FISCAL YEAR 1993)

ATLANTIC

Pleasantville City

BERGEN

Garfield City
Lodi Borough

BURLINGTON

Mount Holly Township
Pemberton Township

CAMDEN

Camden City
Gloucester City
Pennsauken Township

CAPE MAY

Wildwood City

CUMBERLAND

Bridgeton City
Millville City
Vineland City

ESSEX

Belleville Township
Bloomfield Township
East Orange City
Irvington Township
Newark City
City of Orange Township

GLOUCESTER

Glassboro Borough
Paulsboro Borough
Woodbury City

HUDSON

Bayonne City
Hoboken City
Jersey City City
North Bergen Township
Union City City
West New York Town

HUNTERDON

None

MERCER

Trenton City

MIDDLESEX

Carteret Borough
New Brunswick City
Perth Amboy City

MONMOUTH

Asbury Park City
Keansburg Borough
Long Branch City
Neptune Township

MORRIS

None

OCEAN

Lakewood Township

PASSAIC

Passaic City
Paterson City

SALEM

Penns Grove Borough
Salem City

SOMERSET

None

SUSSEX

None

UNION

Elizabeth City
Hillside Township
Plainfield City
Roselle Borough

WARREN

Phillipsburg Town

*These 45 municipalities do not receive either Reallocated Present Need or Prospective Need.

NOTES

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8. 42 U.S.C. 1401, Section 3(b)(2).
9. *See,* for example, U.S. Bureau of the Census, *Measuring the Quality of Housing: An Appraisal of Census Statistics and Methods* (Washington, D.C.: Government Printing Office, 1967); and U.S. Bureau of the Census, *A Preliminary Look at the Results of the Five City Survey* (Washington, D.C., July 9, 1975).
10. Beaton, W. Patrick, "The Use of Combinatorial Indices in Housing Quality Specification." Paper presented to the October 1984 meeting of the ACSP Conference, New York. Beaton, W. Patrick, "Quality Judgments, Quality Analysis, and Housing Policy Analysis" (unpublished paper). Beaton's data are derived from the probabilities of the *Five City Study* (see Note 34).
11. Burchell, Robert W. et al., *Mount Laurel II: Challenge and Delivery of Low-Cost Housing* (New Brunswick, N.J.: Center for Urban Policy Research, 1983), p. 112.
12. Data reflecting the lack of public sewer, septic tank, or cesspool have been retained in the *American Housing Survey.* So, too, are data reflecting the lack of city water or a drilled/dug well. The retention of these data points to their growing importance as surrogates of deteriorated housing.
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14. U.S. Department of Commerce, Bureau of the Census, *The 1990 Census of Population and Housing* (Washington, D.C.: U.S. Government Printing office, 1982).
15. *See Countryside Properties, Inc. et al. v. Mayor and Council of the Borough of Ringwood and Planning Board of Ringwood et al.,* Law Division, Docket No. L-42095-81, July 24, 1984.
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17. For discussion of fair share allocation criteria, *see* New Jersey Department of Community Affairs, "Fair Housing Act Issue Papers" (Trenton, NJ: Division of Housing and Development, January 10, 1986); New Jersey Department of Community Affairs, *Mount Laurel II: Methods of Calculating Municipal Fair Share* (Trenton, NJ: Division of Housing and Development, undated); Listokin, David, *Fair Share Housing Allocation* (New Brunswick, NJ: Center for Urban Policy Research, 1976); Brooks, Mary P., *Lower Income Housing: The Planner's Response* (Chicago: American Society of Planning Officials, 1972); and Burchell, Robert W. et al., *Mount Laurel II: Challenge and Delivery of Low-Cost Housing,* Chapter 7.
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21. State of New Jersey, Department of Labor, Division of Planning and Research, Office of Demographic and Economic Analysis, *Population Projections—New Jersey and Counties: 2000-2030* (Trenton, NJ: Division of Planning and Research, August 1992).
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23. *See* Burchell, Robert W. and Listokin, David, *The Adaptive Reuse Handbook* (New Brunswick, NJ: Center for Urban Policy Research, 1981), Chapter 1, "Property Abandonment in the United States".
24. Center for Urban Policy Research, analysis, *American Housing Survey 1980-1987—Metropolitan Areas of New Jersey.*
25. State of New Jersey, Department of Labor, Division of Planning and Research, *Residential Building Permits* (series—annual 1990 and previous dates).
26. Ibid.
27. *See,* for example, Lansing, J.B. et al., "New Homes and Poor People—Study of Chains of Moves." *Geographical Analysis,* Vol. 6, No. 1 (1974), pp. 95-99; Kristof, F.S., "Federal Housing Policies—Subsidized Production, Filtration, and Objectives," *Land Economics,* Vol. 49, No. 2 (1983), pp. 163-174. *See also* Downs, Anthony, "New Jersey and Other Locations: The Filtering Process as a Source of Housing for Low-Income Households" (Trenton, NJ: New Jersey Council on Affordable Housing, October 1990).
28. Center for Urban Policy Research, analysis of *American (Annual) Housing Survey—1985-1989—Metropolitan Areas of New Jersey.*
29. Ibid.
30. U.S. Department of Housing and Urban Development, "Additions to the Housing Supply by Means Other Than New Construction" (December 1982). Paper prepared by the Division of Housing and Demographic Analysis, Office of Policy Development and Research. *See also* McGough, Duane, "A Second Look at Non-New Construction Additions to Housing Supply: The Implications for the New Jersey Housing Methodology" (Trenton, NJ: New Jersey Council on Affordable Housing), October 1990.
31. Center for Urban Policy Research, analysis, *American Housing Survey 1980-1987—Metropolitan Areas of New Jersey.*
32. 1990 rather than 1993 is used as a base to tabulate the share of multifamily units as demolitions over the period 1990-1992 are not available by structure type. It is possible to estimate total 1993 occupied housing units, but the distribution by structure type cannot accurately be determined without demolition information by structure type.
33. U.S. Department of Housing and Urban Development, "Additions to the Housing Supply by Means Other Than New Construction."
34. Burchell et al., *Mount Laurel II, op. cit.,* Chapter 5, Part IV.
35. The regional share of the summed differences from lowest statewide median household income (weighted and unweighted averages) is used to allocate the spontaneous rehabilitation credit.
36. Black, J. Thomas, "Private-Market Housing Restoration in Central Cities: A ULI Survey." *Urban Land,* November 1975, p. 3; Schaaf, A.H., "Economic Feasibility Analysis for Urban Renewal Housing Rehabilitation," *Journal of the American Institute of Planners,* Vol. 35, No. 6 (November 1969), p. 399.

EXHIBIT 1

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY MUNICIPALITY

(Part I)

EXHIBIT 1
NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
BASE DATA FOR MUNICIPAL LOW & MODERATE INCOME
HOUSING NEED CALCULATION
3-FEB-93

COUNTY	NAME	SUBREG MULTI INDEX NEED (1)	MUNIC. SINGLE INDEX NEED (2)	SUBREG SINGLE INDEX NEED (3)	1993 OCCUPIED HOUSING EST. (4)	% REG. VACANT AREA (5)	% REG. EQUAL. NON-RESID VALUE (6)	REG. INCOME DIFF. (7)	% REG. EQUAL. NONRES VALUE CHANGE (8)	PRES. NEED ALLOCA FACTOR (9)	PROS. NEED ALLOCA FACTOR (10)	1990 LOW- MOD INCOME SUBREG PERCENT (11)
	JOHNSONVILLE	364	410	4544	12695	4.109	8.293	3.840	10.987	5.414	6.312	24.0
ATLANTIC												
	ABSECON CITY	1832	462	20838	2664	1.569	.846	2.582	.871	1.666	1.674	43.0
	ATLANTIC CITY	1832	7357	20838	15612	1.012	58.768	1.583	63.973	20.454	22.189	43.0
	BRIGANTINE CITY	1832	362	20838	5064	0.000	.525	3.135	.211	1.220	1.115	43.0
	BUENA BORO.	1832	408	20838	1700	.302	.283	.820	.189	.468	.437	43.0
	BUENA VISTA TWP.	1832	631	20838	2717	.001	.247	1.180	.163	.476	.448	43.0
	CORBIN CITY	1832	47	20838	172	0.000	.019	.549	.016	.189	.188	43.0
	EGG HARBOR TWP.	1832	997	20838	9616	15.990	4.857	5.862	5.450	8.903	9.101	43.0
	EGG HARBOR CITY	1832	746	20838	1706	1.307	.311	.921	.253	.846	.827	43.0
	ESTELL MANOR CITY	1832	137	20838	462	0.000	.025	1.078	.009	.368	.362	43.0
	FOLSOM BORO.	1832	134	20838	703	0.000	.173	1.154	.083	.442	.412	43.0
	GALLOWAY TWP.	1832	1041	20838	8440	9.477	1.406	6.312	1.189	5.731	5.659	43.0
	HAMILTON TWP.	1832	794	20838	5947	6.954	3.226	4.448	4.277	4.876	5.226	43.0
	HAMMONTON TOWN	1832	1319	20838	4523	4.185	1.523	2.636	1.338	2.781	2.720	43.0
	LINWOOD CITY	1832	313	20838	2430	.715	.743	3.617	.698	1.691	1.676	43.0
	LONGPORT BORO.	1832	75	20838	600	.027	.071	.831	.005	.310	.288	43.0
	MARGATE CITY	1832	733	20838	3885	.094	.656	3.159	.561	1.303	1.272	43.0
	MULLICA TWP.	1832	438	20838	2009	.182	.178	1.671	.144	.677	.666	43.0
	NORTHFIELD CITY	1832	483	20838	2694	1.412	1.107	2.821	.790	1.780	1.674	43.0
	PLEASANTVILLE CITY	1832	1793	20838	6065	.	.	.	.	.	0.000	43.0
	PORT REPUBLIC CITY	1832	116	20838	357	.009	.035	1.177	.015	.407	.400	43.0
	SOMERS POINT CITY	1832	521	20838	4918	.452	1.299	2.397	1.124	1.383	1.324	43.0
	VENTNOR CITY	1832	1735	20838	4900	.201	.600	2.599	.277	1.133	1.026	43.0
	WEYMOUTH TWP.	1832	195	20838	742	0.000	.065	.893	.068	.319	.320	43.0
BERGEN												
	ALLENDALE BORO.	314	447	9239	1863	1.474	.469	1.018	.514	.987	1.002	17.7
	ALPINE BORO.	226	71	11300	542	3.777	.166	.969	.192	1.637	1.646	23.9
	BERGENFIELD BORO.	226	2152	11300	8626	.660	.719	1.293	.716	.891	.889	23.9
	BOGOTA BORO.	342	1490	13266	2771	.024	.158	.580	.120	.254	.242	38.1
	CARLSTADT BORO.	498	701	13568	2147	.439	3.575	.382	3.330	1.465	1.384	40.1
	CLIFFSIDE PARK BORO.	273	2642	13045	8978	.012	.462	1.083	.379	.519	.492	38.8
	CLOSTER BORO.	226	553	11300	2665	.656	.444	.908	.478	.669	.681	23.9
	CRESSKILL BORO.	226	499	11300	2559	.252	.333	.842	.260	.475	.451	23.9
	DEMAREST BORO.	226	316	11300	1542	.447	.082	.772	.080	.434	.433	23.9
	DUMONT BORO.	226	1562	11300	6208	.036	.256	1.108	.272	.467	.472	23.9

EAST RUTHERFORD BORO	498	1078	13568	3267	.346	1.963	.358	2.355	.889	1.019	40.1
EDGEWATER BORO.	273	743	13045	2386	.080	.746	.494	.651	.440	.408	38.8
ELMWOOD PARK BORO.	217	1005	14469	6676	.139	.901	.762	.603	.601	.501	36.8
EMERSON BORO.	226	253	11300	2208	.179	.331	.796	.277	.435	.417	23.9
ENGLEWOOD CITY	342	3097	13266	8958	1.301	1.867	1.385	1.888	1.518	1.525	38.1
ENGLEWOOD CLIFFS BOR	226	90	11300	1837	.133	2.534	1.097	2.334	1.255	1.188	23.9
FAIR LAWN BORO.	217	2080	14469	11391	.182	1.542	1.870	1.256	1.198	1.103	36.8
FAIRVIEW BORO.	273	1640	13045	4283	.001	.670	.398	.686	.356	.362	38.8
FORT LEE BORO.	273	1895	13045	15338	.217	2.997	2.171	3.358	1.795	1.915	38.8
FRANKLIN LAKES BORO.	314	253	9239	3122	4.174	1.168	1.875	1.464	2.406	2.504	17.7
GARFIELD CITY	217	4694	14469	10876	.	.	.	.	.	0.000	36.8
GLEN ROCK BORO.	314	1143	9239	3833	.762	.453	1.230	.516	.815	.836	17.7
HACKENSACK CITY	342	4106	13266	16558	.164	3.878	1.703	4.075	1.915	1.981	38.1
HARRINGTON PARK BORO	226	318	11300	1480	.256	.065	.873	.010	.398	.380	23.9
HASBROUCK HEIGHTS BO	498	1285	13568	4327	.019	.840	.735	.814	.531	.523	40.1
HAWORTH BORO.	226	274	11300	1122	.432	.210	.730	.204	.457	.455	23.9
HILLSDALE BORO.	226	645	11300	3314	1.120	.223	1.026	.174	.789	.773	23.9
HOHOKUS BORO.	314	348	9239	1373	.791	.092	1.057	.090	.647	.646	17.7
LEONIA BORO.	273	1168	13045	3208	.188	.293	.766	.370	.416	.441	38.8
LITTLE FERRY BORO.	498	750	13568	4140	.023	.627	.719	.609	.456	.450	40.1
LODI BORO.	217	2034	14469	8948	.	.	.	.	.	0.000	36.8
LYNDHURST TWP.	498	2545	13568	7104	.249	2.209	.913	2.182	1.124	1.115	40.1
MAHWAH TWP.	314	791	9239	7035	5.933	2.036	1.533	1.973	3.168	3.146	17.7
MAYWOOD BORO.	217	978	14469	3679	.014	.434	.682	.360	.377	.352	36.8
MIDLAND PARK BORO.	314	891	9239	2522	.200	.425	.653	.410	.426	.421	17.7
MONTVALE BORO.	226	230	11300	2383	1.740	2.263	1.002	2.622	1.668	1.788	23.9
MOONACHIE BORO.	498	133	13568	1086	.015	1.550	.268	1.604	.611	.629	40.1
NEW MILFORD BORO.	217	854	14469	6107	.091	.189	.942	.170	.407	.401	36.8
NORTH ARLINGTON BORO	498	1479	13568	5565	.030	.379	.704	.367	.371	.367	40.1
NORTHVALE BORO.	226	279	11300	1511	.181	.733	.586	.529	.500	.432	23.9
NORWOOD BORO.	226	278	11300	1557	1.285	.454	.707	.446	.815	.813	23.9
OAKLAND BORO.	314	295	9239	3895	2.365	.801	1.175	.751	1.447	1.430	17.7
OLD TAPPAN BORO.	226	103	11300	1317	.879	.278	.826	.277	.661	.661	23.9
ORADELL BORO.	217	598	14469	2764	.295	.437	1.198	.346	.643	.613	36.8
PALISADES PARK BORO.	273	1601	13045	5809	.004	.706	.607	.741	.439	.451	38.8
PARAMUS BORO.	217	611	14469	7739	5.249	6.410	1.764	6.067	4.475	4.360	36.8
PARK RIDGE BORO.	226	507	11300	2953	.675	.662	.905	.816	.748	.799	23.9
RAMSEY BORO.	314	635	9239	4700	.712	1.379	1.405	1.427	1.165	1.181	17.7
RIDGEFIELD BORO.	273	1014	13045	3861	.083	.978	.649	.679	.570	.470	38.8
RIDGEFIELD PK VILLAG	273	2344	13045	4936	.138	.773	.738	.959	.550	.612	38.8
RIDGEWOOD VILLAGE	314	3059	9239	8310	1.508	1.012	2.621	1.078	1.713	1.735	17.7
RIVER EDGE BORO.	217	649	14469	4049	.493	.325	.903	.287	.574	.561	36.8
RIVER VALE TWP.	226	180	11300	3175	1.393	.222	1.100	.185	.905	.893	23.9
ROCHELLE PARK TWP.	217	536	14469	2057	.110	.772	.418	.758	.433	.429	36.8
ROCKLEIGH BORO.	226	11	11300	62	.759	.679	.484	.646	.641	.630	23.9
RUTHERFORD BORO.	498	3030	13568	6619	.031	.961	1.076	.892	.690	.666	40.1
SADDLE BROOK TWP.	217	431	14469	4902	.324	1.936	.846	1.885	1.035	1.018	36.8
SADDLE RIVER BORO.	314	139	9239	1002	1.764	.037	1.537	.041	1.113	1.114	17.7
SOUTH HACKENSACK TWP	498	153	13568	736	.007	.956	.253	.764	.405	.341	40.1
TEANECK TWP.	342	4573	13266	12908	1.232	1.330	2.550	1.409	1.704	1.731	38.1
TENAFLY BORO.	226	1580	11300	4702	1.221	.596	1.500	.530	1.106	1.084	23.9
TETERBORO BORO.	498	2	13568	9	.010	.782	.388	.609	.393	.335	40.1
UPPER SADDLE RIV BOR	314	113	9239	2331	1.956	.457	1.448	.577	1.287	1.327	17.7
WALDWICK BORO.	314	485	9239	3298	.419	.329	.951	.291	.566	.554	17.7
WALLINGTON BORO.	498	1278	13568	4696	.069	.370	.409	.289	.283	.256	40.1
WASHINGTON TWP.	226	114	11300	3100	.606	.048	1.120	.012	.591	.579	23.9
WESTWOOD BORO.	226	1089	11300	4111	.777	.672	.769	.636	.739	.727	23.9
WOODCLIFF LAKE BORO.	226	194	11300	1654	1.108	1.022	1.127	1.235	1.086	1.157	23.9

	WOOD-RIDGE BORO.	498	1132	13568	2891	.178	.454	.714	-.034	.449	.286	40.1
	WYCKOFF TWP.	314	640	9239	5072	2.361	.494	1.811	.437	1.555	1.536	17.7
BURLINGTON												
	BASS RIVER TWP.	918	244	7618	568	0.000	.156	.284	.135	.147	.140	45.8
	BEVERLY CITY	585	537	10838	1031	.018	.100	.300	.081	.139	.133	37.5
	BORDENTOWN CITY	585	945	10838	1828	.058	.663	.629	.793	.450	.493	37.5
	BORDENTOWN TWP.	585	317	10838	2944	1.982	1.469	1.030	1.388	1.494	1.466	37.5
	BURLINGTON CITY	585	1582	10838	3892	.483	1.412	.569	1.155	.821	.736	37.5
	BURLINGTON TWP.	585	704	10838	4612	4.102	3.118	1.141	3.022	2.787	2.755	37.5
	CHESTERFIELD TWP.	918	272	7618	984	.023	.180	.768	.167	.324	.319	45.8
	CINNAMINSON TWP.	585	444	10838	4877	1.203	2.386	1.800	2.306	1.796	1.770	37.5
	DELANCO TWP.	585	499	10838	1216	.658	.491	.482	.407	.544	.516	37.5
	DELRAN TWP.	585	512	10838	4537	1.232	1.372	1.480	1.294	1.361	1.335	37.5
	EASTAMPTON TWP.	918	145	7618	2001	.643	.109	.777	.057	.509	.492	45.8
	EDGEWATER PARK TWP.	585	417	10838	3256	.311	.550	.972	.464	.611	.582	37.5
	EVESHAM TWP.	364	344	4544	13405	1.683	3.935	4.127	5.119	3.249	3.643	24.0
	FIELDSBORO BORO.	585	98	10838	189	.057	.088	.353	.084	.166	.165	37.5
	FLORENCE TWP.	585	1575	10838	3904	.751	.825	.933	.576	.836	.753	37.5
	HAINESPORT TWP.	918	268	7618	1196	2.027	.611	.508	.600	1.049	1.045	45.8
	LUMBERTON TWP.	918	371	7618	2713	2.203	1.004	.858	1.036	1.355	1.366	45.8
	MANSFIELD TWP.	918	309	7618	1591	1.295	.330	.559	.292	.728	.715	45.8
	MAPLE SHADE TWP.	364	1044	4544	8830	.147	1.552	1.319	1.383	1.006	.950	24.0
	MEDFORD TWP.	364	559	4544	7283	2.542	1.684	3.065	1.897	2.430	2.501	24.0
	MEDFORD LAKES BORO.	364	148	4544	1569	.022	.049	1.195	.039	.422	.419	24.0
	MOORESTOWN TWP.	364	1556	4544	6002	3.148	5.082	2.328	4.542	3.519	3.339	24.0
	MOUNT HOLLY TWP.	918	1441	7618	3691	.	.	.	.	.	0.000	45.8
	MOUNT LAUREL TWP.	364	410	4544	12695	4.109	8.293	3.840	10.987	5.414	6.312	24.0
	NEW HANOVER TWP.	918	145	7618	864	.003	.106	.295	.092	.135	.130	45.8
	NORTH HANOVER TWP.	918	540	7618	3280	0.000	.285	.494	.270	.260	.255	45.8
	PALMYRA BORO.	585	1105	10838	2909	.335	.361	.761	.295	.486	.464	37.5
	PEMBERTON BORO.	918	229	7618	497	0.000	.072	.285	.059	.119	.115	45.8
	PEMBERTON TWP.	918	1539	7618	10530	.	.	.	.	.	0.000	45.8
	RIVERSIDE TWP.	585	1478	10838	3070	.137	.546	.563	.560	.415	.420	37.5
	RIVERTON BORO.	585	626	10838	1068	.018	.108	.648	.109	.258	.258	37.5
	SHAMONG TWP.	918	120	7618	1898	.282	.113	1.137	.117	.511	.512	45.8
	SOUTHAMPTON TWP.	918	586	7618	4595	.307	.383	.746	.316	.479	.457	45.8
	SPRINGFIELD TWP.	918	261	7618	1039	.003	.218	.644	.228	.288	.292	45.8
	TABERNACLE TWP.	918	194	7618	2404	.489	.111	1.276	.098	.625	.621	45.8
	WASHINGTON TWP.	918	123	7618	302	0.000	.065	.295	-.004	.120	.097	45.8
	WESTAMPTON TWP.	918	133	7618	2204	3.019	.477	1.119	.537	1.538	1.558	45.8
	WILLINGBORO TWP.	364	484	4544	11255	.448	.678	3.078	.422	1.401	1.316	24.0
	WOODLAND TWP.	918	117	7618	425	0.000	.143	.435	.156	.193	.197	45.8
	WRIGHTSTOWN BORO.	918	581	7618	1268	0.000	.104	.119	.043	.075	.054	45.8
CAMDEN												
	AUDUBON BORO.	468	1750	11634	3600	.017	.574	.849	.379	.480	.415	42.2
	AUDUBON PARK BORO.	468	50	11634	495	.007	.001	.137	-.072	.048	.024	42.2
	BARRINGTON BORO.	468	487	11634	2678	.067	.462	.689	.234	.406	.330	42.2
	BELLMAWR BORO.	468	512	11634	4665	.292	1.323	.907	1.125	.841	.775	42.2
	BERLIN BORO.	492	335	7425	1980	.698	.790	.699	.892	.729	.763	38.1
	BERLIN TWP.	492	318	7425	1783	.405	.981	.609	1.425	.665	.813	38.1
	BROOKLAWN BORO.	468	391	11634	705	.059	.218	.290	.185	.189	.178	42.2
	CAMDEN CITY	1563	16363	20247	26016	.	.	.	.	.	0.000	62.6
	CHERRY HILL TWP.	251	975	6279	24903	1.872	16.950	7.804	18.197	8.875	9.291	29.5
	CHESILHURST BORO.	492	80	7425	492	.272	.024	.292	.020	.196	.195	38.1
	CLEMENTON BORO.	492	732	7425	2307	.085	.249	.429	.187	.255	.234	38.1
	COLLINGSWOOD BORO.	251	3100	6279	6350	.079	.781	1.019	.629	.626	.576	29.5
	GIBBSBORO BORO.	492	133	7425	751	.568	.449	.630	.662	.549	.620	38.1
	GLOUCESTER TWP.	492	1370	7425	19255	4.213	1.635	3.970	1.479	3.273	3.221	38.1
	GLOUCESTER CITY	468	2481	11634	4577	.	.	.	.	.	0.000	42.2
	HADDON TWP.	251	1788	6279	6209	.131	1.140	1.204	1.046	.825	.794	29.5

	HADDONFIELD BORO.	468	2210	11634	4484	.118	1.335	1.969	1.152	1.141	1.080	42.2
	HADDON HEIGHTS BORO.	468	1279	11634	3025	.049	.442	.847	.407	.446	.434	42.2
	HI-NELLA BORO.	492	81	7425	467	.028	.044	.150	.024	.074	.067	38.1
	LAUREL SPRINGS BORO.	492	349	7425	820	.006	.137	.436	.114	.193	.185	38.1
	LAWNSIDE BORO.	468	141	11634	1043	.140	.382	.333	.338	.285	.270	42.2
	LINDENWOLD BORO.	492	874	7425	8202	.372	.466	1.150	.420	.662	.647	38.1
	MAGNOLIA BORO.	468	450	11634	1768	.022	.241	.435	.176	.233	.211	42.2
	MERCHANTVILLE BORO.	1563	861	20247	1573	.005	.224	.473	.185	.234	.221	62.6
	MOUNT EPHRAIM BORO.	468	365	11634	1773	.014	.273	.530	.199	.272	.248	42.2
	OAKLYN BORO.	468	795	11634	1844	.019	.222	.459	.209	.233	.229	42.2
	PENNSAUKEN TWP.	1563	3023	20247	12423	.	.	.	.	.	0.000	62.6
	PINE HILL BORO.	492	620	7425	3961	.680	.098	.731	.083	.503	.498	38.1
	PINE VALLEY BORO.	492	7	7425	10	.202	.041	.924	.064	.389	.397	38.1
	RUNNEMEDE BORO.	468	490	11634	3418	.076	.534	.657	.471	.422	.401	42.2
	SOMERDALE BORO.	468	233	11634	2069	.064	.561	.548	.663	.391	.425	42.2
	STRATFORD BORO.	492	340	7425	2698	.046	.713	.862	.649	.540	.519	38.1
	TAVISTOCK BORO.	468	0	11634	11	.097	.022	2.000	.024	.706	.707	42.2
	VOORHEES TWP.	492	409	7425	9602	1.603	4.932	3.102	5.483	3.212	3.396	38.1
	WATERFORD TWP.	492	534	7425	3600	.552	.340	1.139	.288	.677	.660	38.1
	WINSLOW TWP.	492	1243	7425	10187	4.852	1.100	2.145	1.047	2.699	2.681	38.1
	WOODLYNNE BORO.	251	417	6279	884	.004	.042	.202	.018	.083	.075	29.5
CAPE MAY												
	AVALON BORO.	1105	100	15825	868	0.000	.856	1.095	.423	.650	.506	41.5
	CAPE MAY CITY	1105	494	15825	1914	0.000	1.840	.879	2.016	.906	.965	41.5
	CAPE MAY POINT BORO.	1105	55	15825	145	0.000	.011	.225	.013	.079	.080	41.5
	DENNIS TWP.	1105	503	15825	1856	1.623	.318	2.017	.373	1.319	1.338	41.5
	LOWER TWP.	1105	1205	15825	8777	3.187	1.628	2.583	1.496	2.466	2.422	41.5
	MIDDLE TWP.	1105	1287	15825	5549	5.078	1.778	2.422	1.861	3.093	3.120	41.5
	NORTH WILDWOOD CITY	1105	493	15825	2205	0.000	1.624	.524	.469	.716	.331	41.5
	OCEAN CITY CITY	1105	1685	15825	7315	0.000	2.424	3.385	1.789	1.936	1.725	41.5
	SEA ISLE CITY CITY	1105	246	15825	1230	0.000	.538	.980	.354	.506	.445	41.5
	STONE HARBOR BORO.	1105	104	15825	544	0.000	.899	.881	.823	.593	.568	41.5
	UPPER TWP.	1105	564	15825	3915	6.968	.962	3.750	.926	3.893	3.881	41.5
	WEST CAPE MAY BORO.	1105	175	15825	473	0.000	.105	.333	.120	.146	.151	41.5
	WEST WILDWOOD BORO.	1105	47	15825	215	0.000	.022	.147	.019	.056	.055	41.5
	WILDWOOD CITY	1105	738	15825	1896	.	.	.	.	.	0.000	41.5
	WILDWOOD CREST BORO.	1105	311	15825	1641	0.000	2.431	.960	1.368	1.130	.776	41.5
	WOODBINE BORO.	1105	274	15825	702	3.089	.153	.334	.164	1.192	1.196	41.5
CUMBERLAND												
	BRIDGETON CITY	1459	3167	14996	6715	.	.	.	.	.	0.000	45.0
	COMMERCIAL TWP.	1459	560	14996	1781	0.000	.126	.885	.124	.337	.336	45.0
	DEERFIELD TWP.	1459	315	14996	1012	0.000	.091	.789	.073	.294	.287	45.0
	DOWNE TWP.	1459	335	14996	636	0.000	.068	.467	.052	.178	.173	45.0
	FAIRFIELD TWP.	1459	545	14996	1869	2.911	.097	.807	.071	1.272	1.263	45.0
	GREENWICH TWP.	1459	181	14996	331	0.000	.026	.596	.017	.207	.204	45.0
	HOPEWELL TWP.	1459	335	14996	1413	4.285	.088	1.503	.100	1.959	1.963	45.0
	LAWRENCE TWP.	1459	348	14996	810	.000	.067	.772	.053	.280	.275	45.0
	MAURICE RIVER TWP.	1459	472	14996	1257	0.000	.129	.890	.066	.340	.319	45.0
	MILLVILLE CITY	1459	3118	14996	9806	.	.	.	.	.	0.000	45.0
	SHILOH BORO.	1459	87	14996	150	0.000	.010	.463	.010	.158	.158	45.0
	STOW CREEK TWP.	1459	176	14996	500	0.000	.025	.907	.021	.310	.309	45.0
	UPPER DEERFIELD TWP.	1459	505	14996	2422	10.536	.582	1.847	.348	4.322	4.244	45.0
	VINELAND CITY	1459	4851	14996	19045	.	.	.	.	.	0.000	45.0
ESSEX												
	BELLEVILLE TWP.	737	4462	25506	13280	.	.	.	.	.	0.000	39.1
	BLOOMFIELD TWP.	737	7699	25506	18158	.	.	.	.	.	0.000	39.1
	CALDWELL BORO. TWP.	45	1137	7759	3190	.009	.347	.661	.314	.339	.328	21.0
	CEDAR GROVE TWP.	45	494	7759	4114	.534	.782	1.062	.788	.793	.795	21.0
	EAST ORANGE CITY	1100	12252	21021	26603	.	.	.	.	.	0.000	53.8

	ESSEX FELLS TWP.	45	267	7759	722	.322	.040	1.112	.039	.491	.491	21.0
	FAIRFIELD TWP.	45	197	7759	2315	2.041	4.525	.949	5.254	2.505	2.748	21.0
	GLEN RIDGE BORO. TWP	737	1554	25506	2388	.016	.141	1.221	.151	.459	.462	39.1
	IRVINGTON TOWN	977	8521	15607	21674	.	.	.	.	.	0.000	48.2
	LIVINGSTON TWP.	45	768	7759	8687	2.154	3.561	2.890	3.600	2.869	2.881	21.0
	MAPLEWOOD TWP.	977	4365	15607	7780	.800	.675	1.803	.679	1.093	1.094	48.2
	MILLBURN TWP.	45	2252	7759	6792	2.096	2.718	2.778	2.087	2.531	2.320	21.0
	MONTCLAIR TWP.	737	8011	25506	14247	.319	1.204	2.567	1.315	1.363	1.400	39.1
	NEWARK CITY	6803	48278	48278	87711	.	.	.	.	.	0.000	63.3
	NORTH CALDWELL TWP.	45	176	7759	1927	.410	.074	1.421	.072	.635	.634	21.0
	NUTLEY TWP.	737	3781	25506	10425	.040	1.908	1.375	1.826	1.108	1.080	39.1
	ORANGE CITY TWP.	1100	4529	21021	11331	.	.	.	.	.	0.000	53.8
	ROSELAND BORO.	45	186	7759	1821	1.610	2.289	.752	2.812	1.550	1.725	21.0
	SOUTH ORANGE VILL TW	977	2722	15607	5084	.079	.511	1.552	.494	.714	.708	48.2
	VERONA TWP.	45	1686	7759	5453	.089	.490	1.286	.411	.621	.595	21.0
	WEST CALDWELL TWP.	45	594	7759	3501	1.417	1.502	1.251	1.427	1.390	1.365	21.0
	WEST ORANGE TWP.	1100	4239	21021	14644	3.499	2.231	2.403	2.434	2.711	2.779	53.8
GLOUCESTER												
	CLAYTON BORO.	1442	506	15315	2109	1.120	.321	.444	.216	.628	.593	41.1
	DEPTFORD TWP.	1442	891	15315	8716	4.445	3.120	1.746	2.577	3.104	2.922	41.1
	EAST GREENWICH TWP.	1442	388	15315	1767	4.560	.360	.891	.376	1.937	1.942	41.1
	ELK TWP.	1442	337	15315	1313	2.011	.089	.427	.121	.843	.853	41.1
	FRANKLIN TWP.	1442	1009	15315	4832	2.800	.483	1.043	.459	1.442	1.434	41.1
	GLASSBORO BORO.	1442	1040	15315	5126	.	.	.	.	.	0.000	41.1
	GREENWICH TWP.	1442	377	15315	1849	2.011	4.896	.639	4.031	2.515	2.227	41.1
	HARRISON TWP.	1442	417	15315	1671	3.920	.110	.790	.086	1.606	1.599	41.1
	LOGAN TWP.	1442	294	15315	1748	5.943	1.985	.794	2.590	2.907	3.109	41.1
	MANTUA TWP.	1442	761	15315	3524	4.289	.624	1.088	.518	2.000	1.965	41.1
	MONROE TWP.	1442	1262	15315	9529	4.901	1.439	1.642	1.403	2.660	2.648	41.1
	NATIONAL PARK BORO.	1442	330	15315	1115	.179	.052	.378	.038	.203	.198	41.1
	NEWFIELD BORO.	1442	193	15315	567	0.000	.168	.377	.133	.182	.170	41.1
	PAULSBORO BORO.	1442	1178	15315	2418	.	.	.	.	.	0.000	41.1
	PITMAN BORO.	1442	1378	15315	3399	.191	.554	.951	.461	.565	.534	41.1
	SOUTH HARRISON TWP.	1442	152	15315	647	.403	.015	.523	.013	.314	.313	41.1
	SWEDESBORO BORO.	1442	453	15315	731	.094	.164	.290	.116	.182	.166	41.1
	WASHINGTON TWP.	1442	490	15315	13805	3.874	2.595	4.213	3.059	3.561	3.715	41.1
	WENONAH BORO.	1442	343	15315	833	.096	.028	.761	.021	.295	.293	41.1
	WEST DEPTFORD TWP.	1442	807	15315	7670	3.740	5.009	1.586	3.513	3.445	2.946	41.1
	WESTVILLE BORO.	1442	699	15315	1837	.066	.392	.422	.313	.293	.267	41.1
	WOODBURY CITY	1442	1664	15315	4158	.	.	.	.	.	0.000	41.1
	WOODBURY HEIGHTS BOR	1442	236	15315	1115	.107	.373	.725	.231	.402	.354	41.1
	WOOLWICH TWP.	1442	112	15315	477	3.797	.269	.436	.206	1.501	1.480	41.1
HUDSON												
	BAYONNE CITY	1033	11522	21266	25950	.	.	.	.	.	0.000	50.2
	EAST NEWARK BORO.	1033	321	21266	743	.001	.132	.149	.142	.094	.097	50.2
	GUTTENBERG TOWN	5526	1015	39657	3695	.006	.195	.556	.168	.253	.243	63.3
	HARRISON TOWN	1033	2248	21266	5041	.135	1.136	.482	1.236	.584	.618	50.2
	HOBOKEN CITY	5526	9007	39657	15403	.	.	.	.	.	0.000	63.3
	JERSEY CITY	5632	47248	47248	83838	.	.	.	.	.	0.000	63.3
	KEARNY TOWN	1033	6107	21266	12746	4.978	3.159	1.276	2.889	3.137	3.047	50.2
	NORTH BERGEN TWP.	5526	7098	39657	19541	.	.	.	.	.	0.000	63.3
	SECAUCUS TOWN	1033	1069	21266	5659	4.392	6.269	1.137	7.270	3.933	4.266	50.2
	UNION CITY	5526	12307	39657	21076	.	.	.	.	.	0.000	63.3
	WEEHAWKEN TWP.	5526	3223	39657	5180	.216	1.555	.516	2.143	.762	.958	63.3
	WEST NEW YORK TOWN	5526	7007	39657	14736	.	.	.	.	.	0.000	63.3
HUNTERDON												
	ALEXANDRIA TWP.	2979	307	21228	1244	0.000	.041	.776	.033	.272	.269	40.3
	BETHLEHEM TWP.	2979	273	21228	1078	0.000	.086	.945	.090	.344	.345	40.3
	BLOOMSBURY BORO.	2979	178	21228	333	0.000	.060	.289	.048	.116	.112	40.3
	CALIFON BORO.	2979	143	21228	403	0.000	.045	.669	.048	.238	.239	40.3
	CLINTON TOWN	2979	247	21228	807	.152	.272	.663	.291	.362	.369	40.3

	CLINTON TWP.	2979	441	21228	3520	4.008	1.590	1.973	1.518	2.524	2.500	40.3
	DELAWARE TWP.	2979	613	21228	1609	.001	.093	.962	.056	.352	.340	40.3
	EAST AMWELL TWP.	2979	458	21228	1538	0.000	.145	1.075	.172	.407	.416	40.3
	FLEMINGTON BORO.	2979	683	21228	1809	.020	.721	.247	.684	.329	.317	40.3
	FRANKLIN TWP.	2979	294	21228	1024	.063	.131	.801	.123	.332	.329	40.3
	FRENCHTOWN BORO.	2979	326	21228	580	0.000	.092	.306	.088	.133	.131	40.3
	GLEN GARDNER BORO.	2979	179	21228	750	0.000	.024	.545	.024	.189	.189	40.3
	HAMPTON BORO.	2979	218	21228	577	0.000	.019	.306	.018	.108	.108	40.3
	HIGH BRIDGE BORO.	2979	508	21228	1447	0.000	.070	.674	.061	.248	.245	40.3
	HOLLAND TWP.	2979	405	21228	1764	0.000	.136	.593	.065	.243	.220	40.3
	KINGWOOD TWP.	2979	449	21228	1178	0.000	.106	.653	.102	.253	.252	40.3
	LAMBERTVILLE CITY	2979	1096	21228	1727	0.000	.281	.405	.294	.229	.233	40.3
	LEBANON BORO.	2979	152	21228	427	.170	.129	.576	.141	.292	.296	40.3
	LEBANON TWP.	2979	552	21228	1976	0.000	.182	.902	.199	.361	.367	40.3
	MILFORD BORO.	2979	202	21228	516	0.000	.113	.303	.044	.139	.116	40.3
	RARITAN TWP.	2979	504	21228	5781	3.570	1.304	2.289	1.085	2.388	2.315	40.3
	READINGTON TWP.	2979	782	21228	4781	6.019	1.208	2.071	1.451	3.099	3.180	40.3
	STOCKTON BORO.	2979	121	21228	261	0.000	.024	.257	.021	.094	.093	40.3
	TEWKSBURY TWP.	2979	398	21228	1702	.697	.189	2.025	.186	.970	.969	40.3
	UNION TWP.	2979	224	21228	1426	1.087	.400	1.017	.500	.835	.868	40.3
	WEST AMWELL TWP.	2979	235	21228	849	0.000	.115	.521	.105	.212	.208	40.3
MERCER												
	EAST WINDSOR TWP.	542	378	7340	8853	1.878	2.303	2.183	1.953	2.122	2.005	29.5
	EWING TWP.	542	1665	7340	12167	2.296	3.917	2.191	3.417	2.801	2.635	29.5
	HAMILTON TWP.	1793	5277	25835	32967	3.195	5.544	5.123	5.095	4.621	4.471	48.4
	HIGHTSTOWN BORO.	542	738	7340	2007	.049	.390	.709	.350	.383	.369	29.5
	HOPEWELL BORO.	542	392	7340	774	0.000	.172	.561	.154	.244	.238	29.5
	HOPEWELL TWP.	542	688	7340	3974	4.834	1.795	1.873	1.750	2.834	2.819	29.5
	LAWRENCE TWP.	1793	1104	25835	9342	1.856	7.767	2.373	7.278	3.999	3.835	48.4
	PENNINGTON BORO.	542	360	7340	931	.036	.195	.921	.194	.384	.384	29.5
	PRINCETON BORO.	542	1623	7340	3248	.033	1.819	.827	1.742	.893	.867	29.5
	PRINCETON TWP.	542	749	7340	5226	1.539	1.159	2.091	1.384	1.596	1.671	29.5
	TRENTON CITY	1793	19454	25835	30325	.	.	.	.	.	0.000	48.4
	WASHINGTON TWP.	542	241	7340	2482	2.940	.507	.781	.489	1.409	1.403	29.5
	WEST WINDSOR TWP.	542	506	7340	5547	5.346	4.195	2.948	4.800	4.163	4.365	29.5
MIDDLESEX												
	CARTERET BORO.	1409	1569	15810	6606	.	.	.	.	.	0.000	46.0
	CRANBURY TWP.	647	265	3720	892	1.635	.946	1.039	.821	1.207	1.165	37.6
	DUNELLEN BORO.	523	1024	7804	2447	.006	.257	.658	.198	.307	.287	34.4
	EAST BRUNSWICK TWP.	1302	797	12043	15448	.984	4.160	4.581	4.292	3.242	3.286	43.1
	EDISON TWP.	523	2530	7804	32872	2.844	12.438	6.479	13.251	7.254	7.525	34.4
	HELMETTA BORO.	647	120	3720	463	.092	.050	.351	.027	.164	.156	37.6
	HIGHLAND PARK BORO.	1302	2113	12043	5847	.059	.348	.790	.291	.399	.380	43.1
	JAMESBURG BORO.	647	421	3720	2034	.034	.134	.511	.135	.226	.227	37.6
	METUCHEN BORO.	523	1150	7804	4964	.086	.878	1.547	.832	.837	.822	34.4
	MIDDLESEX BORO.	523	781	7804	4785	.235	.920	1.173	.693	.776	.700	34.4
	MILLTOWN BORO.	1302	543	12043	2543	.054	.280	1.071	.227	.469	.451	43.1
	MONROE TWP.	647	483	3720	9889	12.031	1.947	1.444	2.115	5.141	5.197	37.6
	NEW BRUNSWICK CITY	1302	5925	12043	12762	.	.	.	.	.	0.000	43.1
	NORTH BRUNSWICK TWP.	1302	934	12043	12100	1.818	3.729	2.642	3.352	2.730	2.604	43.1
	OLD BRIDGE TWP.	647	1320	3720	20591	6.530	1.354	3.723	1.326	3.869	3.859	37.6
	PERTH AMBOY CITY	1409	6915	15810	14354	.	.	.	.	.	0.000	46.0
	PISCATAWAY TWP.	523	1659	7804	14376	3.179	7.026	3.134	6.338	4.447	4.217	34.4
	PLAINSBORO TWP.	647	265	3720	7326	2.064	3.103	1.528	3.810	2.232	2.467	37.6
	SAYREVILLE BORO.	1409	1402	15810	13087	2.965	2.346	2.322	2.022	2.544	2.436	46.0
	SOUTH AMBOY CITY	1409	1328	15810	2960	.116	.321	.438	.249	.292	.268	46.0
	SOUTH BRUNSWICK TWP.	647	589	3720	9866	7.445	6.338	2.688	7.600	5.490	5.911	37.6
	SOUTH PLAINFIELD BOR	523	661	7804	6821	.700	4.243	1.781	3.704	2.241	2.062	34.4
	SOUTH RIVER BORO.	1302	1731	12043	5127	.086	.329	.620	.281	.345	.329	43.1

	SPOTSWOOD BORO.	647	257	3720	2991	.035	.245	.668	.208	.316	.303	37.6
	WOODBRIDGE TWP.	1409	4595	15810	34085	2.090	11.644	5.306	11.045	6.347	6.147	46.0
MONMOUTH												
	ABERDEEN TWP.	423	555	8798	6035	.272	1.087	1.660	.951	1.006	.961	31.5
	ALLENHURST BORO.	731	216	13980	299	.006	.128	.573	.123	.236	.234	42.5
	ALLENTOWN BORO.	757	187	5476	671	.000	.069	.513	.106	.194	.207	27.0
	ASBURY PARK CITY	731	2989	13980	6925	.	.	.	.	.	0.000	42.5
	ATL. HIGHLANDS BORO.	423	713	8798	1791	.029	.258	.649	.234	.312	.304	31.5
	AVON BY THE SEA BORO	731	488	13980	1006	.009	.154	.326	.146	.163	.161	42.5
	BELMAR BORO.	731	1073	13980	2780	.037	.555	.371	.496	.321	.301	42.5
	BRADLEY BEACH BORO.	731	868	13980	2051	.009	.209	.278	.230	.165	.172	42.5
	BRIELLE BORO.	731	242	13980	1785	.084	.555	.884	.602	.508	.523	42.5
	COLTS NECK TWP.	757	274	5476	2738	.080	.356	1.818	.307	.752	.735	27.0
	DEAL BORO.	731	181	13980	467	.052	.113	.506	.109	.224	.222	42.5
	EATONTOWN BORO.	531	531	9889	5585	.715	4.013	.854	4.135	1.861	1.901	39.8
	ENGLISHTOWN BORO.	757	134	5476	453	.061	.109	.409	.168	.193	.213	27.0
	FAIR HAVEN BORO.	531	590	9889	1903	.035	.217	1.015	.216	.422	.422	39.8
	FARMINGDALE BORO.	757	122	5476	581	.006	.148	.372	.155	.175	.177	27.0
	FREEHOLD BORO.	757	1383	5476	3899	.034	.934	.812	.866	.593	.571	27.0
	FREEHOLD TWP.	757	450	5476	8607	5.413	2.739	2.786	2.816	3.646	3.672	27.0
	HAZLET TWP.	423	321	8798	7309	.239	1.198	1.932	1.132	1.123	1.101	31.5
	HIGHLANDS BORO.	423	664	8798	2356	.017	.296	.361	.282	.225	.220	31.5
	HOLMDEL TWP.	423	175	8798	3533	1.464	3.671	2.455	3.088	2.530	2.336	31.5
	HOWELL TWP.	757	1280	5476	13357	5.259	1.949	2.870	2.080	3.359	3.403	27.0
	INTERLAKEN BORO.	731	198	13980	380	.014	0.000	.645	0.000	.220	.220	42.5
	KEANSBURG BORO.	423	1294	8798	3878	.	.	.	.	.	0.000	31.5
	KEYPORT BORO.	423	1186	8798	3235	.031	.535	.403	.392	.323	.275	31.5
	LITTLE SILVER BORO.	531	278	9889	2048	.222	.400	1.253	.406	.625	.627	39.8
	LOCH ARBOUR VILLAGE	731	92	13980	139	.008	.018	.552	.015	.193	.191	42.5
	LONG BRANCH CITY	531	4233	9889	11651	.	.	.	.	.	0.000	39.8
	MANALAPAN TWP.	757	473	5476	8920	5.119	1.449	2.812	1.706	3.126	3.212	27.0
	MANASQUAN BORO.	731	702	13980	2262	.065	.568	.563	.490	.399	.373	42.5
	MARLBORO TWP.	757	328	5476	8579	5.622	1.340	3.602	1.473	3.521	3.565	27.0
	MATAWAN BORO.	423	444	8798	3594	.048	.512	.999	.485	.520	.510	31.5
	MIDDLETOWN TWP.	423	2808	8798	23379	2.971	6.043	5.783	7.414	4.932	5.389	31.5
	MILLSTONE TWP.	757	362	5476	1648	.016	.256	.936	.395	.403	.449	27.0
	MONMOUTH BEACH BORO.	531	250	9889	1557	.038	.129	.966	.139	.378	.381	39.8
	NEPTUNE TWP.	731	2847	13980	10574	.	.	.	.	.	0.000	42.5
	NEPTUNE CITY BORO.	731	502	13980	2154	.006	.443	.359	.384	.269	.250	42.5
	OCEAN TWP.	731	1119	13980	9575	1.419	2.529	2.090	2.324	2.013	1.945	42.5
	OCEANPORT BORO.	531	317	9889	2114	.391	.683	1.005	.348	.693	.582	39.8
	RED BANK BORO.	531	1831	9889	4688	.010	1.848	.756	1.828	.871	.865	39.8
	ROOSEVELT BORO.	757	128	5476	330	0.000	.017	.582	.017	.200	.200	27.0
	RUMSON BORO.	531	754	9889	2423	.758	.440	1.354	.450	.851	.854	39.8
	SEA BRIGHT BORO.	531	209	9889	931	0.000	.353	.467	.274	.273	.247	39.8
	SEA GIRT BORO.	731	203	13980	881	.103	.185	.791	.187	.360	.360	42.5
	SHREWSBURY BORO.	531	124	9889	1107	.187	1.317	.945	2.032	.816	1.054	39.8
	SHREWSBURY TWP.	531	75	9889	509	0.000	0.000	.203	0.000	.068	.068	39.8
	SOUTH BELMAR BORO.	731	199	13980	675	.002	.094	.222	.099	.106	.108	42.5
	SPRING LAKE BORO.	731	644	13980	1392	.073	.461	.838	.458	.457	.456	42.5
	SPRING LAKE HGTS BOR	731	326	13980	2608	.113	.396	.533	.419	.347	.355	42.5
	TINTON FALLS BORO.	531	282	9889	4650	3.470	1.683	1.452	1.537	2.201	2.153	39.8
	UNION BEACH BORO.	423	638	8798	2001	.136	.340	.519	.286	.332	.313	31.5
	UPPER FREEHOLD TWP.	757	355	5476	1117	.002	.146	.777	.133	.308	.304	27.0
	WALL TWP.	731	1091	13980	7558	7.359	3.478	1.693	3.717	4.177	4.256	42.5
	WEST LONG BRANCH BOR	531	417	9889	2514	.153	.779	.854	.713	.595	.573	39.8

MORRIS

BOONTON TOWN	213	1314	5306	3163	.099	.449	.619	.452	.389	.390	23.8
BOONTON TWP.	213	146	5306	1278	.005	.072	.648	.015	.242	.223	23.8
BUTLER BORO.	444	749	6103	2732	.136	.367	.700	.335	.401	.390	29.5
CHATHAM BORO.	357	1010	8275	3123	.376	.636	1.065	.652	.692	.698	24.4
CHATHAM TWP.	357	351	8275	3680	1.264	.210	1.573	.196	1.016	1.011	24.4
CHESTER BORO.	975	136	6713	459	0.000	.404	.438	.431	.281	.290	28.7
CHESTER TWP.	975	256	6713	1980	.027	.158	1.244	.167	.476	.479	28.7
DENVILLE TWP.	444	1019	6103	4984	7.276	.979	1.365	1.030	3.207	3.224	29.5
DOVER TOWN	975	2287	6713	5220	.255	.819	.639	.880	.571	.591	28.7
EAST HANOVER TWP.	213	251	5306	3142	3.401	2.925	1.135	3.039	2.487	2.525	23.8
FLORHAM PARK BORO.	357	240	8275	2992	4.549	2.928	1.200	2.873	2.892	2.874	24.4
HANOVER TWP.	213	421	5306	3887	5.491	4.052	1.180	3.773	3.574	3.482	23.8
HARDING TWP.	357	309	8275	1406	.029	.340	1.443	.348	.604	.607	24.4
JEFFERSON TWP.	444	932	6103	6547	.005	.308	1.196	.290	.503	.497	29.5
KINNELON BORO.	444	220	6103	2860	.969	.165	1.343	.154	.826	.822	29.5
LINCOLN PARK BORO.	444	435	6103	4003	1.378	.511	.991	.550	.960	.973	29.5
MADISON BORO.	357	1518	8275	5490	.502	1.212	1.339	1.265	1.018	1.035	24.4
MENDHAM BORO.	357	288	8275	1755	0.000	.275	1.153	.335	.476	.496	24.4
MENDHAM TWP.	357	220	8275	1648	.002	.060	1.522	.050	.528	.525	24.4
MINE HILL TWP.	975	288	6713	1235	1.616	.067	.492	.087	.725	.732	28.7
MONTVILLE TWP.	213	727	5306	5068	3.752	1.677	1.928	1.808	2.453	2.496	23.8
MORRIS TWP.	357	1031	8275	7314	4.283	3.383	2.506	3.863	3.391	3.551	24.4
MORRIS PLAINS BORO.	357	426	8275	1963	.502	1.476	.878	1.596	.952	.992	24.4
MORRISTOWN TOWN	357	2211	8275	6787	.394	3.070	.953	3.547	1.472	1.631	24.4
MOUNTAIN LAKES BORO.	213	467	5306	1254	1.158	.289	1.452	.362	.966	.991	23.8
MOUNT ARLINGTON BORO	975	194	6713	1320	0.000	.119	.433	.155	.184	.196	28.7
MOUNT OLIVE TWP.	975	986	6713	8434	.002	1.193	1.296	1.637	.830	.978	28.7
NETCONG BORO.	975	389	6713	1337	0.000	.123	.310	.107	.144	.139	28.7
PAR-TROY HILLS TWP.	213	1980	5306	18686	9.547	9.547	3.060	11.485	7.385	8.031	23.8
PASSAIC TWP.	357	672	8275	2817	.000	.273	1.114	.187	.463	.434	24.4
PEQUANNOCK TWP.	444	517	6103	4354	2.386	.558	1.086	.469	1.343	1.314	29.5
RANDOLPH TWP.	975	532	6713	7215	5.776	.937	2.021	1.039	2.912	2.945	28.7
RIVERDALE BORO.	444	225	6103	866	1.568	.385	.349	.434	.767	.783	29.5
ROCKAWAY BORO.	444	622	6103	2338	.465	.551	.560	.528	.525	.518	29.5
ROCKAWAY TWP.	444	699	6103	7100	4.466	1.779	1.638	1.486	2.628	2.530	29.5
ROXBURY TWP.	975	885	6713	6714	4.178	1.128	1.603	1.124	2.303	2.302	28.7
VICTORY GARDENS BORO	975	88	6713	496	.005	.010	.188	.002	.068	.065	28.7
WASHINGTON TWP.	975	672	6713	5167	0.000	.293	1.725	.305	.673	.677	28.7
WHARTON BORO.	444	686	6103	2085	1.223	.300	.495	.219	.673	.646	29.5

OCEAN

BARNEGAT TWP.	570	357	6808	4377	1.838	.252	.704	.257	.931	.933	53.3
BARNEGAT LIGHT BORO.	570	35	6808	346	0.000	.210	.297	.212	.169	.170	53.3
BAY HEAD BORO.	557	226	7368	549	.047	.195	.639	.187	.294	.291	46.4
BEACH HAVEN BORO.	570	171	6808	677	0.000	.527	.208	.426	.245	.211	53.3
BEACHWOOD BORO.	570	397	6808	3224	.259	.116	.731	.112	.369	.367	53.3
BERKELEY TWP.	570	640	6808	19083	3.341	1.086	.342	1.675	1.590	1.786	53.3
BRICK TWP.	557	1320	7368	26502	1.198	3.507	3.514	3.617	2.740	2.776	46.4
DOVER TWP.	557	1377	7368	28872	5.433	7.190	4.217	6.398	5.614	5.349	46.4
EAGLESWOOD TWP.	570	183	6808	560	0.000	.152	.199	.169	.117	.122	53.3
HARVEY CEDARS BORO.	570	39	6808	183	0.000	.070	.243	.047	.105	.097	53.3
ISLAND HEIGHTS BORO.	557	188	7368	574	.052	.077	.366	.065	.165	.161	46.4
JACKSON TWP.	570	973	6808	11794	12.914	1.773	2.276	1.862	5.654	5.684	53.3
LACEY TWP.	570	499	6808	8579	1.331	1.570	1.221	1.566	1.374	1.373	53.3
LAKEHURST BORO.	570	273	6808	1049	.068	.142	.143	.159	.117	.123	53.3
LAKEWOOD TWP.	557	2256	7368	17207	.	.	.	.	.	0.000	46.4
LAVALLETTE BORO.	557	153	7368	1125	0.000	.208	.249	.320	.152	.190	46.4
LITTLE EGG HARBOR TW	570	383	6808	5342	0.000	.370	.679	.388	.350	.356	53.3
LONG BEACH TWP.	570	189	6808	1726	0.000	.645	.295	.392	.314	.229	53.3
MANCHESTER TWP.	570	431	6808	20023	3.032	.767	.300	.637	1.366	1.323	53.3
MANTOLOKING BORO.	557	55	7368	172	0.000	.050	.641	.055	.231	.232	46.4
OCEAN TWP.	570	222	6808	2216	1.373	.242	.304	.251	.640	.643	53.3
OCEAN GATE BORO.	570	244	6808	883	.012	.024	.159	.022	.065	.064	53.3
PINE BEACH BORO.	570	126	6808	771	.038	.039	.378	.024	.152	.147	53.3

	PLUMSTED TWP.	570	380	6808	2187	.013	.123	.597	.119	.244	.243	53.3
	POINT PLEASANT BORO.	557	590	7368	7251	.062	1.103	1.288	1.116	.818	.822	46.4
	PT PLEASANT BEACH BO	557	674	7368	2130	.076	1.352	.414	2.086	.614	.859	46.4
	SEASIDE HEIGHTS BORO	557	280	7368	1072	0.000	.744	.021	.510	.255	.177	46.4
	SEASIDE PARK BORO.	557	249	7368	854	0.000	.338	.247	.271	.195	.173	46.4
	SHIP BOTTOM BORO.	570	148	6808	678	0.000	.443	.166	.353	.203	.173	53.3
	SOUTH TOMS RIVER BOR	570	153	6808	1097	.094	.129	.292	.097	.171	.161	53.3
	STAFFORD TWP.	570	585	6808	5499	2.662	1.166	.575	1.253	1.468	1.497	53.3
	SURF CITY BORO.	570	79	6808	690	0.000	.292	.144	.270	.145	.138	53.3
	TUCKERTON BORO.	570	301	6808	1312	0.000	.134	.170	.117	.101	.096	53.3
PASSAIC												
	BLOOMINGDALE BORO.	755	587	12245	2789	3.388	.114	.652	.092	1.384	1.377	29.2
	CLIFTON CITY	1969	8770	19507	29174	1.419	7.102	2.998	6.769	3.840	3.729	51.8
	HALEDON BORO.	755	911	12245	2536	.201	.216	.350	.161	.256	.238	29.2
	HAWTHORNE BORO.	755	2277	12245	6865	.412	.815	.973	.649	.733	.678	29.2
	LITTLE FALLS TWP.	755	1030	12245	4273	.820	.764	.737	.858	.774	.805	29.2
	NORTH HALEDON BORO.	755	517	12245	2548	1.268	.125	.672	.119	.688	.686	29.2
	PASSAIC CITY	1969	10737	19507	18727	.	.	.	.	.	0.000	51.8
	PATERSON CITY	3714	22560	22560	43743	.	.	.	.	.	0.000	63.3
	POMPTON LAKES BORO.	755	613	12245	4003	1.547	.336	.809	.307	.897	.887	29.2
	PROSPECT PARK BORO.	755	1064	12245	1795	0.000	.095	.286	.087	.127	.125	29.2
	RINGWOOD BORO.	755	475	12245	4056	.017	.132	1.118	.114	.422	.416	29.2
	TOTOWA BORO.	755	718	12245	3491	2.529	2.252	.676	2.331	1.819	1.845	29.2
	WANAQUE BORO.	755	666	12245	3197	7.482	.203	.682	.157	2.789	2.774	29.2
	WAYNE TWP.	755	1283	12245	15974	14.166	6.076	3.297	6.542	7.846	8.002	29.2
	WEST MILFORD TWP.	755	1609	12245	8680	.011	.388	1.636	.322	.679	.657	29.2
	WEST PATERSON BORO.	755	495	12245	4316	2.265	.883	.741	.961	1.296	1.322	29.2
SALEM												
	ALLOWAY TWP.	1105	375	15825	959	0.000	.037	1.241	.027	.426	.423	41.5
	CARNEYS POINT TWP.	1105	716	15825	3156	6.737	.549	2.114	.549	3.133	3.133	41.5
	ELMER BORO.	1105	307	15825	545	0.000	.110	.751	.094	.287	.282	41.5
	ELSINBORO TWP.	1105	198	15825	490	0.000	.028	.958	.046	.329	.335	41.5
	LOWER ALLOWAYS CR TW	1105	290	15825	663	0.000	.708	.980	.503	.563	.494	41.5
	MANNINGTON TWP.	1105	206	15825	527	0.000	.362	.816	.355	.393	.390	41.5
	OLDMANS TWP.	1105	233	15825	571	6.405	.382	1.031	.283	2.606	2.573	41.5
	PENNS GROVE BORO.	1105	820	15825	1896	.	.	.	.	.	0.000	41.5
	PENNSVILLE TWP.	1105	1070	15825	5310	5.292	3.061	3.602	2.445	3.985	3.780	41.5
	PILESGROVE TWP.	1105	272	15825	1090	.000	.163	1.764	.134	.642	.633	41.5
	PITTSGROVE TWP.	1105	672	15825	2733	.002	.335	1.840	.360	.726	.734	41.5
	QUINTON TWP.	1105	287	15825	952	0.000	.087	.766	.060	.285	.276	41.5
	SALEM CITY	1105	1252	15825	2585	.	.	.	.	.	0.000	41.5
	UPPER PITTSGROVE TWP	1105	347	15825	1073	0.000	.126	1.167	.107	.431	.425	41.5
	WOODSTOWN BORO.	1105	500	15825	1276	0.000	.190	1.107	.182	.432	.429	41.5
SOMERSET												
	BEDMINSTER TWP.	673	321	7780	3629	.172	1.579	1.738	1.532	1.163	1.148	30.8
	BERNARDS TWP.	673	599	7780	6599	4.412	2.820	3.157	2.139	3.463	3.236	30.8
	BERNARDSVILLE BORO.	673	605	7780	2485	.389	.590	1.659	.593	.879	.880	30.8
	BOUND BROOK BORO.	673	1502	7780	3699	.085	.308	.455	.172	.283	.237	30.8
	BRANCHBURG TWP.	277	272	6230	3907	2.978	1.257	2.098	1.185	2.111	2.087	32.0
	BRIDGEWATER TWP.	673	1087	7780	11563	6.299	5.648	4.142	5.731	5.363	5.390	30.8
	FAR HILLS BORO.	673	116	7780	251	.001	.098	.623	.111	.241	.245	30.8
	FRANKLIN TWP.	277	1414	6230	16763	4.558	5.946	4.039	7.259	4.848	5.285	32.0
	GREEN BROOK TWP.	673	180	7780	1447	.997	.658	.977	.666	.877	.880	30.8
	HILLSBOROUGH TWP.	277	663	6230	10780	7.040	1.157	3.416	1.147	3.871	3.868	32.0
	MANVILLE BORO.	277	812	6230	4152	.075	.459	.521	.258	.352	.285	32.0
	MILLSTONE BORO.	277	48	6230	170	.102	.011	.541	.010	.218	.218	32.0
	MONTGOMERY TWP.	277	303	6230	3216	3.728	1.345	2.134	1.247	2.402	2.370	32.0

	NORTH PLAINFIELD BOR	673	2294	7780	7333	.041	.559	1.118	.474	.573	.544	30.8
	PEAPACK GLADSTONE BO	673	325	7780	784	0.000	1.272	.852	1.104	.708	.652	30.8
	RARITAN BORO.	277	777	6230	2305	.339	1.130	.419	.953	.629	.570	32.0
	ROCKY HILL BORO.	277	90	6230	281	.111	.030	.644	.024	.261	.259	32.0
	SOMERVILLE BORO.	277	1417	6230	4557	.092	1.019	.670	.889	.594	.551	32.0
	SOUTH BOUND BROOK BO	277	435	6230	1617	.001	.087	.443	.065	.177	.170	32.0
	WARREN TWP.	673	552	7780	3633	6.164	2.350	2.237	3.133	3.583	3.844	30.8
	WATCHUNG BORO.	673	198	7780	1764	1.537	1.065	1.780	1.044	1.461	1.454	30.8
SUSSEX												
	ANDOVER BORO.	810	139	9373	269	0.000	.042	.180	.041	.074	.074	31.3
	ANDOVER TWP.	810	285	9373	1799	0.000	.223	.598	.212	.274	.270	31.3
	BRANCHVILLE BORO.	810	178	9373	364	0.000	.151	.192	.147	.114	.113	31.3
	BYRAM TWP.	810	385	9373	2792	0.000	.124	.809	.140	.311	.317	31.3
	FRANKFORD TWP.	810	507	9373	1768	0.000	.128	.521	.148	.216	.223	31.3
	FRANKLIN BORO.	810	661	9373	1906	0.000	.197	.310	.193	.169	.168	31.3
	FREDON TWP.	810	166	9373	946	0.000	.040	.509	.041	.183	.183	31.3
	GREEN TWP.	810	158	9373	887	0.000	.037	.499	.037	.179	.179	31.3
	HAMBURG BORO.	810	223	9373	993	0.000	.086	.340	.069	.142	.136	31.3
	HAMPTON TWP.	810	187	9373	1695	0.000	.180	.463	.202	.215	.222	31.3
	HARDYSTON TWP.	810	273	9373	2008	0.000	.117	.493	.105	.203	.199	31.3
	HOPATCONG BORO.	810	865	9373	5655	0.000	.105	1.013	.108	.373	.374	31.3
	LAFAYETTE TWP.	810	207	9373	668	0.000	.186	.426	.221	.204	.216	31.3
	MONTAGUE TWP.	810	194	9373	1061	0.000	.080	.272	.063	.117	.111	31.3
	NEWTON TOWN	810	1084	9373	3032	0.000	.334	.315	.329	.216	.214	31.3
	OGDENSBURG BORO.	810	199	9373	907	0.000	.040	.354	-.039	.131	.105	31.3
	SANDYSTON TWP.	810	224	9373	691	0.000	.040	.220	.037	.087	.086	31.3
	SPARTA TWP.	810	760	9373	5469	0.000	.364	1.483	.379	.616	.621	31.3
	STANHOPE BORO.	810	283	9373	1336	0.000	.052	.429	.041	.161	.157	31.3
	STILLWATER TWP.	810	474	9373	1537	0.000	.037	.441	.035	.160	.159	31.3
	SUSSEX BORO.	810	407	9373	880	0.000	.082	.104	.089	.062	.064	31.3
	VERNON TWP.	810	918	9373	7258	0.000	.561	1.344	.494	.635	.612	31.3
	WALPACK TWP.	810	22	9373	37	0.000	.003	.001	.004	.001	.001	31.3
	WANTAGE TWP.	810	575	9373	3125	0.000	.229	.655	.261	.295	.306	31.3
UNION												
	BERKELEY HEIGHTS TWP	565	329	11555	3874	1.094	2.752	1.612	2.880	1.819	1.862	32.9
	CLARK TWP.	470	429	10892	5508	.815	1.034	1.097	.854	.982	.922	28.8
	CRANFORD TWP.	470	2620	10892	8144	.505	1.490	1.709	1.174	1.234	1.129	28.8
	ELIZABETH CITY	1659	19331	19331	38889	.	.	.	.	.	0.000	59.8
	FANWOOD BORO.	565	428	11555	2454	.004	.156	.893	.158	.351	.352	32.9
	GARWOOD BORO.	470	520	10892	1666	.016	.391	.368	.327	.258	.237	28.8
	HILLSIDE TWP.	434	2644	14263	7077	.	.	.	.	.	0.000	38.8
	KENILWORTH BORO.	434	423	14263	2763	.620	1.489	.450	1.415	.853	.828	38.8
	LINDEN CITY.	434	3311	14263	14352	2.701	7.564	1.201	4.665	3.822	2.856	38.8
	MOUNTAINSIDE BORO.	470	221	10892	2395	1.551	.867	1.196	.738	1.205	1.162	28.8
	NEW PROVIDENCE BORO.	565	485	11555	4248	.409	1.213	1.308	1.093	.977	.937	32.9
	PLAINFIELD CITY	565	6670	11555	15065	.	.	.	.	.	0.000	32.9
	RAHWAY CITY	470	2707	10892	9581	.294	1.766	1.139	1.674	1.067	1.036	28.8
	ROSELLE BORO.	434	2392	14263	7585	.	.	.	.	.	0.000	38.8
	ROSELLE PARK BORO.	434	1852	14263	5057	.007	.299	.788	.251	.365	.349	38.8
	SCOTCH PLAINS TWP.	565	918	11555	7650	2.893	.618	1.810	.543	1.774	1.749	32.9
	SPRINGFIELD TWP.	470	663	10892	5778	1.694	1.622	1.079	1.435	1.465	1.403	28.8
	SUMMIT CITY	565	2726	11555	7643	.732	2.015	2.217	2.018	1.654	1.655	32.9
	UNION TWP.	434	3641	14263	18877	.892	4.556	2.254	4.413	2.568	2.520	38.8
	WESTFIELD TOWN	470	3650	10892	10256	.470	1.241	2.835	1.244	1.515	1.516	28.8
	WINFIELD TWP.	470	82	10892	691	.005	.003	.100	.003	.036	.036	28.8
WARREN												
	ALLAMUCHY TWP.	2979	175	21228	1557	0.000	.057	.634	.047	.230	.227	40.3
	ALPHA BORO.	2979	389	21228	971	.180	.095	.197	.097	.157	.158	40.3
	BELVIDERE TOWN	2979	518	21228	1038	0.000	.188	.203	.163	.130	.122	40.3
	BLAIRSTOWN TWP.	2979	417	21228	1852	0.000	.173	.607	.166	.260	.258	40.3
	FRANKLIN TWP.	2979	384	21228	848	0.000	.069	.373	.062	.148	.145	40.3
	FRELINGHUYSEN TWP.	2979	226	21228	625	0.000	.028	.346	.016	.125	.121	40.3

GREENWICH TWP.	2979	317	21228	669	.131	.131	.302	.158	.188	.197	40.3
HACKETTSTOWN TOWN	2979	844	21228	3030	0.000	.636	.458	.660	.364	.373	40.3
HARDWICK TWP.	2979	134	21228	406	0.000	.021	.295	.029	.105	.108	40.3
HARMONY TWP.	2979	314	21228	960	.360	.649	.334	1.001	.448	.565	40.3
HOPE TWP.	2979	197	21228	621	0.000	.031	.411	.034	.148	.148	40.3
INDEPENDENCE TWP.	2979	283	21228	1499	0.000	.062	.425	.060	.163	.162	40.3
KNOWLTON TWP.	2979	345	21228	907	0.000	.084	.294	.090	.126	.128	40.3
LIBERTY TWP.	2979	222	21228	878	0.000	.024	.404	.025	.143	.143	40.3
LOPATCONG TWP.	2979	399	21228	2026	1.799	.303	.304	.351	.802	.818	40.3
MANSFIELD TWP.	2979	376	21228	2849	0.000	.180	.455	.167	.212	.207	40.3
OXFORD TWP.	2979	326	21228	690	0.000	.051	.215	.051	.089	.089	40.3
PAHAQUARRY TWP.	2979	6	21228	9	0.000	0.000	.092	0.000	.031	.031	40.3
PHILLIPSBURG TOWN	2979	3186	21228	6183	.	.	.	.	.	0.000	40.3
POHATCONG TWP.	2979	426	21228	1323	.309	.212	.324	.256	.282	.296	40.3
WASHINGTON BORO.	2979	954	21228	2637	0.000	.281	.355	.240	.212	.198	40.3
WASHINGTON TWP.	2979	408	21228	1875	0.000	.161	.618	.180	.260	.266	40.3
WHITE TWP.	2979	396	21228	1337	0.000	.459	.330	.290	.263	.207	40.3

EXHIBIT 2

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY REGION

Exhibit 2
BASE DATA BY HOUSING REGION

COAH Region	COLUMN A Percent Deficient	COLUMN B Excess Deficient Housing Units	COLUMN C 1993-1999 Regional Prospective Need	COLUMN D 1993-1999 Filtering Projections	COLUMN E 1990 Multifamily (5 Units or More) Unit Total	COLUMN F 1990 Pre-1940 Units
Northeast	.0290	7,002	4,787	4,895	193,286	255,434
Northwest	.0250	5,306	1,033	4,535	156,893	206,403
West Central	.0180	1,477	8,654	2,830	70,199	61,647
East Central	.0120	1,329	14,424	3,550	74,459	93,848
Southwest	.0150	1,751	8,993	2,994	63,582	80,208
South-Southwest	.0220	676	4,236	1,382	41,231	58,521
New Jersey		17,542	42,127	20,185	599,650	756,061

COAH Region	COLUMN G 1993-1999 Conversion Projections	COLUMN H 1990 2-4 Family Unit Totals	COLUMN I 1993-1999 Spontaneous Rehabilitation Projections	COLUMN J 1989 Regional Household Income Floor ($)	COLUMN K 1989 Weighted Regional Income Differences ($)	COLUMN L 1989 Unweighted Regional Income Differences ($)
Northeast	2,649	218,392	710	20,515	19,234,394,000	4,393,888
Northwest	2,229	150,817	597	23,705	16,299,646,900	3,698,545
West Central	930	44,103	249	31,008	8,828,753,140	1,835,119
East Central	886	45,844	237	22,719	11,539,122,100	2,526,644
Southwest	881	27,265	236	19,015	10,120,912,300	2,557,328
South-Southwest	775	40,576	207	18,343	3,422,312,000	1,234,261
New Jersey	8,351	526,997	2,237	—	69,445,140,000	16,245,786

EXHIBIT 3

Agency Note: COAH is replacing the orginally proposed Exhibit 3 at 25 N.J.R. 1174 through 1181 with the following Exhibit. The original Exhibit 3 not reproposed is **not** reproduced in brackets herein.

BASE DATA FOR MUNICIPAL HOUSING NEED CALCULATION BY MUNICIPALITY

(Part II)

EXHIBIT 3
NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
BASE DATA FOR MUNICIPAL LOW & MODERATE INCOME
HOUSING NEED CALCULATION
3-FEB-93

COUNTY	NAME	ADJUSTED PRIOR CYCLE PROSPECTIVE NEED (1)	AVERAGE DEMOLITIONS 1988-1990 (2)	1990 MULTI-FAMILY UNITS (3)	1990 PRE-1940 UNITS (4)	1990 2-4 FAMILY UNITS (5)	1993 MEDIAN HSLD. INCOME (6)	REDUCTION (1987-1993) (7)	PRIOR-CYCLE CREDITS (8)
	JOHNSONVILLE	248	5.00	2719	272	490	55927	439	101
ATLANTIC									
	ABSECON CITY	66	1.67	154	495	121	46696	0	0
	ATLANTIC CITY	1538	71.00	10725	7942	3945	22340	0	0
	BRIGANTINE CITY	74	23.00	1690	425	1870	39588	0	0
	BUENA BORO.	29	.67	87	416	350	30335	0	0
	BUENA VISTA TWP.	1	.33	6	420	64	31123	0	0
	CORBIN CITY	2	.67	0	41	7	35291	0	0
	EGG HARBOR TWP.	327	8.00	1096	568	304	41353	0	0
	EGG HARBOR CITY	18	.33	229	724	345	31794	0	0
	ESTELL MANOR CITY	2	.67	0	74	3	45834	0	0
	FOLSOM BORO.	0	0.00	0	51	8	44038	0	0
	GALLOWAY TWP.	103	0.00	1813	745	370	46138	221	0
	HAMILTON TWP.	113	4.00	948	632	241	44759	0	0
	HAMMONTON TOWN	146	3.67	494	1392	624	37895	0	0
	LINWOOD CITY	64	0.00	103	363	82	60618	0	0
	LONGPORT BORO.	27	8.33	241	197	61	37910	0	0
	MARGATE CITY	58	10.00	1396	1235	726	44714	0	0
	MULLICA TWP.	5	1.67	5	253	36	40438	0	0
	NORTHFIELD CITY	104	3.33	65	531	62	49086	0	0
	PLEASANTVILLE CITY	0	10.00	1585	1566	988	33041	0	0
	PORT REPUBLIC CITY	0	0.00	0	103	12	50366	0	0
	SOMERS POINT CITY	79	3.33	1781	420	454	34972	0	0
	VENTNOR CITY	34	11.67	1610	2791	1870	36432	0	0
	WEYMOUTH TWP.	1	.33	45	150	26	37840	0	0
BERGEN									
	ALLENDALE BORO.	24	.33	8	537	87	86197	111	0
	ALPINE BORO.	18	1.67	0	95	8	116964	0	0
	BERGENFIELD BORO.	32	3.00	1356	2320	1444	50284	0	0
	BOGOTA BORO.	9	0.00	460	1773	523	50677	0	0
	CARLSTADT BORO.	66	5.67	136	875	1303	43408	0	0
	CLIFFSIDE PARK BORO.	50	19.33	4445	3180	3307	44660	0	0
	CLOSTER BORO.	27	6.33	15	654	219	68810	0	0
	CRESSKILL BORO.	17	2.33	42	531	113	66319	0	0
	DEMAREST BORO.	14	2.00	2	340	41	74966	0	0
	DUMONT BORO.	13	0.00	714	1842	923	53654	0	0
	EAST RUTHERFORD BORO	23	.67	920	1405	1744	37306	0	0
	EDGEWATER BORO.	13	1.33	1435	816	734	48496	41	0
	ELMWOOD PARK BORO.	24	5.00	663	1026	2629	42073	0	0
	EMERSON BORO.	25	1.00	16	288	115	67559	0	0
	ENGLEWOOD CITY	53	1.00	2606	3211	1536	51434	0	0
	ENGLEWOOD CLIFFS BOR	51	14.67	14	88	40	91805	0	0
	FAIR LAWN BORO.	55	1.67	633	2396	1483	54624	0	0
	FAIRVIEW BORO.	20	6.67	1144	1713	2488	36131	0	0
	FORT LEE BORO.	128	22.00	11080	1567	2345	51034	0	0

	FRANKLIN LAKES BORO.	62	7.67	0	239	42	111091	0	0
	GARFIELD CITY	0	4.67	1394	5521	7538	34814	0	0
	GLEN ROCK BORO.	30	2.00	87	1388	103	72574	0	0
	HACKENSACK CITY	143	26.33	11174	3701	2575	42874	0	0
	HARRINGTON PARK BORO	13	.33	6	375	43	83282	0	0
	HASBROUCK HEIGHTS BO	25	.67	710	1528	732	49139	0	0
	HAWORTH BORO.	11	.67	0	315	8	79235	0	0
	HILLSDALE BORO.	24	2.33	150	785	149	68243	0	0
	HOHOKUS BORO.	10	.33	5	428	49	98957	0	0
	LEONIA BORO.	7	0.00	679	1370	557	56908	0	10
	LITTLE FERRY BORO.	14	2.33	1646	611	1198	49395	0	0
	LODI BORO.	0	8.33	1985	1932	4782	36642	0	0
	LYNDHURST TWP.	37	2.67	854	3109	3472	45100	0	0
	MAHWAH TWP.	7	6.00	1623	856	354	62115	368	0
	MAYWOOD BORO.	15	.33	377	1108	843	50160	0	0
	MIDLAND PARK BORO.	18	1.33	189	1089	438	56354	0	0
	MONTVALE BORO.	55	3.00	221	236	179	77299	0	0
	MOONACHIE BORO.	25	0.00	6	122	138	42300	0	0
	NEW MILFORD BORO.	12	0.00	706	851	1547	49060	0	0
	NORTH ARLINGTON BORO	14	3.00	1139	2000	2459	43376	0	0
	NORTHVALE BORO.	32	1.67	2	296	243	62210	0	0
	NORWOOD BORO.	19	5.00	120	301	116	70213	119	0
	OAKLAND BORO.	48	3.67	20	273	89	69722	222	0
	OLD TAPPAN BORO.	21	0.00	6	119	27	82909	95	0
	ORADELL BORO.	22	0.00	132	695	105	82856	0	0
	PALISADES PARK BORO.	15	1.00	1902	1571	2448	39621	0	0
	PARAMUS BORO.	185	0.00	2	602	399	64894	697	0
	PARK RIDGE BORO.	27	4.33	300	597	373	65758	33	36
	RAMSEY BORO.	59	7.33	496	789	333	72149	202	0
	RIDGEFIELD BORO.	13	3.00	418	1169	1803	47827	0	0
	RIDGEFIELD PK VILLAG	15	.67	1322	2780	1670	46710	0	40
	RIDGEWOOD VILLAGE	69	2.33	774	3776	750	82743	0	137
	RIVER EDGE BORO.	20	2.00	377	693	663	57339	0	0
	RIVER VALE TWP.	22	0.00	253	188	105	73125	0	0
	ROCHELLE PARK TWP.	21	.67	218	646	228	46144	9	0
	ROCKLEIGH BORO.	9	0.00	0	14	0	80543	11	0
	RUTHERFORD BORO.	68	5.67	1550	3734	1566	51149	0	0
	SADDLE BROOK TWP.	29	.33	540	514	944	50690	0	0
	SADDLE RIVER BORO.	24	6.00	1	155	3	149228	0	0
	SOUTH HACKENSACK TWP	10	.67	0	157	450	43835	0	0
	TEANECK TWP.	57	4.00	1992	5428	870	62258	0	0
	TENAFLY BORO.	43	6.00	381	1852	451	75616	0	0
	TETERBORO BORO.	63	0.00	0	3	2	69990	0	0
	UPPER SADDLE RIV BOR	45	6.00	2	131	13	103620	117	0
	WALDWICK BORO.	19	1.67	3	493	293	64924	0	0
	WALLINGTON BORO.	20	5.00	1259	1474	2488	35565	0	0
	WASHINGTON TWP.	16	1.00	14	106	33	74847	0	0
	WESTWOOD BORO.	27	2.67	868	1365	698	51553	0	0
	WOODCLIFF LAKE BORO.	34	3.67	0	231	35	97537	0	0
	WOOD-RIDGE BORO.	8	1.67	362	1392	464	56684	0	0
	WYCKOFF TWP.	45	1.00	9	768	184	83495	232	0
BURLINGTON									
	BASS RIVER TWP.	1	.33	1	196	8	35100	0	0
	BEVERLY CITY	20	0.00	28	643	223	33333	0	0
	BORDENTOWN CITY	12	1.67	276	1091	425	42625	0	0
	BORDENTOWN TWP.	75	1.00	562	218	160	48804	175	0
	BURLINGTON CITY	45	6.33	512	1834	450	32789	0	100
	BURLINGTON TWP.	208	2.67	1566	535	333	43580	0	0
	CHESTERFIELD TWP.	24	.33	0	287	36	56270	0	0
	CINNAMINSON TWP.	149	.67	90	483	63	56242	0	0
	DELANCO TWP.	17	.33	23	577	150	40660	35	0
	DELRAN TWP.	100	1.33	905	448	186	51230	0	0
	EASTAMPTON TWP.	16	0.00	352	103	222	46882	0	0
	EDGEWATER PARK TWP.	14	.33	1148	338	244	45413	0	0
	EVESHAM TWP.	240	3.33	2521	242	424	56844	0	0
	FIELDSBORO BORO.	2	.67	0	113	16	42625	0	0
	FLORENCE TWP.	79	.33	479	1776	332	41540	144	0
	HAINESPORT TWP.	38	1.33	0	282	28	41974	0	0
	LUMBERTON TWP.	28	3.33	890	281	74	45056	0	0
	MANSFIELD TWP.	42	0.00	6	291	35	41412	89	0
	MAPLE SHADE TWP.	51	2.00	4006	1025	785	36250	0	0
	MEDFORD TWP.	181	3.33	713	627	185	65817	0	0
	MEDFORD LAKES BORO.	17	0.00	0	168	7	67220	0	0
	MOORESTOWN TWP.	311	.33	567	1850	370	60317	648	16
	MOUNT HOLLY TWP.	0	2.33	351	1449	409	36880	53	0
	MOUNT LAUREL TWP.	248	5.00	2719	272	490	55927	839	0
	NEW HANOVER TWP.	0	0.00	72	71	204	33931	0	0
	NORTH HANOVER TWP.	1	.33	638	246	163	32364	0	0
	PALMYRA BORO.	28	1.00	460	1312	354	41167	0	0
	PEMBERTON BORO.	2	1.00	92	237	97	35621	0	0
	PEMBERTON TWP.	0	6.00	859	651	413	39006	0	0
	RIVERSIDE TWP.	8	0.00	281	1726	528	34890	0	0
	RIVERTON BORO.	5	0.00	92	769	170	49533	0	0

	SHAMONG TWP.	24	2.00	0	88	15	60903	0	0
	SOUTHAMPTON TWP.	40	1.00	1	465	39	35113	112	0
	SPRINGFIELD TWP.	23	1.33	25	245	41	49662	43	0
	TABERNACLE TWP.	37	1.33	2	101	28	60536	0	0
	WASHINGTON TWP.	1	.33	1	107	9	37715	0	0
	WESTAMPTON TWP.	53	2.00	104	90	16	57182	0	0
	WILLINGBORO TWP.	123	2.67	39	67	12	51833	0	0
	WOODLAND TWP.	0	0.00	0	68	27	45178	0	0
	WRIGHTSTOWN BORO.	9	4.00	395	157	112	24288	0	0
CAMDEN									
	AUDUBON BORO.	8	0.00	454	2061	532	40627	0	0
	AUDUBON PARK BORO.	2	0.00	0	39	5	27015	0	0
	BARRINGTON BORO.	2	.67	495	548	296	40080	0	0
	BELLMAWR BORO.	59	0.00	743	377	232	38376	0	0
	BERLIN BORO.	87	0.00	36	335	284	44251	174	0
	BERLIN TWP.	27	3.33	173	277	82	42145	0	0
	BROOKLAWN BORO.	12	.33	49	491	45	34547	0	0
	CAMDEN CITY	0	57.67	4357	12673	3310	19125	0	0
	CHERRY HILL TWP.	987	1.67	3734	868	761	59875	0	0
	CHESILHURST BORO.	8	0.00	0	47	16	36062	0	0
	CLEMENTON BORO.	27	.33	657	677	153	33309	0	0
	COLLINGSWOOD BORO.	33	2.67	1850	3604	1318	36329	0	0
	GIBBSBORO BORO.	47	.67	6	135	20	52250	100	0
	GLOUCESTER TWP.	168	5.00	4001	1059	958	45346	0	338
	GLOUCESTER CITY	0	4.00	532	2871	486	31898	0	0
	HADDON TWP.	31	1.33	1200	2017	676	39836	0	0
	HADDONFIELD BORO.	127	1.33	277	2748	424	62243	0	0
	HADDON HEIGHTS BORO.	18	.33	308	1608	421	43099	0	0
	HI-NELLA BORO.	1	0.00	363	38	22	27872	0	0
	LAUREL SPRINGS BORO.	9	0.00	137	393	107	41447	0	0
	LAWNSIDE BORO.	11	0.00	111	111	79	34834	35	0
	LINDENWOLD BORO.	57	9.00	4317	509	517	34972	0	0
	MAGNOLIA BORO.	16	.67	356	427	98	35628	0	0
	MERCHANTVILLE BORO.	7	.67	296	1087	325	38079	0	0
	MOUNT EPHRAIM BORO.	21	0.00	132	426	185	39214	0	0
	OAKLYN BORO.	6	.33	313	956	278	36156	0	0
	PENNSAUKEN TWP.	0	3.33	999	3159	1155	39707	0	0
	PINE HILL BORO.	21	1.33	1437	463	180	36497	0	0
	PINE VALLEY BORO.	5	0.00	0	12	0	86535	0	0
	RUNNEMEDE BORO.	29	2.00	772	500	258	36313	13	0
	SOMERDALE BORO.	69	.33	403	239	126	38344	0	0
	STRATFORD BORO.	42	0.00	726	263	91	45259	0	0
	TAVISTOCK BORO.	4	0.00	0	0	0	165001	0	0
	VOORHEES TWP.	186	6.33	3146	284	201	56847	0	0
	WATERFORD TWP.	42	.67	43	521	148	48040	0	0
	WINSLOW TWP.	127	7.00	1170	873	325	43908	0	404
	WOODLYNNE BORO.	2	0.00	22	472	163	29160	0	0
CAPE MAY									
	AVALON BORO.	123	38.00	290	564	929	40807	0	0
	CAPE MAY CITY	47	1.33	761	1187	715	30316	0	0
	CAPE MAY POINT BORO.	17	5.33	2	210	85	25437	0	0
	DENNIS TWP.	152	2.00	2	375	17	46346	0	0
	LOWER TWP.	188	14.33	464	1283	265	29335	0	0
	MIDDLE TWP.	312	1.67	86	1019	324	33576	0	0
	NORTH WILDWOOD CITY	83	21.67	1023	1695	2634	24873	0	0
	OCEAN CITY CITY	280	97.33	2176	4158	8601	35220	0	0
	SEA ISLE CITY CITY	77	24.00	833	604	2035	35440	0	0
	STONE HARBOR BORO.	72	22.67	402	495	737	39755	0	0
	UPPER TWP.	133	.67	1	493	244	49458	0	0
	WEST CAPE MAY BORO.	5	0.00	6	349	139	26788	0	0
	WEST WILDWOOD BORO.	18	6.00	20	141	240	22734	0	0
	WILDWOOD CITY	0	75.33	2032	2631	2368	18452	0	0
	WILDWOOD CREST BORO.	39	7.33	718	975	1858	32675	0	0
	WOODBINE BORO.	31	1.00	102	196	69	25793	0	0
CUMBERLAND									
	BRIDGETON CITY	0	0.00	1118	2923	1094	24087	0	0
	COMMERCIAL TWP.	16	5.33	3	495	51	30937	0	0
	DEERFIELD TWP.	28	.67	1	313	58	33474	0	0
	DOWNE TWP.	2	.67	0	356	15	29118	0	0
	FAIRFIELD TWP.	16	1.33	2	343	42	29496	0	0
	GREENWICH TWP.	2	.67	1	189	5	34834	0	0
	HOPEWELL TWP.	21	0.00	3	346	59	42746	0	0
	LAWRENCE TWP.	0	0.00	8	364	23	34637	0	0
	MAURICE RIVER TWP.	5	1.67	3	383	40	33702	0	0
	MILLVILLE CITY	0	6.33	1707	3054	1257	34393	216	0

	SHILOH BORO.	0	0.00	0	120	10	32875	0	0
	STOW CREEK TWP.	0	0.00	0	161	8	40944	0	0
	UPPER DEERFIELD TWP.	43	0.00	265	361	63	39985	0	0
	VINELAND CITY	0	13.67	2718	3921	2079	33806	0	0
ESSEX									
	BELLEVILLE TWP.	0	5.00	3576	4803	4772	42358	0	0
	BLOOMFIELD TWP.	0	2.33	3966	9278	6931	43804	0	0
	CALDWELL BORO. TWP.	19	0.00	1226	1368	644	51038	0	0
	CEDAR GROVE TWP.	39	.67	565	578	393	61010	0	67
	EAST ORANGE CITY	0	15.33	15025	10046	8021	29491	0	0
	ESSEX FELLS TWP.	11	.33	1	329	13	111182	0	0
	FAIRFIELD TWP.	157	2.00	5	208	72	70876	0	0
	GLEN RIDGE BORO. TWP	17	.33	202	1887	107	83403	25	0
	IRVINGTON TOWN	0	22.00	8823	7137	10683	33582	0	0
	LIVINGSTON TWP.	200	.33	15	848	61	81841	0	0
	MAPLEWOOD TWP.	50	1.33	508	5329	1581	63325	11	0
	MILLBURN TWP.	141	2.00	632	2792	547	91602	0	0
	MONTCLAIR TWP.	2	1.00	3875	9627	3668	57686	0	110
	NEWARK CITY	0	237.00	43615	36014	43398	23815	0	0
	NORTH CALDWELL TWP.	23	1.00	3	212	36	101317	0	0
	NUTLEY TWP.	63	1.00	2342	4438	2000	47489	0	0
	ORANGE CITY TWP.	0	10.67	5664	3673	3669	30031	0	0
	ROSELAND BORO.	90	.33	307	228	72	65919	162	0
	SOUTH ORANGE VILL TW	64	2.00	1089	3316	476	70772	53	0
	VERONA TWP.	37	.33	1521	1988	540	60773	0	0
	WEST CALDWELL TWP.	97	18.00	227	727	119	72512	0	0
	WEST ORANGE TWP.	167	2.33	2220	4906	2936	54755	0	0
GLOUCESTER									
	CLAYTON BORO.	38	3.67	213	501	174	34528	0	0
	DEPTFORD TWP.	226	14.33	1454	752	254	42075	0	150
	EAST GREENWICH TWP.	53	0.00	25	462	97	53006	163	0
	ELK TWP.	39	.33	0	284	36	37623	0	0
	FRANKLIN TWP.	13	5.00	59	742	145	40732	0	0
	GLASSBORO BORO.	0	2.00	1296	951	668	37640	0	0
	GREENWICH TWP.	73	0.00	12	436	129	42875	0	0
	HARRISON TWP.	33	2.67	192	458	79	49972	93	0
	LOGAN TWP.	126	1.00	5	299	33	49463	0	0
	MANTUA TWP.	92	1.67	112	811	104	47125	217	0
	MONROE TWP.	164	13.67	839	986	375	39161	0	0
	NATIONAL PARK BORO.	12	1.00	8	399	99	36557	0	0
	NEWFIELD BORO.	0	0.00	2	224	51	40382	0	0
	PAULSBORO BORO.	0	1.33	172	1273	440	25650	0	0
	PITMAN BORO.	23	1.33	278	1709	470	44150	12	0
	SOUTH HARRISON TWP.	0	0.00	0	126	18	47682	0	0
	SWEDESBORO BORO.	17	0.00	8	546	138	34406	0	0
	WASHINGTON TWP.	173	1.33	1724	350	225	56653	0	0
	WENONAH BORO.	6	0.00	11	410	64	57934	0	0
	WEST DEPTFORD TWP.	113	2.00	1821	663	330	42251	204	0
	WESTVILLE BORO.	27	.33	290	765	339	34826	0	0
	WOODBURY CITY	0	2.67	655	1941	777	31892	0	62
	WOODBURY HEIGHTS BOR	20	.33	15	289	52	52635	0	0
	WOOLWICH TWP.	49	.67	0	134	8	44647	0	0
HUDSON									
	BAYONNE CITY	0	15.00	7353	13219	14398	35149	0	0
	EAST NEWARK BORO.	2	0.00	62	341	562	34222	0	0
	GUTTENBERG TOWN	33	6.00	2709	929	1314	44638	0	0
	HARRISON TOWN	16	4.33	1148	2135	3231	37366	0	0
	HOBOKEN CITY	0	9.00	11329	11000	5163	38360	0	0
	JERSEY CITY	0	125.67	39547	46091	37932	31959	0	0
	KEARNY TOWN	6	2.33	2253	7369	6940	41624	0	0
	NORTH BERGEN TWP.	0	32.33	8552	7675	8243	36837	0	0
	SECAUCUS TOWN	157	2.33	1250	1258	2189	56995	634	0
	UNION CITY	0	1.33	11090	11173	9394	28220	0	0
	WEEHAWKEN TWP.	0	0.00	2300	3964	2635	38188	0	0
	WEST NEW YORK TOWN	0	.33	9329	6632	4958	28997	0	0
HUNTERDON									
	ALEXANDRIA TWP.	0	0.00	4	293	38	58915	0	0
	BETHLEHEM TWP.	10	0.00	0	193	18	66621	0	0
	BLOOMSBURY BORO.	8	.67	16	217	37	44868	0	0
	CALIFON BORO.	0	0.00	8	166	28	62294	0	0
	CLINTON TOWN	23	.33	105	298	135	58136	64	0
	CLINTON TWP.	91	3.00	329	436	138	74710	0	0
	DELAWARE TWP.	0	0.00	13	615	73	62479	0	0
	EAST AMWELL TWP.	3	1.33	22	443	87	66800	0	0
	FLEMINGTON BORO.	45	0.00	579	790	571	38687	0	0
	FRANKLIN TWP.	9	0.00	1	308	51	61692	14	0
	FRENCHTOWN BORO.	0	0.00	73	391	142	44496	0	0

	GLEN GARDNER BORO.	0	0.00	280	182	86	53693	0	0
	HAMPTON BORO.	0	0.00	81	270	120	44481	0	0
	HIGH BRIDGE BORO.	15	0.00	40	535	167	53976	19	0
	HOLLAND TWP.	0	0.00	10	283	66	49692	0	0
	KINGWOOD TWP.	1	.33	3	390	92	54949	0	0
	LAMBERTVILLE CITY	0	0.00	174	1379	346	43879	0	0
	LEBANON BORO.	8	.33	13	186	76	57713	0	0
	LEBANON TWP.	0	0.00	3	458	99	58040	0	0
	MILFORD BORO.	0	0.00	29	238	116	44631	0	0
	RARITAN TWP.	141	1.00	328	421	168	67676	358	0
	READINGTON TWP.	91	1.00	240	702	184	68803	183	0
	STOCKTON BORO.	0	0.00	4	145	49	43683	0	0
	TEWKSBURY TWP.	28	0.00	1	426	23	95745	57	0
	UNION TWP.	0	0.00	183	186	70	65846	7	0
	WEST AMWELL TWP.	0	0.00	10	230	45	52021	0	0
MERCER									
	EAST WINDSOR TWP.	169	1.33	3468	180	524	54834	0	0
	EWING TWP.	164	2.67	2149	1810	772	47510	0	0
	HAMILTON TWP.	284	7.00	5905	5933	2425	46390	0	0
	HIGHTSTOWN BORO.	21	1.00	639	790	284	50129	0	0
	HOPEWELL BORO.	0	.33	12	468	180	53453	0	0
	HOPEWELL TWP.	86	1.00	36	733	97	72074	200	0
	LAWRENCE TWP.	362	2.67	1866	1222	624	56138	623	161
	PENNINGTON BORO.	0	0.00	39	439	68	70603	0	0
	PRINCETON BORO.	236	1.00	818	1949	671	47401	3	0
	PRINCETON TWP.	108	2.00	738	828	541	68517	217	0
	TRENTON CITY	0	45.33	6403	20094	6251	28291	0	0
	WASHINGTON TWP.	90	.67	470	232	57	49855	152	51
	WEST WINDSOR TWP.	259	2.00	1318	432	122	84598	569	0
MIDDLESEX									
	CARTERET BORO.	0	5.00	312	1540	1806	44295	0	0
	CRANBURY TWP.	93	4.33	9	341	63	72395	143	0
	DUNELLEN BORO.	4	0.00	151	1253	672	48812	0	0
	EAST BRUNSWICK TWP.	391	1.33	2216	639	491	64646	723	0
	EDISON TWP.	525	.67	9597	1661	1758	55082	324	0
	HELMETTA BORO.	14	1.00	151	147	15	47082	0	0
	HIGHLAND PARK BORO.	27	1.67	2262	2413	1452	43563	0	0
	JAMESBURG BORO.	7	.33	346	388	375	46128	0	0
	METUCHEN BORO.	55	1.67	457	1350	485	58549	82	1
	MIDDLESEX BORO.	71	.67	609	856	484	52407	0	0
	MILLTOWN BORO.	34	.67	52	644	317	59424	0	0
	MONROE TWP.	75	.67	682	433	1111	46406	127	0
	NEW BRUNSWICK CITY	0	8.33	4230	5082	5081	31118	0	0
	NORTH BRUNSWICK TWP.	244	3.67	3458	647	1100	54890	489	0
	OLD BRIDGE TWP.	213	6.33	5194	871	1430	52230	152	203
	PERTH AMBOY CITY	0	3.67	3574	5904	6358	31215	0	0
	PISCATAWAY TWP.	420	7.00	3348	1273	1096	55496	623	109
	PLAINSBORO TWP.	88	4.33	4850	128	434	51606	247	0
	SAYREVILLE BORO.	127	1.33	2820	1482	936	50663	0	0
	SOUTH AMBOY CITY	17	0.00	260	1617	845	41726	0	0
	SOUTH BRUNSWICK TWP.	305	4.00	1876	533	369	59735	575	94
	SOUTH PLAINFIELD BOR	173	6.00	10	748	422	56318	375	0
	SOUTH RIVER BORO.	20	0.00	485	2013	1036	41798	0	0
	SPOTSWOOD BORO.	31	1.00	408	230	96	47244	0	0
	WOODBRIDGE TWP.	618	11.67	7235	4568	2986	50068	0	0
MONMOUTH									
	ABERDEEN TWP.	152	3.00	881	521	342	55493	237	0
	ALLENHURST BORO.	14	1.33	25	315	43	60071	0	0
	ALLENTOWN BORO.	1	.67	88	214	42	51820	0	0
	ASBURY PARK CITY	0	5.33	3892	2731	1773	22829	0	0
	ATL. HIGHLANDS BORO.	62	0.00	341	823	188	49175	0	0
	AVON BY THE SEA BORO	14	0.00	188	822	178	39263	0	0
	BELMAR BORO.	62	5.67	974	1802	746	34834	0	0
	BRADLEY BEACH BORO.	28	6.67	846	1481	521	33373	0	0
	BRIELLE BORO.	83	1.33	24	336	255	58833	0	0
	COLTS NECK TWP.	103	1.67	12	247	52	82631	149	0
	DEAL BORO.	25	.33	50	423	45	53625	0	0
	EATONTOWN BORO.	296	.33	2327	464	657	40550	0	0
	ENGLISHTOWN BORO.	36	0.00	7	155	81	47819	0	0
	FAIR HAVEN BORO.	73	1.67	3	708	21	62972	0	0
	FARMINGDALE BORO.	0	0.00	192	141	75	44516	0	0
	FREEHOLD BORO.	141	6.33	818	1454	573	44360	0	0
	FREEHOLD TWP.	488	7.00	1099	352	246	64632	923	0
	HAZLET TWP.	246	2.33	392	278	135	55752	0	0
	HIGHLANDS BORO.	29	.33	840	772	396	35600	0	0
	HOLMDEL TWP.	391	4.33	11	164	34	92372	626	0
	HOWELL TWP.	427	12.33	436	1007	276	52703	827	0
	INTERLAKEN BORO.	8	0.00	0	244	0	63411	0	0
	KEANSBURG BORO.	0	10.00	577	1382	815	34946	0	0

	KEYPORT BORO.	14	2.00	1088	1327	530	34767	0	0
	LITTLE SILVER BORO.	104	.33	33	350	45	70709	0	0
	LOCH ARBOUR VILLAGE	2	0.00	6	129	2	61146	0	0
	LONG BRANCH CITY	0	9.67	5109	4556	2793	33762	0	0
	MANALAPAN TWP.	241	7.00	1429	378	160	63831	765	0
	MANASQUAN BORO.	107	2.33	96	1173	359	43242	0	0
	MARLBORO TWP.	455	6.67	155	242	89	77043	670	0
	MATAWAN BORO.	103	3.67	1131	530	389	50763	0	0
	MIDDLETOWN TWP.	828	6.33	2186	3221	726	59458	0	0
	MILLSTONE TWP.	7	4.33	1	313	22	62320	6	0
	MONMOUTH BEACH BORO.	36	1.67	793	336	87	64585	0	0
	NEPTUNE TWP.	0	2.33	1733	3602	1489	41702	0	0
	NEPTUNE CITY BORO.	22	.67	628	545	201	36127	0	0
	OCEAN TWP.	672	1.00	2725	1216	400	51573	0	0
	OCEANPORT BORO.	65	.33	119	395	94	60637	0	0
	RED BANK BORO.	339	17.67	1600	2039	1108	40567	0	0
	ROOSEVELT BORO.	0	0.00	3	153	15	60204	0	0
	RUMSON BORO.	130	6.00	2	967	69	70370	0	0
	SEA BRIGHT BORO.	18	.67	483	294	151	46995	0	0
	SEA GIRT BORO.	51	4.33	22	395	19	64525	0	0
	SHREWSBURY BORO.	116	0.00	2	151	6	69214	0	0
	SHREWSBURY TWP.	10	0.00	212	52	49	34907	0	0
	SOUTH BELMAR BORO.	17	2.00	75	401	101	35281	0	0
	SPRING LAKE BORO.	71	2.00	49	1057	94	60708	0	0
	SPRING LAKE HGTS BOR	50	.33	715	431	162	40766	0	0
	TINTON FALLS BORO.	296	4.33	617	283	174	57187	550	0
	UNION BEACH BORO.	41	1.33	1	678	105	42819	0	0
	UPPER FREEHOLD TWP.	0	.33	2	338	61	60840	0	0
	WALL TWP.	415	8.67	556	1281	213	50931	722	0
	WEST LONG BRANCH BOR	139	.67	128	482	157	52177	0	0
MORRIS									
	BOONTON TOWN	16	.33	300	1525	909	49454	0	0
	BOONTON TWP.	7	0.00	0	191	17	66084	23	0
	BUTLER BORO.	8	.33	287	860	480	55462	0	0
	CHATHAM BORO.	41	6.33	291	1253	317	68342	23	0
	CHATHAM TWP.	39	.33	853	369	99	83157	89	0
	CHESTER BORO.	0	0.00	15	169	33	61803	3	0
	CHESTER TWP.	2	1.00	7	235	27	90750	0	0
	DENVILLE TWP.	123	6.33	271	1146	150	65696	388	0
	DOVER TOWN	22	0.00	796	2197	1380	42704	0	0
	EAST HANOVER TWP.	106	.33	5	270	38	71078	266	0
	FLORHAM PARK BORO.	143	2.33	43	273	100	75295	280	0
	HANOVER TWP.	132	2.33	53	441	126	66757	245	0
	HARDING TWP.	46	1.00	3	372	16	114515	0	0
	JEFFERSON TWP.	35	7.33	168	823	244	53778	0	0
	KINNELON BORO.	22	0.00	1	237	16	83029	81	0
	LINCOLN PARK BORO.	29	3.33	866	476	227	59159	100	0
	MADISON BORO.	59	2.33	840	1764	875	62126	0	0
	MENDHAM BORO.	0	0.00	48	340	114	89560	0	16
	MENDHAM TWP.	10	0.00	5	260	27	113186	18	0
	MINE HILL TWP.	17	1.00	23	313	62	56321	76	0
	MONTVILLE TWP.	111	3.33	206	755	134	82307	280	0
	MORRIS TWP.	99	5.00	731	1251	492	81536	283	0
	MORRIS PLAINS BORO.	90	.67	178	526	62	71243	0	0
	MORRISTOWN TOWN	225	2.00	2531	2464	1970	47023	0	0
	MOUNTAIN LAKES BORO.	23	0.00	0	568	8	119335	0	0
	MOUNT ARLINGTON BORO	9	1.67	216	238	116	51665	0	0
	MOUNT OLIVE TWP.	61	4.00	3435	823	411	50411	182	0
	NETCONG BORO.	3	0.00	418	466	239	43604	0	0
	PAR-TROY HILLS TWP.	339	2.33	6928	1312	791	55522	497	230
	PASSAIC TWP.	44	0.00	99	757	229	73358	85	0
	PEQUANNOCK TWP.	60	.33	207	586	197	60428	166	0
	RANDOLPH TWP.	108	2.33	1314	432	569	70843	221	106
	RIVERDALE BORO.	13	0.00	11	245	130	49775	59	0
	ROCKAWAY BORO.	24	1.00	359	720	287	51413	0	0
	ROCKAWAY TWP.	178	22.67	662	717	264	62384	412	0
	ROXBURY TWP.	114	4.67	111	953	374	63232	375	0
	VICTORY GARDENS BORO	2	0.00	207	27	79	39875	0	0
	WASHINGTON TWP.	30	2.33	247	652	142	75410	149	4
	WHARTON BORO.	17	.33	198	811	545	49720	43	0
OCEAN									
	BARNEGAT TWP.	173	3.67	16	224	130	40116	0	0
	BARNEGAT LIGHT BORO.	38	6.33	39	72	187	41750	0	0
	BAY HEAD BORO.	22	1.67	18	569	55	60580	0	0
	BEACH HAVEN BORO.	44	6.00	333	555	681	34508	0	0
	BEACHWOOD BORO.	60	2.67	11	340	71	44642	0	0
	BERKELEY TWP.	327	7.33	506	431	108	25331	0	0
	BRICK TWP.	537	19.33	2566	1122	659	42616	0	0
	DOVER TWP.	1319	57.00	2819	1152	953	44774	835	0
	EAGLESWOOD TWP.	10	2.67	3	169	17	34448	0	0
	HARVEY CEDARS BORO.	19	3.67	1	96	140	39359	0	0

	ISLAND HEIGHTS BORO.	10	0.00	25	288	15	44229	0	0
	JACKSON TWP.	344	11.67	734	596	336	49159	0	0
	LACEY TWP.	345	6.33	17	355	55	41137	0	0
	LAKEHURST BORO.	48	1.67	37	245	160	29872	0	0
	LAKEWOOD TWP.	0	7.33	4005	1263	1768	32132	0	0
	LAVALLETTE BORO.	60	4.33	128	503	597	34899	0	0
	LITTLE EGG HARBOR TW	131	5.00	275	132	82	37357	0	0
	LONG BEACH TWP.	45	2.67	92	482	2193	34952	0	0
	MANCHESTER TWP.	218	5.00	625	155	2837	24914	0	0
	MANTOLOKING BORO.	22	1.00	2	186	4	66780	0	0
	OCEAN TWP.	123	4.00	28	231	19	33923	0	0
	OCEAN GATE BORO.	8	.33	23	350	103	31134	0	0
	PINE BEACH BORO.	21	0.00	2	180	39	43450	0	0
	PLUMSTED TWP.	7	2.67	35	281	174	44879	0	0
	POINT PLEASANT BORO.	215	10.67	582	682	480	44878	0	0
	PT PLEASANT BEACH BO	64	2.33	462	1078	429	38279	0	0
	SEASIDE HEIGHTS BORO	23	0.00	827	529	1094	23782	0	0
	SEASIDE PARK BORO.	36	6.67	276	910	692	35903	0	0
	SHIP BOTTOM BORO.	46	4.67	120	513	558	32125	0	0
	SOUTH TOMS RIVER BOR	27	.33	43	58	15	37149	0	0
	STAFFORD TWP.	301	8.00	54	378	307	34858	0	0
	SURF CITY BORO.	27	4.67	2	185	823	30810	0	0
	TUCKERTON BORO.	49	4.00	170	277	83	30603	0	0
PASSAIC									
	BLOOMINGDALE BORO.	16	1.67	379	631	341	54237	117	0
	CLIFTON CITY	174	6.00	4040	10012	10950	43895	0	0
	HALEDON BORO.	4	0.00	244	1033	1481	39684	0	0
	HAWTHORNE BORO.	26	2.00	536	2696	2519	47420	0	0
	LITTLE FALLS TWP.	32	4.00	902	1196	776	49467	0	0
	NORTH HALEDON BORO.	17	.67	68	536	276	57188	0	0
	PASSAIC CITY	0	12.00	8891	8923	6935	29336	0	0
	PATERSON CITY	0	56.00	12435	17518	23879	29656	0	0
	POMPTON LAKES BORO.	18	.33	801	679	347	53750	0	0
	PROSPECT PARK BORO.	1	0.00	10	1275	1435	39316	0	0
	RINGWOOD BORO.	3	1.33	2	536	48	66029	0	0
	TOTOWA BORO.	44	1.67	79	858	795	50940	0	0
	WANAQUE BORO.	13	2.00	85	742	550	52991	0	0
	WAYNE TWP.	231	18.33	1572	1357	740	65219	0	0
	WEST MILFORD TWP.	27	2.67	166	1376	220	58007	0	0
	WEST PATERSON BORO.	18	3.33	876	547	1253	49426	0	0
SALEM									
	ALLOWAY TWP.	0	0.00	0	343	38	42718	0	0
	CARNEYS POINT TWP.	47	2.33	605	826	210	38933	0	0
	ELMER BORO.	1	.67	2	369	105	36584	0	0
	ELSINBORO TWP.	9	.67	0	226	14	42363	0	0
	LOWER ALLOWAYS CR TW	2	.67	0	284	10	40628	0	0
	MANNINGTON TWP.	1	.33	1	189	15	38375	0	0
	OLDMANS TWP.	56	1.00	1	219	31	43030	0	0
	PENNS GROVE BORO.	0	8.00	353	693	365	23573	0	0
	PENNSVILLE TWP.	54	4.67	586	1041	289	41827	0	0
	PILESGROVE TWP.	4	1.33	22	278	39	51005	0	0
	PITTSGROVE TWP.	23	1.33	6	518	32	38196	0	0
	QUINTON TWP.	2	.67	9	233	37	33444	0	0
	SALEM CITY	0	0.00	616	1110	473	18810	0	0
	UPPER PITTSGROVE TWP	5	1.67	1	385	31	40120	0	0
	WOODSTOWN BORO.	0	.33	209	569	254	37299	0	0
SOMERSET									
	BEDMINSTER TWP.	67	1.33	903	369	153	68799	177	0
	BERNARDS TWP.	216	.67	909	644	336	77000	475	0
	BERNARDSVILLE BORO.	50	3.00	102	733	257	75522	82	0
	BOUND BROOK BORO.	4	2.33	437	1653	1418	40795	0	0
	BRANCHBURG TWP.	93	2.00	55	290	106	74616	197	0
	BRIDGEWATER TWP.	220	1.33	1047	1076	510	69886	493	0
	FAR HILLS BORO.	13	1.00	4	137	35	61806	20	0
	FRANKLIN TWP.	362	7.00	3735	1145	1085	58630	492	182
	GREEN BROOK TWP.	63	1.33	0	202	31	64304	154	0
	HILLSBOROUGH TWP.	116	5.00	1587	559	323	64976	182	0
	MANVILLE BORO.	2	1.00	182	859	1213	41430	0	0
	MILLSTONE BORO.	0	0.00	0	59	17	58616	0	0
	MONTGOMERY TWP.	63	6.33	163	331	85	80827	315	0
	NORTH PLAINFIELD BOR	35	.33	2084	2555	1754	46062	0	13
	PEAPACK GLADSTONE BO	23	1.00	30	402	128	66082	28	9
	RARITAN BORO.	55	1.00	97	905	866	42671	75	0
	ROCKY HILL BORO.	1	.33	10	111	35	62498	0	0
	SOMERVILLE BORO.	170	3.00	1412	1408	959	43634	10	0
	SOUTH BOUND BROOK BO	4	.67	288	429	400	45460	0	0
	WARREN TWP.	161	3.67	7	606	97	79606	333	0
	WATCHUNG BORO.	59	2.00	6	232	52	87042	123	0

SUSSEX

ANDOVER BORO.	0	0.00	32	168	49	40734	0	0
ANDOVER TWP.	26	.67	140	244	52	59749	0	0
BRANCHVILLE BORO.	1	.67	35	215	58	41164	0	0
BYRAM TWP.	0	0.00	14	440	42	62371	0	0
FRANKFORD TWP.	6	3.00	7	400	57	55000	0	0
FRANKLIN BORO.	0	0.00	161	772	259	40305	0	0
FREDON TWP.	9	.33	0	165	35	63936	0	0
GREEN TWP.	0	0.00	0	148	21	64038	0	0
HAMBURG BORO.	2	1.00	169	224	127	49041	0	0
HAMPTON TWP.	17	1.33	3	172	21	51814	0	0
HARDYSTON TWP.	0	0.00	240	219	46	51163	0	0
HOPATCONG BORO.	26	13.00	24	652	143	53023	0	0
LAFAYETTE TWP.	2	1.00	0	188	50	60819	0	0
MONTAGUE TWP.	0	.33	145	173	137	42797	0	0
NEWTON TOWN	27	.67	842	1340	579	35996	41	0
OGDENSBURG BORO.	1	.33	27	227	87	51190	0	0
SANDYSTON TWP.	2	1.00	1	232	17	41156	0	0
SPARTA TWP.	6	3.33	24	961	268	69335	17	0
STANHOPE BORO.	0	.33	90	286	157	52731	0	0
STILLWATER TWP.	0	0.00	37	421	43	51693	0	0
SUSSEX BORO.	0	.33	314	455	245	29590	0	0
VERNON TWP.	4	1.67	905	622	149	56086	0	0
WALPACK TWP.	0	0.00	0	31	0	20625	0	0
WANTAGE TWP.	3	1.33	105	445	112	52165	0	0

UNION

BERKELEY HEIGHTS TWP	70	.67	8	375	73	82634	190	0
CLARK TWP.	51	.67	771	434	251	55104	23	0
CRANFORD TWP.	114	3.67	655	3128	990	59916	0	0
ELIZABETH CITY	0	25.33	15326	16862	16971	30394	0	0
FANWOOD BORO.	24	1.33	5	532	79	66739	0	0
GARWOOD BORO.	17	.67	86	643	693	45208	0	0
HILLSIDE TWP.	0	1.67	327	2882	2372	45306	0	0
KENILWORTH BORO.	39	1.00	8	453	591	43971	0	0
LINDEN CITY.	99	6.67	2200	3438	5002	39502	0	0
MOUNTAINSIDE BORO.	49	0.00	4	245	23	82092	0	0
NEW PROVIDENCE BORO.	91	.33	421	499	474	68662	65	0
PLAINFIELD CITY	0	5.00	3740	5872	4230	42309	0	153
RAHWAY CITY	80	4.00	1807	3002	1921	44854	0	0
ROSELLE BORO.	0	4.33	1685	2450	1713	44474	0	0
ROSELLE PARK BORO.	16	.33	1356	2057	982	47701	0	0
SCOTCH PLAINS TWP.	88	4.33	689	1015	528	64013	218	0
SPRINGFIELD TWP.	80	0.00	1118	754	706	53512	0	0
SUMMIT CITY	121	5.33	1423	3296	1074	73110	0	0
UNION TWP.	157	11.00	1457	4235	3899	46931	94	233
WESTFIELD TOWN	98	4.00	672	4480	1179	73436	0	0
WINFIELD TWP.	1	0.00	4	72	488	31682	0	0

WARREN

ALLAMUCHY TWP.	1	.33	72	135	60	61926	0	0
ALPHA BORO.	10	0.00	109	475	117	37938	0	0
BELVIDERE TOWN	0	0.00	139	554	173	38052	0	0
BLAIRSTOWN TWP.	0	0.00	5	362	148	57511	0	0
FRANKLIN TWP.	5	0.00	0	391	51	51802	7	0
FRELINGHUYSEN TWP.	0	0.00	0	223	27	51938	0	0
GREENWICH TWP.	32	0.00	1	333	72	47936	56	0
HACKETTSTOWN TOWN	66	.33	775	952	445	43238	0	0
HARDWICK TWP.	0	0.00	0	118	9	49912	0	0
HARMONY TWP.	18	.67	0	357	40	47905	36	21
HOPE TWP.	0	0.00	0	208	17	57314	0	0
INDEPENDENCE TWP.	8	0.00	260	272	107	49775	0	40
KNOWLTON TWP.	8	.33	3	327	45	45375	0	0
LIBERTY TWP.	0	0.00	12	214	39	53801	0	0
LOPATCONG TWP.	18	0.00	477	368	69	39895	22	40
MANSFIELD TWP.	12	1.33	1173	303	134	43850	0	0
OXFORD TWP.	0	0.00	19	325	56	40810	0	18
PAHAQUARRY TWP.	0	0.00	0	26	4	33459	0	0
PHILLIPSBURG TOWN	0	.33	855	3780	1270	30018	0	0
POHATCONG TWP.	33	0.00	7	439	65	44620	0	0
WASHINGTON BORO.	11	0.00	666	1176	479	40153	0	9
WASHINGTON TWP.	35	.33	51	402	63	57942	91	0
WHITE TWP.	3	1.33	167	390	53	44924	0	0

TECHNICAL APPENDIX B

Estimating Undeveloped Land in New Jersey Using
Thematic Mapper Satellite Data, 1990
Census Data and the TIGER Files

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Introduction

The Council on Affordable Housing (COAH) has been required to develop fair share housing allocations for low and moderate income families for municipalities state-wide. The development of these allocations is based upon a number of factors including the amount of undeveloped land available within each region.

The conversion of land in New Jersey from undeveloped to developed status is a complex, dynamic process. Traditional methods of estimating land cover that rely on extensive field survey and mapping and the manual interpretation of aerial photography are both extremely expensive and time consuming. Developing reliable state-wide estimates of land cover, including land categorized as developed or undeveloped, in an extremely short time frame required the use of automated and computerized techniques.

Given these constraints, the Cook College Remote Sensing Center (CCRSC), Rutgers University, served as a consultant to COAH to develop these state-wide estimates. A number of types of digital information were used in this process. The analysis relied upon a combination of image processing and geographic information system (GIS) techniques to generate estimates of the amount of undeveloped and developed land present in the state of New Jersey. Simply put, geographic information systems are: computer hardware and software systems that allow the efficient, rapid development of a spatial data base and that permit the analysis of this information in an objective, automated manner.

Overview of the Methods Used in the Analysis

As stated above, image processing and GIS techniques were used to generate land cover estimates for the state of New Jersey. The ERDAS image processing and ARC/INFO and GRASS GIS software packages were used in the development of the data base and subsequent analysis. The following represents an overview of the methods that were used and provides a description of key terms and concepts. A more extensive, technical description of the process is provided in the **Methods and Procedures** section of this report.

The GIS data base that was developed for this analysis contained the following data layers:

(1) Landsat Thematic Mapper digital data providing 30 meter coverage of the entire state;

(2) US Department of Commerce 1990 Census of Population and Housing information and the associate digital TIGER files;

(3) Municipal, county, and state digital boundary files obtained from the NJ DEPE;

(4) Planning area digital boundary files obtained from the State Planning Commission; and

(5) Pineland Management Area digital boundary files obtained from the NJ DEPE.

Satellite digital information has been used extensively in this country and throughout the world to monitor the environment in a cost effective, timely fashion. Landsat data has been used for a number of applications, including: identification and monitoring of agricultural crops, forest monitoring and disease detection, coastal zone monitoring, and for the generation of land cover information. Satellite data is the only spatial data providing complete coverage of New Jersey that is collected in a regular, systematic manner and that can be used in an unbiased way to generate consistent land cover information.

Landsat Thematic Mapper (TM) satellite data was selected by COAH as the best available information for the development of the fundamental land cover data layer for the GIS data base used in this analysis. TM data is acquired by a U.S. satellite system operated under the control of the EOSAT Corporation and is available in digital format. The digital data consists of spectral information that represent the amount of light (i.e. electromagnetic energy) reflected from a portion of the earth's surface in 6 narrow spectral bands and a 7th channel or band that represents radiated heat.

This spectral information is collected for pixels having a 30 meter ground resolution, with the exception of the thermal channel which has a 120 meter ground resolution. Thus, the satellite data used in this analysis has an inherent spatial resolution of 30 meters; however, each 30 meter pixel is classified into a land cover class based upon its spectral signature.

The processing of Landsat TM data to yield a thematic land cover map required a number of steps. The digital data was first formatted to provide coverage of the entire state and then processed to generate a desired classification map. The classification map produced through this process aggregates land cover into two classes—undeveloped and developed. Undeveloped land was defined for the purpose of this study as land presently vacant, being forested, open, or in an agricultural use. Developed land was defined as land that is either presently developed or land that may comprise a surface water body.

It is important to understand that the information derived from the TM satellite data represents land cover estimates and not land use estimates. The crucial difference between these two concepts relates to the inherent use of satellite data to generate land cover information (eg. existing land cover, such as forest, grassland, built-up, or water classes) and not land use information (eg. existing commercial land uses, such as a shopping center, versus an office building complex, or a manufacturing complex). Implicit in this distinction is the fact that the roof of a large commercial building may have the same spectral signature as that of the roof of an industrial plant, manufacturing facility, or warehouse. Consequently, the machine processing of the satellite data cannot be used to make these types of distinctions between land cover types at this level of analysis.

This distinction is of great importance in interpreting the results of this analysis. One of the problems associated with generating land cover estimates for New Jersey was the discrimination of residentially developed land from undeveloped land. This problem was most apparent in urban and suburban areas where either street tree and residential landscape plantings have created a landscape that has essentially a closed forest canopy or where residential housing units have been constructed in forested areas and the forest canopy remains substantially intact.

Given the 30 meter spatial resolution of the TM data, these areas would have been subject to misclassification as being forested or undeveloped if this were the only information available. This problem was addressed through the use of the 1990 census data and the TIGER files to identify areas that, although they may appear forested or undeveloped based upon their spectral properties as determined using TM data alone, can be considered to be developed based upon the density of housing units present. A more complete description of the processing of the census data and the use of the TIGER file spatial information is provided below.

Following the generation of a land cover data layer using the TM digital satellite data and a housing density data layer derived from the 1990 US Census data and associated TIGER files, the GRASS GIS software was used to determine the amount of developed and undeveloped land present state-wide. The tables that were developed provide estimates by county and by municipality and were cross classified by both the State Planning Commission's Planning Areas and the COAH housing regions. The results represent repeatable, unbiased estimates of undeveloped land throughout the state and multi-county regions.

Methods and Procedures

Landsat TM Image Processing

In order to generate land cover estimates for New Jersey, relatively cloud free Landsat Thematic Mapper (TM) data was required. The Thematic Mapper sensor onboard the LANDSAT platform acquired three cloud free images for Path 14, Rows 31, 32, and 33 on March 17, 1991. These scenes were acquired from EOSAT and provided data for the entire state. The ERDAS image processing and GIS software package was used for the satellite image processing and classification procedures.

Digital data providing complete coverage of the state was extracted from the delivered computer compatible tapes (CCTs) and stored in ERDAS format. The entire digital satellite data set for New Jersey had an approximate size of 300 Megabytes (Mbs), which would have been difficult to process as one file. A decision was made to divide the state into upper and lower regions to facilitate storage and processing. This division also corresponded to the approximate physiographic boundaries for the state with the upper region covering the Highlands, Ridge and

Valley, and Piedmont provinces to the north, and the lower region covering the Coastal Plain to the south. It was also felt that this division would aid in the determination of land cover classes, since vegetation and landscape types vary significantly between these groups of provinces.

The upper and lower subsets were created through the merger of the three corresponding scenes. Thematic Mapper scenes contain a certain amount of overlap to assure that continuous coverage of a specific geographic area is potentially available for analysis. To accomplish this edge-matching, the file coordinates in the images were changed so that the northern and southern edges of each scene corresponded to the edge or edges of the adjacent scene. An ERDAS utility was then used to patch the files together and remove areas of overlap which produced two seamless subsets.

Display of the upper image revealed that snow cover was present at higher elevations. Visual interpretation of the snow covered areas in the imagery, as well as an examination of existing maps and orthophotography, revealed that many of these areas were primarily forested, but this observation had to be verified using digital data. The Center image library contained cloud free Thematic Mapper imagery that was collected on August 15, 1988. It was determined that this data would be acceptable for generating the land cover for areas covered by snow in the March 17, 1991 imagery.

In order to eliminate the snow covered areas in the 1991 imagery and substitute the data from the 1988 imagery, a file was created that served as a mask for both data sets. The 1991 scene was displayed on the graphics device, and the analyst, using an ERDAS utility, visually interpreted the spatial distribution of the snow covered areas, digitized the boundaries directly on the screen, and then stored these results in a vector file format. The 1988 data was then coregistered to the 1991 data, so that file sizes between the two scenes would be identical and have matching pixel coordinates. Since the digitized snow boundaries were stored in vector format, this file was converted to a raster file for use as a mask for each data set. This mask was then used to cut out and eliminate the snow covered areas in the 1991 scene, which were then replaced with the corresponding data from the 1988 image.

A classification was performed independently on each of the three data sets: the masked upper region of the 1991 scene, the masked "replacement" portion of the 1988 imagery, and the lower region of the 1991 scene. Through an iterative process, the number of clusters, or training samples, that were derived from each data set varied between 50 and 100. These cluters were then input into a maximum-likelihood classification algorithm. The land cover types that each of the classes represented were then determined using a combination of visual interpretation of the satellite image as well as 7½ minute quadrangle maps and orthophotography. Each class was collapsed into one of six possible land cover types for this application: forest, nonforest vegetation, developed, bare or barren, water, and cloud.

An accuracy assessment was then developed for each of the classified data sets. An ERDAS utility was used to generate 100 random points for each file, which were then displayed on top of the corresponding image. The land cover category for each random point was then interpreted using the raw digital image and the associated aerial and orthophotography. The results of the interpretation from each of the three files were combined and then compared to the results obtained from the computer classification in the form of an error matrix.

Analysis of the results indicated that the classification produced a map having an overall accuracy of approximately 86 percent. Within each land cover class the results varied from 100 percent for the barren and water categories to 78 percent for the built-up/developed category, 81 percent for the vegetated non-forested category, and 88 percent for the forested category.

Analysis of the US 1990 Census Data and Use of the TIGER Files

The definitional problems of land cover versus land use were described above and in this project were most readily apparent when mapping residentially developed land. Residential land is frequently a mixture of different land cover types (i.e. forest, agriculture, and built-up categories). When the spatial resolution (i.e. pixel size) of the digital information that is being used to produce a land cover classification is relatively course (i.e. 30 meters), the fine scale combination of intermixed land cover types common to a residential neighborhood produces a mixed spectral response, and makes different types of residential land difficult to detect using satellite data alone.

The U.S. Census Bureau released the post-census TIGER files and the congressional redistricting (PL94-171) data early in 1991. The PL94-171 data contained the total number of persons and housing units for each census block. By linking these two data items and their spatial distribution, the CCRSC processed and developed in a georeferenced, digital format, a file containing the population and housing unit densities for each census block for the state of New Jersey. This file was then used to develop a housing density data layer or mask that was used to map areas having a housing density greater than a specific density threshold. In order to develop a suitable masking file using the housing density information available from the census data, housing density masks having densities of 0.5 units per acre (i.e. 1 unit per 2 acres), 1 unit per acre, and 2 units per acre were created and evaluated.

Selection of the Housing Density Mask Threshold

Selection of an appropriate threshold residential housing density for this study involved an evaluation of the use of a range of housing densities. As indicated above, the TIGER files and the 1990 census block data were used to calculate housing density by block for the entire state at densities of 0.5, 1, and 2 units per acre. The effectiveness of these housing density thresholds was evaluated for municipalities throughout the state. As an illustration of the methods that were developed, the results obtained for Highland Park and Piscataway Township, Middlesex County, are discussed below.

Highland Park is a typical, relatively small (i.e. 1,236 acre), older suburban community retaining little undeveloped land, but one having a relatively high population and housing density. Residential landscaping and street tree plantings have over time created a community that from the perspective of space and using the information available from the Thematic Mapper satellite system appears substantially forested. Piscataway Township, in contrast, is a relatively larger (i.e. 12,185 acres), developing municipality containing a greater diversity of land use activities including residential areas of varying housing density, commercial areas, agricultural land, forested land, and a portion of the Rutgers University campus.

Table 1, Developed versus Undeveloped Land Cover Estimates Using Housing Density Information, provides a summary of the results of this analysis. The results clearly indicate that the TM digital data, if used alone, would result in an under estimation of the amount of land classified as being developed in residential areas where tree cover is an important component of the spectral information that is recorded by the satellite. In contrast, the results indicate that census data can be effectively used to derive residential housing density information that can greatly reduce this potential problem of misclassification.

The results (see Table 1) indicate that the undeveloped land cover estimates derived from the TM data are significantly reduced through the use of the housing density information. In the case of Highland Park, the percentage of land classified as being undeveloped decreases from 31.9 percent when using the TM information to a low of 6.8 percent when using the 0.5 unit per acre density mask. This pattern is repeated for Piscataway where the estimated percentage of undeveloped land decreases from 56.8 percent when using the TM information to a low of 37.1 percent when the 0.5 unit per acre density mask is used.

The results reflect the degree to which Highland Park is in fact a highly developed community with little land remaining for potential development and within which residential development has taken place at a relatively high density. In contrast, the results for Piscataway reflect a different pattern of development within this community and the existence of a significant amount of undeveloped land even when housing density information is used to improve the accuracy of the estimate of remaining undeveloped land. After examining the data for these and other municipalities, it was decided that the 0.5 unit per acre density threshold yielded the most accurate estimates of undeveloped land.

Processing of the Remaining Digital Boundary Files

Digital boundary files for municipalities or minor civil divisions (MCDs), the term used for municipalities in New Jersey by the US Census, counties, and the state were obtained from the NJ Department of Environmental Protection and Energy (DEPE). These files were used to maintain consistency with existing estimates of the total amount of land within the State, counties, and MCDs. The vector boundary files were converted to raster format as an additional data layer in the GIS data base used to develop the estimates of land cover.

Digital boundary files for the state planning areas were obtained from the State Planning Commission and converted from vector to raster format and also added as a data layer to the GIS data base. Digital boundary files for the Pinelands management areas were obtained from

the Pinelands Commission for land within the Pinelands region and converted from vector to raster format.

Calculation of Adjusted Developed and Undeveloped Land

Following the processing of the TM digital data, the 1990 US Census data and TIGER files, the MCD, county, and state boundary files, the state planning region boundary files, and the Pineland management area boundary files; the GIS data base required to estimate developed and undeveloped land was completed. Following the development of this data base, the GRASS GIS software package was used to calculate the amount of developed and undeveloped land within each MCD by planning area. The results were output in machine readable format and used in the calculation of housing allocation numbers by COAH and its consultants.

Summary and Conclusions

Estimates of developed and undeveloped land were calculated for New Jersey using land cover information derived from Landsat TM digital data. Further refinement of the estimates of undeveloped land was accomplished through the use of the 1990 US Census data to eliminate land that could be characterized as developed based upon existing housing density at the block level.

The estimates that were derived through this process were designed to be consistent state-wide estimates that could be used to establish reasonable regional shares within each housing region for each New Jersey municipality. It is believed that the resulting estimates are the best available and the data created represent a valuable planning tool for government, non-profit, and private sector entities at the state, county, and local levels.

Table 1. Developed versus Undeveloped Land Cover Estimates Using Housing Density Information.

	Municipality			
	Highland Park		Piscataway	
	acres	% total	acres	% total
TM land cover				
undeveloped	394	31.9%	6,921	56.8%
developed	842	68.1%	5,264	43.2%
TM with a 2 unit/acre mask				
undeveloped	200	16.2%	6,009	49.3%
developed	1,036	83.8%	6,176	50.7%
TM with 1 unit/acre mask				
undeveloped	91	7.4%	5,309	43.6%
developed	1,145	92.6%	6,876	56.4%
TM with 0.5 unit/acre mask				
undeveloped	85	6.8%	4,515	37.1%
developed	1,151	93.2%	7,670	62.9%
Total land cover	1,236	100.0%	12,185	100.0%

Note: The TM land cover estimates include the total acreage of land classified as vacant using the digital satellite data.

APPENDIX C

STRUCTURAL CONDITIONS SURVEY

The Council on Affordable Housing (COAH) has estimated the number of substandard housing units occupied by low and moderate income households in each municipality, by employing census data. This estimate is called the municipal indigenous need. COAH recognizes that its estimates may be high or low. Therefore, COAH has devised a survey for any party in COAH's process to present data to COAH that may be used to alter the census-generated indigenous need estimates.

The survey requires an exterior inspection to determine if a housing unit is substandard. It then provides for the use of census data to estimate the number of substandard units occupied by low or moderate income households.

In developing the exterior survey, COAH has divided the exterior structure of a building into seven components: (1) foundation; (2) rails, steps, stairs, porch; (3) siding and walls; (4) windows and doors; (5) eaves, soffets, gutters, leaders; (6) roof and chimney; and (7) fire escape. The foundation, siding and walls and roof and chimney are considered major systems. The remaining components are considered minor systems. Each system is to be ranked as good/excellent or fair/poor. Definitions are provided to guide the exterior inspection in Appendix A.

If one major system is determined to be fair/poor, the structure and all housing units within it are considered substandard. If two or more minor systems are determined to be fair/poor, the structure and all, the units within the structure are considered substandard.

The survey can be conducted from the street, and, in most cases, there will be no need to step on to the property. A view of the front of the structure, its two sides (one side of it is semi-detached) and a portion of the roof should provide sufficient information to complete the survey.

The Structural Conditions Survey shall be performed by individuals who are licensed to perform building and/or housing inspections who have received training from COAH on the implementation of the survey. Additional COAH training may be substituted for a building and/or housing inspection license. COAH will offer training periodically on how to conduct this survey.

There may be some areas of a municipality which can be excluded from the survey. Subdivisions constructed after 1980, areas of very expensive homes, and neighborhoods that the local housing/building inspector believes are trouble free are examples of such areas. All surveys submitted to COAH will be checked by COAH staff with special attention paid to areas of the municipality not surveyed.

The exterior survey should yield an estimate of substandard units within the municipality. To estimate the number of substandard units occupied by low and moderate income households, the Council will rely on census information that is available from the Public Use Micro-Data Sample (PUMS). This data allows COAH to match household income to the census information COAH uses to estimate the indigenous need. The census has divided New Jersey into over 50 PUMS areas. Therefore, the data are sensitive to the different housing stocks found within the State.

As an example, let us assume that a municipality performs the exterior survey and finds 100 substandard units. Let us also assume that the PUMS data indicates that 82 percent of substandard units (within the geographic area defined by the PUMS) are occupied by low and moderate income households. Therefore, the survey results indicate that 82 low or moderate income households are living in substandard housing units.

DEFINITIONS FOR STRUCTURAL CONDITIONS

The following relates to structural components of a residential building. Refer to the attached diagram for component identification.

Excellent to Good—The condition of the component is like new or requires standard maintenance.

Examples:

Foundation—The component may need minor re-pointing and/or paint or the removal of shrubs or vines to protect it from deterioration.

Handrails, Steps, Stairs, Porch—A component or components may need paint and/or re-nailing or tightening.

Siding and Walls—The components may need light scraping and painting and/or re-nailing of loose siding.

Windows and Doors—The components may need light scraping and painting and appear to be operational.

Eaves, Soffets, Gutters, Leaders—The components may need light scraping and painting. Gutters may need realignment. Leaders may need re-attachment.

Roof and Chimney—No immediate repair is needed on the roof. The chimney is straight but may need minor re-pointing.

Fire Escape—The component may need scraping and painting and is properly functioning.

Fair to Poor—The condition of the component requires immediate maintenance, repair or replacement. Further deterioration may adversely affect other exterior and/or interior components.

Examples:

Foundation—The component needs re-pointing, replacement of some stones, brick or blocks or some rebuilding due to: loose, broken or missing bricks or block; missing mortar; excessive cracks in the masonry*; deterioration of masonry surface; pargeting pulling away; sinking; or being out-of-plumb.

Handrails, Steps, Stairs, Porch—The components need replacement of boards, risers, joists, rafters, and/or beams, etc. due to: sagging; broken or unsound supports; a sinking or structurally unsound foundation; broken, missing or rotted boards; missing or unsound railings or balusters; broken or missing trim; missing mortar in the masonry or the masonry being generally deteriorated; excessive cracks in the masonry*; or worn steps.

Siding and Walls

Brick—The component needs re-pointing, spot replacement, re-construction, etc. due to: sagging; bowing; being out-of-plumb; excessive cracks in the masonry*; missing bricks or missing mortar.

Stucco—The component needs patching, spot replacement, or re-construction and painting due to deteriorated surface, cracks, holes, water damage, or bowing.

Wood—The component needs patching, spot replacement, or re-construction and painting due to sagging, bowing, being out-of-plumb, rot, water damage, loose boards, cracked or broken boards.

Siding—The component needs spot, area or total replacement due to broken or missing siding.

Windows and Doors and Related Trim (Exclusive of Storm Doors and Windows)

Windows—The component needs putty or new glass. Other indicators of a fair/poor component include: missing or broken trim; missing or broken sill; a frame or sash out of square; rotted wood; and/or inoperable windows.

Doors—Indicators of a fair/poor door include: broken glass; a frame out of square; missing or broken trims; interior grade doors being used as exterior doors; rotted wood.

Eaves, Soffets, Gutters, Leaders—Indicators of a fair/poor component include: broken or hanging sections; holes, rot leakage and/or missing sections; significant deterioration; or animal infestation.

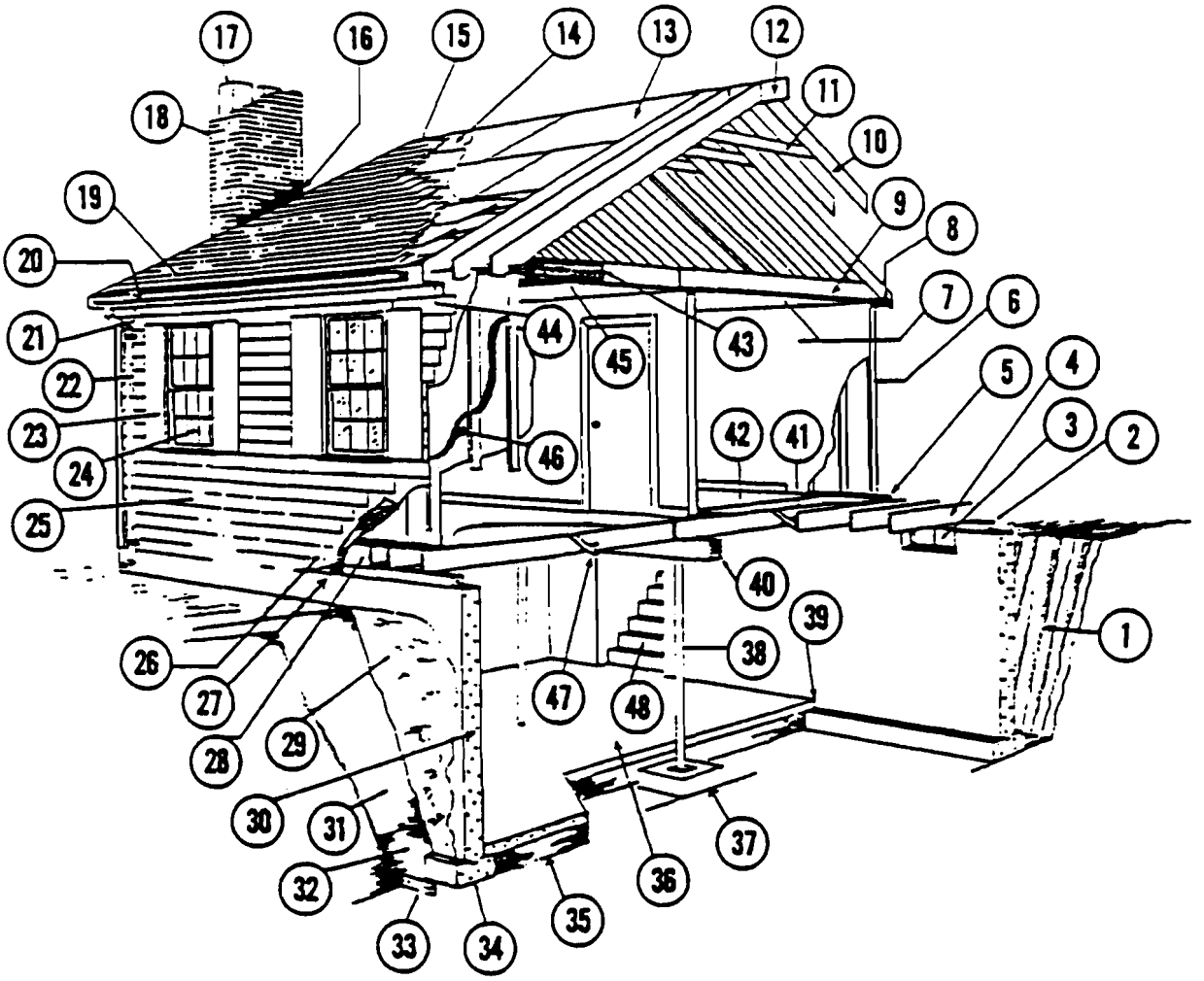
Roof and Chimney

Roof—The component needs moderate scattered shingle replacement, area replacement or total replacement due to: sagging; exposed paper or sheathing; hole(s); curling of shingles; blistering of rolled roofing; cracked shingles; missing shingles; rusted metal roof; and/or leakage.

Chimney—The component needs partial or total reconstruction due to: sinking; being out-of-plumb; excessive cracks*; loose, broken or missing bricks; missing mortar; deteriorated surface and/or lack of a flue.

Fire Escape—The component needs significant physical repairs or replacement and/or is not fully operational.

*Excessive cracks can mean multiple cracks affecting structural integrity or a crack or cracks as wide as ¼ inch.



RESIDENTIAL BUILDING COMPONENTS

1. EXCAVATION
2. SILL PLATE
3. BASEMENT WINDOW
4. FLOOR JOIST
5. SHOE PLATE
6. STUDS
7. DRYWALL
8. PLATE
9. CEILING JOISTS
10. RAFTERS
11. COLLAR TIES
12. RIDGE RAFTER
13. ROOF SHEATHING
14. ROOF FELT
15. RIDGE SHINGLES
16. FLASHING
17. FLUE LINING
18. CHIMNEY
19. ROOF SHINGLES
20. GUTTER
21. FACIA
22. DOWNSPOUT
23. SHUTTER
24. WINDOW
25. WALL SHINGLES
26. BUILDING PAPER
27. WALL SHEATHING
28. FIRE STOP
29. DAMPPROOFING
30. FOUNDATION WALL
31. BACKFILL
32. DRAINAGE STONE
33. DRAINAGE TILE
34. WALL FOOTING
35. GRAVEL
36. CONCRETE SLAB
37. COLUMN FOOTING
38. PIPE COLUMN
39. EXPANSION JOINT
40. GIRDER
41. SUB-FLOOR
42. FINISH FLOOR
43. ATTIC INSULATION
44. SOFFIT
45. CEILING STRAPPING
46. WALL INSULATION
47. CROSS BRIDGING
48. BULKHEAD STAIRS

STRUCTURAL CONDITIONS SURVEY DATE:

RATE COMPONENT: GOOD/EXCELLENT = O

FAIR/POOR = X

SURVEYOR:

STREET:		COMPONENTS								DEFICIENT "STRUCTURE" MARK "YES" OR "NO"	COMMENTS
		ONE "X" AND STRUCTURE IS DEFICIENT			TWO "X"S AND STRUCTURE IS DEFICIENT						
ADDRESS	BLOCK	FOUNDATION	SIDING AND WALLS	ROOF AND CHIMNEY	WINDOWS AND DOORS	EAVES/SOFFETS GUTTERS/LEADS	RAILS/STAIRS STEPS/PORCH	FIRE ESCAPE	NUMBER OF DWELLING UNITS	LOT	

TECHNICAL APPENDIX D

The Cost of Providing Infrastructure

Application: The Cost of Providing Infrastructure

September 4, 1986

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Appendix 1: Data Sources

Appendix 2: Data Definitions

I. Purpose

The purpose of this study is to provide an approach to the development of **financial evaluation forms** to be used by the Council on Affordable Housing and the Department of Community Affairs. This form will provide the necessary data to review whether necessary capital expenditures to support proposed inclusionary housing development obligations would result in "prohibitive costs" to the respective local jurisdictions.

Study Approach

The approach taken to accomplish the study's objective is to first present the theoretical background and analytical approaches that have been used to measure prohibitive costs from the perspective of a community's financial capacity. The infrastructure costs are limited to **water and sewer systems only**.

Section III presents the data requirements needed to measure prohibitive cost and a discussion of indicators that provide a perspective on municipal and financial conditions and status.

Section IV includes a series of worksheets that make up the financial evaluation form. These worksheets provide information on municipal taxes, demographic and statistical data employed to calculate indicators of economic vitality, revenues/expenditures, income data on water and sewer enterprise funds, rates charged to users of each water and sewer service system, wastewater system costs, and costs per household.

Section V presents comparative data on which to make an evaluation of prohibitive costs against generally accepted industry standards. These standards are drawn from Moody's Investors Service selected indicators of Municipal Performance for 1985.

II. Assumptions and Suggested Analytical Approach

The service area and the type of financing, general obligation, revenue bond, special district or tax increment financing will have a direct bearing on who bears the burden of the system costs. A general obligation bond or a revenue bond supported by general property taxes or user charges from an entire jurisdiction has the broadest distribution of cost impacts. An improvement district or tax increment financing district with assessment or "impact fees" levied directly against the properties who benefit from the new system costs has more narrow cost distribution effects. The boundaries of the service area and the method of revenue generation to pay for the project financing must be explicitly defined.

A municipality's ability to pay for the new infrastructure will depend on a judgment as to whether or not its indicators of financial condition indicate "fiscal stress" will result from the added community expenditure. These indicators are objective in nature as described in Section III below and should be judged against the standards of the financial and debt ratios presented in Section V. Generally, a community with poor financial and debt ratios that are below the median ratios are strong candidates for a jurisdiction likely to experience "prohibitive costs" from the new infrastructure. These are generally communities with the lowest investment grade or below investment grade ratings from national rating agencies (Moody's, Standard & Poor's and Fitch).

Many tax-exempt municipal bonds and notes are given ratings to indicate their degree of creditworthiness security from risk or default. Three major national rating agencies analyze the municipal authorities issuing bonds. They are Moody's Investors Service, Standard & Poor's Corporation, and Fitch Investors Service. (Moody's and Standard & Poor's also will rate short-term issues.) Small issues of municipal bonds and notes are often sold without a credit rating.

Creditworthiness	Moody's	Standard & Poor's and Fitch
Prime (highest quality debt)	Aaa	AAA
Excellent	Aa	AA
Good	A	A
Average	Baa	BBB
Fair	Ba	BB
Poor	B	—
Marginal	Caa	B
Default	C	D

Bonds rated between prime and average are considered "investment grade" by banks and conservative investors. Those rated below average are considered "speculative" by the same investors.

In addition, Standard & Poor's has added plus and minus signs to the ratings of certain securities in order to differentiate between stronger and weaker credit ratings. This was done because there were so many bonds in each category. Similarly, Moody's adds a number one to the ratings of bonds that possess the strongest bonds in a category. For example, the strongest bonds in the Aa category are rated Aa1, the strongest bonds in the A category are rated A1, and the strongest bonds in the Baa category are rated Baa1.

Consistency of Standards

It is recommended that the same standards of "prohibitive costs" be used by the Council on Affordable Housing, Local Finance Board, and Department of Environmental Protection in their evaluation of each community.

Limitations

The limitations of these suggested approaches are the difficulties in synthesizing the municipal indicators into a single decision on prohibitive cost. These limitations can be overcome with more sophisticated analysis by developing a prohibitive cost index, perhaps with the technique of multiple discriminant analysis of the indicators. This approach groups indicators into common dimensions of municipal financial capability which can then be classified according to high, average or low strength.*

*See Karen M. Seidel "Oregon Municipal Fiscal Indicators," Bureau of Governmental Research and Service, University of Oregon, October 1983.

III. Data Requirements

Accurate data is fundamental to accurate analysis. The selected indicators are based on techniques by credit and municipal analysts for evaluating municipal financial condition.

In some cases, a particular data item may be simply unavailable or inappropriate, in which case it should be left out. In all cases, however, it is important that data be consistent during the period under examination. If accounting or recording procedures change from one fiscal year to another, adjustments should be made so that each year's data are comparable.

Data Requirements

The data needed for analysis fall into four general categories:

- expenditure elements,
- tax base elements,
- revenue elements, and
- demographics elements.

The analysis of financial conditions is based on an examination of the trends and behavior of key indicators over time. Data are collected for the most recent five-year period for which information is complete.

Data will usually be obtained from annual financial reports and other accounting or reporting statements. A list of suggested sources appears in the Appendix.

A. Economic and Social Factors

Economic and social factors are of primary importance in assessing the creditworthiness of a jurisdiction. A strong economic base should

enable an issuer to overcome some weakness in debt, legal and financial factors and to maintain a sound credit position. On the other hand, a weak or declining economy will demand that an issuer exert the utmost care in debt and financial management to protect creditworthiness. A strong credit usually shows greater than average economic diversity, wealth, and growth. Measures of economic base include total personal income, income per capita, population changes, and changes in per capita income.

Wealth

A wealthy economic base will be indicated by above-average per capita property values, personal income and wholesale and retail sales. Negative aspects here would be a high or rapidly growing proportion of the population at or below the poverty level or on welfare rolls.

Growth

A strong credit also requires a growing economic base, although not all growth is necessarily viewed as favorable. Extremely rapid growth based heavily upon speculative factors may lead to excessive build-up of debt and/or taxes which could prove unsupportable over the long run. While growth is not always a favorable sign, a decline in economic resources is viewed as a negative factor since it would be highly unusual for such a decline to be offset by a tapering of demands on the tax base. Growth rates in population should approximate the state and national averages.

Population

Population is a fundamental indicator of economic growth. Growth in population is associated with increases in retail sales and with growth in consumer-related jobs. Population increases attributable to migration are often additionally associated with construction and durable manufacturing job expansion as well as service sector expansion, particularly the components of business service, government and tourist recreation. Growth at faster rates than the national average indicates an increasing share of the U.S. market. Similarly, population growth exceeding regional rates indicates economic shifts within the region.

Personal income

Personal income is a powerful indicator of economic strength and viewed over time can reveal strong basic trends. Income is also a major fiscal resource of state governments and, therefore, is the standard against which debt and taxes are compared. If income is rising more rapidly than in the nation and/or region as a whole, shifts in economic base composition are a strong possibility. Growth in composition can be expected as can growth in government revenues from sales and income taxes.

Per Capita Income

Per capita income below the national average can be both favorable and unfavorable. Low incomes are associated with low quality public education and, consequently, low skilled labor. Low level and limited scope of government services and a low debt burden also are associated with low per capita income.

Total Nonagricultural Employment

Total employment is a powerful analytic tool, but nonagricultural employment is more useful for comparison. Relatively high growth in nonagricultural jobs is a favorable sign.

B. **Debt Management**

Debt factors have always played a prominent role in municipal credit both because of inherent importance and because debt figures are quantifiable measures which make inter-city comparisons easier than for other factors. Three key ratios traditionally used in the industry attempt to establish the size of a unit's debt, the burden this places upon resources, and the relationship between the servicing of this debt and the unit's overall revenues. In turn, each ratio can be viewed from three aspects in an attempt to weigh its importance in the unit's credit picture: (1) the absolute level of the ratio at that point in time as compared with traditional guidelines; (2) the level of the ratio as compared with ratios of similar types of local units; and (3) the trend of that ratio within the unit being reviewed. Three additional ratios explored in evaluating an issuer's debt management policies relate to the rate of debt retirement, the level of bond anticipation note debt and the level of the unfunded pension liability. Two other items which do not readily lend themselves to quantitative analysis but should be considered in debt analysis are (1) authorized debt and projected debt needs and (2) other significant unfunded debts and contingent liabilities such as leases.

Debt Per Capita

This ratio attempts to establish the size of the unit's debt. It is measured by dividing the unit's overall net debt by its population. Overall net debt is the total tax-supported debt of the issuer as well as its proportionate share of the debt of other governments which may tax residents of that community. When this ratio reaches $1,000 or above, debt is considered as sizeable.

Debt/Estimated Full Value

This ratio attempts to establish the burden which debt places upon resources, and is generally calculated by dividing the unit's net debt by the estimated market value of its real property. A debt burden of 3 percent or below is generally considered low. One between 3 percent and 10 percent is moderate. When the burden reaches or exceeds 10 percent, it is considered heavy and must be closely examined to determine that it will not become unmanageable in the future. The heavier the burden, the closer the attention that must be paid to the trend of that burden, the issuer's physical plant and future borrowing plans.

Debt Service/Revenues

This ratio's purpose is to indicate the flexibility that the locality will have to meet debt service (and other fixed charges although they are not directly part of the ratio) if revenues were to decline. A ratio of 10 percent or less indicates that ample flexibility should exist to meet debt service. If the ratio exceeds this level, it may be explained by a rapid debt retirement schedule or a unit in which capital expenditures are unusually large in relation to operating expenditures. If neither is true, then the higher that ratio becomes, the more concern there is about the unit's ability to meet fixed charges if an economic downturn or some other unforeseen circumstances depress revenues.

Direct Debt Due in Ten Years

This measure indicates the amount of the issuer's long-term debt which matures in ten years. Debt to finance a project should not extend beyond the expected useful life of the project. While each issuer's schedule must be viewed in terms of the types of long-term improvements being financed, it is generally true that the more rapid recapture of debt incurring capacity places the issuer in a more flexible position. Any issuer which has less than one-third of its long-term debt maturing in ten years must be carefully reviewed as to the appropriateness of such a slow retirement schedule.

C. **Financial Management**

A healthy credit is marked by a consistently and realistically balanced budget as reflected in the unit's income and expense statements, a cash surplus (cash and investments exceeding current liabilities) at the last balance sheet date, and maintenance of a manageable level of short-term operating debt. Other factors considered include the unit's tax burden, level of tax collections, reliability of its revenue structure and growth rate of its expenditures. A one-year deficit or drop in property tax collections may not be of particular concern if its origin is external (a national recession) and is resolved in a satisfactory manner and time period. However, if deficits persist over good and bad times, their causes must be examined closely.

Taxes

Taxes are the largest source of government revenues and we are developing data to measure **tax burden** or the ratio of taxes from own sources to personal income. (Adjusted personal income excludes welfare transfer payments from state and local texes.) Tax burden reveals the extent to which current levels of general revenue (excluding intergovernmental revenue) limit the private use of personal income. High tax burden is viewed as a disincentive to private investment and can be an indication of excessive government programs in the face of an unhealthy private economic sector. This measure should be studied along with the component data for revenues and personal income.

Ratios used in evaluating financial management may be categorized under two areas: operating statement and balance sheet data and tax ratios.

Average Annual Increase in Expenditures

One of the most telling indicators is how rapidly an issuer's budget is growing. An increase in expenditures which exceeds growth in the tax

base substantially over a period of time will ususally indicate future credit problems.

Direct Expenditures

Direct expenditures are particularly revealing of the extent of government participation in the economy. If expenditures are increasing more than revenues from own sources and Federal aid, increasing reliance on debt and/or accounting gimmicks is a possibility. Rising per capita expenditures may indicate broader scope and higher quality public services, increasing welfare burdens and/or rising public employee compensation. Below average expenditures that show a sudden surge may indicate a shift to an urban economy characterized by high-skilled industries. Per capita figures facilitate comparisons among jurisdictions and within a state over time.

Comparatively high levels of expenditures should be associated with broader, better services, and some attention should be paid to apparent adequacy and delivery efficiency—or lack thereof.

Operating Surplus (Deficit) Revenues

From the income and expense statement, it is ascertained whether revenues exceeded expenditures (operating surplus) or expenditures exceeded revenues (operating deficit). An operating surplus is considered favorable or comfortable. A large surplus is not necessarily looked for, as a particularly large one may even have negative connotations as to budgeting practices. An operating deficit of more than 5 percent of revenues is of concern and must be further examined in terms of past year's performance, the reason for it (internal or external), and the plans to resolve it.

Accumulated Surplus (Deficit) Revenues

From the balance sheet, the issuer's solvency is evaluating by measuring accumulated surplus or deficit. Generally, a surplus of any size may be considered satisfactory, though a substantial decline from the prior year is deserving of further attention as to its implications for future budgets. Investigate the source of any deficit that has been allowed to accumulate in excess of 10 percent of one year's revenues and examine the issuer's ability and plans to eliminate it.

Effective Property Tax Rebate

The effective property tax rate is an overall rate taking into account not only the property tax rate of the issuer but also those of all its overlapping tax jurisdictions. The effective property tax rate is the tax rate on true or market property, thus allowing for comparisons with other units. A problem exists in using this indicator due to the diversity in revenue structures. However, it is useful in comparing like units within a specific state.

Tax Delinquency Ratios

The property tax collection record is important because some issuers depend heavily upon property taxes; for virtually all issuers, the tax is the budget-balancer; and, because it is one of the best measures of willingness to pay. Two ratios are primarily utilized. The first measures the collections from the current year's levy against the gross levy for that year. The second measures current collections and collections from prior years combined against the current levy.

IV. **Financial Evaluation Forms**

A series of worksheets are presented with instructions on how to fill them out. The eight worksheets are based on the indicators of financial condition as follows:

- **Worksheet #1**—Behavior of Municipal Tax Base and Tax Revenues
- **Worksheet #2**—Expenditure Information
- **Worksheet #3**—Demographic and Statistical Information
- **Worksheet #4**—Water and Sewer Enterprise Fund Information
- **Worksheet #5**—Water and Sewer Rates
- **Worksheet #6**—Total Estimated Annual Local Wastewater System Costs
- **Worksheet #7**—Annual Costs per Household
- **Worksheet #8**—Bond Rating and Debt History

These forms are drawn from various publications of the Government Finance Research Center, Washington, DC.* Computer software is available at nominal cost to process and analyze these data. A data base should be created over time to facilitate comparative analysis between the subject municipality and New Jersey averages for each of the data measurements.

*See Government Finance Research Center, GOVRATIO User's Manual, July 1984 and U.S. EPA, Office of Water Programs, Financial Capability Guidebook, March 1984.

Worksheet #1

Since many local governments are substantially supported by property tax revenues, Worksheet #1 is designed to track the behavior of the tax base and tax revenues, and to provide an indication of the jurisdiction's tax flexibility.

Property Taxes Levied (14) and Property Taxes Receivable (15) should be readily available in the government's Combined Statement of Revenues, Expenditures, and Changes in Fund Balance. Assessed Value (16), Assessment Ratio (17) as a percent, and Full Market Value (18) should be available from the Assessor's Office.

If your government uses different tax levies for different classes of property, you may choose either to use the data for only the largest class of property in terms of revenue or you may calculate average or weighted average data. If you select either approach on the worksheet, identify the method used to ensure that data in subsequent years is comparable.

Worksheet #1
Tax Information (A)

Item Number	Description	Amount ($) 19__	19__	19__	19__	19__
14.	Property Tax Levy					
	Source Documents					
15.	Property Taxes Receivable					
	Source Documents					
16.	Assessed Value					
	Source Documents					
17.	Assessment Ratio	%	%	%	%	%
	Source Documents					
18.	Full Market Value					
	Source Documents					

Instructions:

1. Enter the total for the amount of property taxes levied or billed for each year.
2. For each year, enter the amount of property taxes outstanding at year's end (i.e., the amount uncollected for the year of the levy).
3. Enter the Assessed Value of Taxable Real Property.
4. Enter the Assessment Ratio as a percent.
5. Enter the estimated full (or true) market value of taxable property.
6. Make a note of the document name and page number from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTES: If the Assessed Value or Full Market Value is $1,000,000,000 or more, enter the amount in $1000's.

For the Assessment Ratio, if you have different ratios for different classes of property, use an estimated average ratio.

Worksheet #2

Worksheet #2 also examines trends in the **character** of expenditures across all programs. Data for aggregate Capital Outlays (39), Debt Service (40), Short-Term Interest (41), and Fringe Benefits (42) may be found in the government's Combined Statement of Revenues, Expenditures, and Changes in Fund Balance. These amounts are compared with Total Expenditures actually incurred (43).

Worksheet #2
Expenditure Information (B)

Item Number	Expenditure Type	Actual Expenditures by Type 19__	19__	19__	19__	19__
39.	Capital Outlays					
	Source Documents					
40.	Debt Service					
	Source Documents					
41.	Short-Term Interest					
	Source Documents					
42.	Total Expenditures					
	Source Documents					

Instructions:

1. For each year, obtain the total capital expenditures for all funds except enterprise funds. Enter these amounts in the "Capital Outlays" line.
2. For each year, obtain the total of all debt service (principal and interest) payments from all governmental funds (exclude revenue bond debt service funds). Enter these amounts for Item 35, Debt Service.
3. Similarly, for all funds except enterprise-type funds, obtain the total interest paid on short-term loans; enter the amount for each year in Item 36.
4. Obtain the total expenditures on fringe benefits from all funds except enterprise funds and enter for Item 37.

Worksheet #3

This worksheet is used to assemble demographic and statistical data employed to calculate indicators of economic vitality. If the value of Building Permits (66) and Business Licenses (67) is not available, the raw number of permits and licenses issued may be used. Population (68) and Per Capital Income (69) may be available from a local, regional, or state planning agency; a local bank; or an economic development agency. The Consumer Price Index (70) is available from the U.S. Bureau of Labor Statistics.

Worksheet #3
Demographic and Statistical Information

Item Number	Description	19__	19__	19__	19__	19__
66.	Building Permits					
	Source Document					
67.	Business Licenses					
	Source Document					
68.	Population					
	Source Document					
69.	Per Capita Income	$	$	$	$	$
	Source Document					
70.	CPI					
	Source Document	U.S. Bureau of Labor Statistics—Annual Handbook of Labor Statistics				
71.	Municipal Employees					
	Source Document					
72.	Non-Agricultural Total Employment					

Instructions:

1. For Item 66, enter number of building permits issued during each year.
2. For Item 67, enter number of business licenses issued each year.
3. For Item 68, enter estimated population for each year.
4. Enter estimated per capita income for each year for Item 69.
5. Enter Consumer Price Index each year for item 70.
6. For Item 71, enter the number of full-time equivalent employees each year.
7. For Item 72, enter the covered employment figures drawn from New Jersey Covered Employment, NJ Department of Labor.

Worksheet #4

This worksheet is used to collect income data on water and sewer funds your jurisdiction may operate. Enterprise funds are those established by a government to account for operations in a manner similar to a private business, where it is the intent to recover the costs of a service or facility through user charges. Common enterprise activities include utilities (such as water and sewer services), parking facilities, airports, and transit systems.

The names of the water and sewer enterprise funds chosen should be entered in the left-hand column of the worksheet. The net income for each year for each of the selected enterprise funds is entered in the appropriate column on the worksheet. Generally, net income is the difference between revenues and expenses and is intended to indicate the degree to which the enterprise is self-supporting. However, some services subsidized by the general government may include "transfers in" in the calculation of gross revenue; and some profitable services may include "transfers out" in the calculation of gross expenses. To ensure that enterprise net income figures are a comparable and accurate reflection of enterprise activity, interfund transfers, unless they represent payments or receipts for services provided (for example, for shared overhead), should be eliminated from the calculation of net income.

The "Source Department" area provides space for you to note a reference to the document (and perhaps the page number) from which the data were taken (such as Annual Audit Report; Sewer Enterprise Statement of Revenues, Expenses, and Changes in Retained Earnings; etc.).

Worksheet #4
Enterprise Fund Information (A)

Item Number	Enterprise Fund Name	Enterprise Fund (Net) Income ($) 19__	19__	19__	19__	19__
1.	Fund					
2.	Fund					
3.	Fund					
4.	Fund					
5.	Fund					

Source Documents: 19___ _____
19___ _____
19___ _____
19___ _____
19___ _____

Instructions:

1. Fill in the names of up to five enterprise funds (such as water, parking, airport, sewer, etc.).
2. Enter the (net) income amount for each fund for each year.
3. Make a note of the document name, and page number, from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTE: Enterprise funds are those that are established to account for operations that are financed and operated in a manner similar to a business enterprise — where it is often the intent to finance the operation largely through user charges. (Net) Income is the difference between revenues and expenses. (Do not include transfers.)

Worksheet #5

This worksheet is used to collect data on the rates charged to users of each Enterprise Fund service identified in Worksheet #4. Rates will be found in ordinances or rate schedules and the units on which the rates are charged should be noted in the "Unit Description" column (such as per 100 gallons, 1,000 cubic feet, hour, etc.). If the rate unit changes from one year to the next, a conversion will be necessary to ensure that all rates for any given Enterprise Fund are comparable from year to year. If the rate structure is complex or varies from year to year an average charge per customer may be calculated to provide a comparable figure.

Worksheet #5

Enterprise Fund Information (B)

Item Number	Enterprise Fund Name	Unit Description	19__	Enterprise Fund Rates ($) 19__	19__	19__	19__
6.							
7.							
8.							
9							
10.							

Source Documents: 19____ _____
19____ _____
19____ _____
19____ _____
19____ _____

Instructions:

1. Enter the names of the enterprise funds shown in Worksheet #1.
2. In the "Units" column, for each fund, describe the units on which the rates are based.
3. Make a note of the document name, and page number, from which you gathered the data. This will serve as a reference if you need to verify the information and also will help ensure consistent information in gathering data to update the analysis in future years.

NOTE: If the charges are based on a complex rate structure, use an average rate per customer or per unit. Note this in the "Unit" column.

Worksheet #6

C. TOTAL ESTIMATED ANNUAL LOCAL WASTEWATER TREATMENT SYSTEM COSTS

- Existing Annual Operation, Maintenance, and Replacement Costs $_____ (326)
- Discontinued Annual Operation Maintenance, and Replacement Costs to be Discontinued as a Result of Proposed Project $_____ (327)
- Net Existing Annual Operation, Maintenance, and Replacement Costs (Net) (326-327) $_____ (328)
- Existing Annual Debt Service $_____ (329)
- Estimated Annual Operation, Maintenance, and Replacement Costs of Proposed Facilities (215) $_____ (330)
- Estimated Annual Debt Service and Other Required Expenses for Proposed Facilities (325) $_____ (331)
- Total Estimated Annual Local Wastewater Treatment System Costs (328 + 329 + 330 + 331) $_____ (332)

Worksheet #7
Annual Costs Per Household

- Total Estimated Annual Wastewater Treatment System Costs (332) $_____ (400)
- Nonresidential Share of Total Annual Wastewater Treatment System Costs $_____ (401)
- Residential Share of Total Annual Wastewater Treatment System Costs (400 – 401) $_____ (402)
- Number of Households _____ (403)
- Annual Wastewater Treatment System Cost Per Household (402 ÷ 401) $_____ (404)
- Other Annual Costs Per Household (Identify)
  _____
  _____
  _____ $_____ (405)
- Total Annual Costs Per Household (404 + 405) $_____ (406)

Worksheet #8

Purpose of Worksheet #8

The purpose of this worksheet is to profile and summarize the community's debt position, including the proposed project.

Worksheet #8

Sections A and B

Bond Rating and Debt History

A. BOND RATINGS

- Community's Most Recent General Obligation Bond Rating _____ Rating _____ Date of Rating (500)
- Community's Most Recent Revenue Bond Rating _____ Rating _____ Date of Rating (501)

B. DEBT

	Outstanding	+ This Project	= Total	
• General Obligation Bonds	_____	_____	_____	(502)
• Revenue Bonds	_____	_____	_____	(503)
• Gross Direct Debt			_____	(504)
• Direct Net Debt	_____	_____	_____	(505)
• Overlapping Net Debt	_____	_____	_____	(506)
• Overall Net Debt			_____	(507)
• Other Debt	_____		_____	(508)
• New Debt for Other Capital Improvements			_____	(509)

General Instructions

This worksheet is divided into four sections, each providing background information related to the community's debt history. The sections cover bond ratings, outstanding debt, debt repayment, and debt limits.

Instructions for Section A

Line 500. Give the community's most recent general obligation bonds rating and the date of the rating.

Line 501. Give the community's (or its wastewater utility's) most recent revenue bond rating and the date of the rating.

Enter this information on the Supplemental Information Sheet (Exhibit VII). If the community has never had a rating, enter N/A as not applicable.

Instructions for Section B

Line 502. Give the amount of general obligation debt outstanding, and any new debt for the proposed project. General obligation bonds are those for whose payment the full faith and credit of the issuer has been pledged and are payable most commonly from real property taxes and other general revenues. Include here any general obligation bonds secured by earmarked revenues that flow outside the general fund (double-barreled bonds).

Line 503. Give the amount of revenue bonds outstanding, including any new debt for the proposed facilities.

Line 504. Gross direct debt is the total amount of general obligation and revenue bonds outstanding. (Lines 502 plus 503)

Line 505. Direct net debt is gross direct debt (line 504) less debt that is self-supporting (revenue bonds) and double-barreled bonds.

Line 506. Overlapping net debt is the community's proportionate share of tax-supported debt of local government units located wholly or in part within the limits of a community which must be borne by property or persons in that community's boundaries.

Line 507. Overall net debt is the sum of direct net debt and overlapping debt. (Lines 505 and 506)

Line 508. Three important debt "obligations" that should be considered in evaluating a community's debt load are outstanding leases, unfunded pension liabilities, and notes having a maturity greater than one year. Insert here the amount of other debt the community has outstanding.

Line 509. Give an estimate of the amount of future planned debt for other planned capital improvements your community is contemplating. Include any outstanding bond anticipation notes (BANs) here.

V. **Standards: Comparative Analysis**

This section presents a set of standards on key debt and financial ratios which judge the potentiality for "prohibitive costs," selected indicators of municipal performance based on Moody's Medians, and methods for affordability screening based on household costs.

A. **Key Financial and Debt Ratios**

	Financial Ratios			
	Favorable	**Comfortable**	**Fair**	**Poor**
Average Annual Increase of Expenditures*	Under 8%	8%-10%	12%-15%	Over 15%
Operating Surplus (Deficit)/Revenues	S	S	(D) 0-5%	(D) Over 5%
Accumulated Surplus (Deficit)/Revenues	S	S	(D) 0-10%	(D) Over 10%
Current Tax Delinquency	0-2%	2%-4%	4%-6%	Over 6%
Total Tax Delinquency	-0-	0-1½%	1½%-3%	Over 3%
Effective Property Tax Rate	0-2%	2%-3%	3%-4½%	Over 5½%

*Should not be out of line with the national inflation rate.

	Debt Ratios			
	Favorable	**Comfortable**	**Fair**	**Poor**
Gross Debt Per Capita	$0-500	$500-900	$900-1,200	Over $1,200
Gross Debt/Estimated Full Value	0-3%	3%-7%	7%-10%	Over 10%
Debt Service/Revenues	0-10%	10%-15%	15%-20%	Over 20%
Direct Debt Due in Ten Years	Over 66⅔%	50%-66⅔%	33⅓%-50%	Under 33⅓%

B. **Moody's Medians**

Moody's Ratios: 1985

	New Jersey		U.S.
	Rank	**Amount**	**Median**
Net Tax-Supported Debt Per Capita	15	$ 388	$ 258
Debt as Percent of Estimated Full Valuation	17	1.5	1.1
Net Tax-Supported Debt as a Percent of Personal Income	22	2.8	2.4
Estimated Full Valuation Per Capita	17	25,868	22,904
1983 Personal Income Per Capita	3	14,122	11,284

City and County Debt Medians

The magnitude and the burden of debt are two measures crucial to an evaluation of debt position. As a starting approach, a method for calculating net debt has been developed which allows for comparability among local governments® across the United States. This net debt figure is then applied to population and tax base data. By using the population data and presenting net debt on a per capita basis, a meaningful measure of the relative size of the debt is provided.

Cities

Net Debt Per Capita [1]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
500,000 and over	$559	$271	$ 857	$ 2,004
300,000 to 499,999	406	215	718	1,659
200,000 to 299,999	539	291	706	1,206
100,000 to 199,999	362	85	554	5,211
50,000 to 99,999	369	59	658	3,199
25,000 to 49,999	384	10	689	4,135
10,000 to 24,999	533	134	713	5,843
Under 10,000	792	151	1,064	15,907

Ratio of Net Debt to E.F.V. (%) [3]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
1,000,000 and over	0.4	0.03	4.2	4.1
250,000 to 999,999	0.6	0.7	2.5	5.2
100,000 to 249,999	0.4	0.6	2.5	5.5
Under 100,000	0.7	0.4	2.1	12.2

[2] Cities and counties included in these observations have been grouped according to 1980 U.S. Census population.

[3] Estimated full value (E.F.V.) refers to the "true" or "fair" market value of all taxable property within the boundaries of the unit of government. Users of this data must be aware of the significant variations that exist in methods and quality of property assessment from state to state and even among municipal governments within a given state. Definitions of "taxable property" also vary across the country as does the dependability of equalization ratios.

Counties

Net Debt Per Capita [1]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
1,000,000 and over	$139	$168	$1,049	$ 1,981
250,000 to 999,999	158	275	607	2,071
100,000 to 249,999	96	150	580	1,379
Under 100,000	196	96	488	156,271

[1] Direct net debt figures are derived from observations of city and county governments only and do not include school districts or special districts.

[2] Net debt is defined as a governmental unit's gross debt less sinking funds and other offsets of monies in hand for principal redemption, bonds fully supported from enterprise revenues and short-term operating debt. Direct net debt refers to the net debt incurred directly in the name of a specific city or county; overall net debt further includes the net debt of overlapping and/or underlying units of government apportioned in accordance with property valuation.

As a measure of a government's burden of debt, a ratio is calculated between its net debt and the estimated full value of taxable property. The estimated full value serves as a direct measure of local government wealth and, therefore, is reflective of the government's capacity to service public debt. Taxable valuation is utilized as a wealth measure because it tends to be up-to-date and readily available for all sizes of municipal government.

Ratio of Net Debt to E.F.V. (%) [3]

Population Range [2]	Direct Net Debt Median	Overall Net Debt Low	Overall Net Debt Median	Overall Net Debt High
500,000 and over	1.6	0.9	4.2	8.9
300,000 to 499,999	2.3	1.1	3.1	10.4
200,000 to 299,999	2.2	1.6	2.6	9.0
100,000 to 199,999	1.6	0.3	2.5	9.3
50,000 to 99,999	1.7	1.0	2.8	16.1
25,000 to 49,999	1.8	0.1	2.9	15.0
10,000 to 24,999	2.1	0.2	3.3	24.5
Under 10,000	2.4	0.1	3.6	20.0

Enterprise Performance Medians

The following medians, derived during calendar 1984, convey various measures of performance and earning capability which are common to revenue-producing enterprises. These medians are valuable in assessing an enterprise's financial strengths and weaknesses relative to other similar enterprises.

Ratios derived from the income statement provide measures of profitability (operating ratio and net take-down) and debt-servicing capacity (coverage and safety margins). Coverage levels demonstrate both current and prospective debt repayment ability while safety margins denote additional levels of protection. The debt ratio, which is calculated from the balance sheet, signifies the enterprise's reliance on debt financing and its capacity to support additional debt.

The medians are intended as broad indicators. Significant deviation from the median is not necessarily an indicator of credit quality and may, in fact, highlight a significant event or unusual characteristic of the enterprise (i.e., start-up operation, system expansion or restructuring, abnormal weather).

Municipal Enterprise Medians

	Electric Distrib. Systems	Electric Gen. and Trans.	Water	Sewer	Airport
Operating ratio (%)	83.9	76.0	65.0	66.8	53.2
Net take-down (%)	18.3	26.6	41.0	43.7	50.6
Interest coverage (x)	4.55	2.61	4.00	3.03	3.49
Debt svc. coverage (x)	4.18	2.02	2.52	2.39	2.42
Debt svc. safety margin (%)	14.0	13.7	24.3	23.5	26.7
Debt ratio (%)	44.1	60.5	28.7	19.3	43.2

	Bridge, Tunnel, and Expressway	Turnpike
Operating ratio (%)	32.2	45.8
Net take-down (%)	73.1	56.1
Interest coverage (x)	4.97	10.6
Interest safety margin (%)	43.0	53.1
Bonds retired (%)	23.1	80.8

Municipal Enterprise Definitions (Continued)

Income Statement Components and Ratios

Gross revenue and income:	Operating revenues plus non-operating revenue.
Operating and maintenance expenses:	Operating and maintenance expenses net of depreciation, amortization, and interest requirements
Net revenues:	Gross revenue and income less operating and maintenance expenses.
Operating ratio (%):	Operating and maintenance expenses divided by total operating revenues
Net take-down (%):	Net revenues divided by gross revenue and income
Interest coverage (x):	Net revenues divided by interest requirements for year.
Interest safety margin (%):	Net revenues less interest requirements for year divided by gross revenue and income
Debt service coverage (x):	Net revenues divided by principal plus interest requirements for year.
Debt service safety margin (%):	Net revenues less principal and interest requirements for year divided by gross revenue and income.
Peak debt service coverage by historical net revenues (x):	Net revenues divided by estimated maximum annual principal and interest requirements on all outstanding debt and the bonds to be issued.
Peak debt service coverage by projected net revenues (x):	Projected net revenues for the first full fiscal year following completion of the capital project financed from the new bonds divided by estimated maximum annual principal and interest requirements on all outstanding debt and the bonds to be issued

APPENDIX 1

Data Sources

The necessary data will be available from several different sources. A list of typical source documents is given below:

- annual financial report (audit) for each year
- adopted budget for each year
- official statement for recent bond issues
- municipal rate ordinances
- annual report of pension system
- local or state planning documents
- census department reports (for population, income, etc.)
- handbook for labor statistics (CPI)
- sections of state code governing tax or revenue limitations

APPENDIX 2

DATA DEFINITIONS*

ACCOUNTING PERIOD. A period at the end of which and for which financial statements are prepared.

ACCOUNTING PROCEDURES. All processes that discover, record, classify, and summarize financial information to produce financial reports and to provide internal control.

ACCOUNTING SYSTEM. The total structure of records and procedures that discover, record, classify, summarize and report information on the financial position and results of operations of a government or any of its funds, fund types, balanced account groups, or organizational components.

ACCOUNTS PAYABLE. A liability account reflecting amounts on open account owing to private persons or organizations for goods and services furnished by a government (but not including amounts due from other funds of the same government or to other governments).

ACCOUNTS RECEIVABLE. An asset account reflecting amounts owing on open account from private persons or organizations for goods and services furnished by a government (but not including amounts due from other funds of the same government). Although taxes and special assessments receivable are covered by this term, they should be recorded and reported separately in Taxes Receivable and Special Assessments Receivable accounts, respectively.

ACCRUAL BASIS. The basis of accounting under which transactions are recognized when they occur, regardless of the timing of related cash flows.

ACCRUED EXPENSES. Expenses incurred but not due until a later date.

ACCUMULATED DEPRECIATION. A valuation account to record the accumulation of periodic credits made to record the expiration of the estimated service life of fixed assets.

ADVANCE REFUNDING BONDS. Bonds issued to refund an outstanding bond issue prior to the data on which the outstanding bonds become due or callable. Proceeds of the advance refunding bonds are deposited in escrow with a fiduciary, invested in U.S. Treasury Bonds or other authorized securities, and used to redeem the underlying bonds at maturity or call date and to pay interest on the bonds being refunded or the advance refunding bonds.

ASSESS. To value property officially for the purpose of taxation.

ASSESSED VALUATION. A valuation set upon real estate or other property by a government as a basis for levying taxes.

ASSESSMENT. (1) The process of making the official valuation of property for purposes of taxation. (2) The valuation placed upon property as a result of this process.

ASSESSMENT ROLE. In the case of real property, the official list containing the legal description of each parcel of property and its assessed valuation. The name and address of the last known owner are also usually shown. In the case of personal property, the assessment roll is the official list containing the name and address of the owner, a description of the personal property, and its assessed value.

ASSETS. Resources owned or held by a government that have monetary value.

AUDIT. A methodical examination of utilization of resources. It concludes in a written report of its findings. An audit is a test of management's accounting system to detemine the extent to which interna accounting controls are both available and being used.

AUDIT PROGRAM. A detailed outline of work to be done anc procedures to be followed in any given audit.

AUDIT REPORT. The report prepared by an auditor covering the audi or investigation made by him. As a rule, the report should include (a) a statement of the scope of the audit; (b) explanatory comments (if any) concerning exceptions by the auditor as to application of generally accepted auditing standards; (c) opinions; (d) explanatory comments (i any) concerning verification procedures; (e) financial statements anc schedules; and (f) sometimes statistical tables, supplementary comments and recommendations. The auditor's signature follows item (c) or (d)

AUDITOR'S OPINION. A statement signed by an auditor in which h or she states that he or she has examined the financial statement i accordance with generally accepted auditing standards (with exceptions if any) and in which he or she expresses an opinion on some or all o the constituent funds and balanced account groups of the governmen as inappropriate.

BALANCE SHEET. The basic financial statement that discloses th assets, liabilities, and equities of an entity at a specified date in conformi ty with GAAP.

BASIC FINANCIAL STATEMENTS. Those financial statements includ ing notes thereto, that are necessary for a fair presentation of th financial position and results of operations of an entity in conformit with GAAP. Under Statement 1, basic financial statements include balance sheet, an "all inclusive" operating statement, and (for proprietar funds, Pension Trust Funds, and Nonexpendable Trust Funds) a state ment of changes in financial position.

BETTERMENT. An addition made to, or change made in, a fixed asse that is expected to prolong its life or to increase its efficiency over an above that arising from maintenance, and the cost of which is therefor

*These definitions are from U.S. EPA, Office of Water Program Financial Capability Guidebook, March 1984.

added to the book value of the asset. The term is sometimes applied to sidewalks, sewers, and highways.

BOND. A written promise to pay a specified sum of money called the face value or principal amount, at a specified date or dates in the future, called the maturity date(s), together with periodic interest at a specified rate. The difference between a note and bond is that the latter runs for a longer period of time and requires greater legal formality.

BOND ANTICIPATION NOTES. Short-term, interest-bearing notes issued by a government in anticipation of bonds to be issued at a later date. The notes are retired from proceeds of the bond issue to which they are related.

BOND DISCOUNT. The excess of the face value of a bond over the price for which it is acquired or sold. The price does not include accrued interest at the date of acquisiton or sale.

BOND FUND. A fund formerly used to account for the proceeds of general obligation bond issues. Such proceeds are now accounted for in a Capital Projects Fund.

BOND ORDINANCE OR RESOLUTION. An ordinance or resolution authorizing a bond issue.

BOND PREMIUM. The excess of the price at which a bond is acquired or sold over its face value. The price does not include accrued interest at the date of acquisition or sale.

BONDED DEBT. That portion of indebtedness represented by outstanding bonds.

BONDS AUTHORIZED AND UNISSUED. Bonds that have been legally authorized but not issued and which can be issued and sold without further authorization. This term must not be confused with the term "margin of borrowing power" or "legal debt margin," either one of which represents the difference between the legal debt limit of a government and the debt outstanding against it.

BONDS ISSUED. Bonds sold.

CALLABLE BOND. A type of bond that permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in a manner specified in the bond contract.

CAPITAL OUTLAY. Expenditures that result in the acquisition of or addition to fixed assets.

CAPITAL PROJECTS FUND. A fund created to account for financial resources to be used for the acquisition or construction of major capital facilities (other than those financed by proprietary funds, special assessment funds, and trust funds).

CASH. An asset account reflecting currency, coin, checks, postal and express money orders, and bankers' drafts on hand or on deposit with an official or agent designated as custodian of cash and bank deposits. All cash must be accounted for as a part of the fund to which it belongs. Any restrictions or limitations as to its availability must be indicated in the records and statements. It is not necessary, however, to have a separate bank account for each fund unless required by law.

CASH BASIS. A basis of accounting under which transactions are recognized only when cash changes hands.

CERTIFICATE OF CONFORMANCE IN FINANCIAL REPORTING PROGRAM. A voluntary program administered by GFOA to encourage governments to publish efficiently organized and easily readable CAFRs and to provide peer recognition and technical assistance to the finance officers preparing them.

COMPREHENSIVE ANNUAL FINANCIAL REPORT. (CAFR). The official annual report of a government. It includes five Combined Statements—Overview (the "liftable" GPFS) and basic financial statements for each individual fund and account group prepared in conformity with GAAP and organized into a financial reporting pyramid. It also includes supporting schedules necessary to demonstrate compliance with finance-related legal and contractual provisions, extensive introductory material, and a detailed Statistical Section. Every government should prepare and publish a CAFR as a matter of public record.

DEBT SERVICE FUND REQUIREMENTS. The amounts of revenue that must be provided for a debt service fund so that all principal and interest payments can be made in full on schedule.

DEBT SERVICE REQUIREMENT. The amount of money required to pay interest on outstanding debt, serial maturities of principal for serial bonds, and required contributions to accumulate monies for future retirement of term bonds.

DEPRECIATION. (1) Expiration in the service life of fixed assets, other than wasting assets (q.v.) attributable to wear and tear, deterioration, action of the physical elements, inadequacy, and obsolescence. (2) The portion of the cost of a fixed asset other than a wasting asset that is charged as an expense during a particular period. NOTE: In accounting for depreciation, the cost of a fixed asset, less any salvage value, is prorated over the estimated service life of such an asset, and each period is charged with a portion of such cost. Through this process, the entire cost of the asset is ultimately charged off as an expense.

DIRECT NET DEBT. Gross direct debt less debt that is self-supporting (revenue bonds) and double-barreled bonds (general obligation bonds secured by earmarked revenues that flow outside the general fund).

ENTERPRISE FUND. A fund established to account for operations (a) that are financed and operated in a manner similar to private business enterprises—where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes. Examples of Enterprise Funds are those for water, gas, electric utiliities, swimming pools, airports, parking garages, and transit systems.

ENTITY. The basic unit upon which accounting and/or financial reporting activites focus. The basic governmental legal and accounting entity is the individual fund and account group. Under NCGA Statement 1, governmental GAAP reporting entities include (1) Combined Statements—Overview (the "liftable" GPFS) and (2) financial statements of individual funds (which may be presented as columns on Combining Statements—By Fund Type, on physically separate individual fund statements, or both). The term "entity" is also sometimes used to describe the composition of "the government as a whole" (whether the library is part of the city or a separate government, whether the school system is part of the county or an independent special district, etc.).

EXPENDITURES. Decreases in net financial resources. Expenditures include current operating expenses that require the current of future use of net current assets, debt service, and capital outlays.

EXPENSES. Decreases in net total assets. Expenses represent the total cost of operations during a period regardless of the timing of related expenditures.

FAMILY. A family consists of a householder and one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption; all persons who are related to the householder are regarded as members of his or her family. Not all households contain families, because a household may be composed of a group of unrelated persons or one person living alone.

FULL FAITH AND CREDIT. A pledge of the general taxing power for the payment of debt obligations. Bonds carrying such pledges are referred to as general obligation bonds or full faith and credit bonds.

FUND. A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP). Uniform minimum standards of and guidelines to accounting and reporting. They govern the form and content of the basic financial statements of an entity. GAAP encompass the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. They include not only broad guidelines of general application, but also detailed practices and procedures. GAAP provides a standard by which to measure financial presentations.

GENERALLY ACCEPTED AUDITING STANDARDS (GAAS). Measures of the quality of the performance of auditing procedures and the objectives to be attained through their use. They are concerned with the auditor's professional qualities and with the judgment exercised in the performance of an audit. Generally accepted auditing standards have been prescribed by (1) American Institute of Certified Public Accountants (AICPA) and (2) U.S. General Accounting Office (GAO) in *Standards for Audit of Governmental Organizations, Programs, Activities, & Functions* (the "yellow" book).

GENERAL OBLIGATION BONDS. Bonds for the payment of which full faith and credit of the issuing government are pledged.

GROSS DIRECT DEBT. The total amount of **bonded** debt of a government (general obligation bonds plus revenue bonds).

HOUSEHOLD. A household consists of all the persons who occupy a housing unit. A house, an apartment, or other group of rooms, or a single room is regarded as a housing unit, when it is occupied or intended for occupancy as separate living quarters. A household includes the related family members and all the unrelated persons, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated persons sharing a housing unit as partners, is also counted as a household.

INDUSTRIAL REVENUE BONDS. Bonds issued by governments, the proceeds of which are used to construct facilities for a private business enterprise. Lease payments made by the business enterprise to the government are used to service the bonds. Such bonds may be in the form of general obligation bonds, combination bonds, or revenue bonds.

LEVY. (Verb) To impose taxes, special assessments, or service charges for the support of government activities. (Noun) The total amount of taxes, special assessments, or service charges imposed by a government.

LIABILITIES. Debt or other legal obligation arising out of transactions in the past that must be liquidated, renewed, or refunded at some future date. This term does not include encumbrances.

MEDIAN INCOME. The median income is the amount that divides the distribution into two equal groups, one having incomes above the median, and the other having incomes below the median.

MODIFIED ACCRUAL BASIS. A basis of accounting under which revenues are recognized when they become both "measurable" and "available to finance expenditures of the current period" and expenditures are recognized when the related fund liability is incurred.

MUNICIPAL IMPROVEMENT CERTIFICATES. Certificates issued in lieu of bonds for the financing of special improvements. As a rule, these certificates are placed in the contractor's hands for collection from the special assessment payers.

NET REVENUES AVAILABLE FOR DEBT SERVICE. Proprietary fund gross operating revenues less operating and maintenance expenses but exclusive of depreciation and bond interest. "Net revenue available for debt service" as thus defined is used to compute "coverage" on revenue bond issues. See Coverage. Under the laws of some states and the provisions of some revenue bond indentures, "net revenues available for debt service" for computation of revenue bond coverage must be computed on a cash basis rather than in conformity with GAAP.

NET INCOME. Proprietary fund excess of operating revenues, non-operating revenues, and operating transfers-in over operating expenses, non-operating expenses, and operating transfers-out.

NON-OPERATING EXPENSES. Proprietary fund expenses that are not directly related to the fund's primary service activities.

NON-OPERATING PROPERTIES. Properties that are owned by an enterprise fund but not used in the provision of the fund's primary service activities.

NON-OPERATING REVENUES. Proprietary fund revenues that are incidental to, or by-products of, the fund's primary service activities.

OFFICIAL STATEMENT. A legal document that summarizes all the salient features of the underlying documents and agreements that support a municipal bond offering. It is considered the disclosure document that presents information that is "material" to the offering. The official statement should contain what a reasonable investor would need to know in making a decision about the issue. Thus this document will usually include a description of the issuer, a description of the security of the bond, a summary of the principal financing documents, any feasibility studies that relate to the security, and any other "key information."

OVERALL NET DEBT. The sum of direct net debt and overlapping debt.

OVERLAPPING DEBT. The proportionate share of the debt of local governments located wholly or in part within the limits of the reporting government that must be borne by property within each government. Except for special assessment debt, the amount of debt of each unit applicable to the reporting unit is arrived at by (1) determining what percentage of the total assessed value of the overlapping jurisdiction lies within the limits of the reporting unit, and (2) applying this percentage to the total debt of the overlapping jurisdiction. Special assessment debt is allocated on the basis of the ratio of assessments receivable in each jurisdiction that will be used wholly or in part to pay off the debt to total assessments receivable which will be used wholly or in part for this purpose.

OPERATING INCOME. The excess of proprietary fund operating revenues over operating expenses.

OPERATING REVENUES. Proprietary fund revenues that are directly related to the fund's primary service activities. They consist primarily of user charges for services.

REVENUE BONDS. Bonds whose principal and interest are payable exclusively from earnings of an Enterprise Fund. In addition to a pledge of revenues, such bonds sometimes contain a mortgage on the enterprise fund property.

REVENUES. In general terms, money received in exchange for the delivery of goods and services. A more precise definition is the additions to assets, such as cash or accounts receivable, which: (1) do not increase any liability, such as a debt obligation; (2) do not represent a recovery of an expenditure, such as results from a return of defective purchased equipment; (3) do not represent the cancellation of certain liabilities without a corresponding increase in other liabilities or a decrease in assets, such as forgiveness of a debt; and (4) are not contributions made to fund business-like enterprises.

SERIAL ANNUITY BONDS. Serial bonds in which the annual installments of bond principal are so arranged that the combined payments for principal and interest are approximately the same each year.

SERIAL BONDS. Bonds whose principal is repaid in periodic installments over the life of the issue.

SINKING FUND. A fund established to account for the accumulation of resources for, and the payment of, the principal and interest of general long-term debt.

SPECIAL ASSESSMENT. A compulsory levy made against certain properties to defray part or all of the cost of a specific improvement or service deemed to benefit primarily those properties.

SPECIAL ASSESSMENT BONDS. Bonds payable from the proceeds of special assessments. If the bonds are payable only from the collections of special assessments, they are known as special assessment bonds. If, in addition to the assessments, the full faith and credit of the government are pledged, they are known as general obligation special assessment bonds.

SPECIAL ASSESSMENT FUND. A fund used to account for the financing of public improvements or services deemed to primarily benefit the properties against which special assessments are levied.

SPECIAL DISTRICT. An independent unit of local government organized to perform a single governmental function or a restricted number of related functions. Special districts usually have the power to incur debt and levy taxes; however, certain types of special districts are entirely dependent upon enterprise earnings and cannot impose taxes. Examples of special districts are water districts, drainage districts, flood control districts, hospital districts, fire protection districts, transit authorities, port authorities, and electric power authorities.

TECHNICAL APPENDIX E

Deed Restriction and Lien (New Construction - Sales Units)

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

AFFORDABLE HOUSING AGREEMENT

Prepared by: _____

A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this _____ day of _____ , _____ between _____ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and _____ ; hereafter "AUTHORITY", which Authority is an instrumentality of _____ *(referred to as the "MUNICIPALITY")*, both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least _____ years beginning on _____ and ending at the first non-exempt transfer of title after _____ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units(unit) remain(s) affordable to low and moderate income eligible households for that period of time described in Section III TERM OF RESTRICTION.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income eligible households at a maximum resale price determined by the Authority for the specified period of time.

I. DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Affordable Housing" shall mean residential units that have been restricted for occupancy by Households whose total Gross Annual Income is measured at less than 80% of the median income level established by an authorized income guideline for geographic region and family size.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c.530 (C. 55:14K-1 et seq.).

"Agreement" shall mean this written Affordable Housing Agreement between the Authority and the owner of an Affordable Housing unit which places restrictions on Affordable Housing units so that they remain affordable to and occupied by Low and Moderate Income-Eligible Households for the period of time specified in this agreement.

"Assessments" shall mean all taxes, levies or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the Affordable Housing unit.

"Authority" shall mean the administrative organization designated by municipal ordinance for the purpose of monitoring the occupancy and resale restrictions contained in this Affordable Housing Agreement. The Authority shall serve as an instrument of the municipality in exercising the municipal rights to the collection of funds as contained in this Agreement.

"Base Price" shall mean the initial sales price of a unit produced for or designated as owner-occupied Affordable Housing.

"Council" shall mean the Council on Affordable Housing (COAH) established pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Certified Household" shall mean any eligible Household whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received written certification as a Low or Moderate Income-Eligible Household from the Authority.

"Department" shall mean the New Jersey State Department of Community Affairs.

"Exempt Transaction" shall mean the following "non-sales" title transactions: (1) Transfer of ownership between husband and wife; (2) Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation (but not including sales to third parties); (3) Transfer of ownership through an Executor's deed to a Class A Beneficiary; and, (4) Transfer of ownership by court order. All other title transfers shall be deemed non-exempt.

"Fair Market Price" shall mean the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"First Purchase Money Mortgage" shall mean the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable Housing unit providing that such mortgage is not in excess of the applicable maximum allowable resale price and is payable to a valid First Purchase Money Mortgagee.

"First Purchase Money Mortgagee" shall mean an institu-

tional lender or investor, licensed or regulated by the Federal or a State government or any agency thereof, which is the holder and/or assigns of the First Money Mortgage.

"Foreclosure" shall mean the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross Annual Income" shall mean the total amount of all sources of a Household's income including, but not limited to salary, wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on those sources of income reported to the Internal Revenue Service (IRS) and/or that can be utilized for the purpose of mortgage approval.

"Hardship Waiver" shall mean an approval by the Authority to sell an affordable unit to a household that exceeds the income eligibility criteria after the Owner has demonstrated that no Certified Household has signed an agreement to purchase the unit. The Owner shall have marketed the unit for 90 days after a Notice of Intent to Sell has been received by the Authority and the Authority shall have 30 days thereafter to approve a Hardship Waiver. The Hardship Waiver shall permit a low income unit to be sold to a moderate income household or a moderate income unit to be sold to a household whose income is at 80% or above the applicable median income guide. The Hardship Waiver is only valid for a single sale.

"Household" shall mean the person or persons occupying a housing unit.

"Index" shall mean the measured percentage of change in the median income for a Household of four by geographic region using the income guideline approved for use by Council.

"Low Income Household" shall mean a Household whose total Gross Annual Income is equal to 50% or less of the median gross income figure established by geographic region and household size using the income guideline approved for use by Council.

"Moderate Income Household" shall mean a Household whose total Gross Annual Income is equal to more than 50% but less than 80% of the median gross income established by geographic region and household size using the income guideline approved for use by Council.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular Affordable Housing unit. For purposes of the initial sales or rentals of any Affordable Housing unit, Owner shall include the developer/owner of such Affordable Housing units. Owner shall not include any co-signer or co-borrower on any First Purchase Money Mortgage unless such co-signer or co-borrower is also a named title holder of record of such Affordable Housing unit.

"Price Differential" shall mean the total amount of the restricted sales price that exceeds the maximum restricted resale price as calculated by the Index after reasonable real estate broker fees have been deducted. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Authority at the time a Notice of Intent to Sell has been received from the Owner.

"Primary Residence" shall mean the unit wherein a Certified Household maintains continuing residence for no less than nine months of each calendar year.

"Purchaser" shall mean a Certified Household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment" shall mean the Owner's obligation to the municipality for payment of 95% of the price differential between the maximum allowable resale price and the fair market selling price which has accrued to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Repayment Mortgage" shall mean the second mortgage document signed by the Owner that is given to the municipality as security for the payment due under the Repayment Note.

"Repayment Note" shall mean the second mortgage note signed by the Owner that requires the repayment to the municipality of 95% of the price differential which has accrued to the low or moderate income unit during the period of resale controls at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Resale Price" shall mean the Base Price of a unit designated as owner-occupied affordable housing as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total Monthly Housing Costs" shall mean the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance.

II. PROPERTY DESCRIPTION

This agreement applies to the Owner's interest in the real property commonly known as:

Block _____ Lot _____
Municipality _____
County _____ # of Bedrooms _____
Complete Street Address and Unit Number:
_____
City _____
State _____ Zip _____

If additional Affordable Housing units are to be covered by this Agreement, a description of each additional unit is attached as Exhibit A and is incorporated herein.

III. TERM OF RESTRICTION

A. The terms, restrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurence of either of the following events:

1. At the first non-exempt sale after 10 (ten) years from the beginning date established pursuant to Paragraph A above for units located in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b); or at the first non-exempt sale after 20 (twenty) years from the beginning date established pursuant to Paragraph A above for units located in all other municipalities; or

2. The date upon which the event set forth in Section IX **FORECLOSURE** herein shall occur.

C. The terms, restrictions and covenants of this Affordable Housing Agreement may be extended by municipal resolution as provided for in N.J.A.C. 5:93. Such municipal resolution shall provide for a period of extended restrictions and shall be

effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.

D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.

B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.

C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTION shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.

1. If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Affordable Housing Agreement and a Repayment Note for a period of up to thirty (30) years.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTION.

3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intent to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.

D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. 5:93), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eligible Households throughout the duration of this Agreement.

V. REQUIREMENTS

A. This Agreement shall be recorded with the recording office of the county in which the Affordable Housing unit or units are located. The Agreement shall be filed no earlier than the recording of an applicable Master Deed and no later than the closing date of the initial sale.

B. When a single Agreement is used to govern more than one Affordable Housing unit, the Agreement shall contain a description of each Affordable Housing unit governed by the Agreement as described in Section II PROPERTY DESCRIPTION and/or Exhibit A of the Agreement and an ending date to be imposed on the unit as described in Section III TERM OF RESTRICTION of the Agreement.

C. A Repayment Mortgage and a Repayment Note shall be executed between the Owner and the municipality wherein the unit(s) is(are) located at the time of closing and transfer of title to any purchaser of an Affordable Housing Unit. The Repayment Mortgage shall provide for the repayment of 95% of the Price Differential at the first non-exempt transfer of title after the ending date of restrictions as specified in Section III TERM OF RESTRICTION. The Repayment Mortgage shall be recorded with the records office of the County in which the unit is located.

VI. DEEDS OF CONVEYANCE AND LEASE PROVISIONS

All Deeds of Conveyance and Contracts to Purchase from all Owners to Certified Purchasers of Affordable Housing units shall include the following clause in a conspicuous place.

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT which is filed concurrently with this deed in the Office of the County Clerk of _____ County and is also on file with the Authority".

Any Master Deed that includes an Affordable Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the Master Deed that differentiates the affordable unit from all other units covered in the Master Deed.

VII. COVENANTS RUNNING WITH LAND

The provisions of this Affordable Housing Agreement shall constitute covenants running with the land with respect to each Affordable Housing unit affected hereby, and shall bind all Purchasers and Owners of each Affordable Housing unit, their heirs, assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns for the duration of this Agreement as set forth herein.

VIII. OWNER RESPONSIBILITIES

In addition to fully complying with the terms and provisions of this Affordable Housing Agreement, the Owner acknowledges the following responsibilities:

A. Affordable Housing units shall at all times remain the Primary Residence of the Owner. The Owner shall not rent any Affordable Housing unit to any party whether or not that party qualifies as a Low or Moderate Income household without prior written approval from the Authority.

B. All home improvements made to an Affordable Housing Unit shall be at the Owner's expense except that expenditures for any alteration that allows a unit to be resold to a larger household size because of an increased capacity for occupancy shall be considered for a recalculation of Base Price. Owners must obtain prior approval for such alteration from the Authority to qualify for this recalculation.

C. The Owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

D. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, both public and private, assessed against such unit, or any part thereof, as and when the same become due.

E. Owners of Affordable Housing units shall notify the Authority in writing no less than ninety (90) days prior to any proposed sale of an intent to sell the property. Owners shall not execute any purchase agreement, convey title or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Authority.

F. An Owner shall request referrals of eligible households from pre-established referral lists maintained by the Authority.

G. If the Authority does not refer a certified household within sixty (60) days of the Notice of Intent to Sell the unit or no Agreement to Purchase the unit has been executed, the Owner may propose a Contract to Purchase the unit to an income eligible household not referred through the Authority. The proposed Purchaser must complete all required Household Eligibility forms and submit Gross Annual Income Information for verification to the Authority for written certification as an eligible sales transaction.

H. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was originally restricted (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. Other items of property may be sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the Base Price may be made a condition of the unit resale provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The Owner and the Purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at Resale.

I. The Owner shall not permit any lien, other than the First Purchase Money Mortgage, second mortgages approved by the Authority and liens of the Authority to attach and remain on the property for more than sixty (60) days.

J. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the Owner, in addition to paying any assessments required by the Master Deed of the Condominium or By-laws of an Association, shall further fully comply with all of the terms, covenants or conditions of said Master Deed or By-Laws, as well as fully comply with all terms, conditions and restrictions of this Affordable Housing Agreement.

K. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:93), for determining that a resale transaction is qualified for a Certificate of Exemption. The Owner shall notify the Authority in writing of any proposed Exempt Transaction and supply the necessary documentation to qualify for a Certificate of Exemption. An Exempt Transaction does not terminate the resale restrictions or existing liens and is not considered a certified sales transaction in calculating subsequent resale prices. A Certificate of Exemption shall be filed with the deed at the time of title transfer.

L. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:93), for determining that a resale transaction is qualified for a Hardship Waiver. The Owner may submit a written request for a Hardship Waiver. If no Certified Household has executed an agreement to purchase within ninety (90) days of notification of an approved resale price and referral of potential purchasers. Prior to issuing a Hardship Waiver, the Municipality shall have 30 days in which to sign an agreement to purchase the unit at the approved resale price and subsequently rent or convey it to a Certified Household. The Municipality may transfer this option to the Department, the Agency, or a qualified non-profit organization as determined by the Council. For approval of a Hardship Waiver, an Owner must document efforts to sell the unit to an income eligible household. If the waiver is granted, the Owner may offer a low income unit to a moderate income household or a moderate income unit to a household whose income exceeds 80% of the applicable median income guide. The Hardship Waiver shall be recorded with the deed at the time of closin and is only valid for the designated deed at the time of closing and is only valid for the designated resale transaction. It does not affect the resale price. All future resales are subject to all restrictions stated herein.

M. The Owner shall be obligated to pay a reasonable service fee to the Authority at the time of closing and transfer of title in the amount specified by the Authority at the time a restricted resale price has been determined after receipt of a Notice of Intent to Sell. Such fee shall not be included in the calculation of the maximum resale price.

IX. FORECLOSURE

The terms and restrictions of this Agreement shall be subordinate only to the First Purchase Money Mortgage lien on the Affordable Housing property and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of any default of such mortgage as such remedies are set forth in the First Purchase Money Mortgage documents for the Affordable Housing unit.

Any Affordable Housing owner-occupied property that is acquired by a First Purchase Money Mortgagee by Deed in lieu of Foreclosure, or by a Purchaser at a Foreclosure sale conducted by the holder of the First Purchase Money Mortgagee shall be permanently released from the restrictions and covenants of this Affordable Housing Agreement. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to Foreclosure with regard to the First Purchase Money Mortgagee, a lender in the secondary mortgage market including but not limited to the FNMA, Federal Home Loan Mortgage Corporation, GNMA, or an entity acting on their behalf and all subsequent purchasers, Owners and mortgagees of that particular Affordable Housing unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this Agreement with respect to the Affordable Housing unit owned by such defaulting mortgagor at time of the Foreclosure sale).

Upon a judgment of Foreclosure, the Authority shall execute a document to be recorded in the county recording office as evidence that such Affordable Housing unit has been forever released from the restrictions of this Agreement. Execution of foreclosure sales by any other class of creditor or mortgagee shall not result in a release of the Affordable Housing unit from the provisions and restrictions of this Agreement.

In the event of a Foreclosure sale by the First Purchase

Mortgagee, the defaulting mortgagor shall be personally obligated to pay to the Authority any excess funds generated from such Foreclosure sale. For purposes of this agreement, excess funds shall be the total amount paid to the sheriff by reason of the Foreclosure sale in excess of the greater of (1) the maximum permissable Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale pursuant to the rules and guidelines of the Authority and (2) the amount required to pay and satisfy the First Money mortgage, including the costs of Foreclosure plus any second mortgages approved by the Authority in accordance with this Agreement. The amount of excess funds shall also include all payments to any junior creditors out of the Foreclosure sale proceeds even if such were to the exclusion of the defaulting mortgagor.

The Authority is hereby given a first priority lien, second only to the First Purchase Money Mortgagee and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such excess funds. This obligation of the defaulting mortgagor to pay the full amount of excess funds to the Authority shall be deemed to be a personal obligation of the Owner of record at time of the Foreclosure sale surviving such sale. The Authority shall be empowered to enforce the obligation of the defaulting mortgagor in any appropriate court of law or equity as though same were a personal contractual obligation of the defaulting mortgagor. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure sale shall be responsible or liable to the Authority for any portion of this excess.

No part of the excess funds, however, shall be part of the defaulting mortgagor's equity.

The defaulting mortgagor's equity shall be determined to be the difference between the maximum permitted Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale as calculated in accordance with this Agreement and the total of the following sums: First Purchase Money Mortgage, prior liens, costs of Foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to Foreclosure, provided such total is less than the maximum permitted Resale Price.

If there are Owner's equity sums to which the defaulting mortgagor is properly entitled, such sums shall be turned over to the defaulting mortgagor or placed in an escrow account for the defaulting mortgagor if the defaulting mortgagor cannot be located. The First Purchase Money Mortgagee shall hold such funds in escrow for a period of two years or until such earlier time as the defaulting mortgagor shall make a claim for such. At the end of two years, if unclaimed, such funds, including any accrued interest, shall become the property of the Authority to the exclusion of any other creditors who may have claims against the defaulting mortgagor.

Nothing shall preclude the municipality wherein the Affordable Housing unit is located from acquiring an affordable property prior to foreclosure sale at the approved maximum Resale price and holding, renting or conveying it to a Certified Household if such right is exercised within 90 days after the property is listed for sale and all outstanding obligations to the First Purchase Money Mortgagee are satisfied.

X. VIOLATION, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the terms of this Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties to this Agreement that a breach will cause irreparable harm to the Authority, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low and moderate income housing. Upon the occurrence of a breach of any of the terms of the Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the Agreement, injunctive relief to prevent further violation of the Agreement, entry on the premises, and specific performance.

XI. RIGHT TO ASSIGN

The Authority may assign from time to time its rights, and delegate its obligations hereunder without the consent of the Owner. Upon such assignment, the Authority, its successors or assigns shall provide written notice to the Owner.

XII. INTERPRETATION OF THIS AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid financial speculation or circumvention of the purposes of the Fair Housing Act for the duration of this Agreement and to ensure, to the greatest extent possible, that the purchase price, mortgage payments and rents of designated Affordable Housing units remain affordable to Low and Moderate Income-Eligible Households as defined herein.

XIII. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested as follows:

To the Owner:

At the address of the property stated in Section II PROPERTY DESCRIPTION hereof.

To the Authority:

At the address stated below:

Attention:

Or such other address that the Authority, Owner, or municipality may subsequently designate in writing and mail to the other parties.

XIV. SUPERIORITY OF AGREEMENT

Owner warrants that no other Agreement with provisions contradictory of, or in opposition to, the provisions hereof has been or will be executed, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the Authority, and their respective successors.

XV. SEVERABILITY

It is the intention of all parties that the provisions of this instrument are severable so that if any provisions, conditions, covenants or restrictions thereof shall be invalid or void under any applicable federal, state or local law, the remainder shall be unaffected thereby.

In the event that any provision, condition, covenant or restriction hereof, is at the time of recording of this instrument, void, voidable or unenforceable as being contrary to any applicable

federal, state or local law, both parties, their successors and assigns, and all persons claiming by, through or under them covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability or unenforceability, shall be deemed to apply retrospectively to this instrument thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein described as fully as if they had been in effect at the time of the execution of this instrument.

XVI. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of New Jersey.

XVII. OWNER'S CERTIFICATION

The Owner certifies that all information provided in order to qualify as the owner of the property or to purchase the property is true and correct as of the date of the signing of this Agreement.

XVIII. AGREEMENT

The Owner and the Authority hereby agree that all Affordable Housing units described herein shall be marketed, sold, and occupied in accordance with the provisions of this Agreement. Neither the Owner nor the Authority shall amend or alter the provisions of this Agreement without first obtaining the approval of the other party except as described in Section III, Paragraph C, TERM OF RESTRICTION. Any such approved amendments or modifications of this Agreement shall be in writing and shall contain proof of approval from the other parties and shall not be effective unless and until recorded with the County Clerk for the County in which the Affordable Housing units are situated.

XVIX. ACKNOWLEDGEMENT

Owner acknowledges receipt of a true copy of this Agreement.

Dated: _____

By: _____

Signature *(Owner)*

_____

Signature *(Co-Owner)*

STATE OF NEW JERSEY)

)ss

COUNTY OF)

BE IT REMEMBERED, that on this _____ day of _____ , 199__ , before me, the subscriber, _____ personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Owner (Co-Owner) named in the within instrument; that is the Affordable Housing Agreement of the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me, _____ the date aforesaid.

0010w 5/91

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

REPAYMENT MORTGAGE
Contains Deed Restrictions

MORTGAGE IS SUBORDINATE TO A FIRST PURCHASE MONEY MORTGAGE OR REFINANCING

Prepared by: _____

This Mortgage made on _____, 19__ between _____
(referred to as "Borrower") and _____ *(referred to as the "Authority")*,
which Authority is an instrumentality of _____ *(referred to as the "Municipality")*

REPAYMENT MORTGAGE NOTE

In consideration of value received by the Borrower in connection with the Property (described below) purchased by the Borrower, the Borrower has signed a note dated _____. The Borrower promises to pay the amounts due under the Note and to abide by all promises contained in the Note.

MORTGAGE AS SECURITY

This Mortgage is given to the Authority as security for the payment due and the performance of all promises under the Note. The Borrower mortgages the real estate owned by the Borrower described as follows (referred to as the "Property"):

All of the land located in the _____ of _____
County of _____ and State of New Jersey, specifically described as follows:
Street Address: _____
City: _____ Zip: _____ Block No.: _____ Lot No.: _____
Also more particularly described as:

Together with:

1. All buildings and other improvement that now are or will be located on the Property.
2. All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the Property.
3. All rights which the Borrower now has or will acquire with regard to the Property.

BORROWERS ACKNOWLEDGEMENTS

1. The Borrower acknowledges and understands that:

a) Municipalities within the State of New Jersey are required under the Fair Housing Act and regulations adopted under the authority of the Act to provide for their fair share of housing that is affordable to households of low and moderate income; and

b) The Property which is subject to this Mortgage has been designated as housing which must remain affordable to low and moderate income households for at least thirty years unless a shorter time period is authorized in accordance with rules established by any agency having jurisdiction (the "restricted period"); and

c) To ensure that such housing, including this Property, remains affordable to low and moderate income households during the restricted period, an Affordable Housing Agreement has been executed by the Borrower that constitutes covenants running with the land with respect to the Property and the Municipality has adopted procedures and restrictions governing the resale of the Property and ; and

d) The Authority to which the Property is mortgaged has been designated by the Municipality to administer the procedures and restrictions governing such housing.

2. The Borrower also acknowledges and understands that the Property has been purchased at a restricted sales price that is less than the fair market value of the Property.

BORROWER'S PROMISES

In consideration for the value received in connection with the purchase of the Property at a restricted sales price, the Borrower agrees as follows:

1. The Borrower will comply with all of the terms of the Note and this Mortgage which includes:

a) Within the restricted period starting with the date the Borrower obtained title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds the maximum allowable resale price as established by the Authority. In the event of breach of this promise, Borrower hereby assigns all proceeds in excess of the maximum allowable resale price to the Authority, said assignment to be in addition to any and all rights and remedies the Authority has upon default.

b) At the first non-exempt transfer of title of the Property after the ending date of the restricted period, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period to the Authority.

2. The Borrower warrants title to the premises *(N.J.S.A. 46:9-2)*. This means the Borrower owns the Property and will defend its ownership against all claims.

3. The Borrower shall pay all liens, taxes, assessments and other governmental charges made against the Property when due. The Borrower will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

4. The Borrower shall keep the Property in good repair, neither damaging nor abandoning it. The Borrower will allow the Authority to inspect the Property upon reasonable notice.

5. The Borrower shall use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

CONTROLS ON AFFORDABILITY

The procedures and restrictions governing resale of the Property have been established pursuant to the Fair Housing Act and the regulations adopted under the authority of the Act, (all collectively referred to as "Controls on Affordability"). Reference is made to the Controls on Affordability for the procedure in calculating the

maximum allowable resale price, the method of repayment described in item 1(b) of the section entitled "Borrower's Promises", and the definition of a "restricted sale" for purposes of determining when the Affordability Controls are applicable, and the determination of the restricted period of time.

RIGHTS GIVEN TO LENDER

The Borrower, by mortgaging the Property to the Authority, gives the Authority those rights stated in this Mortgage, all rights the law gives to lenders, who hold mortgages, and also all rights the law gives to the Authority and/or Municipality under the Affordability Controls. The rights given to the Authority and the restrictions upon the Property are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, the Authority will cancel this Mortgage at its expense.

DEFAULT

The Authority may declare the Borrower in default on the Note and this Mortgage if:

1. The Borrower fails to comply with the provisions of the Affordable Housing Agreement;
2. The Borrower fails to make any payment required by the Note and this Mortgage;
3. The Borrower fails to keep any other promise made in this Mortgage;
4. The ownership of the Property is changed for any reason without compliance with the terms of the Note and Mortgage;
5. The holder of any lien on the Property starts foreclosure proceedings; or
6. Bankruptcy, insolvency or receivership are started by or against any of the Borrowers.

AUTHORITY'S RIGHTS UPON DEFAULT

If the Authority declares that the Note and this Mortgage are in default, the Authority shall have, subject to the rights of the First Mortgagee, all rights given by law or set forth in this Mortgage.

NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORTGAGE. ADDRESS CHANGES MAY BE MADE UPON NOTICE TO THE OTHER PARTY.

NO WAIVER BY AUTHORITY

The Authority may exercise any right under this Mortgage or under any law, even if the Authority has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Authority does not waive its right to declare the Borrower is in default by making
payments or incurring expense on behalf of the Borrower.

EACH PERSON LIABLE

This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Authority may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

SUBORDINATE MORTGAGE

The lien on this Mortgage is inferior to and subject to the terms and provisions of the First Purchase Money Mortgage executed contemporaneously herewith or any subsequent refinancing.

NO ORAL CHANGES

This Mortgage can only be changed by an agreement in writing signed by both the Borrower and the Authority.

SIGNATURES

The Borrower agrees to the terms of this Mortgage by signing below.

ACKNOWLEDGEMENT

Borrower acknowledges receipt of a true copy of this mortgage at no charge.

Dated: _____

ATTEST: _____ By: _____
Signature *(Borrower)*

_____
Signature *(Co-Borrower)*

STATE OF NEW JERSEY)
)ss
COUNTY OF)

BE IT REMEMBERED, that on this _____ day of _____, 19___, before me, the subscriber, _____ personally appeared _____ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Borrower (Co-Borrower) named in the within instrument; that is the Repayment Mortgage for the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me, _____ the date aforesaid.

0293w 5/91

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

REPAYMENT MORTGAGE NOTE

_____ ,199— _____, New Jersey

FOR VALUE RECEIVED _____ (referred to as the "Borrower") promises to pay to _____ (referred to as the "Authority") an instrumentality of _____ (the "Municipality") the amounts specified in this Note and promises to abide by the terms contained below.

REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Borrower is giving the Authority a Repayment Mortgage , dated _____. The Repayment Mortgage covers real estate (the "Property") owned by the Borrower, the legal description of such real estate being contained in the Repayment Mortgage . This mortgage is subordinate to the first mortgage executed contemporaneously herewith or any subsequent financing.

BORROWERS PROMISE TO PAY AND OTHER TERMS

1.The Property is subject to terms, restrictions and conditions that prohibit its sale at a fair market price for an established period of time. Within the restricted period, starting with the date the Borrower obtains title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds a maximum allowable resale price established by the Authority.

a. All proceeds received during the restricted period in excess of the restricted amount shall be paid to the Authority.

b. At the first non-exempt sale of the Property after restrictions have ended, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period of resale (the "Price Differential") to the Authority.

2. The amount due and payable to the Authority shall be calculated as follows:

FAIR MARKET PRICE less MAXIMUM ALLOWABLE RESALE PRICE
equals
PRICE DIFFERENTIAL

BORROWER'S PROCEEDS
equals
MAXIMUM ALLOWABLE RESALE PRICE plus 5% OF PRICE DIFFERENTIAL

AMOUNT OF NOTE
equals
FAIR MARKET PRICE less BORROWER'S PROCEEDS

WAIVER OF FORMAL ACTS

The Borrower waives its right to require the Authority to do any of the following before enforcing its rights under this Note:

1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

RESPONSIBILITY UNDER NOTE

All Borrowers signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Authority may enforce this Note against any one or more of the Borrowers or against all Borrowers together.

SIGNATURES

The Borrower agrees to the terms of this Note by signing below.

WITNESSED:

_____ _____ L.S.

_____ L.S.

0290w 5/91

TECHNICAL APPENDIX F

State Planning Commission Memorandum of Understanding and Flow Charts

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING, dated the 27th day of October, 1992, by and between the New Jersey State Planning Commission (the Commission) and the New Jersey Council on Affordable Housing (the Council).

WHEREAS, the New Jesey Supreme Court determined, in its Mt. Laurel decisions, that every municipality has a Constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families; and

WHEREAS, in 1985, the New Jersey legislature enacted the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) in response to the Mt. Laurel decisions, and created the Council on Affordable Housing as the entity having primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State; and

WHEREAS, in 1985, also in response to the Mt. Laurel decisions, the New Jersey legislature enacted the State Planning Act (N.J.S.A. 52:18A-196 *et seq.*) to replace the State Development Guide Plan with a State Development and Redevelopment Plan (State Plan) to be used as a tool for assessing suitable locations for infrastructure, housing, economic growth and conservation; and

WHEREAS, both the State Planning Act and the Fair Housing Act recognize (1) the interdependence of planning for infrastructure and planning for low and moderate income housing; (2) the importance of maximizing the use of existing infrastructure in determining suitable locations for development, and (3) the importance to comprehensive planning of the phasing of infrastructure development with inclusionary development; and

WHEREAS, on June 12, 1992 the State Planning Commission adopted the first State Development and Redevelopment Plan pursuant to the State Planning Act; and

WHEREAS, the Resource Planning and Management System, which establishes planning areas consisting of centers and their environs, is the preferred mechanism of the State Plan to effectuate the State Planning Act's mandates to provide a coordinated, integrated and comprehensive plan for the growth, development, renewal and conservation of the State and its regions, and to identify areas for growth, agriculture, open space conservation and other appropriate designations; and

WHEREAS, in accordance with the Fair Housing Act, which specifically requires the Council to make adjustments to municipal present and prospective fair share of regional housing needs when the pattern of development is contrary to the planning designations in the State Plan, the Council will be promulgating administrative rules that utilize the Resource Planning and Management Structure and Statewide Policies with respect to municipal certification of housing elements and the handling of requests for site specific relief that are directed to the Council from the Courts; and

WHEREAS, it is mutually beneficial to the Council and to the Commission to enter into this Memorandum of Understanding to develop a cooperative planning process that will enable the Council to meet its constitutional and legislative mandates to develop a planning and financing mechanism for low and moderate income housing that is in accordance with regional considerations and sound planning concepts, and that will ensure that the Commission maintains, revises and sees implemented a State Plan that promotes a distribution of low and moderate income housing throughout New Jersey in locations and patterns that are consistent with the goals of the State Planning Act; and

WHEREAS, the cooperative planning process developed pursuant to this Memorandum of Understanding will advance coordinated and comprehensive planning in the State, will result in greater predictability in planning with respect to meeting the mandates of the Council and the Commission, and will thereby benefit State agencies, counties, municipalities and the public interest.

NOW, THEREFORE, in consideration of the promises contained in this Memoradum of Understanding, the Commission and the Council hereby agree to the following Basic Principles:

1. Both the Commission and the Council will share all available information useful or necessary to achieving the objectives of this Memorandum of Understanding. The Commission will direct the Office of State Planning to provide to the Council in a timely manner, such reports or recommendations that are necessary for the Council to carry out its responsibilities.

2. A cooperative planning process will be established and maintained between the Council and the Commission that will advance coordinated and comprehensive planning in the State, will result in greater predictability in planning with respect to meeting the mandates of the Council and the Commission, and will thereby benefit State agencies, counties, municipalities and the public interest.

3. The State Plan's Resource Planning and Management Map (RPMM), which includes planning areas, identified centers, designated centers, environs and critical environmental/historic sites, provides the Council with a framework for allocating housing need and locating sites based on considerations of infrastructure availability, environmental sensitivity, and historic preservation.

4. All planning areas can accommodate growth and therefore can accommodate a commensurate housing obligation, in a manner consistent with the goals, objectives and policies of the State Plan.

5. Centers are the preferred mechanism for accommodating growth and inclusionary developments in each planning area, in a manner consistent with the goals, objectives and policies of the State Plan.

6. As provided for in the State Planning Rules (N.J.A.C. 17:32-8) immediately after adoption of the State Plan the Commission will accept petitions to have identified centers receive designation. When determining community development boundaries for a center, the Commission will take into consideration the State Plan's housing policies and objectives, including those respecting low and moderate income housing.

7. The Commission accepts the Council's definition pursuant to N.J.A.C. 5:92-1, of developable, available, approvable and suitable sites and realistic development potential, and the Council accepts the Commission's definitions, pursuant to the State Plan, of urban and community infrastructure, centers and environs, identified and designated centers and critical environmental/historic sites.

8. The Council will use the State Plan to allocate regional housing need based on planning areas within each municipality.

9. County planning entities will be invited to assist municipalities, the Council and the Commission in identifying Centers on a voluntary basis.

10. Municipalities that are consistent with the State Plan's goals, objectives and policies, and that petition the Council within two years of filing a housing element with the Council, will receive the benefit of maximum flexibility with respect to Council certification. Municipalities that are not consistent with the State Plan's goals objectives and policies, and that do not petition the Council for certification within two years of filing with the Council a housing element consistent with the State Plan's policies and objectives, may expose themselves to actions by the Council and Commission with respect to identifying and designating centers and site specific relief to objectors.

IN WITNESS WHEREOF, the Commission and the Council have caused this Memorandum of Understanding to be duly executed by their authorized representatives on the date first above written.

NEW JERSEY STATE PLANNING COMMISSION

by: _____

Title: _____

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

by: _____

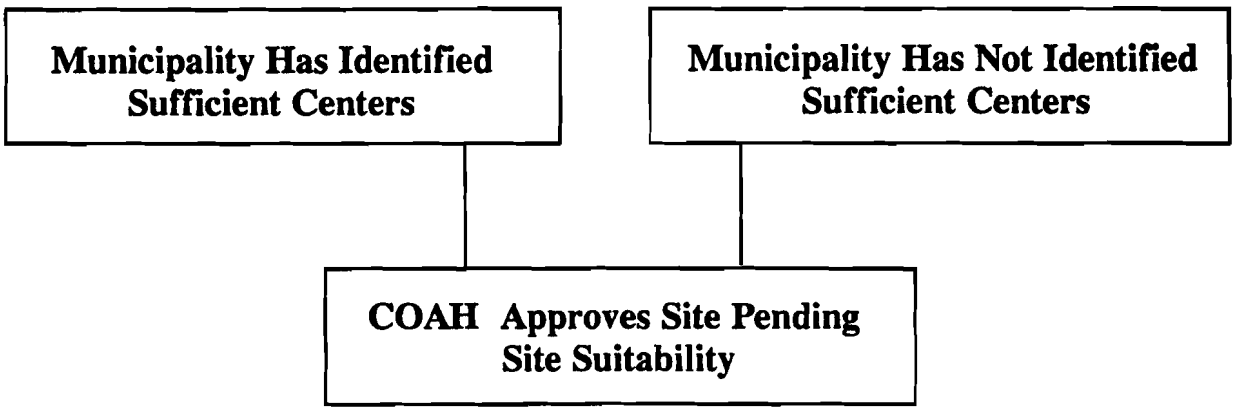
Title: _____

COAH REVIEW OF MUNICIPAL HOUSING ELEMENTS

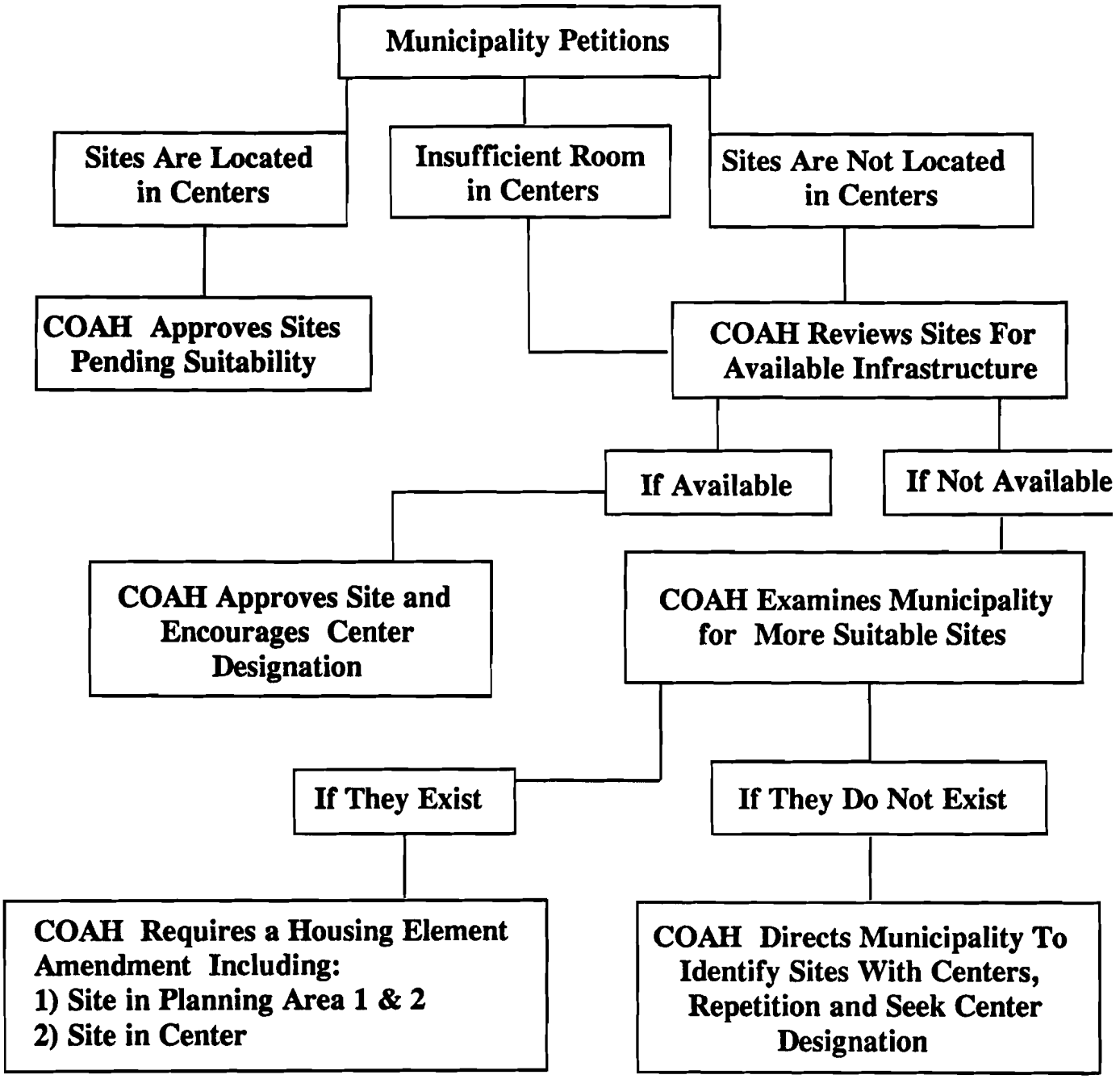
BASED ON SDRP

All Charts Must Be Reviewed Within The Context of N.J.A.C. 5:93-5.4

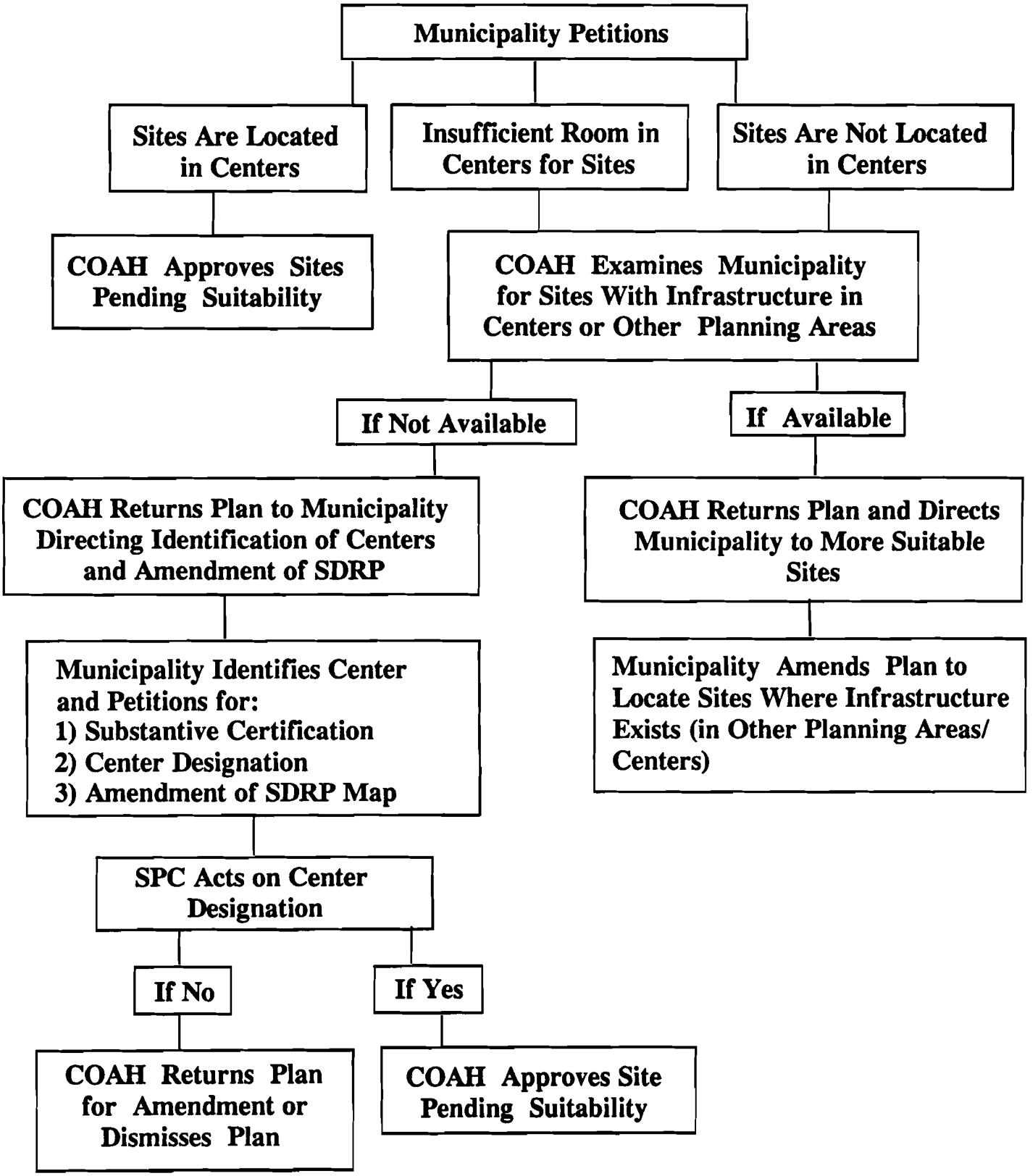
SITE REVIEW IN PLANNING AREAS 1 & 2



SITE REVIEW IN PLANNING AREA 3



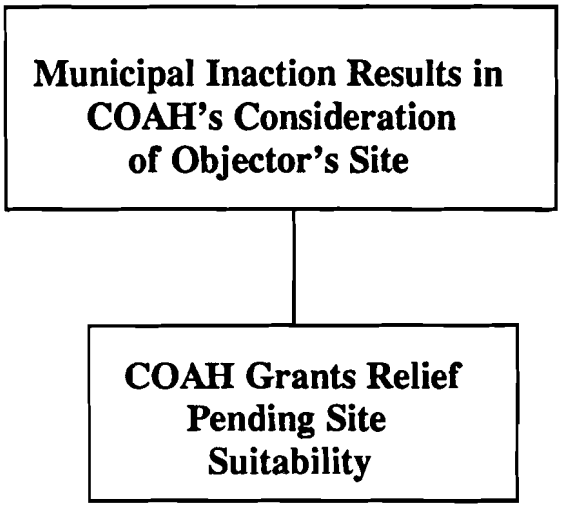
SITE REVIEW IN PLANNING AREAS 4 & 5



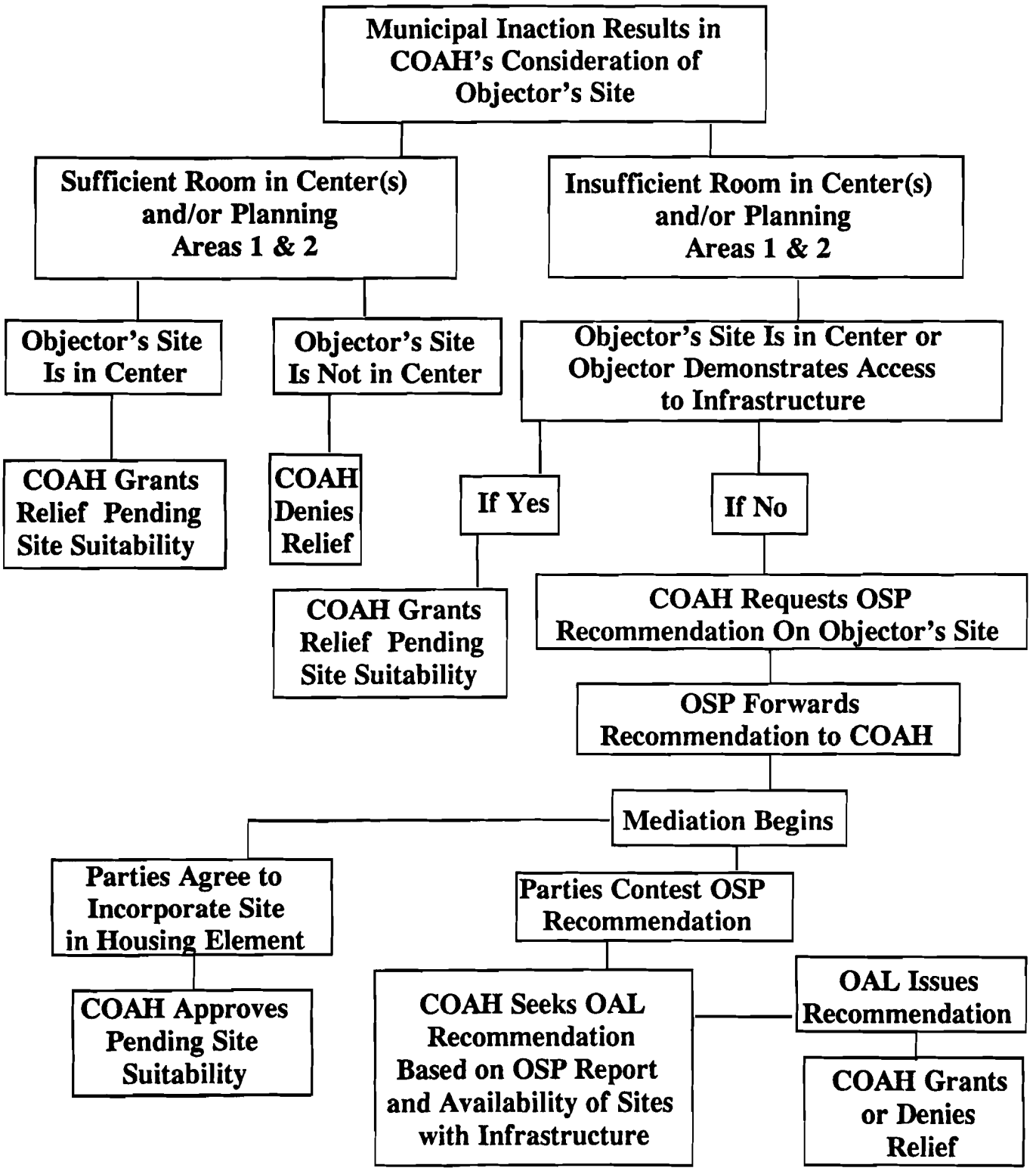
COAH PROCESS OF GRANTING RELIEF TO OBJECTORS BASED ON SDRP

All Charts Must Be Reviewed Within The Context of N.J.A.C. 5:93-13

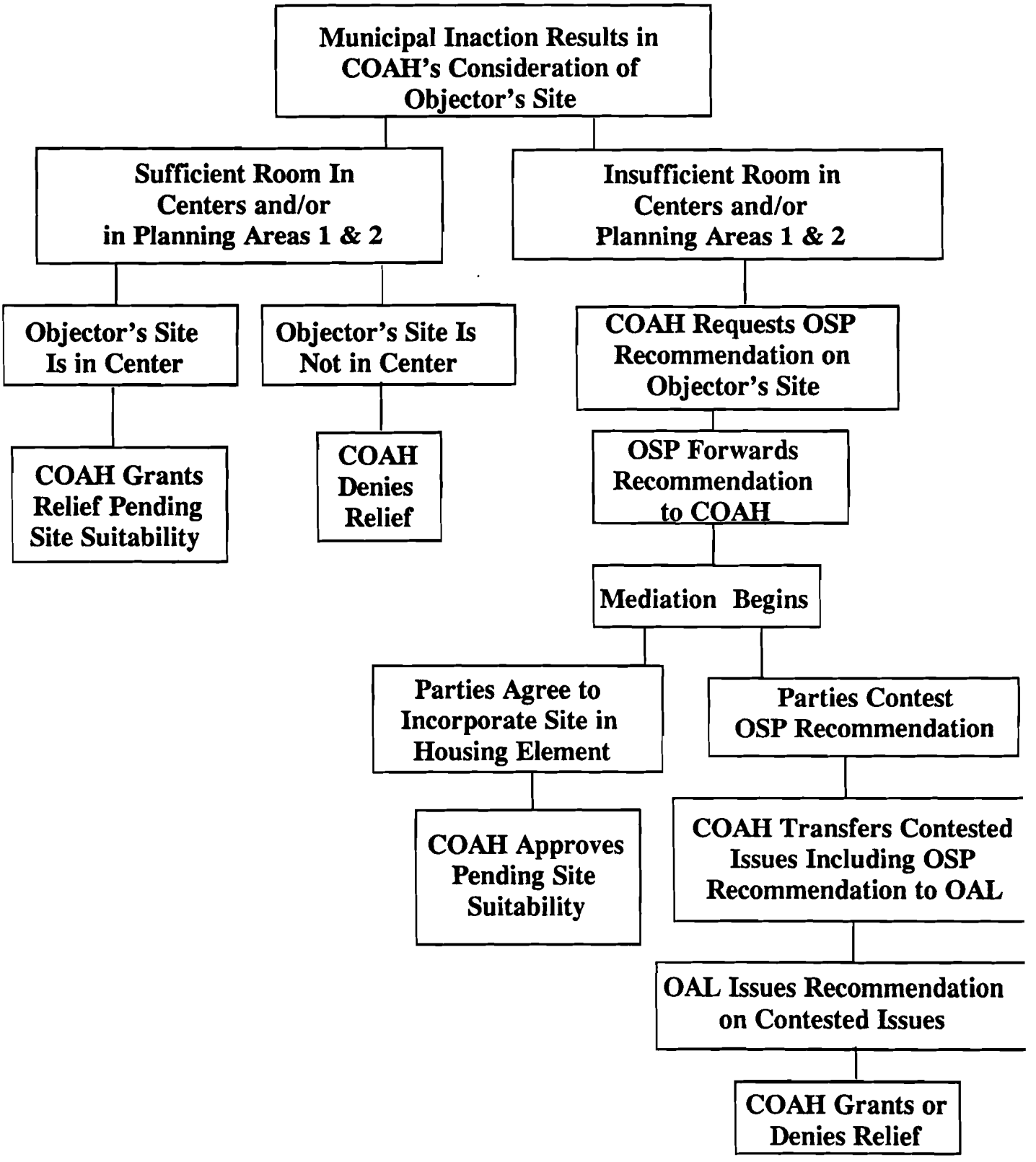
OBJECTOR RELIEF IN PLANNING AREAS 1 & 2



OBJECTOR RELIEF IN PLANNING AREA 3



OBJECTOR RELIEF IN PLANNING AREAS 4 & 5



APPENDIX G

REGIONAL CONTRIBUTION AGREEMENT COUNTY REVIEW CHECKLIST

The Fair Housing Act permits a municipality to transfer up to 50 percent of its low and moderate income housing obligation to a willing receiving municipality. The terms of this Regional Contribution Agreement (RCA) transfer are determined by individual negotiations between willing sending and receiving municipalities within the same housing region.

Recognizing the need for sound comprehensive regional planning, the Act refers the RCA to the county of the receiving municipality for review and for submittal of its comments and recommendations to COAH. The Act indicates that this review shall be performed by the county planning board or other designated agency and that in its review, the county "shall consider the master plan and zoning ordinance of the sending and receiving municipalities, its own county master plan and the State development and redevelopment plan." The results of this review and the county recommendation are to be **by resolution** of the county planning board. At a minimum, the following language is to be incorporated into the resolution, if the recommendation is positive:

WHEREAS, directed by the New Jersey Council on Affordable Housing, the (receiving) County Planning Board has reviewed this proposal; and

WHEREAS, the staff of the (receiving) County Planning Board has examined the Master Plan and Zoning Ordinances of the (sending) municipality and (receiving) municipality; the Master Plan of (receiving) County and the State Development Guide Plan; and

WHEREAS, after duly examining all the above cited plans, the staff of the (receiving) County Planning Board has found that the proposed Regional Contribution Agreement is in accordance with sound, comprehensive regional planning; that the (receiving) municipality and the proposed RCA housing locations therein offer convenient access to employment opportunities; and that the proposed RCA housing would have access to public transportation;

NOW, THEREFORE BE IT RESOLVED that the (receiving) County Planning Board recommends approval of the proposed Regional Contribution Agreement between the (sending) municipality and the (receiving) municipality; and

BE IT FURTHER RESOLVED that the (receiving) County Planning Board recommends that the New Jersey Council on Affordable Housing approve the proposed Regional Contribution Agreement.

If negative, please develop appropriate language.

In order to conduct this review, the **sending** municipality must forward the following documents to the receiving municipality's county planning board:

1. Master Plan of Sending Municipality.
2. Zoning Ordinances of Sending Municipality.
3. Housing Element of Sending Municipality.
4. Transportation Element of Sending Municipality.
5. 208 Plan of Sending Municipality.
6. Other Regional Plans, if applicable.
7. Regional Contribution Agreement Project Plan.

If both sender and receiver are in the same county, then all necessary documents are on file except the RCA Project Plan. In that instance, only a formal review request letter and the RCA Project Plan need be forwarded.

The Act permits COAH to establish time limits for county review and, since COAH views expedient review of RCAs as crucial, it has imposed a 45 day limit for the county to complete its review. COAH may provide a 15 day extension if the county requests such an extension for legitimate reasons. The 45 days begin when the sending municipality forwards all the necessary documents as a complete package to the receiving municipality's county planning board with a request for review and recommendation. COAH should be copied on the transmittal letter only. If the county is unable to complete its review within the allotted time, or if there is no county planning board or designated county agency, COAH shall perform the required review.

To facilitate county review, COAH has developed a four section checklist which is attached. The checklist is to be completed as part of the county review process and forwarded with the resolution to COAH. When both the County Planning Board and NJ Housing and Mortgage Finance Agency feasibility reviews are completed, the RCA will be presented to COAH for action.

SECTION I: ACCESS TO EMPLOYMENT OPPORTUNITIES

A. Does the proposed agreement provide realistic housing opportunities within convenient access to employment opportunities?

Housing Site(s) Proposed:

	Location	Site #	Yes	No
1. Receiving Munic.	_____	_____	A.___	___
	_____	_____	B.___	___
	_____	_____	C.___	___
	Location	Site #		
2. Sending Munic.	_____	_____	A.___	___
	_____	_____	B.___	___
	_____	_____	C.___	___

BRIEFLY EXPLAIN ACCESS FOR EACH SITE ON SEPARATE SHEET INCLUDE SITE #

B. Is the proposed housing served by available transit?

Housing Site(s) Proposed:
If yes, check type(s) of service

1. Receiving Munic. Location	#	Yes	Munic	Inter-Municipal County	Inter-Co	No
_____	___	A.___	___	___	___	___
_____	___	B.___	___	___	___	___
_____	___	C.___	___	___	___	___
2. Sending Munic. Location	**#**					
_____	___	A.___	___	___	___	___
_____	___	B.___	___	___	___	___
_____	___	C.___	___	___	___	___

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

SECTION II: CURRENTLY ADOPTED AND/OR OFFICIAL LAND USE ELEMENT CONSISTENCY REVIEW (ATTACH RELEVANT PAGES OF DOCUMENTS CITED BELOW)

	Check One: Complies In Whole	Complies In Part (Explain)	Conflicts In Whole
A.1. Receiving Munic. (a) Master Plan Of: _____; Adopted:	___	_____	_____

Brief Explanation (attach additional sheets as necessary)

_____

_____

_____

	Complies In Whole	Complies In Part (Explain)	Conflicts In Whole
(b) Zoning Ordinance Of: _____; Adopted:	___	_____	_____

Brief Explanation (attach additional sheets as necessary)

_____

_____

_____

2. Sending Munic.	Complies In		Conflicts
(a) Master Plan Of:	Whole	Part (Explain)	In Whole*
_____;Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

(b) Zoning Ordinance	Complies In		Conflicts
	Whole	Part (Explain)	In Whole
Of: _____; Adopted:	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

C. Are there any future plans to serve the proposed housing with transit?

	Yes	No
1. Receiving Munic.	A.__	__
	B.__	__
	C.__	__
2. Sending Munic.	A.__	__
	B.__	__
	C.__	__

IF TRANSIT POSSIBLE, BRIEFLY EXPLAIN TRANSIT FOR EACH SITE ON SEPARATE SHEET

	Complies In		Conflicts
	Whole	Part (Explain)	In Whole
D.1. Receiving County Land Use Element Of: _____County;	____	_____	_____

Adopted: _____

Brief Explanation (attach additional sheets as necessary)

	Complies In		Conflicts
	Whole	Part (Explain)	In Whole
C.1. Other Regional Plan Land Use Element(s) * Affecting;	____	_____	_____
(a) Receiving Munic. _____;Adopted: _____			

Brief Explanation (attach additional sheets as necessary)

	Complies In		Conflicts
	Whole	Part (Explain)	In Whole
D.1. State Development Redevelopment Plan (S.D.R.P.) **			
(a) Receiving Munic.	____	_____	_____
(b) Sending Munic.	____	_____	_____

Brief Explanation (attach additional sheets as necessary)

* For example, is site(s) consistent with Hackensack Meadowland Development Commission's Adopted Land Use Element

** Use official State Development Guide Plan until S.D.R.P. is adopted.

SECTION III: CURRENTLY ADOPTED TRANSPORTATION PLAN AND/OR PROGRAM ELEMENT CONSISTENCY REVIEW

1. Are there transportation or transit plans at any level of government which would positively or negatively affect the proposed housing and/or the proposed housing sites?

1. Within Sending Munic.

2. Within Receiving Munic.

CERTIFICATION: There are currently no transportation plans to build roadway that may invalidate sites.

(ATTACH RELEVANT PAGES OF DOCUMENT)

A. Is the proposed housing consistent with the 208 plan?

	Housing Site(s) Proposed Location	Site #	Check One Yes	No
1. Within Receiving Munic.			A.__	__
			B.__	__
			C.__	__

ATTACH ADDITIONAL SHEETS IF NECESSARY TO COMPLETE ABOVE QUESTION

This review is certified by the undersigned as representing a true and accurate statement of fact.

Based on this review, it is found that the following sites are:

1. Within Receiving Munic. Housing Site(s) Proposed Location	Site #	In Keeping With Sound Regional Comprehensive Planning	Not in Keeping With Sound Regional Comprehensive Planning
		A.____	____
		B.____	____
		C.____	____
2. Within Sending Munic. Location	Site #		
		A.____	____
		B.____	____
		C.____	____

CERTIFIED BY: _____

DATED: _____

TYPE NAME: _____

TITLE: _____

REPRESENTING _____

PROFESSIONAL LICENSE #:(as applicable)_____

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION

Coastal Permit Program Rules

Readoption: N.J.A.C. 7:7

Proposed: February 22, 1994 at 26 N.J.R. 917(a).
Adopted: May 4, 1994 by Robert C. Shinn, Jr. Commissioner, Department of Environmental Protection and Energy.
Filed: May 10, 1994 as R.1994 d.276, **without change.**

Authority: N.J.S.A. 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq. and 13:19-1 et seq.
DEPE Docket Number: 09-94-01.

Effective Date: May 10, 1994.
Expiration Date: September 12, 1994.

Summary of Public Comments and Agency Responses:

On February 22, 1994, the Department of Environmental Protection and Energy ("Department") proposed to readopt without amendments the Coastal Permit Program Rules, N.J.A.C. 7:7, for a limited period of time, until September 12, 1994. These rules establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA) (N.J.S.A 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Act (N.J.S.A. 12:5-3). The Department also published on February 22, 1994, a proposal to readopt the Coastal Permit Program Rules with amendments to reflect and administer the legislative amendments to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., enacted July 19, 1993. See 26 N.J.R. 918(a). The Department is reviewing comments received on the pending proposal and anticipates adopting the revised rules by July 19, 1994, the operative date of the legislative amendments.

Two persons submitted written comments on the proposed readoption without change, as follows:

1. James Shissias, General Manager, Public Service Electric and Gas Company
2. Albert Knoll, Administrator, Township of Dennis

The comments and the Department's responses are summarized below. The number in parentheses after each comment identifies the respective commenter listed above.

1. COMMENTS: As the commenter understands NJDEPE's proposal, the existing program rules expire on May 12, 1994. NJDEPE is proposing to readopt these rules "as is" until September 12, 1994. Meanwhile, NJDEPE is proposing substantial changes to the program rules, which presumably would be adopted sometime in July 1994, and would take effect on September 13, 1994. The commenter appreciates being notified by NJDEPE of the applicable timetable; however, the expiration dates should not appear in the Summary Statement. It is the commenter's experience that the Summary Statement has no enforcement value. The proper place for public notification of an expiration date is within the proposed new rules themselves. (1)

RESPONSE: The current Coastal Permit Program Rules, N.J.A.C. 7:7, expire on May 12, 1994. Under Executive Order No. 66(1978), the Department is required to review the existing rules and determine whether they are necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department has undertaken the required review and, as noted above, has proposed and anticipates adopting substantial changes to N.J.A.C. 7:7 to implement the legislative amendments to CAFRA. To avoid any lapse in the Coastal Permit rules and program in the meantime, the Department is readopting the existing regulations for a limited period of time.

The proposal summary explained why the Department was proposing two readoptions of N.J.A.C. 7:7, one without change and one with amendments, in the same issue of the New Jersey Register. The expiration date of these readopted rules appears in the caption of this adoption notice and is tracked by the Office of Administrative Law. Upon adoption of the pending proposal to readopt N.J.A.C. 7:7 with amendments, the new expiration date for the chapter will be established in accordance with Executive Order No. 66(1978). The amended rules will take effect on publication and will supersede those adopted herein.

2. COMMENT: The commenter understands the need for substantial changes to the existing program rules as required by N.J.S.A. 13:19-1 et seq. However, since NJDEPE is unable to promulgate new rules in a timely manner, presumably due to the enormity of the changes, it must be acknowledged that the public has had insufficient time to fully comprehend and assess NJDEPE's proposed actions. Accordingly, the public comment period should be extended. (1)

RESPONSE: As stated previously, the Department's purpose in readopting the rules without change at this time is to prevent their expiration while it prepares to adopt the extensive amendments that reflect the legislative changes to CAFRA. In light of this, the Department did not extend the comment period for this limited proposed readoption. However, the Department did extend the public comment period on the pending proposal to readopt the chapter with amendments for an additional 30 days, from March 24, 1994, to April 25, 1994. See 26 N.J.R. 1561(a).

3. COMMENT: The comment period should be extended so that a proper review of the proposed regulations can be accomplished by municipalities as to the impact on their communities. Also, the public hearing held on the proposed regulations in Ocean City was not conducted for the benefit of those people who thought they would learn something about the regulations. It was instead a place to comment on the record about the specifics of the proposed regulations. There was a lack of material available for the public at the hearing. The DEPE should have had copies of the proposed regulations available for public review. (2)

4. COMMENT: The commenter expresses specific concerns about the proposed amendments to N.J.A.C. 7:7E-3.44 regarding the Pinelands; the deadline of July 19, 1994 for obtaining approvals in order to be exempt from the permitting requirements of the amended statute and the requirement that the approvals be obtained in accordance with the Municipal Land Use Law; and permit jurisdiction over wetlands in the Pinelands overlap area (2).

RESPONSE: These comments do not pertain to this proposed readoption without change. The Department notes, however, that the comment period was extended an additional 30 days for those proposals reflecting the legislative changes to CAFRA. See 26 N.J.R. 1561(a). The Department did make the various CAFRA-related proposals available for public review by publication in the New Jersey Register and by mailing copies to any one who requested them. The Department will address the commenter's specific concerns in the adoption notice for the appropriate CAFRA-related rule proposals to which the comments refer, namely, the proposed readoption of N.J.A.C. 7:7 with amendments (DEPE docket number 08-94-01/105), published at 26 N.J.R. 918(a), and the proposed amendments to the Rules on Coastal Zone Management (DEPE Docket Number 11-94-01/291), published at 26 N.J.R. 943(a).

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

(b)

DIVISION OF WATER QUALITY WASTEWATER FACILITIES REGULATION PROGRAM

Treatment Works Approval, Sewer Ban and Sewer Ban Exemption Rules

Adopted Repeals: N.J.A.C. 7:9-1 and 7:14A-12
Adopted New Rules: N.J.A.C. 7:14A-22 and 23
Adopted Amendments: N.J.A.C. 7:14A-1.9 and 7:15-5.18

Proposed: August 2, 1993 at 25 N.J.R. 3282(a).
Adopted: May 4, 1994 by Robert C. Shinn, Commissioner, Department of Environmental Protection and Energy.
Filed: May 10, 1994 as R.1994 d.278, **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. 58:10A-1 et seq. and 13:1D-1 et seq.
DEPE Docket Number: 40-93-07.

Effective Date: June 6, 1994.
Expiration Date: June 2, 1995, N.J.A.C. 7:14A;
October 2, 1994, N.J.A.C. 7:15.

The Department has adopted major revisions to the rules concerning the requirements for treatment works approval permits (TWAs), imposition of sewer connection bans, and the criteria for exemptions from sewer connection bans. The scope of these revisions is of such magnitude that the Department has repealed existing subchapters N.J.A.C. 7:14A-12, Requirements for Treatment Works Approval, and N.J.A.C. 7:9-1, Water Pollution Control, and replaced them with new subchapters N.J.A.C. 7:14A-22, Treatment Works Approvals, Sewer Bans and Sewer Ban Exemptions, and N.J.A.C. 7:14A-23, Technical Requirements for Treatment Works Approvals. The Department has also adopted amendments to N.J.A.C. 7:14A-1.9, the definitions section of the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, of which these new subchapters are a part, and to N.J.A.C. 7:15-5.18 Statewide Water Quality Management Planning rules.

Before proposing these changes the Department published a Working Paper on Sewer Ban and Treatment Works Approval Programs in January of 1992. The public was invited to comment on the options contained in the working paper; 42 written comments from individuals and organizations were submitted. Interested party input on the Working Paper was also obtained at two public meetings held on March 12 and 24, 1992, which were conducted as informal, round table discussions.

The Department published the formal proposal of these rules in the August 2, 1993, New Jersey Register at 25 N.J.R. 3282(a). Two public hearings were held, one on September 10, 1993, in Trenton, and another on September 23, 1993 in New Brunswick. The 60 day public comment period closed on October 2, 1993.

Summary of Hearing Officer's Recommendations and Agency Responses:

Dennis Hart, Director of the Division of Water Quality, served as the hearing officer at the public hearings. As a result of the public hearings, Director Hart recommended that the Department adopt the proposed amendments with the changes discussed below in the Summary of Public Comments and Agency Responses. The Department agrees with the recommendation. Interested persons may inspect the public hearing record, or obtain a copy upon payment of the Department's usual copying charges, by contacting:

Janis E. Hoagland, Esq.
Administrative Practice Officer
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The Department received written comments from 27 commenters. Seven commenters testified at the public hearings. Of the commenters, seven were from sewerage authorities, five were from engineering firms, three were from environmental organizations, four were from various State and municipal agencies, and 11 were from private citizens and business organizations.

The majority of the commenters supported the proposal. Many expressed enthusiasm for the idea that the new rules would reduce the unnecessary permitting requirements for many projects and eliminate the TWA requirement altogether for a significant portion of smaller domestic treatment works, and for over 90 percent of the industrial treatment systems.

The Department has incorporated into these rules long-standing policies regarding holding tanks, construct-only sewers, flow equalization tanks, time extensions, wastewater hauling and diversion and many other technical requirements and administrative procedures. The sewer ban program has been significantly modified to require the imposition of sewer connection bans in only those situations where the environmental impacts warrant such an action. Many administrative procedures involving the ban program have been revised for clarity, such as the sewer ban effective date, procedures for imposing a sewer connection ban, and the effect of a ban on TWA applications which are under review with the Department at the time of ban imposition. The sewer ban exemption criteria have been modified as well to incorporate long-standing policies and to provide additional relief to charitable organizations. Finally, the technical requirements for treatment works have been substantially revised to take into consideration the technological advances and industry standards which have evolved since 1970, when the technical rules were last revised.

Summary of Public Comments and Agency Responses:

The following submitted written and/or oral comments on the August 2, 1993 proposal:

Name—Affiliation

1. Ellen Gulbinsky—Association of Environmental Authorities
2. Thomas Davis—Handex of New Jersey, Inc.
3. Anthony DiLodovico—Schoor, DePalma and Canger Group
4. Richard Dovey—Atlantic County Utilities Authority
5. Abigail Fair—Association of New Jersey Environmental Commissions
6. John Gaston—Stony Brook Regional Sewerage Authority
7. Christine Cox—Gill St. Bernard's School
8. William Harrison—The Pinelands Commission
9. Gary Holt—New Jersey American Water Company
10. Donald Hoven—Hackensack Water Company
11. Diane Krell—Merck and Co., Inc.
12. Ella Filippone—Passaic River Coalition
13. Ronald Lacey—Jersey Central Power and Light
14. Michael Lyons—Northeast Monmouth County Regional Sewerage Authority
15. Mary Arnold
16. Dean R. Mon—New Jersey Builders Association
17. Russell Nerlick—Western Monmouth Utilities Authority
18. Nancy Power—New Jersey Wastewater Treatment Trust
19. Mark Strickland—Public Service Electric and Gas Co.
20. Judith Thorton—New Jersey Manufactured Housing Association
21. Maureen Tinen—Union County Economic Development Corporation
22. Paul Wyszkowski—AT&T Bell Labs
23. Mike Haydinger—Utility and Transportation Contractors Association of New Jersey
24. Dennis Palmer—The Landis Sewerage Authority
25. Joseph Pantalone—Adams, Rehmann and Heggan
26. Edmond Speitel—Speitel and Speitel, Inc.
27. Robert Boose—New Jersey School Boards Association

General

The Department's response to Comments 1 through 17, follows Comment 17.

1. COMMENT: The Utility and Transportation Contractors Association of New Jersey commented that it fully supported the new rules. The commenter noted that the new rules were intended to increase the TWA program's effectiveness, optimize the use of available resources and eliminate undue hardship to the regulated community. The commenter stated that the new rules do much to achieve these goals, and that they will enhance the protection and improvement of the environment.

The commenter also observed that the new rules will encourage a more timely review and issuance of permit approvals by eliminating unnecessary and repetitive processes. Moreover, sewer bans had been imposed for insignificant violations. The new rules provide sewer ban exemptions which will allow construction to continue. This is very important, considering New Jersey's economy.

2. COMMENT: Handex of New Jersey, Inc. commented that the Department is to be commended for its efforts to update and streamline the rules so as to maintain the protection of human health and the environment while easing the burden on both the regulated community and the Department.

3. COMMENT: The Association of New Jersey Environmental Commissions commented that it appreciated the time and effort that the Department has taken to make the rules clearer and more effective in protecting resources of the State, and urged the Department to ensure the protection of precious and finite State water resources, which should be the Department's paramount consideration.

4. COMMENT: The Passaic River Coalition commented that it appreciated the Department's effort to simplify its regulatory structure, and that the Department should eliminate sewer bans which "are not justifiable when compared to the minimal environmental benefits achieved." The commenter expressed agreement with the proposed changes concerning the sewer ban rules, and stated that the proposed four conditions for imposing a sewer connection ban are sufficient for

protecting water quality under the existing water quality management program. The commenter also agreed with maintaining the ban imposition criteria for Ground Water Dischargers. In evaluating whether elimination of the violation of a flow limitation as a trigger for a sewer ban would lead to increased environmental damage, the commenter considered the new rules potential impact on stormwater management and concluded that they should have a negligible impact. The commenter further stated that when the present sewer ban rules were adopted, some parties believed that sewer bans could be used to control overdevelopment of an area with its consequential degradation of the area's water resources. Unfortunately, for this purpose, sewer bans are very blunt, imperfect and ineffective instruments. Better management of our water resources requires effective watershed planning and management.

The commenter additionally stated that stormwater pollution is a major problem, but these rules are inappropriate for addressing this problem. It would be useful if the sewerage authorities would consider how they might be part of the solution to stormwater pollution. Instead of creating more and more bureaucratic agencies by creating stormwater utilities, the commenter suggested using the expertise and experiences of sewerage authorities to help improve storm water quality.

The commenter also considered the potential impact of the changes in the rules regarding flow on the distribution of water flows. The institution of sewerage and sewage treatment systems have generally rerouted wastewater and stormwater flows away from groundwater recharge and flows into small feeder streams in the area where the wastewater is generated or the storm water precipitates, and into streams and rivers downstream of where the flows started. This diversion of water results in losses in available water supplies. The proposed rule changes may slightly increase the flow of water to downstream areas. This is a secondary impact from the development of larger and larger sewage treatment capacity. This impact is important to those concerned about water supplies for people and the environment in the future.

5. COMMENT: Merck and Co. commented that the new rules afforded positive changes in aspects of TWAs, sewer bans, and the sewer ban exemption program. With reference to TWAs, Merck supported the Department's decision that a TWA is not required for increases in flow if the aggregate is less than 8,000 gallons per day (gpd) over five years, or for the replacement of worn, damaged, or inoperable pumps if the new unit will serve the same purpose. The commenter also supported the absence of a TWA requirement for industrial treatment works discharging to a delegated authority except for sewer connections of greater than 8,000 gpd or for increases greater than 8,000 gpd. The commenter additionally approved of the 30-day administrative General Industrial TWA, as well as the exemptions for oil/water separators, non-contact cooling water discharges, and heat exchangers. Merck additionally supported the rules making Stage I TWA requirements optional.

With reference to sewer bans, the commenter supported the Department's decision that the bans are not to be imposed solely for flow exceedences, and also approved of the new rules and procedures for determining compliance over a three-month period.

Finally, the commenter supported the exemption from sewer bans of groundwater remediation projects approved by the Department's Site Remediation Program.

6. COMMENT: Jersey Central Power and Light commented that, in general, it was very supportive of the Department's proposal for significant changes to address the unnecessarily onerous and ambiguous requirements in the current rules. The commenter pointed out that it provided comments on the Department's January 1992 "Working Paper" and was pleased that many of the comments were included in the proposed rules.

7. COMMENT: The Northeast Monmouth County Regional Sewerage Authority commented that the new rules will greatly improve the Department's Treatment Works Program. The commenter especially appreciated the balanced approach that allows for moderate development while ensuring that the environment is protected. Although the commenter stated that the flow threshold for projects that require TWAs is low, it believed it would allow for controlled growth without over-regulation and unnecessary paperwork. The commenter stated that by solely considering actual environmental impacts, the Department is bringing reason into the sewer ban program. Perhaps the sewer ban exemption program will also be reasonable because it will allow sewer construction in special cases.

8. COMMENT: The New Jersey Manufactured Housing Association commented that it supported the Department's efforts to avoid duplication, and delay in addressing existing environmental conditions, and generally simplify the treatment works approval process.

The commenter noted that increased cost resulting from regulation adds a considerable increment to the cost of housing in New Jersey. Since wastewater regulatory costs are already substantial, simplification of programs, avoiding duplication between programs and streamlining the processing of certain classes of requests are critical.

9. COMMENT: The Union Economic Development Authority commented that it supported the new rules, stating that for the past several years, sewer moratoriums imposed by the Department have restricted and halted many economic development projects in a number of municipalities throughout the State. As a corporation committed to the planned economic growth of Union County, the commenter strongly supported the rules, which should encourage a more balanced approach toward the protection of New Jersey's environment and the need for a sustained level of economic growth.

10. COMMENT: The Landis Sewerage Authority commented that it supported the new rules and stated that they made great strides towards achieving the stated program goals. The commenter stated that the rules will not have a negative impact upon the environment, will improve the quality of the State's waterways in some cases, and will create jobs through the less obtrusive nature of the regulatory process. The commenter cited the following as positive steps: increasing the sewer extension threshold to 8,000 gpd; no longer requiring indirect dischargers in areas where a delegated pre-treatment program has been approved to obtain a TWA from the Department; and a more realistic implementation of the sewer extension ban program. The commenter also stated that the updating of the design criteria for both sewer extensions and treatment plants has been long overdue because of the need to reflect more modern technology and water conservation plumbing techniques that have evolved since these regulations were first proposed in the 1950s. The commenter also observed that the Department, through the proposal of these regulations, has shown greater sensitivity and acknowledgement of a more practical application of its regulatory powers over sewer extension and sewer bans, and that the commenter wholeheartedly supported the proposal.

11. COMMENT: Adams, Rehmann, and Heggan commented that many of the changes would benefit the single-family home owner; unfortunately, for numerous individuals, the financial damage and negative social impact are irreversible. Nevertheless, the commenter applauded the Department's efforts to reduce the effect of stringent and cumbersome bureaucracy on the average citizen.

12. COMMENT: The New Jersey Wastewater Treatment Trust commented that the existing sewer ban program is overburdensome and sets up economic barriers for municipalities. Sewer bans limit the ability of a municipality to provide for economic growth. In some cases, projects already approved by local planning boards cannot go forward because a sewer ban has been imposed. The changes will result in an improved regulatory program by making the rules more realistic. These changes will also provide for improved water quality and economic opportunity for New Jersey municipalities.

13. COMMENT: Schoor, DePalma and Canger commented that the Department's proposal to allow for Stage 1 TWAs to be optional is satisfactory.

14. COMMENT: AT&T commented that it supports the Department's effort to revise its TWA program in order to remove unnecessary and burdensome requirements on the regulated community, while continuing to protect the integrity of the State's waters.

15. COMMENT: The Stony Brook Regional Sewerage Authority commented that the proposal was one of the more comprehensive and better-formulated proposals that the Department has produced for a number of years. The proposal met many of the commenter's expectations.

16. COMMENT: The Association of Environmental Authorities commented that it represents 141 water, wastewater, solid waste and improvement authorities across the State of New Jersey. The commenter complimented the Department on the important program direction change which is stated and exemplified in the TWA rule proposal. The commenter noted that the Department's recognition that environmental degradation should prompt the imposition of a sewer ban is both technically and environmentally sound. The commenter also observed that the previous system was based on arbitrary mathematical limits which were unrelated to the environmental conditions. Moreover, the commenter has long supported the approach which the Department now embraces and looks forward to an improved program upon its adoption. Finally,

the commenter observed that the new rules present several sound management changes which reduce both the cost to citizens and the regulatory burden. As positive examples, the commenter cited the placement of Industrial TWAs under the jurisdiction of the local delegated agency, and the change from 2,000 to 8,000 gallons per day (gpd) in the approval threshold.

17. COMMENT: The Atlantic County Utilities Authority supported the Department's effort to update its rules.

RESPONSE: The Department acknowledges these supportive comments and thanks all of the commenters who participated in this rulemaking process by providing testimony in the public hearings, contributing to the Round Table discussions or submitting written comments on the Department's Working Paper on Sewer Ban and Treatment Works Approval Programs (January 1992) and/or the subsequent rule proposal published in the August 2, 1993 New Jersey Register. Through the public participation process, the Department has endeavored to work more closely with all interested parties and to elicit their input and suggestions for improving these programs, many of which have been included in the new rules. The Department believes that a better product has resulted through this process.

18. COMMENT: Schoor DePalma and Canger commented that the Department should weigh the comments from organizations like the New Jersey Builders Association more heavily than comments from individuals, since such organizations represent nearly 3,000 member firms that employ tens of thousands of people in the construction industry in the State.

RESPONSE: The Department considers all comments on their individual merit and has given careful and objective consideration to each and every comment submitted on the rule proposal and the January 1992 Working Paper.

N.J.A.C. 7:14A-1.9 Definitions

19. COMMENT: The Western Monmouth Utilities Authority commented that the Department should define the following terms: sewer or house lateral, significant growth potential (as used in N.J.A.C. 7:14A-22.15(b)), and municipally owned regional pump station (as used in N.J.A.C. 7:14A-23.10(e)).

RESPONSE: For the purpose of these rules, a sewer or house lateral is considered to be any connection which does not meet the definition of sewer extension as defined at N.J.A.C. 7:14A-1.9. A separate definition is not necessary since these terms are mutually exclusive. Significant growth potential, as used in N.J.A.C. 7:14A-22.15(b), is a limiting factor for the approval of flow equalization tanks and is dependent upon particular circumstances. It is based, in part, upon overall cost effectiveness. Significant growth potential would, in general, mean that several properties are available for current or future development and need sewer availability; it would not be cost effective to limit future development by the use of an equalization tank, when additional sewer capacity may be indicated. A definition for regional pump station has been added at N.J.A.C. 7:14A-1.9.

20. COMMENT: The Passaic River Coalition commented that the term non-conventional pollutant was not defined.

RESPONSE: The term "non-conventional pollutant" is already defined at N.J.A.C. 7:14A-1.9 as any pollutant not defined to be a conventional pollutant or a toxic pollutant. For the purpose of the sewer ban imposition criteria, conventional pollutants are listed at N.J.A.C. 7:14A-22.17, and toxic pollutant is defined at N.J.A.C. 7:14A-1.9.

21. COMMENT: The Association of Environmental Commissions commented that the term "authority" as used throughout the rule proposal could be confused with the definition at N.J.S.A. 40:14A and 40:14B, which contains a very specific definition of "authority." The commenter suggests that the Department use the term "local agency" and/or "owner operator" as a possible alternative to the word authority.

RESPONSE: The Department agrees with the comment that the term "authority" as used in the proposed rules could be confusing. Therefore, the Department has replaced it throughout the rule with the terms "sewerage authority" which is adequately defined at N.J.A.C. 7:14A-1.9.

N.J.A.C. 7:14A-22.1 General policy and purpose

22. COMMENT: The Passaic River Coalition commented that the sewer ban program can be an effective enforcement policy that complements other enforcement mechanisms for compliance with NJPDES permits. However, the value of TWAs in improving water quality is not obvious, and this section of the regulations does not explain the connection. The Department owes the public an evaluation of how these regulations benefit the quality of the water of the State. TWA requirements have been detrimental rather than helpful. In one case, an industrial facility had to wait months for a simple TWA, and pounds of suspended solids entered the permittee's receiving water.

Merck and Co. commented that an administrative review or a permit-by-rule should be sufficient for connections and increases in flow for the following reasons: (1) N.J.A.C. 7:14A-23 dictates that the technical standards must be met; (2) a professional engineer certifies that the facility will meet the standards; and (3) the CWEA will ensure that facilities meet their permits.

RESPONSE: The current TWA program is one of pollution prevention which serves to monitor and address pollution problems before serious environmental damage occurs. The Department has completed a thorough evaluation of the TWA program and its associated benefits to water quality through the preparation of the Working Paper, written comments from interested parties concerning the Working Paper, two public meetings, the resulting rule proposal, the two public hearings and the subsequent written and oral comments. The TWA program regulates the construction and operation of domestic and industrial wastewater collection, conveyance and treatment systems. The main purpose of the program is to protect the waters of the State by preventing the entry of increased pollutants by completing engineering evaluations of treatment and conveyance system designs to ensure compliance with state standards and to ensure that the treatment works can achieve their intended objectives.

Approximately 60 percent of domestic TWA applications currently received by the Department require technical design modifications and/or clarification prior to approval in order to comply with the State's technical design standards. If these designs are not reviewed by the Department, there exists a clear potential for environmental damage and serious health risks due to improperly constructed treatment works. The Department would then be placed in the position of having to attempt to remediate problems after the fact. Further, if the Department becomes involved in correcting design problems only after sewerage facilities are constructed, the only option for resolving the problem is an enforcement action and reconstruction of the treatment works, which is not cost-effective or an appropriate way of protecting the environment. Further the TWA program is conducted in accordance with the 90 day time frame established in the Rules and Regulations Governing 90 day Construction Permits (N.J.A.C. 7:1C), and the current average processing time is 79 days.

It is the Department's position that these rules accomplish the objective of eliminating unnecessary TWA requirements without compromising the program's environmental effectiveness, and hence, the water quality of the State.

23. COMMENT: The Passaic River Coalition commented that the Department's review is limited to engineering. What is the purpose of this review?

RESPONSE: The Department's review is not limited to engineering. All TWA applications are reviewed for administrative, programmatic and technical aspects. The Department's engineering review is undertaken to ensure that the proposed design is adequate to meet its intended purpose, which for treatment systems is achieving the required effluent limits. This is necessary to determine if compliance with NJPDES limitations and other requirements will result. The engineering evaluation is crucial, considering the complexity of sewage treatment plant design, the need for coordination with other Department programs, and the inherent environmental risks of inadequate designs. The review is also needed to ensure that prudent alternatives are chosen when conflicting interests suggest different options.

24. COMMENT: The Western Monmouth Utilities Authority commented that the Department should make it clear to the residents of the State that the discharge of surface and/or groundwater into sanitary sewer systems is not appropriate.

RESPONSE: The Department agrees that discharge of water from roof leaders, sump pumps in cellars, and other related sources of inflow into sanitary sewers is inappropriate and should be avoided to the maximum extent possible. In particular, sewerage authorities which have systems that are at or near capacity must include, as part of their capacity assurance program, a program to eliminate or minimize such sources of inflow. The Department has therefore modified the Capacity Assurance Program rules at N.J.A.C. 7:14A-22.16(a), to include, wherever feasible, the disconnection of roof leaders and sump pumps from sanitary lines and their connection into storm sewer lines as part of the authority's approved capacity assurance program.

25. COMMENT: Mary Arnold commented that the Department should end its complicity in "stealth" infrastructure sprawl by requiring that sewer extension applications only be accepted for areas already included in an approved 208 Water Quality Management Plan. This loophole which would allow permits for dry line sewers in areas not yet approved for sewer service, sets programs within the Department against themselves, the Office of State Planning. The loophole permits developers and municipalities to get a foot in the door for a new sewer service area without the public review that would otherwise be required. It should be closed immediately.

RESPONSE: The Department does not agree with the comment. The rules do not permit the construction of dry sewers in areas which are not intended to be served by such sewage collection systems. N.J.A.C. 7:14A-22.9 provides only three situations in which "dry sewers" may be approved: (1) areas identified as future sewer service areas in the appropriate Water Quality Management Plan; (2) areas currently subject to a sewer connection ban (therefore already in an existing sewer service area); and (3) road crossings located in existing or future sewer service areas. There are no provisions which allow the construction of sanitary sewers, whether construct and operate or construct only, in areas which are not identified as either existing or future sewer service areas in the appropriate Water Quality Management Plan. Additionally, the Department has maintained the requirement that all projects involving an extension of the collection system, regardless of flow, obtain a TWA from the Department. One reason for maintaining this provision is to ensure consistency with approved Wastewater Management Plans.

N.J.A.C. 7:14A-22.2 Scope

26. COMMENT: The New Jersey Builders Association commented that the Department should not require the issuance of domestic TWAs and should require only public notices.

RESPONSE: The Department does not agree with the comment. The Department has completed an extensive two-year evaluation of the TWA program, published a Working Paper on the subject, and has conducted two public hearings and two roundtable discussions to obtain information as to the changes to the scope and permitting requirements that should be made. This evaluation and public comment period culminated in this rule proposal, which took into consideration all of the comments received. The discussion as to the need for TWA permits is contained in the rule proposal Summary published in the August 2, 1993 New Jersey Register at 25 NJR 3284 through 3287.

27. COMMENT: AT&T commented that a 90 day review and approval period should be imposed on the sewerage authorities, similar to that required by the Department for TWAs.

RESPONSE: If the Department had delegated the TWA program to local authorities, then the Department could mandate particular time frames within which the delegated agency must perform the review. However, the Department has not delegated this program, but has merely raised the threshold for which certain projects require a TWA permit. Therefore, as in the past, the duration of time for which a local authority reviews treatment works projects in its service areas is not within the Department's jurisdiction.

28. COMMENT: Mary Arnold commented that fee-based funding of Department permitting creates a dependency on the very community the Department is supposed to regulate. While the commenter believed that the regulated community should pay its fair share, this explicit "tit for tat" funding puts customer service about on par with environmental protection.

RESPONSE: These new rules do not regulate the fee aspects of treatment works approvals. The applicable fee provisions are contained in N.J.A.C. 7:1C, which were not proposed for revision as part of this rulemaking. Thus the comment is outside the scope of the proposal.

N.J.A.C. 7:14A-22.3 Activities for which a treatment works approval is required

29. COMMENT: The New Jersey Builders Association asked for clarification on why the Department has chosen to eliminate the requirement for TWAs for industrial facilities while it continues to require them for domestic TWAs.

RESPONSE: Treatment works approvals, except for conveyance systems, will no longer be required for indirect dischargers in delegated areas where the approved pre-treatment program has been delegated to sewerage authorities. However, for areas where the pre-treatment program has not been delegated, the Department has not eliminated the requirement to obtain TWAs for industrial facilities; rather the rules contain provisions for an expeditious General Industrial TWA program.

The rule proposal Summary at 25 N.J.R. 3283 through 3287 explains in detail the rationale for the provision for General Industrial TWAs. The Department had the opportunity to eliminate the TWA requirement for indirect dischargers in areas where the authority for an approved pre-treatment program (delegated area) was delegated by the Department pursuant to the Federal rules at 40 CFR part 403. This concept is not applicable to domestic TWAs because the delegation arrangements are limited to industrial pre-treatment systems only. Since no similar controls for domestic treatment works or conveyance aspects of industrial treatment works currently exist, the Department chose not to eliminate these TWA permitting requirements.

The Department has the ability to rely on the Clean Water Enforcement Act (CWEA) to protect water quality from the effluent of industrial systems. Under the CWEA, it can order private industries to cease discharge until the problems at the facility are rectified. This approach is not as applicable to publicly owned treatment works which serve a variety of residential properties and cannot, for all practical purposes, simply cease operating. The Department's role in evaluating domestic TWAs helps ensure the uniformity and adequacy of all municipal collection and treatment systems throughout the State and thereby protects the water resources of the State where other mechanisms for such protection are lacking.

The Department has evaluated in detail several ways in which to streamline the issuance of domestic TWAs. The adoption of these rules will accomplish significant gains in this area.

30. COMMENT: The Western Monmouth Utilities Authority commented with reference to N.J.A.C. 7:14A-22.3(a) that a sewer or house lateral that serves a single residential unit with a separate garage which includes a workshop and a water closet with sink should be exempt from the requirement to obtain a permit, as the garage could be thought of as part of the residential unit and not a separate unit.

RESPONSE: N.J.A.C. 7:14A-22.3(a)2 requires a TWA for building, installing, modifying or operating any sewer line, pumping station or force main which serves more than two buildings, or will convey 8,000 gpd or more of flow to a treatment works. Therefore, a TWA is not required for a single residential unit with a separate garage since the sewer line in question would not serve more than two buildings and the flow to the treatment works would be less than 8,000 gpd.

31. COMMENT: Merck and Co. inquired whether, according to N.J.A.C. 7:14A-22.3(a)2, if three laterals are constructed, each conveying slightly less than 8,000 gpd, and all connecting into the same existing trunk sewer, would a TWA be needed for the increase in flow in the trunk sewer of slightly less than 24,000 gpd.

RESPONSE: A TWA would not be required for the increase in flow in the trunk sewer. In this situation, the scope of the proposed treatment works is the construction of three laterals (since the trunk sewer is already existing). Therefore, providing each lateral conveys less than 8,000 gpd, a TWA is not needed for the proposed construction.

32. COMMENT: Schoor, DePalma and Canger, and the New Jersey Builders Association commented that the Department should modify the requirement which increases the threshold that necessitates a TWA permit from the current 2,000 to 8,000 provided no sewer extension is proposed so as to eliminate the condition that "no sewer extension is proposed."

RESPONSE: As stated in the proposal at 25 N.J.R. 3285, these rules maintain the requirement that a TWA from the Department be obtained, irrespective of flow, if an extension of the sewage collection system is proposed in the roadway, public right-of-way or easement that crosses more than two properties. The reason for keeping this requirement is that most sewer extensions are constructed in sections and at different times. If a sewer line is designed and built without considering the total need of the upstream contributory area, it may become a problem for the entire area by creating a bottleneck and may need to be replaced/upgraded at a later date, which is costly and should be avoided. Furthermore, the additional land areas brought under sewer service must be checked against and coordinated with the provisions of the appropriate water quality management plan so that the environmental well being of an area can be maintained. Sewer extension permits are an effective regulatory and planning tool which will continue to exist.

N.J.A.C. 7:14A-22.4 Activities for which a treatment works approval is not required

33. COMMENT: Merck and Co. commented that in N.J.A.C. 7:14A-22.4(a)4, the citation N.J.A.C. 7:14A-12.3 appears to be a typographical error and should be changed to N.J.A.C. 7:14A-22.3.

RESPONSE: The Department agrees with the comment and the reference within N.J.A.C. 7:14A-22.4(a)4 has been changed from 12.3 to 22.3.

34. COMMENT: Merck and Co., the Western Monmouth Utilities Authority, and the New Jersey Manufactured Housing Association commented that there should be an expansion of the category of projects which are considered "replacement in kind" and, therefore, would not require a TWA. The New Jersey Manufactured Housing Association stated that flow amount, not building location, should be the focus of regulation. Merck and Co. stated that no permit should be required when existing systems which do not meet the current standards are replaced (regardless if they are replacement in kind). The Western Monmouth Utilities Authority stated that no permit should be required for replacing a smaller diameter pipe with a larger diameter pipe with no change in slope, and that the replacement of wastewater pumps or impellers with slightly larger pumps or impellers should not require a TWA.

RESPONSE: The scope of replacement in kind projects gives sewerage authorities the ability to perform the majority of the necessary repair and maintenance work to their systems without obtaining a TWA from the Department.

In regard to the comment stating that flow amount rather than building location should be the focus of the regulation, building size and location cannot be ignored since in most cases an increase in building size results in an increase in flow and changes in location may result in substantial design changes to the collection system.

With respect to upgrading existing systems to comply with current standards, when work is proposed on existing systems, where practical, those systems must be upgraded to meet current standards. The Department requires a TWA for these applications in order to make a reasonable evaluation of the circumstances and determine if the proposed changes are adequate and appropriate. As stated in the Response to Comment 21, approximately 60 percent of domestic TWA applications submitted to the Department require technical design modifications and/or clarification to comply with the State's technical design standards.

The Department disagrees with the comment that a TWA should not be required for replacing a smaller diameter pipe with a larger diameter pipe. The Department believes that its review of these types of changes is necessary since they raise potential operational concerns such as maintaining adequate velocities. From a planning standpoint, such changes need to be reviewed with respect to the existing and future sewer service needs of the community.

The Department agrees with the comment concerning replacement of impellers with slightly larger impellers and has modified N.J.A.C. 7:14A-22.4(a)6 to eliminate the requirement for a TWA for capacity changes at a pump station if the only proposed change is an increase in impeller size.

35. COMMENT: Merck and Co. commented that it agreed with N.J.A.C. 7-14A-22.4(a)6, which provides that no TWA is required for replacement of worn, damaged, defective or inoperable equipment.

RESPONSE: The Department appreciates the comment in support of the proposed rule. No TWA is required providing the capacity and location of the pumps or treatment units to be replaced will not change, and the replacement treatment unit or wastewater pump station will be utilized to perform the same function as the former unit.

36. COMMENT: The Landis Sewerage Authority suggested that chemical addition for odor control should be included at N.J.A.C. 7:14A-22.4(a)7, among the activities to be exempted from the requirement of obtaining a TWA, since many wastewater collection system owners install small chemical feed systems for sodium hypochlorite or peroxide for the control of odors from the collection system or at the end of force mains.

RESPONSE: The Department agrees with the comment and has included chemical addition for odor control (provided no treatment unit construction is undertaken) in the exemption at N.J.A.C. 7:14A-22.4(a)7.

37. COMMENT: Handex commented that on March 31, 1993, the Department issued a Draft NJPDES Category B4B General Petroleum Product Cleanup permit. That permit has a segment for short pump tests and dewatering projects which specifically references N.J.A.C. 7:14A-1.9 and N.J.A.C. 7:14A-12.1(a) for authorization of pump test and dewatering activities to proceed under this permit without a Treatment Works Approval. As both of the regulations cited were proposed for repeal, the commenter requested that proposed N.J.A.C. 7:14A-22.4 be expanded to include: "Mobile treatments works which are being specifically utilized for the treatment of water in relation to a short term pump test or UST dewatering project authorized under the NJPDES Category B4B General permit."

RESPONSE: The Department agrees with the comment and has incorporated the exemption in the rules at N.J.A.C. 7:14A-22.4(b)4.

38. COMMENT: Jersey Central Power and Light and the Landis Sewerage Authority expressed support for the Department's exempting from the TWA requirement industrial pre-treatment facilities that discharge to sewerage authorities which are delegated agencies having an approved pre-treatment program. Merck and Co. and Jersey Central Power and Light referred to this change as "delegating" the industrial TWA program. The commenters stated that the rule will promote more rapid compliance by industry with the compliance schedules or effluent limits of delegated local agencies. They also noted that the publicly owned treatment works (POTWS), having approved plans will have to carefully review applications in light of the Clean Water Enforcement Act penalties.

RESPONSE: The Department appreciates the supportive comments. However, it notes that the TWA requirements for industrial pre-treatment facilities are not being delegated to the sewerage authorities; instead, the requirements for obtaining a TWA are simply being eliminated in delegated areas for the reasons explained in the Summary of the proposal. See 25 N.J.R. 3286. Those sewerage authorities with an approved pre-treatment program have jurisdiction over the construction and operation of such treatment systems.

39. COMMENT: Jersey Central Power and Light commented that it overwhelmingly supports the exemption for specific industrial activities from TWA requirements. The activity must employ certain standard and approved treatment technologies/equipment or not have significant environmental impact. The examples cited include American Petroleum Institute (API) approved oil/water separators, grease traps, discharge of non-contact cooling water and heat exchangers among others. The commenter stated that the use of such equipment or technologies that are similar in nature and standard in design, that are approved or endorsed by reputable associations such as the API or the U.S. Coast Guard, and whose design is certified by a professional engineer to the effect that the treatment works is capable of achieving compliance with effluent limitations in a facility's discharge permit, should be exempted from the TWA requirements.

RESPONSE: The Department acknowledges and appreciates the comment in support of the proposed changes to eliminate those unnecessary TWA permit requirements. However, it should be noted that treatment works which are exempt from obtaining a TWA are limited strictly to those specifically listed at N.J.A.C. 7:14A-22.4(a) and (b). All other treatment equipment or technologies, unless specifically exempted in the rules, require a Treatment Works Approval or General Industrial TWA from the Department.

40. COMMENT: The Landis Sewerage Authority commented that, in addition to an API oil/water separator, such things as sand traps or sediment traps that are installed routinely in facilities such as car washes, truck wash bays and other similar discharges, should also be exempted from obtaining a TWA.

RESPONSE: The Department agrees with the comment, and has incorporated these specific exemptions in the rules at N.J.A.C. 7:14A-22.4(b)2.

41. COMMENT: The Association of New Jersey Environmental Commissions and Mary Arnold commented that they were concerned about raising the threshold for TWAs from 2,000 gallons per day (gpd) to 8,000 gpd. Mary Arnold stated that projects which do not require a TWA should be governed by consistency with an approved wastewater management plan and should be linked to public notice and hearing requirements. The New Jersey Builders Association and Schoor, DePalma and Canger endorsed raising the threshold to 8,000 gpd and supported the elimination of the TWA requirement for expansions of existing buildings if the flow from the expansion would be less than 8,000 gpd. Merck and Co. stated that the threshold of 8,000 gpd was not great enough and should be increased to 25,000 gpd. The Landis Sewerage Authority commented that the increased flow threshold was a positive action which will relieve both applicants and the Department of the need to review and process permits for modest projects of little environmental impact.

Jersey Central Power and Light supported the increase in threshold that triggers the TWA permit requirement from the current 2,000 gpd to 8,000 gpd, provided no sewer extension is proposed. The commenter stated that the local publicly owned treatment works (POTW) is in the best position to approve projects of this size. Additionally, the commenter

supports the change to eliminate the TWA requirement for expansions of existing buildings if the flow from the expansion would be less than 8,000 gpd. The commenter stated that the current threshold, 2,000 gpd, is overly restrictive and requires the Department to expend a disproportionate amount of resources on such projects which, in all likelihood, have negligible environmental impact.

RESPONSE: The Department has carefully examined this issue and has determined that lateral connections with projected flows of less than 8,000 gpd (which is four times the current threshold of 2,000 gpd) are generally routine designs with minimal environmental impacts. Most of these standard engineering designs are not so specific or complex as to warrant additional review and approval by the Department. The Department is increasing the flow threshold fourfold. An increase to even a higher value does not appear prudent at this time; the Department will first evaluate the results of the change to 8,000 gpd threshold.

It should be noted that pursuant to N.J.A.C. 7:14A-22.2(g), whether or not a TWA from the Department is required, treatment works for all projects are "required to conform with any applicable requirements of this subchapter" including N.J.A.C. 7:14A-22.1(a)6, which states "that sewage generating facilities are located within the appropriate sewer service area as determined by the applicable water quality management plan." Because all applicable local planning board approvals, governing body approvals, sewage authority approvals and building permits approvals must be obtained for these projects before construction may commence, the Department does not see the need for these types of minor projects to go through additional, repetitive public notice and hearing requirements. Also, it is correct that a TWA is not required for expansions of an existing building if the flow from the expansion is less than 8,000 gpd; however, multiple expansions within a five year period must have an aggregate flow of less than 8,000 gpd to be exempt from obtaining a TWA. If these expansions within a five year period have a total projected flow of 8,000 gpd or more, then a TWA is required.

42. COMMENT: Merck and Co. commented that, with reference to N.J.A.C. 7:14A-22.4(b)1ii, the word "may" should be replaced with "shall" as follows: "Projects involving additional flow through an existing sewer line of 8,000 gpd or more require a TWA for the conveyance aspects only and (may) shall be considered under the provisions of N.J.A.C. 7:14A-22.6.

RESPONSE: It is the Department's intent, as stated in the proposal Summary at 25 N.J.R. 3286, to review most industrial TWA applications in accordance with the provisions of N.J.A.C. 7:14A-22.6, Information and submission requirements for general industrial treatment works approvals. However, there may be certain circumstances under which the Department determines that a technical review is warranted, in which case the applicant will be notified within 30 days of submission that the project will require a technical review and will be subject to review pursuant to N.J.A.C. 7:1C.

43. COMMENT: Merck and Co. commented that N.J.A.C. 7:14A-22.4(b)1 was confusing. The TWA requirements for delegated industrial treatment works should have been placed in N.J.A.C. 7:14A-22.3, so it is clear that a General Industrial TWA is required. In addition, the commenter stated that the phrase "for conveyance aspects only" was unclear.

RESPONSE: The rule at N.J.A.C. 7:14A-22.3(b) has been modified to state that industrial treatment works approval applications submitted pursuant to N.J.A.C. 7:14A-22.3(a)4 and 5 (which describe particular types of industrial treatment works) will generally be processed within 30 days of a complete application in accordance with N.J.A.C. 7:14A-22. With reference to "conveyance aspects only" under N.J.A.C. 7:14A-22.4(b)1i, projects that discharge to delegated authorities, encompass pre-treatment units and sewer extensions will not require a TWA for the pre-treatment unit but will require an individual TWA for the construction and operation of the sewer extension. Projects involving additional flow only may be considered under the General Industrial 30 day TWA process.

44. COMMENT: Merck and Co. commented that the TWA requirement for both N.J.A.C. 7:14A-22.4(b)1i and ii should only apply in obtaining a General Industrial TWA under N.J.A.C. 7:14A-22.6. As written, a full Stage II application will be required for connections and a General Industrial TWA would be required for additional flow.

RESPONSE: It is the Department's intention to issue General Industrial TWAs for industrial treatment works in non-delegated areas (30 day process), and to issue individual TWAs (90-day process) for the construction of all sewer extensions. In the event that a project involves the construction of a pre-treatment facility and a sewer extension, thereby requiring both a General Industrial TWA and an individual TWA, the Department will conduct the reviews simultaneously and issue a single document prior to the end of the 90 day review period. In general, pre-treatment units will not be reviewed for technical aspects.

N.J.A.C. 7:14A-22.5 Treatment works approval

45. COMMENT: The New Jersey Manufactured Housing Association commented that a timeframe during which applications will be reviewed for completeness would be appropriate.

RESPONSE: The provision at N.J.A.C. 7:14A-22.5(d) has been retained from the existing rule; it requires that treatment works approval applications be acted on by the Department in compliance with N.J.A.C. 7:1C-1, 90-Day Construction Permit Rules. This process mandates a limit of 20 working days for an administrative review within which the Department must declare the submittal to be administratively complete or incomplete and send a notification of any required items to the applicant.

46. COMMENT: The Atlantic County Utilities Authority commented that N.J.A.C. 7:14A-22.5(k), which concerns emergency TWA approvals, should be revised to provide timely notification to the receiving treatment collection system owner and treatment plant owner of the Department's intent to grant an emergency treatment works approval. Due to NJPDES permit holders' obligations to comply with the NJPDES Discharge Permit, consent of the receiving treatment works is recommended.

RESPONSE: The Department agrees that it is desirable that the receiving collection system owner and treatment plant owner be notified of intent to modify the collection system or wastewater flow into a system. However, the Department's experience has been that the majority of emergency approval requests are made by the collection system owner for emergency repairs of existing systems, or the treatment plant owner/operator for modifications to the treatment process. Nonetheless, N.J.A.C. 7:14A-22.5(k)1 has been modified to include the requirement that the applicant notify, by telephone or in writing, the owner of the affected collection system and/or treatment plant (as appropriate) prior to construction, and to include the project location, the extent of the work to be performed, and the reason for the emergency.

47. COMMENT: The New Jersey Manufactured Housing Association supported the inclusion of the process pursuant to which emergency TWAs can be issued quickly in accordance with N.J.A.C. 7:14A:22-5(k).

RESPONSE: The Department acknowledges and appreciates the comment in support of the new rule.

N.J.A.C. 7:14A-22.6 Information and submission requirements for general industrial treatment works approvals

48. COMMENT: The New Jersey Manufactured Housing Association supported the inclusion of a process pursuant to which a TWA approval can be granted if a municipality elects not to execute a consent form as proposed at N.J.A.C. 7:14A-22.6(a)5.

RESPONSE: The Department acknowledges the comment. It should be noted that this is not a new provision; this procedure has been retained from the previous rules.

49. COMMENT: Merck and Co. commented that the engineer's certification at N.J.A.C. 7:14A-22.6(a)3 should be modified as follows: "the proposed treatment works, as designed, will enable the facility to meet all applicable Federal, State and local effluent limitations, conditions and/or requirements that the treatment works was designed for." It would be difficult for a professional engineer to certify that a treatment works for controlling one parameter will enable a facility to meet all parameters.

RESPONSE: Applications for treatment plant upgrades and expansions are generally submitted in their entirety and should be designed to meet all the effluent limits specified in the facility's NJPDES permit (each unit does not obtain an individual permit). Even if only one unit in a treatment process is to be added or modified, the design engineer must take into consideration the effect and treatment capabilities of the existing units when designing the new unit. Therefore, the required certification as proposed is appropriate. If particular circumstances warrant, the design engineer may modify the certification to state the specific unit performances he is certifying to and submit it to the Department for consideration. The Department will retain the right to approve or deny the project based upon the specific reasons given for the partial certification.

50. COMMENT: Handex commented that in those instances where an applicant has applied for a General Industrial TWA or holds a valid NJPDES Category B4B DSW (Discharge to Surface Water) permit, the following occurs: The applicant for the B4B permit must request the WQM003 Statement of Consent from the local government and the

affected sewerage authority. A complete copy of the application must be submitted with the request. Thus, given that the local government and the affected sewerage authority have already been provided with information regarding a subject project and the opportunity to either provide or deny the Statement of Consent, the requirement to repeat the entire WQM003 Consent Statement process does not provide any environmental benefit. N.J.A.C. 7:14A-22.6(a) should provide an exemption from repeating the WQM003 Consent Statement process for applicants for a general TWA, who hold, or have applied for a Category B4B permit.

RESPONSE: Under N.J.A.C. 7:14A-22.6(a), the requirement of submitting a WQM003 consent form for General Industrial TWA applicants which have been authorized to discharge pursuant to a NJPDES B4B DSW General Permit is not a redundant exercise. The TWA application requires section b of the WQM003 form to be executed by the owner of the wastewater conveyance system into which the project directly connects. This certification of adequate conveyance capacity in the existing wastewater conveyance system to serve the proposed project is not required to be submitted under the B4B DSW application. This procedure guarantees that the owner of the existing conveyance system has no objections to this connection and is not aware of any inadequate conveyance capacity conditions in that system.

The Department will consider deleting consent requirements during the NJPDES permitting process as opposed to the TWA program. Nevertheless, the consents necessary for the NJPDES B4B DSW Permit and the TWA program serve specific and unrelated purposes.

51. COMMENT: PSE&G commented that, with respect to General Industrial TWAs, obtaining consent from local authorities can often take several months. If the Department cannot deem a TWA application administratively complete before local consent is granted, then the process is put on hold pending receipt of a Statement of Consent from the local authorities. The commenter recommended that the Department accept a TWA application as administratively complete as long as the appropriate local authorities have been requested to grant consent. This modification would allow the Department and the local authorities to review the project simultaneously rather than sequentially, thus speeding up the process. The Department's actual approval of a TWA would, of course, have to wait until consent is formally granted.

RESPONSE: The Department has committed to a goal of either issuing a General Industrial TWA within 30 days of receipt of a complete application or of notifying the applicant that the project cannot be granted a General Industrial TWA, and an individual TWA, subject to a 90-day review process, is required. If applications which contain only the request for the consent are accepted, it is highly unlikely that the Department would be able to approve these applications within 30 days, since N.J.A.C. 7:14A-2.1(k) provides for a 60-day waiting period for approval of applications that do not contain consents. The General Industrial TWA is intended to create an expeditious and efficient system, the success of which depends upon the submittal of complete applications. Acceptance of incomplete applications would compromise the basic intent of processing the General Industrial TWA applications within 30 days.

52. COMMENT: The Passaic River Coalition commented, with reference to N.J.A.C. 7:14A-22.5(1) that, on its surface, the issuance of a General Industrial TWA within 30 days of receipt of a complete application appears to be an improvement. This time is adequate because the Departmental review would be administrative in nature. If the purpose of this approval is only to comply with regulations, the commenter questioned why the regulations are needed at all.

RESPONSE: The purpose of the General Industrial TWA program was described in detail in the proposal summary. See 25 N.J.R. 3283-3287. The provision requiring a General Industrial TWA approval rather than altogether eliminating the TWA requirement is essential for a number of reasons. Without knowing the scope of the work proposed, the Department cannot determine which, if any, of the projects should be required to obtain an individual TWA. Moreover, there is a need to establish and maintain a record of treatment works that are constructed within the State, as well as to ensure that such works are designed and operated by duly licensed engineers and operators, respectively. The General Industrial TWA procedures will accomplish this without placing an undue burden on the regulated community. In reducing the scope of Industrial TWA application requirements, the Department has placed a substantially increased reliance on enforcement aspects, particularly pursuant to the Clean Water Enforcement Act. For fair, appropriate and successful enforcement actions it is essential to determine whether the noncompliance resulted from inadequacy and/or negligence in design, construction or operation. The procedures will facilitate such determinations, as design drawings and operational requirements will be readily available in the Department's records.

Industrial treatment works which discharge directly to the surface or ground waters of the State, if not properly designed, constructed or operated, can potentially cause irreparable damage to the receiving waters and surrounding ecosystems. Environmental damage of this nature can, at times, go unnoticed for a considerable period of time. Remediation of the resulting problems is expensive and time-consuming. If the Department had opted to totally eliminate the industrial TWA program, the Department would be forced to remediate problems after the fact, when the damage is already done. By maintaining the industrial TWA program, the Department can continue to provide oversight on the design and operation of these treatment systems. In the event that a system does not operate properly, the Department will have access to its records to aid in the determination of the cause of the problem (for example, a design flaw, construction not in accordance with the specifications on file, operator's error).

53. COMMENT: The Passaic River Coalition commented, with reference to N.J.A.C. 7:14A-22.6(a)5 that although the Department has reduced its review time, the municipal review requirements remain unchanged. These reviews are onerous, time-consuming, and unhelpful. The Department should consider what the purpose of these regulations is.

RESPONSE: This rule does not, nor was it intended to, change any municipal review requirements. The Department has no authority or control over the scope of municipal review requirements. One of the goals of the new rules is to eliminate the Department's involvement in the areas where the current TWA requirements are duplicative and provide little environmental benefit. In the Department's judgment, the new rules establish a reasonable and justifiable program while not compromising the overall goal of environmental protection.

The primary objective of the TWA and sewer ban programs is to prevent degradation of the waters of the State due to inadequately designed and/or poorly operated wastewater conveyance and treatment facilities. During implementation of the program rules as they have existed since 1987, members of the public, both regulated and indirectly affected, have made the Department aware of a number of problems with many of the rule provisions and have also identified a number of possible improvements. As a result, Department staff undertook a comprehensive review of the existing programs aimed simultaneously at increasing the program's environmental effectiveness, optimizing the use of available resources, and eliminating undue hardships to the regulated community.

The Department investigated the types of projects which were subject to multiple reviews at the local and State levels. The multiple layers of review add significant costs to a project, which is ultimately borne by the consumer in the form of higher fees and purchase price. The projects exempted under this new rule are those that the Department has determined to be generally routine designs having minimal environmental impacts.

54. COMMENT: The Passaic River Coalition commented, with reference N.J.A.C. 7:14A-22.6(d), that if there are critical parts of the TWA program that should be retained for sufficient reason, then these requirements might be combined with the NJPDES permit review process. The comment is applicable to both industrial and domestic treatment works approvals.

RESPONSE: The majority of TWAs issued by the Department do not require an individual NJPDES permit. Additionally, new treatment facilities and expansions of existing facilities cannot be given a TWA approval within the NJPDES permit since the final effluent limitations included in the NJPDES permit are the basis for the treatment works design. A TWA application thus cannot be submitted as part of the NJPDES permit review process, since at that stage in the permitting process, neither the design engineer nor the Department knows the specific discharge limitations within which the facility must be capable of operating.

55. COMMENT: Jersey Central Power and Light commented that it strongly supported the General Industrial TWA program because it will result in faster compliance and greater benefit to the environment.

RESPONSE: The Department acknowledges this comment and believes that the issuance of General Industrial TWAs will expedite compliance with industrial treatment requirements, reduce regulatory burden on the applicant, and reduce review effort by the Department.

56. COMMENT: AT&T inquired, with reference to N.J.A.C. 7:14A-22.3, why the Department retained the treatment works approval requirement for sewer extensions associated with the General Industrial TWA, particularly for indirect dischargers in a delegated area. For private facilities and industry, many sewer extension projects are located totally on-site, and are minor in scope, for example relocation of a sewer for building expansion. AT&T also stated that General Industrial TWAs for sewer extensions should also be eliminated. The New Jersey Builders Association questioned why the Department allows delegated agencies the right to review complex pre-treatment facilities but not sewer extensions.

RESPONSE: The Department did not propose to include in the General Industrial TWA program projects which require the construction of a sewer extension. Rather, an individual TWA, subject to a 90-day review period, is required. There are many reasons for the necessity of a 90-day technical review for conveyance systems which serve industrial areas/facilities instead of a 30-day administrative review.

In developing these rules, the Department's objective was to eliminate unnecessary TWA requirements, especially where other adequate industrial controls do exist. One such area is pre-treatment systems in delegated areas. However, the Department's involvement provides oversight to ensure that conveyance system design throughout the State adheres to the Department's technical standards, that delegated agencies issue permits for treatment units only, and that conveyance systems do not fall under the scope of the approved pre-treatment program.

The Department cannot rely on or expect local agencies to perform a function which has not been delegated to them. Incorrectly designed and operated conveyance systems can potentially have a substantial adverse impact on the entire municipality, including future development and environmental protection. The Department must thoroughly review all sewer extensions because their impact is not strictly limited to the particular site in question.

57. COMMENT: AT&T commented that it appreciated the information provided in Summary of the proposal, which described the Department's intent to eliminate the TWA requirement for indirect dischargers in delegated areas. See 25 N.J.R. 3286. However, the commenter was concerned regarding the empowerment of a local authority to review and approve treatment works projects for indirect dischargers. Presently, an applicant for a TWA must obtain the required endorsement or written Statement of Consent from the local authority having jurisdiction in the applicant's area. If the request for the endorsement or written consent is not granted by the local authority, then the procedures set forth in N.J.A.C. 7:14A-2.1(k) apply. An application would be considered complete after the 60-day notification period to the local authority had elapsed.

RESPONSE: These issues will be resolved strictly at the appropriate local levels, with applicants having the same appeal rights as any other local approval. The time for a local authority to review and approve treatment works projects in its sewer service areas is not within the Department's jurisdiction.

58. COMMENT: Hackensack Water Co. and Merck and Co. commented that there is no reason for an industrial user that discharges to a delegated local authority to have any restrictions on flow increases, provided it meets the flow level in its discharge permit. The penalties under the Clean Water Enforcement Act provide all the incentive necessary to ensure that flow increases are controlled. It is recommended that N.J.A.C. 7:14A-22.4(b)1ii be deleted.

RESPONSE: The flow from a facility impacts the collection and conveyance systems, which is not addressed or included in the pre-treatment programs for the delegated authorities. The Department realized that it was burdensome, in some cases, to require individual 90-day TWAs for projects involving increases in flow only, with no actual construction being undertaken. Therefore, N.J.A.C. 7:14A-22.4(b)1ii was included to provide that such projects may be eligible for a 30-day general TWA. However, there may be a few cases where the magnitude of the flow increase or concern regarding the adequacy of the downstream conveyance system to handle the increases in flow may necessitate a full technical review under an individual TWA.

N.J.A.C. 7:14A-22.8 Requirements for construction, installation, or modification of treatment works—Stage II

59. COMMENT: The Atlantic County Utilities Authority commented that N.J.A.C. 7:14A-22.8(a)3 and N.J.A.C. 7:14A-22.6(a)5 do not require the consent of collection system owners other than the one with which the project connects. It is not clear if the consent or certification of the receiving treatment plant and/or sewerage authority is intended to also mean consent or certification for indirect connection to the regional collection system. It is suggested that the Department's WQM003 form be revised, or another mechanism be provided, to allow for the consent or certification of the regional collection system operator.

RESPONSE: The Department considers a requirement that all the owners of the collection system between a proposed project and the treatment facility consent to the project onerous, cumbersome and impractical. In certain cases such a requirement would necessitate the consent of multiple agencies and significantly delay the application process. Therefore, the only certification of adequate conveyance capacity required is that of the owner of the conveyance system into which the project directly connects. In cases in which additional conveyance authorities are involved, each downstream owner must appropriately monitor introductions to its systems and take appropriate action to prevent, if necessary, additional flow from upstream connections. These arrangements are usually part of the service agreement between system owners.

The consent of the receiving wastewater treatment facility at section C of the WQM003 form is strictly a certification stating that with the addition of the flow proposed in the permit application, the committed flow will not exceed the permitted capacity of the facility. In addition, the owner also certifies that the treatment plant is currently complying with its NJPDES permit effluent requirements, and will continue to do so with the additional flow from the project in question.

Section C is not intended to include a consent or certification for indirect connection to the regional collection system. Section B, as explained above, requires certification of the owner of the collection system into which the project directly connects. In cases where a project indirectly connects into a regional conveyance system that is owned by an entity that is different than the receiving treatment facility, no consent is required from the regional authority for the purposes of a TWA application. Of course, the local municipalities and sewerage authorities may establish mutual approval procedures as part of their locally initiated and enforced service agreements.

The current WQM003 consent form does provide for the consent of the regional collection system owner in cases where there is a proposed direct connection to that system. In cases where there is an indirect connection, the regional collection system owner would be fully aware of the project if the authority is also the owner of the wastewater treatment facility. However, there are indirect connections to regional collection systems that flow to treatment facilities not owned or operated by the same regional entity which do not require consent from the collection authority.

This procedure is currently in place and was instituted in full realization of the above-noted practical limitations and the Department's reliance on the certification of the owner of the collection system executing section B of the WQM003 form, and that the owner is complying with all applicable agreements with the owner of the downstream system into which the project indirectly connects. If a regional collection authority desires to have greater control than is facilitated by the WQM003 consent form, such control would more appropriately be incorporated in the local service agreements.

60. COMMENT: The Atlantic County Utilities Authority commented that unless otherwise requested by the sewerage authority, receiving treatment plant and/or district sludge management lead planning agency, consents and/or certifications (as the case may warrant) of agencies having jurisdiction should be required in all cases without exception. If one of these agencies does not wish to review these projects, the agency could notify the Department.

RESPONSE: There are a number of agencies which have jurisdiction over land development projects. However, as a practical matter, and to prevent the application process from becoming too cumbersome, the WQM003 consent form is limited to those agencies which are directly concerned with treatment works construction and those with the responsibility to certify and assure that the existing conveyance and treatment facilities are adequate to handle flow from new construction. The Department, at times, also conditions its approvals on certain other specific approvals which may affect the viability of the treatment works design as proposed. However, such conditions are limited in scope. Further, a general condition of the TWA is that the applicant must obtain any local, other State, and Federal approvals which may be required for a particular project.

The Department and the regulated community would not benefit from requiring the consent and/or certification of all agencies with jurisdiction over a project because it is not practical, during the TWA review process, to determine all of the permits required. Even if those were known, it would be impractical to seek endorsements for aspects not directly related to the treatment design. The Department has therefore limited the consent requirement to those agencies which are specifically related to the evaluation and approval of sewerage facilities within a given area.

61. COMMENT: The New Jersey Manufactured Housing Association commented that a number of municipalities currently require that the local approval process be commenced, or even completed, before executing a consent form. The existing consent form is often interpreted as an indication that the proposal is in compliance with local law. However, for certain municipal approvals, the most expeditious way to proceed may be to seek municipal consent after obtaining treatment works approval from the Department since, at that point, the applicant has final plans approved by the Department to present to the municipality. Currently, the applicant may be caught in a cycle between municipal approvals and going forward in the TWA process. Revising a request for consent to be an acknowledgment that the TWA application has been provided, rather than as an indication that local laws have been met, could serve to expedite the process and still provide the same notice to the local authorities.

RESPONSE: The purpose of the WQM003 consent form is not limited to providing notice to local authorities of a proposed project. Section A of the WQM003 form is a certification by either the governing body, sewerage entity, or the owner of the wastewater treatment facility that the project as proposed conforms with all municipal ordinances and/or agency requirements. In additions, section B and C are certifications by the owner(s) of the wastewater conveyance and treatment systems, respectively, attesting to the adequacy of the existing treatment works to convey and treat flow generated from the project in question.

If the Department were to consider applications complete prior to the project receiving the consent of the governing body, effort would be wasted reviewing projects which might be revealed to be infeasible. By requiring consents prior to the TWA submission, the potential for major design changes to treatment works designs because of inconsistencies with municipal and/or sewerage authority requirements is greatly reduced.

62. COMMENT: The New Jersey Builders Association and the New Jersey Manufactured Housing Association commented that the Department should modify N.J.A.C. 7:14A-22.8 to allow signatures older than one year on applications for construction, installation or modification of treatment works since there is no similar restriction on the lengths of the approvals. Obtaining new endorsements will impose unjustified administrative burdens. Schoor, DePalma and Canger commented that the Department should accept signatures older than one year for Stage II TWA construction, installation, or modification applications. The New Jersey Manufactured Housing Association commented that N.J.A.C. 7:14A-22.8, by placing a one-year limit on the validity of signatures, will increase administrative costs. The commenter favored a longer time period during which signatures will remain valid.

RESPONSE: It is unclear which signatures Schoor, DePalma and Canger and the New Jersey Manufactured Housing Association refer to. However, the Department assumes that the comments refer to consents from the municipality/authority, since obtaining the applicant's or consultant engineer's signatures should not create any hardship. In the past, the Department has limited the timeframe for accepting signatures on TWA applications to no longer than six months due to the fact that it is a common practice for municipalities and sewerage authorities to condition approvals for a specific limited period, which may vary among the sewerage authorities. The Department's proposal for a one-year acceptance of signatures was based on discussions with the affected municipalities and sewerage authorities and a review of local approvals and resolutions routinely submitted with the TWA applications.

Agencies that managed wastewater treatment facilities in the past have expressed the need to limit the validity of their consent, since it is not prudent for them to approve projects and allocate flow to projects indefinitely. There are at least two reasons for this. First, allocated sewage capacity might remain unused (as committed flow) for long periods for projects that are no longer viable. Second, and more importantly, as stated earlier, the performance and/or operating conditions change with time (for example, compliance with effluent discharge limitations), and it becomes necessary to maintain adequate control over those projects which are anticipated to be served by the treatment facility. The Department has determined that a one-year period for accepting signatures balances the concerns of both the building community and the local authorities.

63. COMMENT: Schoor, DePalma and Canger commented that the Department should track only quantities of wastewater and be apprised of the design flow. Applicants should need only submit forms WQM003 (which documents that the sewage treatment plant (STP), can handle the flow) and the WQM006 (the engineer's report that states the STP is designed correctly).

RESPONSE: Tracking quantities of wastewater committed to a treatment facility is not the primary objective of the TWA program. The main purpose of the TWA program is to evaluate treatment works designs to ensure compliance with all applicable regulations aimed at protecting the environmental well-being of the area and the integrity of the waters of the State by preventing the entry of increased pollutants from inadequate treatment and conveyance facilities. The WQM003 and WQM006 forms alone do not provide sufficient information to perform an engineering evaluation of the adequacy of the treatment works design. These forms are intended to aid in the Department's overall evaluation of the proposed design.

N.J.A.C. 7:14A-22.10 Requirements for Stage III treatment works approval applications

64. COMMENT: Schoor, DePalma and Canger, and the New Jersey Builders Association commented that the Department should eliminate the requirement to submit a fee for Stage III TWAs. The commenters observed that collecting an additional fee is not authorized under the 90-Day Law.

RESPONSE: The Department disagrees with the comment. A Stage III TWA constitutes a permit modification of a Stage II TWA, and, therefore, an appropriate fee under the 90-Day Construction Permits rules at N.J.A.C. 7:1C-1 for a permit modification is appropriate. In addition, the Department's determination that these requests constitute a permit modification is justified in that additional work is required to evaluate and process Stage III requests, the majority of which are for modification of "construct" only TWAs issued in sewer ban areas, or for unique situations which require significant time to resolve. Moreover, the initial issuance of a Stage II construct only TWA requires additional time and effort (as opposed to a Stage II/III combined), yet there is no additional fee at the time of application for a Stage II only, which the Department could justify. Further, the fee charged for Stage III TWAs is minimal (currently $100.00), and is inadequate to cover the Department's actual operating costs for issuing such a modification . The option of Stage II construct only approvals was made available mainly to address the needs of developers who wish to begin construction prior to the rescission of a sewer connection ban. The Department believes that the resulting minimal fee for the Stage III issuance is not an unreasonable burden. The Department encourages all applicants to apply for a Stage II/III combined approval to the maximum extent feasible in accordance with the rules.

65. COMMENT: The Atlantic County Utilities Authority commented that some Department-mandated regulatory mechanism should be established which documents the transition of "flows which are anticipated from connections which have been approved but not in operation" to actual flows.

RESPONSE: For projects subject to obtaining a TWA from the Department, the rules require that within 30 days of project completion, the WQM005 form, entitled "Certification for Approval by Local Agency," be completed and submitted to the Department. This procedure not only certifies to the Department that the treatment works was built in substantial conformance with approved plans and specifications and inspected and tested under the supervision of a licensed professional engineer, but also that the treatment facility is approving the operation of the treatment works. Once the Department has received the completed WQM005 form, the corresponding projected flow is deleted from the Department's sum of the anticipated flow and considered to be a part of the actual flow reported on the facility's Discharge Monitoring Report (DMR).

The Department is also in the process of updating the existing WQM007 Form entitled "Wastewater Flow Summarization, Quarterly Report." This will enable the Department to better track anticipated flows to treatment facilities. In any case, the Department believes that the primary responsibility for tracking actual and committed flows to sewage treatment plants rests with the plant owner/operators since they are better equipped to monitor and control such flows. This is especially

so under the new rules since many projects that would previously have required a TWA from the Department will no longer require one.

N.J.A.C. 7:14A-22.11 Modifications and revocations of treatment works approvals

66. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that the Department should be required to act on TWA modifications within a specified period, such as 30 days.

RESPONSE: To require the Department to process TWA modifications within a specific period would require an amendment to the 90-Day Construction Permits rules at N.J.A.C. 7:1C. However, the Department does have a policy of acting on TWA permit modification requests within 90 days.

67. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that a TWA modification should not be required if the project change involves fewer units, and should only be required if there will be an increase in flow with reference to N.J.A.C. 7:14A-22.11(c)1vi. The Atlantic County Utilities Authority commented that the written certification of the sewerage authority or receiving treatment plant should be required only if there is an increase in the facility's projected flow and notification and/or consent of the same agency(ies) should be required if there is to be a decrease in projected flow.

RESPONSE: The Department agrees that if the only modification to the TWA involves a reduction in the projected flow resulting from fewer units or less square footage, and there is no change in the sewer design, location or any other reason for which a modification pursuant to N.J.A.C. 7:14A-22.11, would be required, then a TWA modification will not be required. An example is a six-story office building being modified to a five-story office building, or a 50-unit three-bedroom apartment building being modified to a 50-unit two-bedroom apartment building (in all cases the sewer design and location must remain unchanged). N.J.A.C. 7:14A-22.11(b) has been revised to accommodate such a situation and to clarify that increases in projected flow will require a TWA modification. Decreases in projected flow will not require a TWA modification since there will not be an increased impact to the sewer system.

68. COMMENT: The New Jersey Manufactured Housing Association supports simplification of the TWA modification procedures, including elimination of notification to the Department of a change of ownership as proposed at N.J.A.C. 7:14A-22.5(f), and codification of the application requirements for a TWA modification as proposed at N.J.A.C. 7:14A-22.11(c).

RESPONSE: The Department acknowledges and appreciates the comment in support of the new rules.

N.J.A.C. 7:14A-22.12 Extensions of time for treatment works approvals

69. COMMENT: Schoor, DePalma and Canger commented that the Department should clarify that TWAs are good for two years.

RESPONSE: N.J.A.C. 7:14A-22.12(a) clearly states that a TWA issued by the Department is valid for a period of two years from the date of issuance, unless specifically revoked in accordance with N.J.A.C. 7:14A-22.11, or stated otherwise in the approval's special provisos.

70. COMMENT: The Passaic River Coalition inquired, with reference to N.J.A.C. 7:14A-22.12(b), why a TWA to operate is not valid for as long as the equipment is operating properly. The commenter inquired if the rules had a purpose other than the generation of fees for the Department.

RESPONSE: Once the treatment works have been constructed, the WQM005 form has been submitted and the treatment works has been placed into operation, the TWA to operate is valid indefinitely (and no further approvals are required) unless the Department modifies or revokes the TWA permit for cause pursuant to N.J.A.C. 7:14A-22.11. Subsequent renewal fees are not required for TWAs.

71. COMMENT: The Atlantic County Utilities Authority stated that N.J.A.C. 7:14A-22.12(e) would allow an applicant to preserve the approval status of a TWA indefinitely and could, in effect, allow the applicant to reserve sewerage capacity if construction has "legally" begun. It is unreasonable to expect a sewerage treatment or collection owner or operator to certify that flow generated by a project can be accommodated without reference to a time limit. It is therefore suggested that N.J.A.C. 7:14A-22.12(e) be eliminated in its entirety and applicants in need of time extensions apply under the remaining provision of this section.

RESPONSE: The Department believes N.J.A.C. 7:14A-22.12(e) appropriate because it allows the Department the discretion to grant or deny the TWA extension if construction has been interrupted for more than two years. The local sewerage authority may independently impose a time limit on the flow allocation granted to a particular project and notify the applicant that the project must be completed within a particular time-frame and that the flow allocation is not valid indefinitely. It is not appropriate for the Department to exercise such control over flow allocations since the procedures for such approvals vary greatly, depending on the rules of the local sewerage authorities.

72. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that N.J.A.C. 7:14A-22.12 should be modified to allow the Department to issue extensions for an immediate three years as opposed to issuing one year extensions on three separate occasions. The New Jersey Manufactured Housing Association commented that a five-year extension of TWAs should be provided.

RESPONSE: TWAs are governed by the 90 Day Construction Permits Rules at N.J.A.C. 7:1C. N.J.A.C. 7:1C-1.5(b) requires that a requested TWA extension, if granted, will be for a maximum period of one year and that no permit will be extended beyond a total of five years from the original date of the approval. The Department believes that due to the dynamic situation associated with sewage conveyance and treatment systems, there is a need to evaluate these approvals on a periodic basis, taking into consideration the current operating status of the affected systems. Further, the Department does not believe that applying for a time extension is a hardship on the regulated community. The procedure is very simple and requests are processed quickly, generally within one to two weeks. Also, these rules include additional provisions at N.J.A.C. 7:14A-22.12(b)2 to enable the applicant to obtain a TWA extension after the approval has expired, providing the consent of the sewerage authority has been obtained. However, it should be noted that N.J.A.C. 7:14A-22.12 does not allow a TWA to be extended beyond five years from the original date of issuance.

N.J.A.C. 7:14A-22.13 Administrative requirements for wastewater holding tanks (non-industrial)

73. COMMENT: Schoor, DePalma and Canger supported the provision that addresses holding tanks.

RESPONSE: The Department acknowledges the commenter's support for wastewater holding tank requirements, N.J.A.C. 7:14A-22.13. These rules codify Departmental policy, and will facilitate a more efficient processing of permit applications involving holding tanks.

74. COMMENT: The Pinelands Commission commented that the use of wastewater holding tanks to serve new development within the Pinelands Area is not consistent with the requirements of the Pinelands Comprehensive Management Plan. The rules should be revised to preclude such uses of wastewater holding tanks within the Pinelands Area.

RESPONSE: N.J.A.C. 7:14A-22.8(a)11 requires that either a certificate of filing or an approval from the Pinelands Commission be obtained and submitted for all projects located within the Pinelands prior to the issuance of a TWA. Therefore, it is not necessary to specifically prohibit the use of wastewater holding tanks to serve new developments within the Pinelands in the TWA regulations since such proposals would routinely be denied by the Department if an applicant was unable to obtain the required certificate of filing or approval from the Pinelands Commission. Including specific requirements of the Pinelands Commission or other jurisdictions within these rules would make them unduly cumbersome and necessitate rule amendments every time other agencies modify their rules and/or policies.

Moreover, N.J.A.C. 7:13A-22.13, concerning the use of permanent wastewater holding tanks, is strictly limited to cases where the wastewater holding tank will eliminate a failed subsurface sewage disposal system which cannot be reasonably repaired or rehabilitated and wastewater holding tanks utilized at a marina or dock which serves watercraft that are equipped with marine sanitation devices. Additionally, as in all cases, these rules constitute minimum State standards, and agencies which have jurisdiction over a particular area may adopt more stringent standards, if so warranted.

75. COMMENT: The New Jersey Builders Association supports the requirements concerning wastewater holding tanks. These requirements are consistent with the wastewater holding tanks provisions contained in the Standards for Individual Subsurface Disposal Systems (N.J.A.C. 7:9A-3.12).

RESPONSE: The Department acknowledges the commenter's support for this provision.

N.J.A.C. 7:14A-22.16 Capacity assurance program

76. COMMENT: The Passaic River Coalition commented that pursuant to N.J.A.C. 7:14A-22.16, a sewer ban is needed when a collection system does not have adequate conveyance capacity, and raw sewage is escaping into the environment. A Departmental evaluation of the effectiveness of this program would be appreciated.

RESPONSE: The Department believes this comment is misdirected. The Capacity Assurance Program (CAP) is applicable to sewage treatment plants which have reached 80 percent of their permitted flow limit. It is not related to adequate conveyance capacity in the collection system.

77. COMMENT: The Stony Brook Regional Sewerage Authority commented that the trigger for when a CAP is imposed needs to be examined in both its application and its consequences. The rule makes the consequences of not following a CAP more severe in that now the Department can act unilaterally and effectively impose a ban even when most flows have not gone above 100 percent, if the Department is not satisfied with the actions of the entity involved. This was previously not the case.

RESPONSE: The Department disagrees with the comment. Pursuant to the previous rules, sewage treatment plants which had committed flow up to their permitted flow limits were placed under a sewer connection ban, regardless of what the actual flow level was, or at what level of treatment the plant was operating. N.J.A.C. 7:14A-22.16 now provides that when a plant's committed flow reaches 100 percent of its permitted flow, the Department will cease issuing TWAs. No sewer ban is imposed. Projects which have projected flows of less than 8,000 gpd and which do not otherwise require a TWA can go forward at the discretion of the sewerage authority. In a sewer ban situation, no additional flow can be added to a treatment plant unless the project meets very specific ban exemption criteria. This change represents a significant relaxation of the TWA rules.

N.J.A.C. 7:14A-22.17 Sewer ban imposition

78. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that the Department should focus on loading and not the concentration of pollutants when imposing sewer connection bans. The Passaic River Coalition expressed opposition to excluding limitations on concentrations of conventional pollutants as a trigger for imposition of a sewer ban.

RESPONSE: The use of pollutant loading as the sole criterion on by which to impose a sewer ban may be appropriate only when the treatment plant is discharging effluent at a constant rate and at its NJPDES permitted flow limit. For plants which are operating below their flow limit, concentration becomes an integral factor in determining plant performance and hence the imposition of a sewer connection ban. The discharge of a highly concentrated pollutant can have a severe and lasting detrimental impact upon the receiving water, and must be taken into consideration. For example, if a plant discharges at or near its pollutant loading limit while flowing at half its permitted capacity (thereby essentially at double the concentration limits), two issues immediately arise: (1) Why is the treatment plant not functioning as designed, since it is unable to meet concentration limits; and (2) How would this effluent continue to meet loading requirements when additional flow to the plant is permitted, if it cannot effectively reduce the pollutant concentrations? Treatment plants are typically given flow limitations (and hence corresponding maximum loadings) based upon future need. It is irresponsible, both environmentally and for planning considerations, to reach maximum permitted loading limitations prior to reaching maximum permitted flow limitations. If the plant can reduce pollutant concentrations, then it should be operated in that manner at all times. Thus, the rules continue to require compliance with both the loading and the concentration limits. The Department believes that adequate and justifiable modifications to the sewer ban program have been made.

79. COMMENT: The New Jersey Builders Association commented that the Department should account for water conservation plumbing when deciding whether or not a sewer ban should be imposed.

RESPONSE: The criteria for the imposition of a sewer connection ban on a sewage treatment plant depend upon the quality and quantity of the effluent, and its impact on the receiving water. The quality of the influent is not one of the ban imposition criteria. Plants which are subject to varying influent due to water conservation fixtures to the extent that it affects NJPDES compliance, must take appropriate measures including expansion or modification of the treatment process to the degree necessary to meet NJPDES effluent limitations.

80. COMMENT: The Passaic River Coalition commented with reference to N.J.A.C. 7:14A-22.17(a)2 that the Department should consider using a measure of central tendency other than the arithmetic mean for some parameters. For instance, the arithmetic mean of pH is inappropriate since pH is a logarithmic function. The distribution of values for other parameters is not always normal. Perhaps the median would be a better measure of central tendency for some parameters.

RESPONSE: The Department agrees that for the determination of pH, it may be more precise to use a measure of central tendency other than an average; however, the use of an average is still appropriate for the purpose intended. The three-month average is a measure of the degree of non-compliance. If an effluent was in significant non-compliance with the pH limit, whether the determination for a ban was made using an average, or another measure of central tendency, the numbers would be close enough that the final determination would be the same. For the sake of consistency, and for ease of calculation, the Department will continue to use the average. In addition, the pH limit in a NJPDES permit is typically given as a range from six to nine; therefore, some degree of variability is already built in.

81. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented concerning N.J.A.C. 7:14A-22.17(a)2 that with respect to determining whether a violation exists, the Department should eliminate the requirement to take the average of three months of monitoring data and in its place substitute the data for three consecutive months.

RESPONSE: It is the Department's position that the use of a three-month average is the most appropriate method to determine non-compliance to the degree necessary for the imposition of a sewer ban. If a plant had minor excursions for a single month, the three-month average of data would most likely not result in the imposition of a ban. If an excursion from the limits continues for three consecutive months, a ban would be imposed whether the Department used the average of three months data method, or the three consecutive month method. By using a three-month average, however, the Department is facilitating timely and preventative action for plants which are operating on a marginal level, for example, violating for two consecutive months, meeting limits in the third month, and violating for the next two consecutive months. This type of "on again, off again" compliance is unacceptable and must be addressed. The Department refers the commenters to the rationale for the changes in the sewer ban program presented in the rule proposal Summary at 25 N.J.R. 3287 through 3289.

If there are extenuating circumstances which result in a plant discharging effluent which is in significant non-compliance with its NJPDES limits during a single event, the Department would take into consideration whether an "upset" as defined at N.J.A.C. 7:14A-1.9 had occurred with respect to a sewer-ban requirement, if so requested by the permittee. As stated in N.J.A.C. 7:14A-22.18(a), within 20 days of the treatment works becoming subject to a ban in accordance with N.J.A.C. 7:14A-22.17, the affected sewerage authority or municipality must adopt a resolution imposing the sewer connection ban. Therefore, any request by a permittee to the Department for relief from the ban imposition requirements must be received by the Department prior to this 20 day time frame.

82. COMMENT: The Association of New Jersey Environmental Commissions (ANJEC), the Passaic River Coalition and the New Jersey Builders Association commented on the Department's decision not to impose a sewer ban for flow exceedences. ANJEC opposed lifting sewer bans when excessive flows are the result of growth from improper zoning which is not consistent with an approved Wastewater Management Plan. Additionally, ANJEC stated that proposed safeguards for plants exceeding permitted flows consist of imposing a capacity assurance program, and there is little assurance that the Department will implement this regulation. The Passaic River Coalition supported the proposed change, stating that eliminating flow as an automatic trigger for a sewer ban will eliminate many of the current problems with the sewer ban program that are not relevant to water quality considerations. The New Jersey Builders Association expressed support for this rule, which would allow much-needed housing to proceed.

RESPONSE: The rationale for the Department's decision to not impose a sewer ban for flow exceedance alone is discussed in detail at 25 NJR 3289. No ban is required if the surface water treatment plant exceeds its permitted flow, as long as it continues to meet appropriate effluent limitations, including total mass loadings. This is based upon: (1) for plants with excessive inflow and infiltration, high flow conditions generally occur during wet weather when the flow in the receiving stream

is also high, and do not correspond to the critical low flow conditions that are used in determining the NJPDES limits; (2) to tie the imposition of a sewer connection ban to preliminary flow estimates arrived at through the Water Quality Management planning process would cause unjustifiably severe hardships to the regulated community; and (3) due to the conservative nature of the Department's projected flow criteria, committed flow values are often far in excess of the flows actually generated by the projects once they are constructed and in operation. The Department, therefore, is at times faced with enforcing a sewer ban for a hypothetical problem.

It is important to note, however, that although a sewer ban is not required to be imposed on plants which are meeting all effluent limitations with the exception of flow, the Department will not issue TWAs which will contribute additional flow to these plants. For treatment plants where the flow varies seasonally due to high inflow and infiltration, but is well within NJPDES flow limits during dry months, there is a provision proposed at N.J.A.C. 7:14A-22.16(a)6 and recodified at N.J.A.C. 7:14A-22.16(b), which allows additional TWAs to be issued.

83. COMMENT: The Association of New Jersey Environmental Commissions commented that the subject of non-point source pollution from stormwater runoff should have been addressed in the proposal.

RESPONSE: These rules are not applicable to separate stormwater sewers. There are several provisions in the rules pertaining to combined sewers which prohibit the construction of new combined systems. Exceptions may, however, be granted for replacement of existing combined sewers.

84. COMMENT: The Passaic River Coalition commented that it agreed with the proposal in that the automatic imposition of a sewer ban based on the exceedance of a limitation on a toxic parameter should be removed from the current rules.

RESPONSE: The Department acknowledges the comment in support of N.J.A.C. 7:14A-22.17(c).

85. COMMENT: The Passaic River Coalition inquired whether a sewer ban would be imposed in the time between the recognition of a problem of non-compliance with a limitation on a non-conventional parameter in a NJPDES permit and the issuance of an Administrative Consent Order or TWA? This regulation does not recognize that modification of the permit might be the best solution to the problem.

RESPONSE: In accordance with N.J.A.C. 7:14A-22.18(a), a sewer ban must be imposed within 20 days of the treatment works becoming subject to any of the ban imposition criteria specified in N.J.A.C. 7:14A-22.17. The initial sewer ban imposition date is not dependent upon the status of administrative consent order negotiations or future TWAs for upgrades. Decisions on NJPDES permit modification requests for less stringent effluent limitations are dependent upon the merit of specific requests independent of the provisions of these rules. The scope of this subchapter does not include NJPDES permit modifications. During the time a NJPDES permit modification request is under consideration, the treatment plant must remain under sewer ban.

86. COMMENT: The Passaic River Coalition commented that although it may disagree at times with the Department on how discharge to groundwater limitations should be set in permits, it agrees that violation of the limitation on any parameter in a NJPDES/DGW permit should be grounds for the imposition of a sewer ban.

RESPONSE: The Department acknowledges the comment.

87. COMMENT: The Western Monmouth Utilities Association inquired whether or not it would be appropriate to institute a ban if there were backups into residences or businesses which resulted in raw sewage contaminating the building.

RESPONSE: A discharge of sewage from any unpermitted discharge location, whether from a a manhole, backups into residences or other locations, is cause for a sewer connection ban. However, a backup into a residence or other single building should be investigated to determine if the cause for the backup is contained in the individual lateral. If problems occur where several houses or buildings within a specific area have difficulty introducing additional flow into a sewer line, that section of the collection system must be placed under sewer ban and an in-depth sewer system evaluation should be initiated to identify and remedy the cause of the problem. Language has been added at N.J.A.C. 7:14A-22.17(a)1i and ii providing that if there is a one-time overflow occurrence which is the result of extreme and unusual precipitation, or equipment malfunction which has been repaired, the owner/operator may, within 20 days of the occurrence, request relief from the imposition of the sewer ban. The request must be in writing and be submitted to the Department's Wastewater Facilities Regulation Program. Such requests for relief must be accompanied by adequate supporting data.

88. COMMENT: The Western Monmouth Utilities Association commented that it is unclear from the regulations whether a ban should be self-imposed or imposed by the Department for an overflow from a collection system which results from an abnormally high rainfall or flood. The question is: should a ban be placed on a facility because of any overflow or only for those overflows that happen with some regular occurrence? The commenter did not believe the Department intended to place or require bans in such a flooding incident. However, some statistically sound method to judge the severity of a storm which would be excused from the ban should be proposed.

RESPONSE: In accordance with N.J.A.C. 7:14A-22.18(a), sewer connection bans are required to be imposed by the owner/operator of the treatment works. When the owner/operator fails to act in accordance with the rules, the Department may take appropriate action including the issuance of a directive for the imposition of a sewer connection ban. A sewer connection ban must be imposed in all circumstances when a lack of adequate conveyance capacity is identified. The Department agrees, however, that there may be extenuating circumstances, such as a one-time overflow occurrence due to an extreme and unusual rain event, or an overflow from equipment malfunction which has been repaired, for which the owner/operator of the collection system may request that the sewer connection ban rule not be applied. Therefore, as discussed in the response to Coment 88, language has been added to N.J.A.C. 7:14A-22.17(a)1i and ii providing for requests for relief from the imposition of a sewer ban in such circumstances.

89. COMMENT: Adams, Rehman and Heggan commented that since the new Hammonton treatment plant will meet conventional treatment parameters, the commenter believes that the ban will be lifted at that point in time, providing that the treatment sustained meets the requirements, and the town of Hammonton will not have to wait until the second phase of the land application facilities are constructed. The commenter sought a clarification of the rule as it affects the town's situation.

RESPONSE: As long as the Hammonton treatment plant discharges to surface water in accordance with a valid NJPDES permit, the ban imposition/rescission criteria applicable to the plant are the same as they are for all other plants that discharge to surface water. That is, if the effluent meets all NJPDES permit parameters for conventional pollutants, and there is an administrative consent order in force, or construction is under way for upgraded facilities which will enable the effluent to meet all NJPDES permit conditions (see N.J.A.C. 7:14A-22.17), then a ban will not be required. At such time as the Hammonton plant begins to discharge to groundwater, then the effluent must meet all NJPDES permit requirements to remain exempt from a sewer ban. In this context, the Department will also review the provisions of any administrative or judicial consent order to ensure that a ban rescission decision is not inconsistent with these documents.

90. COMMENT: The Stony Brook Regional Sewerage Authority commented that the triggers for events and particularly the triggers for the implementation of sewer bans need to be arranged in such a way that the Clean Water Enforcement Act (CWEA) and the sewer ban program complement one another. The Department needs to decide how it wants to initiate sewer bans as they relate to the CWEA. It seems the triggers are too sensitive.

RESPONSE: Prior to publishing the rule proposal, the Department had explored many ways to modify the sewer ban program including matching the imposition of a sewer connection ban with the criteria for determining a "serious violation" pursuant to the CWEA. This option was found impractical and inadequate to achieve the objectives established for the regulatory reform. By tying the imposition of a ban to the definition of a serious violation, bans would be imposed regardless of the status of treatment plants upgrades, compliance with administrative consent orders, or the types of NJPDES limits which were violated. In addition, it provides no relief from toxic limits in NJPDES permits. The Department believes that the proposed ban imposition criteria are appropriate and constitute a major improvement over the existing criteria.

N.J.A.C. 7:14A-22.19 General policy and procedure for sewer connection ban exemptions

91. COMMENT: Schoor, DePalma and Canger, and the New Jersey Builders Association commented that the rule should contain a timeframe within which the Department must take action on issuing sewer

ban exemption approvals. The commenters cited N.J.A.C. 7:14A-2.19(c) and 22.21(e).

RESPONSE: The establishment of a period for the processing sewer connection ban exemptions would require amending N.J.A.C. 7:1C, which was not within the scope of this proposal. However, the Department agrees with the comment and has been implementing a policy of processing sewer ban exemption requests within 90 days. The current review time averages approximately 72 days. If sewer ban exemptions were included under the 90-day rules, an appropriate processing fee would be required.

92. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that N.J.A.C. 7:14A-22.19(a) should preclude the ability of sewer authorities or municipalities to impose more stringent criteria than are set forth in the Department's rules for obtaining exemptions.

RESPONSE: The Department promulgates the minimum standards and the qualifying criteria for State approvals. At times, local and regional authorities have specific needs that must be met, often through regulatory actions. In the case of sewerage facilities, the municipalities and sewerage authorities have responsibilities and obligations pursuant to the Water Pollution Control Act and the Clean Water Enforcement Act and they may have contractual agreements with other agencies. To meet these obligations, they may, at times, need to establish criteria more stringent than the Department's criteria. However, it should be noted that the Department does not get involved in sewer moratoriums that are imposed by local authorities for reasons other than those mandated in these regulations and no sewer ban exemptions from the Department from these moratoriums are required.

N.J.A.C. 7:14A—22.20 Activities which do not require an exemption from the Department

93. COMMENT: Schoor, DePalma and Canger commented that the Department should accept preliminary local approvals and not just receipt of a sewer extension permit as a way to be grandfathered from sewer ban. The applicant should have the option to obtain either a building permit or an approval from a sewerage authority as a way to be grandfathered from a sewer ban. See N.J.A.C. 7:14A-22.20(b) and 22.22.

RESPONSE: The Department does not agree with the comment. The existing sewer ban program has been drastically modified to make it fair and to only require bans that are essential for environmental reasons. The ban exemption criteria have also been expanded. If the Department incorporated the commenter's suggestion into the ban exemption criteria, the sewer connection ban program would be meaningless.

94. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that the Department should clarify whether construction needs to be started or whether a TWA simply needs to be applied for or obtained so as to be grandfathered from a sewer ban under N.J.A.C. 7:14A-22.20.

RESPONSE: The Department believes the rules are clear on this point. In order for a project to be grandfathered from a sewer connection ban, a complete TWA (Stage II and Stage III) must have been obtained from the Department and be valid. For the project to be exempted, construction on the treatment works does not have to be initiated prior to the imposition of the sewer connection ban. However, construction must be initiated prior to the expiration of the TWA. If the TWA expires while the sewer connection ban is in place, the project is no longer grandfathered from the sewer connection ban.

N.J.A.C. 7:14A-22.21 Application procedures for obtaining a sewer connection ban exemption from the Department

95. COMMENT: The New Jersey Builders Association commented that N.J.A.C. 7:14A-22.21(d) provides that if a sewerage authority or municipality denies a ban exemption request, the decision cannot be appealed to the Department. The commenter asked what recourse does an applicant have if it cannot appeal to the Department?

RESPONSE: The applicant would have access to the same appeal procedures as are applicable to any other local decision. The Department has and will continue to provide any assistance that sewerage authorities or municipalities may need in interpreting the sewer ban exemption rules.

N.J.A.C. 7:14A-22.22 Sewer ban exemption criteria

96. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that with reference to N.J.A.C. 7:14A-22.2(a)3, the public need ban exemption criteria should be expanded to allow exemptions for facilities that are 100 percent privately financed, provided they meet a public need as defined in the rules.

RESPONSE: When the sewer ban exemption criteria were first promulgated in 1987, this exemption was limited to 100 percent publicly owned or operated projects, since private projects have the flexibility to locate in areas not subject to a sewer ban. However, the Department failed to recognize the myriad of methods used to provide funds for projects serving a public need. Since the regulations were first developed, many creative methods of funding projects serving a public need have emerged, and the Department recognizes that projects which in the past may have been 100 percent publicly funded may now have a portion of their funds provided by private agencies. Nonetheless, the intent of this exemption criteria is to allow exemptions for projects that are publicly financed.

The Department recognizes that the rules may not address a project which all concerned parties agree should be exempt. The provision at N.J.A.C. 7:14A-22.22(a)7, however, allows consideration of an application for an exemption for publicly or socially needed projects by not-for-profit organizations which do not meet any other exemption criteria. The rule requires that the not-for-profit organization must serve a fundamental public need such as food, shelter, health and safety and meet the criteria for a tax exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code. The applicant must also demonstrate that there are no feasible alternatives to the project.

97. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented with reference to N.J.A.C. 7:14A-22.2(a)2, that the Department should modify the ban exemption criteria to allow for a project that replaces a building/facility even if it is not exactly the same size replacement, providing there is no increase in the amount of wastewater being generated. Additionally, the replacement building should not be limited to exactly the same location, since the Department should be interested only in the amount of flow and not the location. The comment cited, as an example, a college campus.

RESPONSE: Pursuant to N.J.A.C. 7:14A-22.22(a)2, the size of the facility has no bearing upon its obtaining an exemption provided the projected flow is not more than the flow from the building being replaced. The requirement that the facility must be at the same location is based upon the premise that the wastewater flow allocation needs to remain with a specific property. If these rights were transferred to another property, the original property would, for all practical purposes, become unusable until the sewer connection ban is lifted and additional flow allocations are obtained. However, it should be noted that while implementing the ban exemption criteria, the Department does allow replacement flow exemptions as long as the replacement structure is within the same property as the structure being replaced. Additionally, as in the past, the Department will continue to consider the transfer of wastewater flow on contiguous properties owned and/or operated by the same entity. Examples of these types of facilities include schools, college campuses, industrial/commercial complexes and hospitals.

98. COMMENT: Schoor, DePalma and Canger commented that the November 1, 1986 cut-off date referenced in the sewer ban exemption criteria pertaining to grandfathered projects (N.J.A.C. 7:14A-22.22(a)8) is objectionable and the commenter requested that the Department base its decisions on the date of the sewer ban.

RESPONSE: The Department believes that the comment lacks merit in light of the reasons for which this exemption was originally promulgated. As explained in the proposal Summary at 25 N.J.R. 3290, this ban exemption category was established for the purpose of allowing projects that had obtained building permits prior to the Department's promulgation of revised TWA and sewer ban rules (effective November 1987) to proceed. Very few, if any, projects covered under this catagory still remain viable. The Department considered eliminating it but chose not to because of the remote possibility that some projects may still be able to benefit from it because of the permit extension act.

99. COMMENT: Schoor, DePalma and Canger supported the increase in flow that can be exempted from a sewer ban from 400 gpd to 600 gpd. The New Jersey Builders Association supported the increase from 400 gpd to 600 gpd, but commented that the exemption criteria should be expanded to include projects that need a sewer extension, rather than limit them to projects which do not require a TWA.

RESPONSE: The Department acknowledges the supportive comments in support of the increased threshold for the exemption criterion at N.J.A.C. 7:14A-22.22(a)1. However, if the Department were to allow the construction of sewer extensions within these exemption criteria, sewer connection bans, which these new rules already substantially reduce, would become largely ineffective. The sewer extension in and of itself

creates available sewer service for land which fronts the sewer line. Once the sewer line is constructed, the potential to connect a multitude of additional sewer connections less than 600 gpd clearly exists. This should not be allowed during a sewer connection ban. The Department has completely modified the sewer ban program so that only those plants with significant non-compliance are subject to a State-imposed sewer connection ban. The number of sewer connection bans is expected to decrease under these new rules. As the Department stated in the Working Paper, the modifications to the sewer ban and ban exemption criteria need to be evaluated as a whole. The Department believes the proposed rules adequately achieve their objective.

100. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association strongly urged the Department to significantly revise the exemption criteria dealing with low or moderate income housing at N.J.A.C. 7:14A-22.22(a)4 to broaden their applicability. The criteria should be revised to provide that any development where at least 10 percent of the dwelling units will be set aside as deed-restricted low and moderate income units should qualify for an exemption since the costs of constructing the lower end units is funded by the higher priced units. The Association of New Jersey Environmental Commissions support the exemptions for low and moderate income housing as part of a Regional Contribution Agreement as long as water quality is not degraded as a result.

RESPONSE: With these new rules, the Department has modified the sewer connection ban program to make it fair and just so that only bans that are essential for environmental reasons will be imposed. If all of the units in developments where 10 percent of the dwelling units are low or moderate income units were exempted from a sewer connection ban, the sewer ban would likely be ineffective for its intended purpose. The criteria consider issues such as hardship, the extent of the environmental impact of the project and the public need for the project.

101. COMMENT: The Association of New Jersey Environmental Commissions opposed allowing an exemption for a facility on a newly created lot resulting from a one-time subdivision of a single lot into two lots.

RESPONSE: The exemption criterion at N.J.A.C. 7:14A-22.22(a)1 allows a one-time subdivision of a single lot into two lots if the total flow from both lots does not exceed 600 gpd. Therefore, the total amount of flow exempted from one lot or resulting from a one-time subdivision is the same.

102. COMMENT: The Gill St. Bernard's School commented that under N.J.A.C. 7:14A-22.22(a)3i, publicly owned schools are specifically identified as being eligible for ban exemptions. Private schools should be similarly recognized in these regulations, as both institutions serve the same essential public needs. The commenter suggested that N.J.A.C. 7:14A-22.22(a)7 provide that not-for-profit schools be eligible for sewer ban exemptions.

RESPONSE: The Department agrees with the comment and has accordingly modified N.J.A.C. 7:14A-22.22(a)3. This exemption will be limited to expansions to existing private accredited schools only. New private schools are not exempt since they are presumed to have the flexibility to locate in non-sewer ban areas.

103. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association supported the change with respect to groundwater remediation efforts and the requirement that the applicant first review alternate treatment methods prior to the Department issuing an exemption for groundwater remediation. Jersey Central Power and Light stated that as a result of its comments and those of other interested parties, groundwater remediation projects that are approved by the Department's Site Remediation Program will be exempted from the sewer ban. JCP&L was pleased the Department has included these specific types of projects for coverage under the sewer ban exemption rules and hoped that ongoing and future projects would be exempted irrespective of the ban date.

RESPONSE: The Department acknowledges the supportive comments. It should be noted that N.J.A.C. 7:14A-22.22(a)6 does not allow exemptions in areas affected by inadequate conveyance capacity or when the flow from the project will create a bypass or other health hazard at the wastewater treatment plant, unless adequate provisions for conveyance are included in the project scope.

104. COMMENT: The New Jersey Manufactured Housing Association commented that the entire exemption criteria section appears to be applicable only to publicly owned treatment works. There is no reason not to apply this to privately owned facilities.

RESPONSE: The Department agrees with this comment inasmuch as privately owned wastewater treatment plants are subject to the sewer connection ban regulations in the same manner as POTWs. Therefore, projects which are impacted by a sewer connection ban imposed upon privately owned treatment works will receive the same consideration as those served by publicly owned treatment works.

105. COMMENT: With reference to N.J.A.C. 7:14A-22.22(a)8, Mary Arnold commented that the threshold for substantial expenditures are far too low. One could easily spend $25,000 renovating a kitchen. The requirement for proof is a real improvement.

RESPONSE: The Department believes that the commenter misunderstands the rule provision. The intent of this exemption criterion is to allow construction which had begun prior to a sewer ban imposition to be completed, and it is applicable to projects which required a TWA, yet did not obtain the necessary TWA because the building permit or other approval was issued prior to November 3, 1986—which is the date the Department published a rule change clarifying which projects need a TWA. The renovation of a kitchen would not require a TWA, nor is it likely that such work would have begun in 1986 and still be under way today. Further, there is no set minimum or maximum cost which must be expended. The substantial expenditure is considered to be a percentage of the total project cost. Therefore, if a total project cost is $100,000 the developer would have had to spend $25,000 on in-the-ground improvements under the authority of a local approval granted prior to November 3, 1986.

N.J.A.C. 7:14A-22.23 Delegation

106. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that they were disappointed in the Department's decision to not delegate the domestic TWA program. Schoor, DePalma and Canger stated that the Department's rationale for delegating the industrial program (based on the Clean Water Enforcement Act) is inconsistent with its position for not delegating the domestic TWA program. It was suggested that the Department only require a notice from the local sewerage entity to the Department, as opposed to a TWA.

107. COMMENT: The Stony Brook Regional Sewerage Authority commented that the subject of delegation for TWAs is positive. The Department will have to fully support the delegated local entities.

RESPONSE: It must be noted that the Department has not delegated the industrial TWA program. The rule simply does not require a TWA for certain industrial pre-treatment units (indirect dischargers) that are located in areas where the pre-treatment (SIU) program has already been delegated.

The rationale for not requiring a TWA for certain industrial treatment works, as opposed to domestic treatment works, is based upon a number of factors that were fully explained in the proposal summary.

Two major reasons are: (1) that the sewerage authorities which have previously been delegated the industrial pre-treatment program are subject to strict controls and substantial penalties under the Clean Water Enforcement Act if their limits are not met, and (2) industrial facilities (as opposed to publicly owned treatment works) are better able to quickly modify and control their processes and influent (to the extent of shutting down certain operations) to meet permit limits.

In addition, some sewerage authorities expressed concerns regarding taking on the liability and responsibility for granting final authorization on large treatment works projects. Also, with respect to the Department's proposal to not require TWA permits for certain minor projects, a number of commenters have already expressed concerns that too much control at the local level and no appeal procedures to the Department would result in further delays of their projects. All of these concerns, in addition to the fact that the Division of Law has advised the Department that enabling statutes do not allow for delegation of TWA permits, has resulted in the Department's not delegating any portion of the TWA program.

With respect to eliminating the domestic TWA program, the Department has taken into consideration the public comments received on the Working Paper. The Working Paper also presented the option of eliminating the TWA program but that alternative was not supported by a majority of the commenters. A significant number of comments requested that the domestic TWA program be retained for projects of greater environmental significance and that no TWA be required for smaller projects. The rules will accomplish this by reducing the number of applications which would, under the current rules, require a TWA by approximately 30 percent.

108. COMMENT: Speitel and Speitel Inc., strongly supported the proposed rule changes. The delegation of small domestic TWAs is necessary and long overdue. The redundant paperwork and potential 90 day review period are onerous for small businesses. The Department should support a revision to the enabling legislation to permit delegation of small TWAs.

RESPONSE: The Department acknowledges the comment, and believes that the adopted rule will provide major relief for a large number of projects. Some of the changes proposed include not requiring a TWA for flows up to 8,000 gpd (equivalent to a 80,000 square foot office/retail building), not requiring a TWA for on-site grinder pumps, not requiring a TWA for building additions/modifications that would result in less than 8,000 gpd of additional flow, and not requiring a TWA for replacement-in-kind projects.

N.J.A.C. 7:14A-22.24 Requests for adjudicatory hearings

109. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association strongly objected to the provision which affords the right to a third party hearing. The commenters favored limiting adjudicatory hearings to applicants only. Establishing third party appeals without legislative authorization directly contradicts the Department's prior position. Finally, the commenters claimed that TWAs are strictly technical and third party appeals are meant solely to halt unwanted projects and are never meritorious.

RESPONSE: N.J.A.C. 7:14A-22.24 has been modified to reflect the recent enactment (in December 1993, subsequent to the proposal of these rules) of P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3), which prohibits State agencies from promulgating rules that allow third party appeals of permit decisions unless specifically authorized by Federal or State law. The following has been added as N.J.A.C. 7:14A-22.24(e): "Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14B-3.1 through 3.3 (P.L. 1993, c.359)." N.J.A.C. 7:14A-22.24(a) and (b) have been modified to reflect this addition of subsection (e).

N.J.A.C. 7:14A-23.1 Purpose

110. COMMENT: The Passaic River Coalition commented that in this subchapter there are 15 pages of regulations in small print. The commenter inquired why the technical details of designing treatment works need to be regulated and suggested that the Department issue a guidance document instead and eliminate subchapter 23. The commenter questioned the purpose of these regulations.

RESPONSE: The technical standards for designing treatment works need to be specified and implemented in order to safeguard and protect the public welfare and the environment. Guidance documents cannot impose binding requirements and are advisory. There must be a standard code or regulation with minimum standards applicable throughout the State to ensure that all treatment works design, construction and operation decisions are consistent from municipality to municipality. The Department establishes these technical standards to guarantee uniformity throughout the State for the construction and operation of treatment works.

N.J.A.C. 7:14A-23.2 Scope

111. COMMENT: The New Jersey Builders Association recommended that the Department adopt for its technical design standards the "Ten State Standards" which are currently used by states in the Great Lakes region. The Western Monmouth Utilities Authority suggested that the Department not adopt regulations of another state unless it has been independently determined that the regulations are appropriate. The commenter also stated that the Department should not adopt United States Environmental Protection Agency guidelines without a caveat that adoption of the guidelines does not prevent an engineer from providing independent information to justify alternate design standards.

RESPONSE: The Department investigated the possibility of adopting the Ten State Standards as its technical standards but rejected the idea for the following reasons: There are requirements in the Ten States Standards which contradict current Department regulations and others which are not applicable to New Jersey for various reasons. Additionally, the Department would not have the ability to amend the technical design regulations to address environmental concerns and/or problems without concurrence from the existing members of the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers (which authored the Ten State Standards) which may or may not agree. This would delay the implementation of rules that are vital to protecting the environment and technology that more appropriately serves the State's needs. The Department staff used the Ten States Standards as one of many references to improve New Jersey's technical standards and address the concerns and problems which the Department has experienced over the years administering the TWA program.

The Department, while not adopting EPA's guidelines, has considered them in its rulemaking efforts. Those additional or modified technical requirements in subchapter 23 that appear in other State regulations (for instance the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4) were specifically reviewed by the Department and included as appropriate in these rules. With regard to the commenter's request for a provision which allows for consideration of alternate designs, the rules include such a provision at N.J.A.C. 7:14A-23.2(b).

112. COMMENT: The Western Monmouth Utilities Authority commented that the Department has proposed to remove the section of the current rules on package plants. The Department should allow alternative design treatment facilities that are pre-engineered if they have been certified by the National Sanitation Foundation to meet certain specified limits. This would allow designs that do not meet the criteria for larger plants but which work for small plants.

RESPONSE: The Department has not removed the section of the rules on package treatment plants; rather, that material has been redistributed throughout the technical requirements with references made to smaller treatment plants of less than 150,000 gpd. As in the past, the Department will continue to accept and evaluate alternative design treatment facilities that are pre-engineered if performance standards are demonstrated and the facility is certified by a New Jersey licensed professional engineer as capable of meeting the required effluent limitations. N.J.A.C. 7:14A-23.2(b) allows the Department to consider and approve an alternate design. This provision requires the submission of appropriate supporting documentation addressing the need for deviation from the technical design criteria and justification for the proposed alternate design.

N.J.A.C. 7:14A-23.3 Projected flow criteria

113. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association questioned why the Department did not conduct a more in-depth study and request information as to exactly what flows are actually being generated and what are proper design flows. Schoor, DePalma and Canger questioned whether or not the determination of 0.125 gallons per day per square foot (gpd/sf) is justified for office and retail buildings. The Western Monmouth Utilities Association inquired whether the Department conducted a statistical analysis to show that 0.125 gpd/sf was a valid number or whether the Department was relying on an obsolete number.

RESPONSE: The Department recognizes that for projected flows to be as accurate as possible, in-depth studies are the most desirable means to determine them. Although the Department requested, at the public hearings held on September 10 and 23, 1993, that consulting engineers and sewerage authorities provide any data they had on the subject, no data were submitted. Nonetheless, the Department agrees that flows generated from individual facilities in the office/retail use category vary greatly and that 0.125 gpd/sf is excessively conservative. Based upon a review of available records, the Department determined that a projected flow figure of 0.100 gpd/sf is justified for retail and office space uses. The Department's records do not provide for justification of projected flow values below this number. Accordingly, the rule at N.J.A.C. 7:14A-23.3(a) has been revised to reflect this change.

114. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that the updated flow figures do not take into account the mandatory installation of water conservation devices in new housing, particularly for sewer ban exemption requests.

RESPONSE: Water conservation devices are mandatory only for new construction or internal renovations. Since not all new connections into existing systems are a result of new building construction, the Department continues to utilize the flow figures which represent all types of facilities. In addition, although water conservation devices reduce the volume of wastewater, this results in a correspondingly increased loading concentration to the treatment facility. Thus the impact of the additional wastewater upon the treatment facility is the same with respect to loading, regardless of the volume.

115. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented with reference to residential units that the Department should adjust these figures so that they are based on number of bedrooms and not the type of structure (single family home, townhouse, condominium).

RESPONSE: The Department agrees and has modified the projected flow criteria table at N.J.A.C. 7:14A-23.3(a) accordingly.

116. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that the Department should reduce its projected wastewater flow to 50 or 60 gpd per person.

RESPONSE: The use of 75 gpd/person in N.J.A.C. 7:15-5.18(f) is for planning purposes only and is to be used when sewerage authorities and/or municipalities are preparing planning documents and when the precise scope and intensity of land development/utilization remains unknown. The Department believes that this number, for planning purposes, represents an average for a use that varies greatly across the State. Once the sewerage authority and/or municipality knows the details of a specific project, then the treatment works should be designed in accordance with the projected flow criteria specified in N.J.A.C. 7:14A-23.3.

117. COMMENT: The Association of Environmental Authorities and Schoor, DePalma and Canger commented that a provision should be made for modifying the projected flow numbers where it can be demonstrated that the number of employees in a retail store warrants a different number than would be based on the mere square footage of the facility. Flexibility is needed to avoid problems for local agencies resulting from variations in the actual flow generated versus the projected flow values which are held in reserve for these projects.

RESPONSE: Since there is an infinite number of retail building uses and occupancies, it is impractical for the Department to develop projected flow criteria to address not only all the different types of retail uses but also the intensities of activity at specific locations which may vary over time. Furthermore, changes in the ownership and/or tenancy of retail use buildings are common, and the criteria should reflect this. Irrespective of these considerations, other values for projected flow, to be used for treatment works design purposes only, may be approved if supported by actual wastewater flow records. All determinations for a treatment works approval determination and/or a sewer ban exemption must be based upon the projected flow criteria established in the rules. To avoid overestimating the amount of capacity each sewerage authority must hold in reserve, each TWA applicant is required to submit a WQM005 Certification Form once the construction of the treatment works is complete. Upon receipt of this form, the Department will not consider the anticipated flow to be held in reserve since at that time it is converted to actual flow which is representative of the specific use.

118. COMMENT: The Landis Sewerage Authority commented that the Department is moving in the right direction by establishing updated flow design requirements for various uses. However, many authorities and public bodies have a critical portion of their annual budget designed around user fees and connection fees. Generally, in preparing these user fees and connection fees, equivalent dwelling units (EDU) or basic service units (BSU) are utilized. Often these EDUs are tied back to 300 gpd and thereby utilized to calculate connection fees and annual user fees. The commenter suggested the addition of a new section which provides both that the Department recognizes these flow figures are for design purposes for new sewer extensions, and that the calculation of connection fees or annual user fees by local agencies may vary as long as all users within a similar class are treated in a similar manner in accordance with State law.

RESPONSE: The Department agrees with the comment in that it is not the Department's intent that the projected flow criteria constitute a factor in local authorities' establishment of user fees and connection fees and has modified N.J.A.C. 7:14A-23.3(a) to make this clear.

119. COMMENT: The New Jersey School Boards Association commented that many local school districts have found that Department guidelines for the construction of wastewater treatment facilities are based upon estimated wastewater flow figures at continuous use. This has resulted in facilities that are too large for schools. The guidelines do not take into consideration that most classrooms are not filled to capacity every day, that building usage during summer is greatly reduced, and that there are numerous holidays during the school year for which the building is not utilized. The commenter believes that it is unfair for the Department to impose fines while boards await permit and/or modification approval. In addition, the commenter believes that Department guidelines should be based upon actual school wastewater flow rather than estimated wastewater flow.

RESPONSE: The Department acknowledges that in certain cases, the projected design flow criteria may be too conservative. However, the rules do provide at N.J.A.C. 7:14A-22.3 for consideration and approval of alternative projected flow criteria if accompanied by adequate supporting data such as water use records for similar facilities. It is incumbent upon the design engineer to supply such information to the Department for consideration prior to or with the TWA application. It should be noted, however, that the Department requires that the facilities be capable of adequately conveying and treating peak flows irrespective of daily or seasonal variations. Although there are times that flows are reduced during the summer and holidays, capacity for peak times must be provided.

N.J.A.C. 7:14A-23.4 Plans and specifications submitted to the Department with treatment works approval applications

120. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that the Department should accept "preliminary" plans as part of a complete TWA application. The Department states that preliminary plans are not valid. However, in most cases, preliminary subdivisions or site plans which are approved by the municipality are the ones that are ultimately submitted. The New Jersey Manufactured Housing Association commented similarly and also noted that an inconsistency between local regulation and the TWA program could increase administrative costs and create confusion.

RESPONSE: The issuance of a treatment works approval is generally the last approval necessary prior to initiation of construction, and as such final designs for treatment works are available and must be submitted. As part of the TWA submittal, approvals from the local municipality, sewerage authority and/or treatment plant owner are required and any modifications which these agencies desire should be included in the submitted design plans. If the Department were to approve preliminary plans, delays would result for the applicants who must obtain a TWA modification for each change required by the local agencies. N.J.A.C. 7:14A-23.4(e) provides that preliminary plans are acceptable if a notation is added to the drawing that states that the design is final with respect to sanitary sewers.

N.J.A.C. 7:14A-23.5 Engineering design reports to be submitted to the Department with treatment works approval applications

121. COMMENT: Merck and Co. commented that with respect to N.J.A.C. 7:14A-23.5(e), if the Department intends to review industrial treatment works "for conveyance purposes only," the information requested in this section is both unnecessary and excessive. The Department should modify this section to only require reports from industrial treatment works that discharge directly into surface water or ground water.

RESPONSE: The rationale for requiring complete applications, including detailed engineering reports, was explained in the rule proposal Summary at 25 N.J.R. 3286. The requirement of an engineer's report is not excessive in that this information must be prepared in conjunction with the design of the treatment works, whether or not a TWA is required.

N.J.A.C. 7:14A-23.6 Gravity sewer design

122. COMMENT: The New Jersey American Water Company, Schoor, DePalma and Canger, and the New Jersey Builders Association commented with respect to N.J.A.C. 7:14A-23.6(b)7, that there is no justification for requiring a distance of three feet between the surface and a sewer line, which causes excessive fill on sites. Engineering techniques can compensate for a lesser depth. In addition, compliance with the three foot requirement is not always possible when replacing an existing main or service.

RESPONSE: The requirement of a three-foot distance between the proposed grade and sewer line is supported by numerous technical design regulations and guidelines. In general, sewers should be sufficiently deep to receive wastewater from basements, to withstand expected loadings, and to prevent freezing. If circumstances warrant and engineering techniques can compensate for a lesser distance, the rules at N.J.A.C. 7:14A-23.2(b) provide for deviations from this requirement to be considered by the Department on a case-by-case basis during the technical review of the TWA application. The Department has not previously received objections to this requirement and does not view placing sewer lines three feet below grade as an excessive or unnecessary standard.

123. COMMENT: The Western Monmouth Utilities Authority commented that N.J.A.C. 7:14A-23.6(b)8 states that, in general, sewer lines that are larger than hydraulically necessary to carry the projected flow and that are proposed only for the purpose of achieving the minimum flow requirements will not be approved. This would seem to be an unreasonable technical standard as it may be in the interest of a waste-

water facility to avoid a pump station which might be necessitated. The replacement of a sewer line is an expensive project. Where growth may occur in the future, that is unanticipated, one may make a judgment to go to a slightly larger size pipe which will save the investment of thousands of dollars in the future to replace the pipe should additional flows become realized. It should be left to the engineer and owner to size sewer lines so long as they will work hydraulically with the currently projected flows.

RESPONSE: The comment appears to be out of context. The Department has no objections to, and routinely approves, construction of larger diameter sewers than are necessary to convey immediate flows as long as it can be demonstrated that the additional future flows anticipated to be contributing to that project justify such a design. The Department is fully aware of the need to design treatment works to accommodate projected and future flows and works with the municipalities and authorities to achieve this goal. However, the construction of larger diameter sewers which will not receive the additional flows for an extended period of time could result in operational or maintenance problems.

The Department also realizes the need to avoid the construction of a pump station unless it is absolutely necessary. However, as a practical matter, some areas cannot be properly served by gravity sewers due to topography constraints. The Department has revised the design standards to reflect the use of PVC pipe and allow the flattest possible slope at which gravity sewers can properly function. If it is not possible to construct gravity sewers at the minimum slopes required in N.J.A.C. 7:14A-23.6, then it may be necessary for an applicant to incorporate a pump station into the design.

124. COMMENT: The Landis Sewerage Authority commented with reference to N.J.A.C. 7:14A-23.6(b)2 that the utilization of PVC pipe at a different "n" factor has values for slope of pipe only up to 15-inch-diameter pipe. The question is, why stop at 15 and not continue to 18 or 24 inches?

RESPONSE: The Department agrees with the comment and has expanded the table at N.J.A.C. 7:14A-23.6(b)2 to include slope values for a pipe diamter of up to 36 inches.

125. COMMENT: The Landis Sewerage Authority commented that in both the gravity sewer design section, N.J.A.C. 7:14A-23.6, and the inverted siphon provision at N.J.A.C. 7:14A-23.7, the reference is made to cast iron. References to cast iron should be deleted and ductile iron should be substituted in all places where cast iron is noted. The commenter also notes that in N.J.A.C. 7:14A-23.6(b)4i ductile iron is misspelled in the third sentence.

RESPONSE: The Department appreciates and agrees with this comment, as the use of cast iron in gravity sewer and inverted siphon design is no longer an industry standard and ductile iron is a preferable material. The references to cast iron in N.J.A.C. 7:14A-23.6 and 23.7 have been replaced with ductile iron. The typographic error in N.J.A.C. 7:14A-23.6(b)4i has also been corrected.

126. COMMENT: The Landis Sewerage Authority commented that the gravity sewer section should address the connection of two different sized sewer pipes. Of course this connection should be made at a manhole and the elevations of the two pipes should be such that either (1) the crowns of the two pipes are at the same elevation or (2) the three quarter points of the two pipes are at the same elevation. The purpose of this is that should a small diameter sewer enter a large diameter sewer at points and elevation lower than the previous two, there is a great likelihood that the larger sewer when flowing half full or higher will surcharge the smaller sewer line, resulting in deposition, odors, septic conditions and possible blockages.

RESPONSE: The Department agrees with the comment and has added a provision at N.J.A.C. 7:14A-23.6(b)12 to address the connection of two different sized sewer pipes, as follows: "When a smaller sewer joins a larger one, the invert of the larger sewer should be lowered sufficiently, or the smaller pipe raised sufficiently, to maintain the same energy gradient. An approximate method for securing these results is to place the 0.8 depth point of both sewers at the same elevation."

N.J.A.C. 7:14A-23.8 Manholes

127. COMMENT: Merck and Co. asked whether, if manholes are required at the ends of each sewer line, is a manhole required at the end of a sewer line where it connects into a building? Perhaps the Department should specify "dead" ends or other clarifying language.

RESPONSE: The provision at N.J.A.C. 7:14A-23.8(a) applies to municipal/private sewer system extensions in the public right of way and is not intended to apply to lateral connections from buildings. Manholes are not required at the end of a sewer line where it connects into a building but may be constructed in conjunction with lateral connections for maintenance/operational reasons, if desired.

128. COMMENT: The Western Monmouth Utilities Authority commented concerning N.J.A.C. 7:14A-23.8(g) that the Department should consider the minimum manhole access diameter to be 24 inches to 25 inches, recognizing the need to accommodate workers using proper confined space entry equipment.

RESPONSE: The access diameter of 22 inches for manholes in N.J.A.C. 7:14A-23.8(g) is a minimum standard and the Department has no objections to the construction of manholes with an access diameter of 24 to 25 inches or even larger if the situation warrants. The Department has specified the minimum diameter to be 22 inches to address smaller projects in which it is not desirable to mandate a larger diameter due to the size of the sewer, equipment availability, and/or cost considerations. However, the Department recognizes the need to equip workers with proper confined space entry equipment, and encourages, where possible, greater than 22-inch-access diameters.

129. COMMENT: The Landis Sewerage Authority commented that a new section needs to be added to the manhole provision concerning the discharge of force mains into gravity sewers. After wastewater has been in a closed channel situation such as a force main, septic conditions will occur. When the discharge from the force main occurs, sulfides, specifically hydrogen sulfide, will be released, eventually resulting in degradation of concrete structures. The commenter recommended that the receiving manhole from any force main be a lined manhole. The lining should be of some resistant material similar to PVC or the patented T-Lock System. Lining the manhole with PVC will protect the concrete structures from degradation via the hydrogen sulfide and its sulfuric acid by-products.

RESPONSE: The Department agrees that it is good engineering practice to line a receiving manhole from a force main with a resistant material to protect the manhole structure from hydrogen sulfide and related by-products. However, the Department does not believe that such a design is mandatory. The technical regulations constitute the minimum standards and the Department has no objections to, and, in fact, encourages, the incorporation of a resistant liner in manholes.

130. COMMENT: The New Jersey American Water Co. commented that the provision that "no service connections to a sewer system are allowed within 100 ft. of a public water supply" is impractical in many areas of the State where building lots or houses are built close to one another. This requirement should be amended or removed.

RESPONSE: This requirement applies only to public, not private, water supplies and hence is generally not applicable to individual wells serving single dwellings. However, there are some cases where service connections to a sewer system may be proposed within 100 feet of a public water supply. In those cases, considering the potential environmental and health risks, the Department believes the rule provision is necessary. However, deviations from this provision will be considered by the Department in cases where such a design is the only feasible alternative.

N.J.A.C. 7:14A-23.10 Wastewater pumping stations

131. COMMENT: Schoor, DePalma and Canger and the New Jersey Builders Association commented that this section requires an applicant to demonstrate to the satisfaction of the Department that the use of low pressure force mains (grinder pumps) are the most prudent alternative available. The Department should not have the authority to dictate the use of one central pump station as opposed to individual grinder pumps. The Department should not involve itself in the design of facilities but rather should leave this to the design engineer.

RESPONSE: The Department believes the provision is necessary and in the public interest. The purpose of the technical review of TWA applications is to evaluate the proposed engineering design and determine whether it is in compliance with all applicable design standards. In cases where there is more than one option available, such as one central pump station versus individual grinder pumps, it is obviously good engineering practice to investigate all available alternatives prior to proceeding with the design, irrespective of the TWA requirements. Therefore, it should not be burdensome to require the submittal of documentation which supports the proposed design, since that information should have already been gathered and evaluated. As in all engineering proposals, decisions are made depending on a number of factors and the Department would be negligent in its evaluation of engineering designs if it did not have the same information as was available to the design engineer.

132. COMMENT: Merck and Co. commented in reference to N.J.A.C. 7:14A-23.10, Wastewater pumping stations, and N.J.A.C. 7:14A-23.12, Dry wells and wet wells, that the terms "wastewater pumping station" and "wet wells" should be defined in N.J.A.C. 7:14A-1.9. The commenter also inquired if these wastewater pumping stations and wet well standards apply to wastewater treatment plants and municipal pumping stations only, or also to an industrial facility that discharges to a POTW.

RESPONSE: N.J.A.C. 7:14A-23.2(a) states that these rules apply to individuals, sewerage authorities, municipalities, governmental agencies, private firms and all persons who propose to design, construct and/or operate any treatment works for the collection, conveyance or treatment of domestic or industrial wastes in the State of New Jersey. Thus the wastewater pumping station and wet well standards in these rules do apply to industrial facilities that discharge to a publicly owned treatment works. The Department recognizes that since the rules do not specify any technical standards solely and explicitly for the construction of industrial treatment works, deviations may be necessary to address specific circumstances. The Department will afford due consideration to such requests. In all cases, where appropriate, the general technical standards specified in the rules must be used. The definitions for wastewater pumping stations and wet wells are not included in N.J.A.C. 7:14A-1.9 since these are common terms which are applicable to both domestic and industrial treatment works designs.

133. COMMENT: The Western Monmouth Utilities Authority commented with reference to N.J.A.C. 7:14A-23.10(g) that force mains are generally buried and are not subject to routine maintenance. Therefore, a cleanout is not necessary at the low point of a force main. If properly designed, a force main will have proper velocity to assure self-cleaning of the line. The commenter has never known of a cleanout to be installed at the bottom of a force main. Such a cleanout would be buried in the ground and would have to be excavated if it were to be used. If the Department feels that there is a need to provide access to a force main, this access should be provided at the high point where an access port could be placed at an air relief chamber so that cleaning equipment or pigs could be installed in the force main.

RESPONSE: The Department agrees with this comment insofar as cleanouts are more appropriate in cases where operation and maintenance are a concern due to excessive distance between access points. The Department has routinely approved cleanouts at low points in force mains but realizes that a mandatory provision for such a design is burdensome in some cases. Therefore N.J.A.C. 7:14A-23.10(g) has been modified to recommend rather than mandate the use of cleanouts on low points of the force main where they are warranted for operational and maintenance reasons.

134. COMMENT: The New Jersey American Water Co. and the Landis Sewerage Authority commented that N.J.A.C. 7:14A-23.10(a)4 concerns automatic alarms and the requirement to extend by wire to a police station or other staffed location. With the advances in electronic equipment, there are a number of telemetric alarm systems that utilize either radio frequencies or microwaves to transmit the data.

RESPONSE: The Department agrees with this comment and to address these advances in electronic equipment has replaced "extend by wire" with "be telemetered" at N.J.A.C. 7:14A-23.10(a)4.

135. COMMENT: The Landis Sewerage Authority commented that N.J.A.C. 7:14A-23.10(d) requires pumps installed in dry wells to operate under a positive suction head. However, such manufacturers as Gorman Rupp do provide a pump that is self-priming and may operate not necessarily under a positive suction head situation. This requirement should reflect that generally pumps installed in dry wells should operate on a positive suction head unless specifically manufactured to provide for self-priming or other appropriate features so they may operate without net positive suction head.

RESPONSE: The Department agrees with this comment and has added the following to N.J.A.C. 7:14A-23.10(d) to allow for pumps that are designed to properly operate without a positive suction head: "Pumps installed in dry wells shall operate under a positive suction head unless specifically designed and manufactured with appropriate features to allow for proper operation otherwise."

N.J.A.C. 7:14A-23.13 Wastewater treatment plants

136. COMMENT: The Western Monmouth Utilities Authority commented with reference to N.J.A.C. 7:14A-23.13(o), that 250 mg/l is a conservative number for the B.O.D. of raw sewage.

RESPONSE: The Department agrees that, depending on the specific circumstances, a B.O.D. of 250 mg/l may be a conservative value. However, this number is for design purposes and falls within generally accepted ranges for B.O.D. values of raw sewage. In cases where other values are demonstrated through the use of actual data from the treatment system in question, the Department will consider a reduced value as a basis for organic loading during the TWA review process.

137. COMMENT: The Western Monmouth Utilities Authority commented with reference to N.J.A.C. 7:14A-23.13(o) that design flow should be defined to include the raw sewage influent flow rate plus any recycles caused by wasting of activated sludge, backwash of filters, or other recycles which result in a flow rate through the unit higher than the influent flow rate to the treatment plant.

RESPONSE: The Department agrees with the comment that design flow should include any recycles from the treatment facility. However, the existing definition of design flow at N.J.A.C. 7:14A-1.9 is adequate in this regard. The definition states in relevant part that design flow means the average daily volume of wastewater, which a domestic treatment works was designed to treat or convey. Therefore, the definition already includes any recycles caused by wasting of activated sludge, backwash of filters, or other recycles because the treatment facility must be designed to treat and convey all flows resulting from the treatment process in addition to the influent flow rate.

N.J.A.C. 7:14A-23.17 Settling tanks

138. COMMENT: The Landis Sewerage Authority commented that with reference to activated sludge, the settling tanks for facilities over two MGD should contain a maximum surface settling rate of 800 gallons per square foot per day (gals./sq.ft./day), similar to the requirements for facilities less than two MGD, and not 1,000 gals./sq.ft./day. This lower settling rate will allow the clarifier to accept higher flows during peak flows or storm surges. A 10 foot minimum sidewater depth is acceptable and was also recommended for facilities less than two MGD.

RESPONSE: The Department agrees that it is good engineering practice to reduce the surface settling rate and thereby allow the clarifier to accept higher flows during peak flows or storm surges. However, these regulations are minimum standards. The Department has no objections to a more conservative design, as proposed by the commenter.

N.J.A.C. 7:14A-23.19 Trickling filter

139. COMMENT: The Western Monmouth Utilities Authority commented that the standard rate trickling filters loading rates are for those with rock media. The same comment applies to higher rate trickling filters. For filters with manufactured media, the manufacturer's suggested loading rates based upon actual demonstrations should be utilized.

RESPONSE: The Department agrees that loading rates for manufactured media are not included in these regulations. The Department does routinely allow, after review and approval of supporting engineering documentation, other suggested loading rates to address manufactured media. The rules have been appropriately clarified at N.J.A.C. 7:14A-23.19(g) and (h).

N.J.A.C. 7:14A-23.20 Rotating biological contactors

140. COMMENT: The Western Monmouth Utilities Authority commented on the provision concerning rotating biological contactors that requires flow equalization when the ratio of peak to average flow exceeds 2.5. If this peak average ratio is exceeded, flow equalization might also be needed for activated sludge and/or trickling filters. Unless there are separate documents that show that rotating biological contactors are more susceptible to upset with high flow rates, separate criteria for these contactors should be provided as this requirement is a disadvantage when doing economic comparisons with trickling filters or activated sludge.

RESPONSE: The Department agrees with the comment and has deleted the proposed requirement at N.J.A.C. 7:14A-23.20(b) which stated that flow equalization must be provided when the ratio of peak (maximum instantaneous) to average daily flow exceeds 2.5. The Department recognizes that flow equalization is advantageous during high ratios of peak to average flow, regardless of the type of treatment process. Therefore, at N.J.A.C. 7:14A-23.13, Wastewater treatment plants, a provision has been added to address the use of flow equalization for all types of treatment systems. Specifically, N.J.A.C. 7:14A-23.13(p) now states: "Flow equalization at the treatment facility is suggested in cases where the ratio of peak (maximum instantaneous) to average daily flow exceeds 2.5."

N.J.A.C. 7:14A-23.21 Activated sludge

141. COMMENT: The Western Monmouth Utilities Authority commented with reference to N.J.A.C. 7:14A-23.21(f), that the requirement to pre-aerate pre-settled wastewater to an activated sludge system if the

incoming wastewater contains less than two ppm dissolved oxygen should be made a suggestion rather than a requirement.

RESPONSE: The Department disagrees with this comment and believes that, in general terms, two ppm dissolved oxygen is more appropriate as a requirement instead of a recommendation. However, as with all the technical standards in subchapter 23, the Department recognizes that, at times, deviations from these requirements may be necessary to address specific circumstances. As provided at N.J.A.C. 7:14A-23.2(b), the Department will consider deviations from these design standards provided that appropriate documentation addressing the need for deviation and justification for the proposed design is submitted with the TWA application.

N.J.A.C. 7:14A-23.23 Chlorination

142. COMMENT: The Western Monmouth Utilities Authority commented that N.J.A.C. 7:14A-23.23(b)5 requires that an automatic alarm and observation window be provided. It should not be an either/or situation; both should be provided.

RESPONSE: The Department agrees with the comment and has accordingly modified N.J.A.C. 7:14A-23.23(b)5. This change results in an added safety feature in the design and operation of chlorination facilities. The Department believes that this requirement is not excessive since observation windows are already required under the Occupational Safety and Health Act for these systems.

N.J.A.C. 7:14A-23.26 Sludge digestion and management

143. COMMENT: The Western Monmouth Utilities Authority commented that this entire section is directed towards anaerobic sludge digestion.

RESPONSE: The Department agrees with this comment and has retitled N.J.A.C. 7:14A-23.26, "Anaerobic sludge digestion and management."

N.J.A.C. 7:14A-23.28 Drying beds for residuals

144. COMMENT: The Western Monmouth Utilities Authority commented that the Department should remove burlap as a suggested material and utilize one of the currently available engineering fabrics.

RESPONSE: The Department agrees with this comment as it is no longer an industry standard to use burlap around the joints of underdrains installed in conjunction with drying beds. The Department has replaced burlap with "an acceptable engineering fabric" in N.J.A.C. 7:14A-23.28(b)3. The use of burlap for new systems will no longer be accepted.

145. COMMENT: The Western Monmouth Utilities Authority (WMUA) commented that with reference to N.J.A.C. 7:14A-23.28(b)9, which requires three weeks between loadings to Phragmites reed beds, that the current facilities at the WMUA provides for only two weeks between loadings. The Department should be required to substantiate the basis for the selection of the time period.

RESPONSE: Based upon recommendations from the consulting/design community, the Department has selected a minimum capacity of three weeks between loadings to the same bed at projected sludge production. The Department's primary concern is the ability to provide adequate capacity for proper operation during winter months. However, as with other design standards, deviations from this criterion will be considered if it can be demonstrated to the Department's satisfaction that a reduced capacity will provide adequate treatment throughout the entire year.

N.J.A.C. 7:14A-23.31 Stabilization of residuals

146. COMMENT: The Landis Sewerage Authority commented that N.J.A.C. 7:14A-23.31(b)1 requires that all composting and curing operations be enclosed. This basically seems to be directing that all composting in the State of New Jersey shall proceed only in an in-vessel type of facility. This is short-sighted and the Department should allow in potentially rural areas the composting in some sort of static pile or other mechanism in the open rather than in a totally enclosed facility.

RESPONSE: The Department does not agree that N.J.A.C. 7:14A-23.31(b)1 limits all composting to an in-vessel type of facility. Active composting and curing operations are required to be enclosed and vented which does not necessarily mandate an in-vessel type of facility. In-vessel facilities are not the only way to enclose composting and curing operations. Currently, there are non in-vessel facilities in operation which satisfy this requirement. Regardless of the type of design chosen, composting operations must conform with the Department's air pollution control rules at N.J.A.C. 7:27.

147. COMMENT: The Western Monmouth Utilities Authority commented with reference to N.J.A.C. 7:14A-23.31(b)5 that the aeration system should be designed to distribute air, not oxygen, evenly. Composting systems do not use pure oxygen which this sentence would appear to indicate.

RESPONSE: The Department agrees with this comment and has changed the reference from oxygen to air in N.J.A.C. 7:14A-23.31(b)5.

148. COMMENT: The Landis Sewerage Authority commented that N.J.A.C. 7:14A-23.31(b)7 assumes a very large wood chip, two inches × two inches × ½ inches to 1¼ inches × 1¼ inches × ¼ inches. Generally, in-vessel facilities would utilize a bulking agent that is substantially smaller than even the lower range indicated here.

RESPONSE: The Department believes that the range for the wood chip size is appropriate but has modified the language at N.J.A.C. 7:14A-23.31(b)7 to allow for the consideration of wood chip sizes which are not within this range provided that the engineering report addresses the suitability of the alternative size.

149. COMMENT: The Landis Sewerage Authority commented that N.J.A.C. 7:14A-23.31(b)15 requires that static pile height not exceed seven feet. This seems somewhat restrictive in that higher heights in the eight to nine foot range should be acceptable.

RESPONSE: The Department disagrees with this comment and believes that a seven foot restriction on static pile height is reasonable for design purposes. If facilities were designed for a greater static height it would result in the potential for operational/maintenance problems.

Summary of Agency-Initiated Changes:

N.J.A.C. 7:14A-22.1(b) has been modified to require the treatment plant operator, as well as the treatment plant owner, to be responsible for the implementation of corrective actions to prevent additional connections to treatment facilities which are exceeding their permitted flow limitations.

N.J.A.C. 7:14A-22.3(a)5 has been modified to delete the reference to industrial treatment works classified as "Significant Indirect Users" (SIUs) as having to obtain a treatment works approval in non-delegated areas. N.J.A.C. 7:14A-22.3(a)1 already requires all industrial treatment works to obtain a TWA, and the purpose of N.J.A.C. 7:14A-22.3(a)5 is to differentiate between delegated areas and non-delegated areas. Stating that SIUs need to obtain a TWA in N.J.A.C. 7:14A-22.3(a)5 is redundant. The modification of this paragraph eliminates the ambiguity between N.J.A.C. 7:14A-22.3(a)1, which requires all industrial treatment works to obtain a TWA, N.J.A.C. 7:14A-22.4(a)1, which exempts from obtaining a TWA lateral connections of less than 8,000 gallons per day, and N.J.A.C. 7:14A-22.4(b)1, which exempts from obtaining a TWA only those indirect industrial treatment works located in delegated areas and which do not involve a sewer extension.

N.J.A.C. 7:14A-22.4(b)2 has been modified to clarify that stormwater management facilities are exempt from obtaining a treatment works approval.

N.J.A.C. 7:14A-22.5(a)3 has been modified to correct a typographical error. The word "plans" has been replaced with the word "plants."

N.J.A.C. 7:14A-22.10(c)3 has been modified to correct a typographical error. The word "notification" has been replaced with "modification," so that the sentence states, "An appropriate fee for a permit modification pursuant to N.J.A.C. 7:1C-1.5. There is no reference to a fee for a permit "notification" in N.J.A.C. 7:1C-1.5.

N.J.A.C. 7:14A-22.12(e) has been modified to correct a grammatical error. The word "is" has been replaced with the words "has been."

N.J.A.C. 7:14A-22.14(b) and 22.17(a)3i have been modified to provide that an administrative or judicial consent order is required rather than only an administrative consent order.

N.J.A.C. 7:14A-22.16(a) has been modified to require that, for plants at or above 80 percent of their permitted flow, the owner or operator must submit, on a quarterly basis, a completed WQM007 Form to the Wastewater Facilities Regulation Program, Bureau of Construction and Connection Permits in Trenton. The WQM007 form requires the treatment facility to list its committed flow amounts. The submission of this form will better enable the Department to track the facility's committed flow. The submission of this form will not be burdensome to the sewerage authorities, since the committed flow information is normally available and readily accessible in their records.

N.J.A.C. 7:14A-22.16(b), which pertains to the Department's consideration of allowing TWAs for additional contributory flow to be issued to treatment facilities which are above their permitted flow levels, has been modified to clarify that the Department intended this consideration to be available for plants with excessive inflow and infiltration only. This

intention was stated in the Department's 1992 Working Paper on this program: "Option A.2, for STP's which occasionally (yet to be defined precisely) exceed NJPDES permitted flows due to excessive inflow and infiltration (I/I), but are otherwise meeting effluent quality limits, a ban would not be imposed provided that a consent agreement between the authority/municipality and the Department is entered into which provides for the implementation of necessary measures to correct the I/I problem within a specified time frame."

The Working Paper goes on to state, "The need to regulate flow quantities is recognized since the efficiency of treatment plants is related to flow and because the discharge of contaminants limited by concentration only will increase with flow. However, in implementing the current sewer ban criteria, the Department is sometimes placed in the position of imposing sewer bans after heavy rains and entertaining requests for their rescission once the seasonal flow exceedance problem is temporarily gone during dry weather.... Thus, according to the current regulations, bans on plants with significant I/I problems could come on and off quite frequently."

This intention was also stated in the rule proposal Summary at 25 N.J.R. 3288: "A significant change proposed for surface water dischargers is that no sewer ban would be required if the surface water sewage treatment plant exceeds its permitted flow, as long as it continues to meet appropriate effluent limits, including total mass loadings. For plants with excessive inflow and infiltration, high flow conditions generally occur during wet weather when the flow in the receiving stream is also high, and do not correspond to the critical low flow conditions that are used in determining the NJPDES limits."

Both of these documents, the Working Paper and the rule proposal, clearly state that it is the Department's intent to limit the approval of additional TWAs above a plant's permitted capacity to those sewage treatment plants which are subject to excessive inflow and infiltration, and can meet their flow requirements during dry months. Therefore, the Department has modified N.J.A.C. 7:14A-22.16(b) to make clear this intent. Some additional minor changes were made to subsection (b) to improve readability.

In addition, a new paragraph has been added, as N.J.A.C. 7:14A-22.16(b)1, to specify and clarify what should be contained in the detailed technical report required pursuant to N.J.A.C. 7:14A-22.16(b). In the rule proposal Summary at 25 N.J.R. 3289, the Department states: "... the Department, at its discretion and based upon a review of available information (including plant design, plant performance and provisions of the water quality management plans), may decide not to allow approval of treatment works applications that would contribute additional flow to the plant." Such a decision making basis could appear to be overly broad and provide for the Department's unguided discretion. Therefore, the Department has specified the information necessary to make such a decision, and has provided specific guidance on what is necessary for an applicant to submit as part of its detailed technical report. The rule has been modified to state that such a report must contain a discussion of the extent of inflow and infiltration, dry weather treatment capacity at the plant, the plant's ability to treat additional flows, water quality issues, status of the current NJPDES permit for the plant, and the effect that such a decision will have upon the discharge limitations contained in future NJPDES permits.

It should be noted that this clarification does not modify the rule with respect to the Department's not requiring the imposition of a sewer connection ban for reasons of flow exceedance alone, as stated in N.J.A.C. 7:14A-22.17(c). Projects which will contribute additional flow, but do not require a TWA (for example, lateral connections conveying less than 8,000 gallons per day), can proceed without the Department's approval.

N.J.A.C. 7:14A-22.17(a)3ii has been modified to correct a grammatical error and to remove the incorrect assumption that only a sewerage authority could award a construction contract, and not, for example, a municipality or private entity.

N.J.A.C. 7:14A-22.18(a)3 has been modified to delete the requirement that building permits may not be issued for projects which do not have a TWA issued prior to the ban imposition data. The phrase "before the effective date of the ban as specified in (e) below" has been deleted. If a project has a valid TWA, it does not matter whether the TWA was issued prior to or subsequent to, the imposition of the ban. If the Department issues a TWA after the imposition of a sewer connection ban, then the issue of the ban would have been taken into consideration during the TWA review process. Examples of situations in which the Department would issue a TWA subsequent to the ban imposition date would be if the project obtained a sewer ban exemption, if the project involved no additional contributory flow (see N.J.A.C. 7:14A-22.20(d)), or if the TWA application met the requirements of N.J.A.C. 7:14A-22.18(c).

N.J.A.C. 7:14A-22.18(b) has been modified to correct a typographical error. The word "area" has been added to the first sentence.

N.J.A.C. 7:14A-22.18(c) has been modified to add the word "receiving" prior to treatment works, to clarify that it is the sewerage authority which is actually receiving the wastewater flow which must sign the WQM003 form and be in compliance with its NJPDES limits at the time of signature.

N.J.A.C. 7:14A-22.18(f), dealing with the sewer ban rescission request, has been modified to clarify the Department's intent that it is only the sewerage authority or municipality which is actually subject to the ban which can request a rescission, and not a neighboring, unaffected sewerage authority or municipality. In addition, "may" has been replaced with "shall" to clarify that at such time that a sewer connection ban is no longer required by this subsection, the affected sewerage authority must request its rescission. Although the Department has no obligation to locally imposed and enforced sewer moratoriums, the Department does not want to be placed in the position of continuing a State-imposed sewer connection ban (and processing sewer ban exemptions) when such a ban is not mandated by the environmental criteria established for this purpose in the rules. This issue was first raised in the Department's 1992 publication of the Working Paper on Sewer Ban and Treatment Works Approval Programs, which, along with the comments received, served as a guide in the writing of the proposed rules. As stated in the Working Paper: "When the sewer ban regulations were originally adopted, the Department did not intend sewer bans to be utilized as a tool to control land use. The Department's position on this aspect has not changed. Land use management should be done directly and publicly through such things as local zoning ordinances, and State funding and permitting decisions that are consistent with the State Development and Redevelopment Plan."

This issue has also been referenced in the rule proposal Summary at 25 N.J.R. 3287, which states: "When the far reaching impacts of sewer connection ban are considered, it becomes apparent that sewer bans should only be imposed when the environment will clearly benefit from such an action ... When a sewer connection ban is imposed for permit violations that are environmentally insignificant, the credibility of the program suffers and results in increased number of appeals, wasted time and effort, and, at times, waivers for the rules.

Finally, the phrase, "it can show that the reasons which required the imposition of the ban pursuant to N.J.A.C. 7:14A-22.17 no longer exist," has been replaced with, "a ban is no longer required in accordance with N.J.A.C. 7:14A-22.17." This change clarifies that the treatment works must be in full compliance with all the criteria for a ban rescission and not, for example, in compliance with a limit it was originally placed on ban for and out of compliance with the current limit.

At N.J.A.C. 7:14A-22.22(a)4, the sewer ban exemption criteria for housing for low and moderate income senior citizens has been modified to allow that such projects may be funded pursuant to the Farmer's Home Administration Multi-Family Housing Program. These funds are provided under conditions similar to those under which such projects are funded pursuant to the Federal Housing Act. With this change, the Department recognizes that the funds for such housing projects are functionally equivalent and makes this exemption available for projects funded through either program.

N.J.A.C. 7:14A-22.22(a)5 has been modified to take out the term "local health authority" and to use the more appropriate term "administrative authority."

N.J.A.C. 7:14A-23.34 has been modified to narrow the scope of treatment works subject to these closure requirements. The effect of this change is that only those treatment works at NJPDES permitted facilities are required to follow these closure requirements. The Department considered it too burdensome with for too little environmental gain to justify imposing the the procedure for minor treatment works which are not located at NJPDES permitted facilities.

Other minor changes to N.J.A.C. 7:14A-23.34 include changing the office to which information should be submitted from the Division of Facility Wide Enforcement to the Wastewater Facilities Regulation Program. Certain grammatical changes were therefore necessary in subparagraph (c)1i(3) and (4) pertaining to the appropriate submission of plans, and other related grammatical changes were necessary in subparagraph

(c)1i(7) and (c)2i. References to "Administrator" have been modified to "Assistant Director."

N.J.A.C. 7:14A-23.34(d) has been modified to specify what the final inspection of the treatment works by the Department will include. This section clarifies that the final inspection is to verify that all influent and effluent pipes have been sealed and that all solid and residual materials related to the treatment process have been removed.

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

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings:

...

"Adequate conveyance capacity" means:

1. That in the downstream sewers, the peak dry weather flow does not exceed 80 percent of the depth of the pipe and the peak wet weather flow does not result in overflows or discharges from any unpermitted location.

2. (No change.)

...

"Committed flow" means the sum of the actual flow plus the sum of all flows which are anticipated from connections which have been approved but are not yet in operation. The flow to be anticipated from any such connections shall be that flow referred to in the Departmental approval.

...

"Connection" means any physical or operational change, associated with an increase in projected flow, to a collection system of any building, facility, or other structure either proposed or existing for which a building permit or other municipal approval including site plan or subdivision approval is required, and which connects directly or indirectly to any portion of a treatment works.

...

"Industrial waste" means non-domestic waste, including, but not limited to, those pollutants regulated under Section 307(a), (b) or (c) of the Federal Water Pollution Control Act.

...

"Projected flow" means that flow which is estimated or anticipated to be generated from a facility, based upon the criteria contained in N.J.A.C. 7:14A-23.3.

...

"Regional pump station" means any wastewater pumping station which conveys wastewater from more than one municipality or from at least 25 percent of a single municipality's sewer service area, and has a design capacity of at least 0.5 MGD.

...

"Sewer extension" means any sewer, pipe, line, structure or appurtenance used for the conveyance of domestic or industrial waste of a liquid nature, whether forced or by gravity, which:

1. Will extend along an easement through more than two properties, a roadway or public right-of-way;

2. Conveys flows from more than two buildings; or

3. Conveys, or will convey, 8,000 gallons per day or more of sewerage flow determined in accordance with the criteria specified in N.J.A.C. 7:14A-23.3. This includes all sewer lines from a single building if the building utilizes more than one sewer line to convey waste to the sewer system and the aggregate waste flow is 8,000 gallons per day or more.

...

SUBCHAPTER 22. TREATMENT WORKS APPROVALS, SEWER BANS, SEWER BAN EXEMPTIONS

7:14A-22.1 General policy and purpose

(a) It is the purpose of this subchapter to:

1. Establish when a treatment works approval permit is required from the Department;

2. Establish the administrative requirements for treatment works approval applications;

3. Establish the criteria for the imposition of sewer connection bans;

4. Restrict the approval of additional sewer connections, by means of a sewer connection ban, in circumstances when untreated or partially treated wastewater is being discharged in substantial noncompliance with a NPDES or NJPDES permit, or circumstances when inadequate conveyance capacity exists in a collection/conveyance system;

5. Establish criteria for exemptions from sewer connection bans; and

6. Establish a mechanism for actions by local and regional *[sewage]* ***sewerage*** authorities to provide for adequate sewage conveyance and treatment facilities within their sewer service areas, and to ensure that sewage generating facilities are located within the appropriate sewer service area as determined by the applicable water quality management plans.

(b) The performance of sewerage facilities, which are generally owned and operated by local and regional sewerage authorities, is dependent, in part, on how they are managed as well as upon controls exercised over the issuance of local approvals and additional sewage connection permits. Adequate monitoring and prudent management of such facilities is essential in order to prevent violations of their NJPDES permits or overflows of conveyance systems. It is the responsibility of the sewerage authority and/or treatment plant owner***/operator*** to implement timely corrective actions and to ensure that additional connections to the treatment works do not result in such occurrences. Whenever the participating municipalities and sewerage authorities fail in this responsibility, the Department may take whatever action that it deems necessary to assure compliance, including, but not limited to, ceasing the issuance of treatment works approval permits and/or the imposition of a sewer connection ban.

7:14A-22.2 Scope

(a) Pursuant to N.J.S.A. 58:10A-6, no person shall build, install, modify or operate any facility (including any sewer extension as defined in this chapter) for the collection, conveyance, treatment or discharge of any industrial or domestic wastewater except in conformance with this subchapter.

(b) In a sewer connection ban area, any project involving the construction, operation or modification of a connection, including the modification of a building's projected flow, may not be undertaken except in conformance with this subchapter.

(c) In addition to any action expressly authorized by this chapter, the Department shall have the authority to pursue other remedial actions and may take enforcement actions under the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and impose fines or penalties in accordance with the Civil Administrative Penalty Rules, N.J.A.C. 7:14-8, or other applicable statute for failure to comply with the terms, conditions, and requirements of this subchapter.

(d) These rules shall be liberally construed to permit the Department and its various agencies to administer their statutory functions.

(e) The Department may, upon notice to all parties and in the public interest, delegate, in accordance with N.J.A.C. 7:14A-22.23, the application of these rules.

(f) The technical standards for the design and construction of treatment works are contained in N.J.A.C. 7:14A-23.

(g) When a treatment works is not required to obtain an approval from the Department pursuant to this subchapter, the treatment works is nonetheless required to conform with any applicable requirements of this subchapter and N.J.A.C. 7:14A-23, Technical Requirements for Treatment Works Approvals.

(h) The Department shall determine within 20 working days of the issuance of a final NJPDES permit or NJPDES permit modification, whether the discharger shall be required to obtain approval in accordance with the subchapter.

(i) No person shall permit, approve or otherwise allow the construction, installation, modification or operation of any facility or activity that violates the terms, conditions and requirements of this subchapter.

(j) Applications for treatment works approval permits which are administratively complete prior to the *[adoption of these rules]* ***June 6, 1994***, shall be processed by the Department in accordance with the requirements of N.J.A.C. 7:14A-12, and the Department shall issue an approval, denial or conditional approval.

7:14A-22.3 Activities for which a treatment works approval is required

(a) Except as provided in N.J.A.C. 7:14A-22.4, no person shall engage in any of the following activities except in conformance with a valid treatment works approval from the Department:

1. Building, installing, modifying, or operating any treatment works including, but not limited to, sewer extensions, sewer interceptors, domestic and industrial wastewater treatment systems, holding tanks, equalization tanks and wastewater treatment and recycling systems.

2. Building, installing, modifying or operating any sewer line, pumping station or force main which serves more than two buildings or will convey 8,000 gallons per day or more of flow to a treatment works.

i. Increasing the projected flow in an existing sewer line by 8,000 gallons per day or more shall require a treatment works approval permit, irrespective or whether or not additional sewer line construction is involved;

3. Building, installing, operating or modifying any residuals treatment units, including, but not limited to, facilities for composting, heat drying, thickening, digestion, air drying, thermal reduction, dewatering and storage of sludge;

4. Building, installing, operating or modifying any domestic or industrial treatment works that discharges directly to the surface water or ground water of the State, with the exception of individual subsurface disposal systems exempted pursuant to N.J.A.C. 7:14A-22.4(a)3; or

5. Building, installing, operating or modifying any industrial treatment works *[by a facility classified as a "Significant Indirect User" and]* located in an area of the State where the Department is the control authority (non-delegated areas) for an industrial pretreatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-13.1(a).

(b) Industrial treatment works approval applications submitted pursuant to (a)4 and 5 above will generally be processed within 30 days of receipt of a complete application in accordance with N.J.A.C. 7:14A-22.6.

*[(b)]***(c)*** Projects for which flow is the determining factor for the requirement of a treatment works approval pursuant to this section, the projected flow criteria specified in N.J.A.C. 7:14A-23.3 shall be used.

7:14A-22.4 Activities for which a treatment works approval is not required

(a) A treatment works approval from the Department is not required for the following activities:

1. Building, installing, modifying or operating any sewer lateral (whether forced or by gravity), which will convey less than 8,000 gallons per day of projected flow;

2. Building, installing, modifying or operating any wastewater pumping equipment which utilizes a lateral force main connection, whether publicly or privately owned, to serve a facility whose projected flow is less than 8,000 gallons per day;

3. Building, installing, operating or modifying a septic system or other subsurface disposal system where the aggregate projected flow of the facility, using the criteria established in N.J.A.C. 7:9A, is less than or equal to 2,000 gallons per day of sanitary sewage. Treatment works for such facilities are regulated pursuant to N.J.A.C. 7:9A Standards for Individual Subsurface Sewage Disposal Systems;

4. For existing facilities, and regardless of current flow, aggregate increases in the projected flow of less than 8,000 gallons per day over a five year period resulting from internal plumbing modifications, building additions, renovations or changes in use of a facility, providing that the project does not involve construction of a sewer extension or other treatment works which requires a permit pursuant to N.J.A.C. 7:14A-*[12.3]***22.3***.

i. In sewer ban areas, this exception shall not be construed to exempt the need for a sewer ban exemption prior to construction, if required pursuant to this subchapter;

ii. This exception does not apply to projects served by individual subsurface disposal systems or small treatment plants (less than 150,000 gpd) that discharge to groundwater;

5. Rehabilitation or the replacement of existing sewer lines providing that the diameter, slope and location of the sewer line will remain unchanged;

6. The replacement of worn, damaged, defective or inoperable wastewater pumps, sewage treatment units or components of residuals treatment and storage units providing that the capacity and location of the pumps or treatment units to be replaced will not change and the replacement treatment unit or wastewater pump station will be utilized to perform the same function as the former unit;

i. Existing pumping stations whose capacity is increased through a change in impeller size only, with no other modifications, do not require a treatment works approval.

7. Minor modifications of treatment works including, but not limited to, chemical addition for the purpose of improving performance ***and/or odor control*** (provided no treatment unit construction is to be undertaken), ***and*** modifications to treatment units for repair, maintenance or monitoring providing that the treatment process is not altered;

8. Residuals spreading and injection equipment to be utilized to disperse residuals at NJPDES permitted and exempted operations for land application of residuals;

9. The following mobile (not stationary) residuals storage installations:

i. Frac tanks except when fixed into position;

ii. Tanker trailers; and

iii. Roll-off containers;

10. Mobile street sweepers and payloaders utilized to collect and move residuals at NJPDES permitted and exempted residual operations;

11. Provisions for emergency storage of residuals provided said storage is less than 180 days in duration and in accordance with Part 4-VIII of the Statewide Sludge Management Plan; or

12. Building, installing, operating or modifying treatment or storage units for sludge derived products.

(b) In addition to (a) above, a treatment works approval or general industrial treatment works approval will not be required for the following facilities:

1. Building, installing, operating or modifying any industrial treatment works discharging into a publicly owned treatment works (indirect dischargers), and located in an area of the State for which the Department is not the control authority (delegated area) for the industrial pretreatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-13.1(a);

i. Projects involving the construction of a sewer extension require a treatment works approval for the conveyance aspects only and are subject to the conditions of N.J.A.C. 7:14A-22.8;

ii. Projects involving additional flow through an existing sewer line of 8,000 gpd or more require a treatment works approval for the conveyance aspects only and may be considered under the provisions of N.J.A.C. 7:14A-22.6;

2. Building, installing, operating or modifying an American Petroleum Institute approved gravity oil/water separator, a retention *[basin]* or detention basin, ***sand traps or sediment traps that are installed routinely in facilities such as car washes, truck wash bays and other similar discharges,*** when these systems are authorized under a general NJPDES permit, have been determined not to require a NJPDES permit, or are exempted from obtaining a NJPDES permit pursuant to this chapter ***or are stormwater management facilities (see (b)3v below)***; *[or]*

3. Building, installing, operating or modifying any of the following activities or facilities:

i. Grease traps for use in restaurants;

ii. Cooling towers for non-contact water/heat exchange units;

iii. Holding tanks for wastewater which is solely industrial in nature and the amount to be discharged (through a collection system or hauled) to a treatment works will be less than 8,000 gallons per day;

iv. Recycling systems for industrial waste only, which do not discharge directly to the surface water or ground water;

v. Stormwater management facilities, including but not limited to retention basins, detention basins, and oil/water separators that prevent, abate, reduce, collect, convey, store, treat, dispose of, or otherwise manage stormwater runoff;

vi. Any part of a separate storm sewer system; or

vii. Treatment units used for pretreatment of water for use in an on-going manufacturing process at the industrial facility*[.]**; or***

4. Mobile treatment works to be specifically utilized for the treatment of water in relation to a short-term pump test or dewatering associated with an underground storage tank project authorized under a NJPDES category B4B General permit.

(c) Notwithstanding the terms of (a) and (b) above, the Department shall have the authority to regulate, at its discretion, any sewer connection or other domestic or industrial treatment works when a sewer connection ban exists or a health emergency so requires.

(d) The lack of a need to obtain a treatment works approval in accordance with this section does not relieve the project owner and/or sewerage authority from the responsibility to comply with all requirements of a NJPDES discharge permit. The responsibility of determining that additional flows to the treatment works will not result in any unpermitted discharge or NJPDES permit violation rests with the owner of the collection system and treatment facility.

(e) For projects in which flow is the determining factor for the requirement of a treatment works approval permit pursuant to this section, the projected flow criteria specified in N.J.A.C. 7:14A-23.3 shall be used.

7:14A-22.5 Treatment works approval

(a) A treatment works approval consists of the following three stages:

1. Stage I is an optional preliminary or conceptual review of treatment works as prescribed in N.J.A.C. 7:14A-22.7. The Department recommends that a stage I review and approval be obtained for any new sewage treatment plant or plant expansion, or if the proposed treatment works involves a new or innovative design or technology.

2. Stage II is an approval to construct, install or modify a treatment works as outlined in this subchapter.

3. Stage III is an approval to operate a treatment works that has been constructed or received a stage II approval. In general, separate stage II "construct only" approvals are issued for projects located in sewer ban areas, in future sewer service areas for which no downstream sewers exist, and for construction of some treatment *[plans]* ***plants***. Stage II and stage III approvals are generally issued concurrently as a single document, when operation of the treatment works can occur immediately upon completion of the project.

(b) The construction, installation, modification or operation of a treatment works in a manner inconsistent with the terms and conditions of the Department's approval constitutes a violation of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and may be subject to penalties and fines pursuant to the above Act, the Civil Administrative Penalty Rules, N.J.A.C. 7:14-8, or other applicable statute.

(c) The Department may modify, suspend or revoke a treatment works approval in accordance with N.J.A.C. 7:14A-22.11.

(d) The Department shall approve, condition, or deny an application for a treatment works approval pursuant to this subchapter and N.J.A.C. 7:1C-1, within 90 days of receipt of a complete application by the Department. This time period may be extended for one 30 day period upon the mutual consent of the applicant and the Department.

(e) The issuance of a treatment works approval by the Department does not relieve the applicant of the continuing responsibility for the successful collection, conveyance, treatment or discharge of pollutants, nor does it relieve the applicant from the responsibility of insuring that all discharges are consistent at all times with the terms and conditions of the applicable NJPDES permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the applicable NJPDES permit. The applicant is also responsible for complying with all applicable permits, regulations, statutes, or other laws.

(f) The applicant and any owner or operator of a treatment works shall provide notice of the terms and conditions of any existing treatment works approval to a prospective purchaser of the treatment works. Upon change of ownership of the treatment works, the new owner shall assume responsibility for its proper operation and maintenance or closure. Notification to the Department of a change in ownership for the treatment works approval permit is not required.

(g) The Department's review of applications and submissions is limited to engineering (including hydraulic) features of significance to applicable discharge limits and protection of the environment. The Department will not review structural, mechanical or electrical design, except when it may be significant to achievement of discharge limitations or to the protection of the environment.

(h) A permit to construct or operate a treatment works, previously issued to the owner or operator pursuant to N.J.S.A. 58:11-10 or 58:12-3 will constitute a treatment works approval for the purpose of this subchapter. The permit and any conditions thereto will continue to be in effect until such time as the permit is revoked, amended or expired.

(i) The full responsibility for adequate design, construction and operation of the treatment works, and the full responsibility for successful collection, treatment and discharge of pollutants shall be on the applicant.

(j) Treatment works shall be constructed in a manner which is consistent with the provisions of the appropriate wastewater management plan.

(k) The Department may grant an emergency approval authorizing the construction and/or operation of a treatment works prior to issuance of a formal treatment works approval in situations such as the modification/rehabilitation of existing treatment and conveyance systems where time delays may threaten the public health or safety. Such approvals shall be subject to the following requirements:

1. The Department ***and the affected collection system owner and/or treatment plant owner (as appropriate)*** shall be informed by telephone ***or in writing***, prior to construction, as to the project location, the extent of work to be performed, and the reason for the emergency.

2. Within 15 calendar days of commencing the activity for which an emergency approval is authorized, an application for a treatment works approval and/or sewer ban exemption shall be submitted to the Department for review and issuance of the required permit. "As-built" drawings, if applicable, shall be submitted.

3. The Department reserves the right to deny an emergency approval request if it is determined that an emergency approval request is not justified, the activity would be inconsistent with any applicable rules, or a more prudent alternative is available.

4. Failure to comply with the requirements of (k)1 or 2 above, the construction or operation of treatment works inconsistent with the emergency authorization, or submission of false information may subject the applicant to enforcement action by the Department, including the imposition of fines or penalties.

(l) For most industrial treatment works, treatment works approvals will be issued in the form of a General Industrial Treatment Works Approval. The submission requirements for a General Industrial TWA are contained in N.J.A.C. 7:14A-22.6, and are administrative in nature. Within 30 days of receipt of a complete General Industrial TWA application, the Department will issue a General Industrial TWA or notify the applicant that due to a potentially significant health risk, environmental impact, or past performance of the facility the project cannot be granted a General Industrial TWA and an individual treatment works approval is required.

7:14A-22.6 Information and submission requirements for general industrial treatment works approvals

(a) Industrial treatment works not exempt pursuant to N.J.A.C. 7:14A-22.4 shall submit the following information as an application for a General Industrial Treatment Works Approval:

1. The Department's standard application form CP-1 (original) signed, dated and imprinted with a seal where applicable;

2. The minimum fee for a treatment works pursuant to N.J.A.C. 7:1C-1.5;

3. A certification signed and sealed by a New Jersey licensed professional engineer stating the following:

i. The proposed treatment works, as designed, will enable the facility to meet all applicable Federal, State and local effluent limitations, conditions and/or requirements;

ii. The proposed treatment works or contributing facility will not dilute any portion of its waste stream for the purpose of meeting any applicable NJPDES effluent limitation or condition; and

iii. The permittee currently holds a valid final NJPDES permit, General permit authorization, or for indirect dischargers, the applicant is specifically exempted by the Department;

4. A completed Licensed Operator Grading sheet;

5. A resolution, certification and/or written statement of consent from the affected municipality, sewerage authority, owner of the receiving treatment plant; owner/operator of the wastewater conveyance system into which the project will directly connect; and district sludge management lead planning agency (if applicable, see (a)5ii below) or completion of the Department's form WQM003;

i. Required consents shall be in conformance with N.J.A.C. 7:14A-2.1(k).

ii. A written statement of consent from the district sludge management lead planning agency is required only for applications that involve construction of residual management units at ultimate residuals management sites.

iii. Written statements of consent from the affected sewerage authority must contain a certification concerning the plant's compliance with the applicable NJPDES permit requirements.

iv. A written statement of consent from the owner/operator of the conveyance system must certify that the conveyance system has adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9, to convey the additional flow.

v. If an applicant is unable to obtain the required endorsement or written statement of consent, then the procedures stated in N.J.A.C. 7:14A-2.1(k) shall apply. An application may be considered complete only after the 60 day period of notification, as required in N.J.A.C. 7:14A-2.1(k), has elapsed;

6. One set, each, of final construction plans and specifications, signed and sealed by a New Jersey licensed professional engineer.

7. An engineering abstract containing, at a minimum, the following:

i. A description of waste treatment system;

ii. The ultimate destination of all wastewater and residuals;

iii. A listing of all pollutants, including regular and intermittent flows, which may enter the system;

iv. Average and peak flow requirements; and

v. The expected composition of effluent from the treatment system; and

8. Copies of notification to local agencies by certified mail, return receipt requested, in accordance with N.J.A.C. 7:1C-1.5.

(b) The Department, within 30 days of receipt of a complete application for an Industrial Treatment Works Approval, shall issue a General Industrial TWA, or notify the applicant that based upon the potential for significant health risk, environmental impact, or past performance of the facility an individual treatment works approval review is required.

1. At the time of notification to the applicant that the project does not qualify for a General Industrial TWA, the applicant will also be notified of the additional administrative requirements, if any, necessary for the application to be considered administratively complete pursuant to N.J.A.C. 7:14A-22.8.

(c) A General Industrial TWA permit shall consist, at a minimum, of the following:

1. The name of the facility and permittee receiving the General Industrial TWA;

2. The General Industrial TWA permit number and applicable NJPDES number or authorization;

3. The licensed operator classification where applicable;

4. The date of authorization for construction, operation or modification of the industrial treatment works; and

5. Such other general conditions as are appropriate.

(d) For direct dischargers to surface or groundwater or for indirect dischargers required to obtain an SIU permit from the Department, applications for General Industrial TWA's will not be accepted for review unless the applicant has previously obtained a valid NJPDES permit or general permit authorization.

7:14A-22.7 Requirements for preliminary review of applications for treatment works approval—stage I

(a) Stage I approvals are optional but are recommended for new or expanded treatment plants and for projects involving new or innovative technologies or designs.

(b) Applications submitted for stage I review shall contain the following:

1. A letter of request for a Stage I review from the applicant or applicant's agent; and

2. A project report which, at a minimum, contains the following:

i. Project concept, scope and purpose;

ii. Water quality management considerations;

iii. A brief description of proposed treatment and/or conveyance methods, and appropriate basis for design;

iv. For new or innovative technology application, performance data from similar facilities; and

v. A sludge management proposal;

(c) The Department will respond to the applicant with the review findings for appropriate consideration.

(d) Any applicant who proceeds to a stage II design, without first obtaining a stage I approval shall bear the full responsibility for the adequacy of design to meet the intended purpose and the Department reserves the right to require the applicant to investigate the feasibility of alternate treatment or conveyance methods during the stage II application process, if the Department determines that drawbacks may exist with the submitted design.

7:14A-22.8 Requirements for construction, installation, or modification of treatment works—stage II

(a) Persons who propose to build, install or modify treatment works that require the Department's approval pursuant to this subchapter, shall submit the following information and documents in the manner prescribed in this subchapter:

1. The Department's standard CP-1 form (original) signed, dated and imprinted with a seal where applicable; and

2. The appropriate fee, calculated in accordance with N.J.A.C. 7:1C-1.5, made payable to Treasurer, State of New Jersey, Environmental Services Fund;

3. A resolution and/or original written statement of consent from the affected municipality, sewerage authority, owner of the receiving treatment plant, owner/operator of the wastewater conveyance system into which the project will directly connect, and district sludge management lead planning agency (if applicable, see (a)3ii below) or completion of the Department's form WQM003.

i. Endorsements shall comply with the requirements of N.J.A.C. 7:14A-2.1(k).

ii. A written statement of consent from the district sludge management lead planning agency is required only for applications that involve construction of residual management units at ultimate residuals management sites.

iii. Written statements of consent from the affected sewerage authority shall contain a certification concerning the plant's compliance with applicable NJPDES permit requirements.

iv. A written statement of consent from the owner/operator of the conveyance system shall certify that the conveyance system has adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9, to convey the additional flow.

v. If an applicant is unable to obtain the required endorsement or written statement of consent, then the applicant may choose to follow the procedures stated in N.J.A.C. 7:14A-2.1(k). An application may be considered complete only after the 60 day period of notification, as required in N.J.A.C. 7:14A-2.1(k), has elapsed.

4. Copies of notification to local agencies by certified mail, return receipt requested, in accordance with N.J.A.C. 7:1C-1.5;

5. For wastewater collection and conveyance systems, an original signed copy of the Department's Engineering Report Form WQM006. The Engineer's Report shall be signed and sealed (embossed) by a New Jersey licensed professional engineer;

6. For treatment units, holding tanks, equalization tanks, or treatment works other than collection and conveyance systems, in addition to the Department's form WQM006, the applicant shall prepare and submit a technical report addressing the requirements specified in N.J.A.C. 7:14A-23.5;

7. An itemized engineering cost estimate for the proposed treatment works. The cost estimate shall be in sufficient detail to indicate the basis for the estimate and the approximate separation of costs for individual sewerage facilities;

8. One set, each, of final construction plans and specifications, signed and sealed by a New Jersey licensed professional engineer, and meeting the requirements stated in N.J.A.C. 7:14A-23.4;

9. One original Dry Sewer Affidavit, if applying for a stage II "construction only" permit pursuant to N.J.A.C. 7:14A-22.9;

10. A copy of a USGS Quad Map with the project site location boundaries drawn to scale;

11. Copies of Pinelands approval or certificate of filing, or Delaware and Raritan Canal Commission approval, if required;

12. For sewage holding tank applications, the following additional items are required:

i. A letter of consent from the local board of health; and

ii. Evidence of contracts with two licensed waste haulers (one as a back-up); and

13. For a hauling/diversion treatment works application, the following additional items are required:

i. Evidence of contracts with two licensed waste haulers (one as a back-up);

ii. For projects involving wastewater hauling, a letter of consent from the entity accepting the wastewater for treatment and final disposal and for projects involving wastewater diversion, a letter of consent from the municipality or authority accepting additional flow through its collection system; and

iii. A statement concerning the frequency and amount of wastewater which will be hauled/diverted. This amount shall be at least equivalent to the project's projected flow pursuant to N.J.A.C. 7:14A-23.3.

(b) All submissions, including the application, engineer's report, specifications, and plans shall bear an embossed seal of a New Jersey licensed professional engineer.

(c) Applications shall be signed by the applicant, a responsible official of the applicant as defined in N.J.A.C. 7:14A-2.4, or an authorized agent providing that an authorization for signature is submitted with the application.

1. A responsible official is an individual meeting the requirements set forth in N.J.A.C. 7:14A-2.4(a)2i.

2. Signatures older than one year at the time of submission to the Department are not acceptable, except in the case of a previously denied application, in which case the Department shall have the discretion to accept signatures older than one year, or require more recent signatures, depending upon the specific circumstances.

7:14A-22.9 Stage II "construction only" treatment works approvals

(a) "Dry/construct only" treatment works approvals are stage II approvals, for which operation may not occur until the Department issues a formal stage III approval in accordance with the provisions of this subchapter. Generally, the Department will consider applications for "dry/construct only" facilities in the following circumstances:

1. The proposed project is located in an area that is not currently served by a sewage collection system, and is located within a future sewer service area as identified in the appropriate water quality management plan. In such cases, the application shall include the following:

i. Permits for individual septic systems issued by the administrative authority pursuant to N.J.A.C. 7:9A, or a certification from the administrative authority attesting to the suitability of the soils to support on-site subsurface disposal systems in accordance with N.J.A.C. 7:9A; and

ii. A statement from the municipality and the person financially responsible for the project, that the septic systems will be abandoned and connection to the domestic treatment works will occur at such time as sewer lines become available.

2. The proposed project is located in an area currently subject to a sewer connection ban and the applicant seeks permission to construct sewage collection and conveyance facilities that will not become operational until the sewer connection ban is rescinded by the Department. The Department's consideration of this request is dependent upon submission and compliance with the following:

i. The owner of the receiving sewage treatment plant or downstream collection/conveyance facility which is subject to the sewer ban is in compliance with one of the following:

(1) An executed administrative consent order with the Department, which provides a schedule for all corrective work that is necessary for rescission of the sewer connection ban; or

(2) A treatment works approval permit has been issued for construction, the completion of which will result in rescission of the sewer connection ban, and a contract with a specific date for the completion of construction has been awarded;

ii. Submission of a written statement with appropriate documentation that the project can be financially managed during the expected duration of the sewer connection ban, or submission and concurrent approval of an interim means of sewage disposal pursuant to N.J.A.C. 7:14A-22.13 or 22.14; or

3. The project is for the construction of sewer lines in conjunction with a road paving project, will not have any immediate source of contributory flow, and is located in a current or future sewer service area as identified by the appropriate wastewater management plan.

(b) "Dry/construct only" treatment works approval applications shall include the following:

1. All items identified under N.J.A.C. 7:14A-22.8, for requirements of stage II treatment works approvals, with the exception of non-applicable sections of the Department's WQM003 consent form for treatment plants or collection systems subject to a sewer connection ban; and

2. A Dry Sewer Affidavit signed by (as applicable) the property owner, the municipality in which the project is located, and appropriate official of the receiving sewage treatment plant, stating at least the following:

i. The affected authority/municipality shall not allow the use of the sewerage facilities without prior written approval from the Department;

ii. That operation of the treatment works will not be permitted until the sewer connection ban has been rescinded by the Department (if applicable) or adequate downstream sewerage facilities are available as determined by the Department (if applicable);

iii. That the possibility exists a treatment works approval for operation (stage III) may not be granted, or may be excessively delayed and that the applicant is proceeding at his own risk; and

iv. The applicant is aware that subsequent construction of the permitted "dry" treatment works, in and of itself, does not qualify the project for a sewer ban exemption pursuant to N.J.A.C. 7:14A-22.22.

(c) A "dry/construct only" treatment works approval shall be filed with the appropriate county clerk as notice to prospective purchasers of restrictions that may apply to the property. The "dry/construct only" TWA shall remain filed with the deed of record until such time as a treatment works approval for operation (stage III) has been issued by the Department.

7:14A-22.10 Requirements for stage III treatment works approval applications

(a) No person shall operate a treatment works for which a treatment works approval from the Department is required except in conformance with the provisions of this subchapter.

(b) For treatment works approvals that have been issued concurrently as stage II and stage III approvals ("construct and operate"), operation of the facilities may occur upon completion of the project, inspection and approval of the facilities by the licensed professional engineer overseeing the construction, approval by the local ***municipality or sewerage*** authority, and submission to the Department of Form WQM005, Certification of Approval.

(c) For treatment works approvals that have been issued as stage II ("construct only"), except for the temporary operation of treatment works for the purpose of performance testing, operation may begin only after written approval in the form of a stage III treatment works approval is issued by the Department. Requirements for a stage III approval include:

1. Inspection and approval of the facilities by the licensed professional engineer overseeing the construction and submission of a properly completed form WQM005 to the Department;

2. Submission of a written request for operation from the applicant or duly authorized agent and a written statement in which proof that all conditions of the stage II TWA to construct have been satisfied;

3. An appropriate fee for a permit *[notification]* ***modification*** pursuant to N.J.A.C. 7:1C-1.5; and

4. Submission of "as-built" plans and specifications if different than the approved plans and specifications.

7:14A-22.11 Modifications and revocations of treatment works approvals

(a) The Department may modify, suspend or revoke a treatment works approval in whole or in part for cause, including, but not limited to:

1. Violation of any term or condition of the treatment works approval;

2. Obtaining a treatment works approval by misrepresentation or failure to disclose fully all relevant facts; or

3. If such treatment works approval is inconsistent with any duly authorized effluent limitation, permit, regulation, statute, or other applicable local, State or Federal law.

(b) The Department shall determine whether any material changes, design or construction alterations, or changes in flow, which occur after the issuance of a treatment works approval permit will require a modification. When assessing the need for a modification, the Department will evaluate how the proposed changes affect the design or conditions of approval of the original permit. Generally a treatment works approval modification is not required for the substitution of units or materials with others that are structurally, hydraulically, and functionally equivalent, except in cases when a detailed engineering review is needed to determine equivalency. Changes in location*[,]* ***or*** unit sizing and capacity, ***or increases in*** flow or project scope***,*** will require a modification ***or a new TWA, as determined by the Department, depending on the magnitude of the change*.**

(c) Unless such a requirement is specifically waived by the Department, a modification request will generally not be considered, and instead, a new treatment works application will be required for major modifications of the project scope including, but not limited to, the addition of a pumping station or alternate treatment units or processes, significant changes to the collection system and the inclusion of sewage generating structures not covered in the original approval.

1. Requests for modifications shall include the following documents:

i. An appropriate fee pursuant to N.J.A.C. 7:1C-1.5;

ii. A written request from the applicant stating the nature, scope and reasons for the modification;

iii. Revised construction plans and specifications (if applicable);

iv. A revised WQM006 Engineer's Report (if applicable);

v. A copy of the original treatment works approval permit; and

vi. Written consent from the appropriate sewerage authority if the modification will result in an increase in the project's projected flow, or if the modification requires a change or alteration to the point of connection of the proposed sewer to the existing collection system.

2. The Department will accept permit modification requests only for treatment works approvals that are valid (not expired) at the time that the modification request is submitted to the Department. In addition requests for modification will only be considered for a maximum period of two years following the last construction activity on the treatment works conducted in accordance with the Department's original approval.

7:14A-22.12 Extensions of time for treatment works approvals

(a) Stage II treatment works approvals are valid for an initial period of two years, unless otherwise stated in the approval document. A stage II approval will expire unless building, installing or modifying of the treatment works has begun within the initial approval period stated on the permit, unless the permit is extended pursuant to this subchapter.

(b) At the Department's discretion, a treatment works approval may be extended beyond the original two year approval date, to a maximum period of five years from the original issuance date. Each extension, if granted, will be for a maximum period of one year.

1. A request for an extension of time must be received by the Department prior to the expiration date of the permit and shall include the following:

i. An appropriate fee pursuant to N.J.A.C. 7:1C-1.5(b);

ii. A written request from the applicant or authorized agent; and

iii. Consent for the time extension from the sewerage authority if the sewerage authority has notified the Department, in writing, that all time extension requests under its jurisdiction must be accompanied by the authority's consent.

2. If the extension request is not received by the Department prior to the expiration date of the permit, then in addition to the information required under (b)1 above, the applicant shall also submit written proof of consent for the time extension from the sewerage authority or municipality which owns the receiving treatment plant, and the minimum fee in accordance with N.J.A.C. 7:1C-1.5. In such cases, if the request is approved, the Department will issue the permit extension in the form of a new TWA valid for one year, but extendible up to a maximum of five years from the issuance date of the original approval.

(c) The Department's decision on whether or not to grant a time extension is dependent upon the circumstances which exist at the time the request is made, including, but not limited to, the status of any sewer connection ban. Generally, the request will be denied if a sewer connection ban is in place and the project does not qualify for a sewer ban exemption pursuant to this subchapter.

(d) The earliest a time extension request will be considered by the Department is one year prior to the permit expiration date.

(e) Once the construction of sewerage facilities is legally initiated, the TWA is considered to be in effect and further time extensions are not required. However, if construction *[is]* ***has been*** interrupted for a period of more than two years, the Department, at its discretion, may revoke the TWA and deny the extension request. The factors to be considered in making such decisions include, but are not limited to, a sewer connection ban or conveyance problem, time span for which construction is interrupted, the status of the construction, and the reasons for construction interruption.

7:14A-22.13 Administrative requirements for wastewater holding tanks (non-industrial)

(a) Wastewater holding tanks for temporary use may be approved by the Department in the following circumstances:

1. Simultaneous or subsequent to the issuance of a Stage II "dry/construct only" treatment works approval issued by the Department pursuant to N.J.A.C. 7:14A-22.9(b)2, for projects located in sewer ban areas; or

2. To serve a proposed project that is located in an area not presently served by sanitary sewers and where a treatment works approval has been issued and a contract has been awarded which contains a scheduled completion date for the construction of

downstream facilities necessary for the elimination of the holding tank.

(b) An administrative authority may, pursuant to N.J.A.C. 7:9A-3.12, approve the temporary use of a sewage holding tank for a period of up to 180 days for an existing structure served by a malfunctioning septic system that is causing a public health hazard.

(c) Wastewater holding tanks as a permanent means of sewage disposal may be approved in the following circumstances:

1. The holding tank will be utilized to eliminate a failed subsurface disposal system which has been certified by the local board of health or the Department to be a health hazard, connection to a domestic treatment works is not possible or practical, and the holding tank will not be utilized for additional sources of wastewater flow resulting from a building expansion, change in use, or other source;

i. For holding tanks to serve a facility with a projected flow of less than 2,000 gallons per day, the applicant shall demonstrate in accordance with N.J.A.C. 7:9A-3.4(d)1 through (d)5, that the existing system was legally constructed and cannot be repaired or rehabilitated and there are no feasible alternatives or substitutes.

ii. For holding tanks to serve a facility with a projected flow of 2,000 gallons or more, in addition to demonstrating that the existing system cannot be repaired or rehabilitated, an amendment to the appropriate wastewater management plan pursuant to N.J.A.C. 7:15-4.3 may be required, unless in accordance with N.J.A.C. 7:15-4.2 the use of the holding tank is mandated by an administrative consent order executed between the Department and the applicant; or

2. The holding tank will be utilized at a marina or dock which serves watercraft that are equipped with marine sanitation devices.

(d) The holding tank shall meet the technical design requirements specified in N.J.A.C. 7:14A-23.5.

(e) The entity identified as the receiving treatment plant for the final treatment and disposal of hauled wastewater shall have sufficient capacity to handle the additional flow and not be subject to a sewer connection ban.

7:14A-22.14 Temporary wastewater hauling/diversion

(a) Wastewater hauling is the removal and transportation of a permitted quantity of wastewater from the headworks of a facility and prior to treatment, by a licensed waste hauler, from a treatment facility which is subject to a sewer ban, to a treatment facility which is not subject to a sewer ban. Wastewater diversion is the re-direction of a permitted quantity of wastewater flow from a collection or conveyance system to an alternate collection system not subject to a sewer connection ban.

1. Flow diversion may be accomplished by constructing various temporary gravity sewers or pumping stations or by modifying an existing collection system so that flows are re-directed to an alternative treatment works.

(b) The temporary use of wastewater hauling/diversion may be approved by the Department simultaneous or subsequent to the issuance of a stage II "dry/construct only" treatment works approval issued by the Department pursuant to N.J.A.C. 7:14A-22.9(b)2, for projects located in sewer ban areas, or if authorized by the Department through an administrative**/judicial*** consent order executed by the applicant and the Department.

7:14A-22.15 Requirements for flow equalization tanks

(a) The use of flow equalization tanks located at the head of treatment plants, regional pumping stations or pre-treatment facilities for the purpose of improving the treatment process is encouraged by the Department, and will be approved providing that all administrative and technical requirements of this subchapter and the technical requirements specified in N.J.A.C. 7:14A-23 are met.

(b) Flow equalization tanks proposed to serve areas with significant future growth potential will not be approved as permanent facilities. The problems associated with existing conveyance capacity in these areas should be addressed through appropriate corrective measures such as repairing, replacing, or upgrading the existing inadequate sewerage systems, controlling inflow and infiltration or other applicable remedies.

(c) In addition to the situation specified in (a) above, flow equalization tanks may be approved for permanent use when the following conditions are satisfied:

1. It is shown that a flow equalization tank is the most appropriate means of providing sewer service to the area under consideration, it is designed as an integral part of the sewage conveyance system and there are no other practical or feasible alternatives, and its use will be on a regional basis (not for individual developments); and

2. The use of the flow equalization tank is to serve areas with severely limited potential for growth and for which the applicant has demonstrated to the Department's satisfaction that the upgrading of the existing downstream conveyance system is not economically feasible due to the limited sources of contributory flow anticipated from future connections in the service area.

(d) To the maximum extent possible, the utilization of flow equalization tanks should be consolidated to accommodate multiple users. In general, the individual use of flow equalization tanks on a project specific basis is discouraged.

(e) As part of the submission of a treatment works application for a permanent flow equalization tank, the owner of the affected collection system shall submit an engineer's report meeting the requirements of N.J.A.C. 7:14A-23.5.

(f) If requested by the applicant, upon receipt of the information referenced in (e) above, the Department will conduct a Stage I review pursuant to N.J.A.C. 7:14A-22.7 and will render a finding as to the acceptability of the proposed permanent flow equalization tank.

(g) Flow equalization tanks may be approved on a temporary basis for the purpose of improving situations when inadequate conveyance capacity exists in a collection system. In such a situation, the eventual elimination of the equalization tank must be assured through either an administrative consent order that contains provisions for the corrective work to enable the elimination of the equalization tank, or through the issuance of a treatment works approval that provides a specific and mandatory schedule for the construction of downstream facilities necessary for the elimination of the equalization tank.

7:14A-22.16 Capacity assurance program

(a) Whenever the committed flow reaches or exceeds 80 percent of the permitted capacity of a treatment works, the participating municipalities and/or sewerage authorities shall submit to the Department a program to be implemented in order to prevent an overloading of their facility or a violation of their NJPDES permit. This program shall include, but is not limited to, the following:

1. Implementation of water conservation measures;

2. Reduction of inflow and infiltration (I/I) where appropriate. Measures shall be taken, to the satisfaction of the Department, which appropriately identify the causes and course of corrective action within a specified time frame;

3. Implementation of measures to maximize treatment plant capacity at a minimum cost;

4. Construction of improvements;

***5. Disconnection of roof leaders, sump pumps and other sources of inflow, from sanitary sewer lines and connect into storm sewer lines where storm sewers are available and to the extent feasible;**

6. Submission, on a quarterly basis, of a completed WQM007 Form to the Wastewater Facilities Regulation Program, Bureau of Construction and Connection Permits, CN-029, Trenton, New Jersey 08625; and*

*[5.]****7.*** Preparation for the imposition of a self-imposed sewer connection ban, as required by N.J.A.C. 7:14A-22.17, in the event that it is anticipated that additional flows will result in violations of any pollutant parameter limits contained in the plant's NJPDES or NPDES permit*[; and]****.***

*[6.]****(b) For treatment plants which are subject to excessive inflow and infiltration to the extent that NJPDES permit limits for flow are occasionally exceeded during wet months, the Department will consider issuing TWAs for additional flow if***, *[If]* in the sewerage authority's opinion, the affected sewage treatment plant can treat flows in excess of its permitted capacity and still maintain

compliance with the pollutant limits specified in its NJPDES permit*[,]**.* *[then in]* ***In*** addition to the requirements in (a)1 through *[5]* ***7*** above, the authority shall submit a detailed technical report demonstrating its findings and providing justification for the issuance of treatment works approvals for ***additional contributory*** flows *[above the permitted capacity]*.

1. The detailed technical report referenced in (b) above must contain a discussion of the following issues:

i. The extent of inflow and infiltration;

ii. Dry weather treatment capacity at the plant;

iii. The plant's ability to treat additional flows;

iv. Water quality issues;

v. Status of the current NJPDES permit for the plant; and

vi. The effect that such a decision will have upon the discharge limitations contained in future NJPDES permits.*

*[(b)]***(c)* If the participating municipalities and authorities do not comply with (a) above, then the Department may issue a warning notice. A warning notice shall require the sewerage authority or municipality to prepare and submit a program pursuant to N.J.S.A. 58:10A6(h)(3) and (a) above, within 45 days of receipt of the notice.

*[(c)]***(d)* Upon approval by the Department of a program submitted pursuant to (a) or (b) above, the sewage authority and participating municipalities shall give public notice of the program in a manner designed to inform local residents, developers, local planning board and other affected persons. Such notice shall include at least the following information:

1. The name, mailing address and telephone number of the owner of the treatment works;
2. The permitted capacity of the treatment works;
3. The committed flow to the treatment works;
4. A statement that the treatment plant is approaching its permitted capacity and the possibility exists that a sewer connection ban will be imposed if the plant is unable to maintain compliance with its discharge limits; and
5. Description of the service area including the participating municipalities.

*[(d)]***(e)* In the event that the committed flow to a sewage treatment plant is at or above 100 percent of the plant's permitted capacity, and the Department determines that issues involved in (a), (b) or (c) above have not been appropriately addressed and that additional flows above the plant's permitted capacity may result in violations of their NJPDES permit, the Department may cease the further issuance of treatment works approvals for additional flow to the plant. In the event that such a decision is made, the Department, at its discretion, may grant exceptions for projects that require a TWA providing the project meets the sewer ban exemption criteria specified in N.J.A.C. 7:14A-12.22.

*[(e)]***(f)* Neither this section nor the provisions of N.J.A.C. 7:14A-22.17 shall apply to industrial treatment works that are direct dischargers to the waters of the State.

7:14A-22.17 Sewer ban imposition

(a) A sewer connection ban shall be imposed in accordance with this subchapter, when any one of the following events occurs:

1. The downstream sewerage facilities do not have adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9;

i. If the cause of inadequate conveyance capacity is a one-time overflow occurrence which has been determined to be the result of extreme and unusual precipitation, or equipment malfunction which has been repaired, the owner/operator may notify the Department, Division of Water Quality, in writing within 20 days of the occurrence and request relief from the imposition of the sewer ban.*

ii. The Department may require any local agency requesting relief pursuant to this provision to provide additional detailed justification, including, but not limited to, a sewer system capacity analysis and evaluation;*

2. For a three month consecutive period, a treatment works has discharged effluent to a surface water which violates the limitations for any of the conventional pollutants, as defined in (b) below, of its NJPDES or NPDES permit, as determined by the arithmetic average of the permit parameters for the period;

3. For a three month consecutive period, a treatment works has discharged effluent to the surface water which violates any non-conventional pollutant of its NJPDES or NPDES permit, as determined by the arithmetic average of the permit parameters for the period, and the sewerage authority or municipality does not meet one of the following requirements for relief from the sewer connection ban imposition:

i. The treatment plant owner has entered into an administrative ***/judicial*** consent order with the Department that contains a schedule for the completion of improvements necessary to enable the treatment facility to comply with all the conditions and limitations of its NJPDES permit; or

ii. A treatment works approval permit for the improvements necessary to enable the treatment facility to comply with all conditions and limitations of its NJPDES permit has been issued and *[the authority has awarded]* a contract for ***the*** construction ***has been awarded****; or

4. For a three month consecutive period a treatment works has discharged effluent to ground water which violates any effluent or flow limitations of its NJPDES or NPDES permit, as determined by the arithmetic average of the permit parameters for the period.

(b) For the purpose of the sewer ban imposition and rescission criteria, "conventional pollutant" shall mean NJPDES discharge permit limitations established for oxygen demanding pollutants (BOD, CBOD, NBOD and TBOD), total suspended solids (TSS), pH and bacterial quality indicators (fecal coliform, total coliform, enterococci).

(c) For surface water dischargers, violations of NJPDES or NPDES effluent requirements for flow, percent removal or toxicity shall not require the imposition of a sewer connection ban. In the case of a treatment facility at or above 80 percent of its permitted flow, the facility shall be subject to the provisions of the Capacity Assurance Program specified at N.J.A.C. 7:14A-22.16.

(d) For the purposes of ban imposition and rescission criteria only, if a valid NJPDES permit contains more than one means of measuring an oxygen demanding pollutant (example: CBOD or NBOD or TBOD), then consistent compliance with only one measurement is required.

(e) In the event that the sewerage authority and/or municipality does not impose the required sewer connection ban, the Department may cease issuing treatment works approval permits, direct the imposition of a sewer connection ban and take other enforcement actions that it deems necessary.

(f) Sewer connection bans in effect and imposed pursuant to N.J.A.C. 7:14A-12.21 shall remain in full force and effect unless specifically allowed to be rescinded by the Department in writing, and in accordance with N.J.A.C. 7:14A-22.18(f).

7:14A-22.18 Procedures and effective date for the imposition of a sewer connection ban

(a) Within 20 days of the treatment works becoming subject to a ban pursuant to N.J.A.C. 7:14A-22.17, the owner/operator of the subject treatment works shall:

1. Adopt a resolution imposing the sewer connection ban;
2. Cease the further approval of sewer connections to the subject treatment works as of the effective date of the ban;
3. Notify the affected municipalities that they shall cease the issuance of building permits and condition all other approvals which will require or modify a sewer connection, and which has not already obtained a valid treatment works approval issued by the Department *[before the effective date of the ban as specified in (e) below]*.

i. For projects that do not require a treatment works approval and/or sewer ban exemption pursuant to N.J.A.C. 7:14A-22.20, the *[local authority]* ***municipality*** may issue building permits or other local approvals; and

4. Give notice of the sewer connection ban to the Department, to residents of the area that contributes to the subject treatment works, landowners therein, local planning boards, and other persons or legal entities affected by the ban, within 10 days of adoption of the ban imposition resolution, and at intervals of no more than six months in a manner reasonably expected to be received by such persons.

(b) Other than in (a)3i above, the affected sewerage authority and participating municipalities shall not issue sewer connection approvals or endorse sewer connection applications for specific projects in the affected ***area*** unless the following requirements have been met:

1. A sewer connection ban has been implemented in accordance with this subchapter;
2. Sewer connection ban exemption criteria equivalent to, or more stringent than, those contained in N.J.A.C. 7:14A-22.22 have been adopted; and
3. The sewer connection ban ordinance, or resolution, and the sewer ban exemption for the specific project has been approved by the Department.

(c) Treatment works applications filed with the Department prior to the effective date of the sewer connection ban will be considered for approval *[providing]* ***provided*** that at the time of the sewerage authority's certification on the Department's Form WQM003, the ***receiving*** treatment works was operating in compliance with all applicable conditions as stated in the WQM003 Form.

(d) When the participating municipalities and/or affected sewerage authorities have failed to comply with (a) and (b) above, the Department shall cease issuing treatment works approvals and may also direct the imposition of a sewer connection ban, issue administrative orders, assess civil administrative penalties, seek judicial relief, or take any other enforcement action it deems necessary.

(e) The effective date for any sewer connection ban required to be imposed by this subchapter shall be 20 days following the date upon which the first of either of the following occurs:

1. The due date of the Discharge Monitoring Report which would indicate non-compliance in accordance with N.J.A.C. 7:14A-22.17; or
2. The date of identification of a lack of adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9.

(f) *[Any]* ***The affected*** sewerage authority or municipality *[may]* ***shall*** apply to the Department for a rescission or modification of a sewer connection ban implemented pursuant to this subchapter at such time as *[it can show that the reasons which required the imposition of the sewer ban pursuant to N.J.A.C. 7:14A-22.17 no longer exist.]* ***a ban is no longer required in accordance with N.J.A.C. 7:14A-22.17.*** No ban may be rescinded without written approval from the Department.

7:14A-22.19 General policy and procedure for sewer connection ban exemptions

(a) Each affected sewage authority, or municipality that owns a treatment works, upon the institution of a connection ban, shall adopt exemption criteria at least as stringent as those included in this subchapter in order to provide relief to persons who qualify for such relief. The burden of proof is upon the applicant for all exemption requests and the Department and each affected sewerage authority shall presume that all applicants have knowledge of the sewer connection ban after the effective date of its imposition.

(b) No exemption shall be granted to any person who subsequently proceeds with a proposed project, without first obtaining all necessary approvals, and thereby increases or creates a self-imposed hardship.

(c) For projects which require a treatment works approval pursuant to N.J.A.C. 7:14A-22.3, a sewer ban exemption approval, if required pursuant to this subchapter, shall be obtained from the Department or delegated agency, prior to filing the treatment works approval application.

(d) Before making a final decision, the Department may request additional documentation or information that is relevant to the project. Failure of the applicant to supply the additional information may serve as a basis for denial of the application.

(e) Water conservation plumbing is required in all instances of new or modified plumbing or piping. Water conservation plumbing is a condition of the exemption and does not constitute the basis for a sewer ban exemption.

(f) An exemption granted for a specific project at a determined location is not transferable to any other project or location, and is only transferable to a new owner providing the location, scope and other relevant conditions of granting the original exemption remain unchanged. Transfers to new owners meeting the requirements of this subsection do not require Department approval.

(g) Projects which have changed in scope or for which the conditions of granting the original exemption have changed are not considered to be exempt. The applicant/owner of such projects shall apply for a new sewer ban exemption in accordance with this subchapter.

7:14A-22.20 Activities which do not require an exemption from the Department

(a) Any project which has proceeded in accordance with a valid stage II and stage III treatment works approval from the Department for the construction and operation of treatment works will not require a sewer ban exemption from the Department provided that construction of the facilities is undertaken in accordance with the Department's approval.

(b) For projects which do not require a treatment works approval pursuant to N.J.A.C. 7:14A-22.4, a sewer ban exemption from the Department is not required provided that the owner/applicant of the project has obtained a building permit prior to the effective date of the sewer connection ban, and is otherwise lawfully entitled to initiate construction in conformance with previously issued valid approvals.

(c) Modifications, additions or deletions to the internal plumbing or piping of any lawfully, pre-existing building will not require a sewer ban exemption provided that:

1. The size of the building will not increase (gross area); and
2. The category and scope of use of the building will remain unchanged in accordance with N.J.A.C. 7:14A-23.3, Projected flow criteria.

(d) The replacement, rehabilitation or modification of existing conveyance and treatment facilities will not require a sewer ban exemption provided that the project does not involve any additional contributory flow, as determined by the Department.

7:14A-22.21 Application procedures for obtaining a sewer connection ban exemption from the Department

(a) The sewerage authority or municipality imposing the ban shall provide the applicant with the following:

1. A copy of the ban exemption regulations contained in N.J.A.C. 7:14-22.18 through 22.22;
2. The Department's ban exemption application form, WFR001, entitled: "Application for Exemption from a Sewer Connection Ban";
3. The effective date of the sewer connection ban; and
4. A copy of the authority's sewer ban exemption criteria.

(b) An applicant requesting an exemption shall submit the Department's application form for an exemption from a sewer connection ban and any other appropriate documentation to the appropriate sewerage authority or municipality, who shall review the request for compliance with the applicable criteria.

(c) If the affected sewerage authority or municipality determines that the applicant meets the criteria specified in N.J.A.C. 7:14A-22.22, or more stringent criteria that may be locally adopted, the authority shall forward the application package and a written letter of consent, to the Department for a final decision, unless the local authority has been delegated the authority to approve exemption requests pursuant to N.J.A.C. 7:14A-22.23.

(d) If the sewerage authority or municipality denies the sewer ban exemption request, that decision cannot be appealed to the Department.

(e) After reviewing the application for a sewer connection ban exemption, the Department will notify the affected sewerage authority of the results of its review.

(f) Before making a decision, the Department may request that the applicant supply additional documentation. If the additional requested information is not supplied, the Department may deny the exemption request.

(g) The granting of an exemption by the Department and the affected sewerage authority does not relieve the applicant of the responsibility to comply with all other State and local requirements, including compliance with the appropriate water quality management plan requirements and obtaining a treatment works approval from the Department, if required.

7:14A-22.22 Sewer ban exemption criteria

(a) A sewer ban exemption may be granted for projects that meet any one of the following criteria:

1. If the proposed project will have a total projected flow of 600 gallons per day or less, calculated in accordance with the Department's flow criteria contained in N.J.A.C. 7:14A-23.3, and meets the following requirements:

i. The project will be constructed and/or operated on a tax lot which was in existence prior to the effective date of the ban, or on a tax lot which is the result of a one-time subdivision of a single lot into two lots, subsequent to the date of the ban. In this instance, a total of 600 gallons per day may be approved for the combination of both lots; and

ii. The proposed project does not require a sewer extension;

2. If the project will replace a building/facility, at the same location, which was in existence prior to the effective date of the sewer connection ban, and was or is currently connected to the treatment works subject to the ban, and the replacement facility will create flow equal to or less than the former facility, calculated in accordance with either one of the following:

i. The projected flow of the proposed building is less than or equal to the projected flow of the existing building based on the criteria contained in N.J.A.C. 7:14A-23.3; or

ii. The projected flow of the proposed facility, based on N.J.A.C. 7:14A-23.3, is equal to or less than the actual flow of the existing building, based upon water use records for the most recent 12 month period available;

3. If, in the Department's opinion, there exists a sufficient public need for the proposed project such as for health, safety, food or shelter, there are no reasonable alternatives including alternate sites, and the project meets any one of the following:

i. The project is publicly owned or operated, including, but not limited to, a long term health care facility which has received a certification of need from the New Jersey Department of Health, *[a school,]* ***a*** hospital, *[or]* ***a*** fire or police station ***or a public school or expansion of an existing New Jersey accredited private school for primary, secondary or higher education***; or

ii. At least 10 percent of the project's operating costs are provided by a public entity such as the State, county, municipality or an agency of such, the project is for the purpose of ensuring the public welfare by a "not-for-profit" organization. Such projects include a volunteer ambulance squad, school or facility for people with disabilities, an emergency shelter for persons in need, and other projects of a similar nature;

4. If the project is designed to house people with low or moderate incomes, and the affected sewerage authority or municipality is in compliance with either an administrative consent order with the Department, or a judicial consent order with the U.S. Environmental Protection Agency, or has obtained a treatment works approval and awarded a contract for construction of facilities necessary to eliminate the reasons for the sewer connection ban, and it can be demonstrated that the project meets any one of the following requirements:

i. The project is to be occupied exclusively by senior citizens with low incomes *[and meets all of the following conditions:

(1) The project]* ***, and*** will be owned or operated by a not-for-profit organization incorporated pursuant to N.J.S.A. 55:14I-1 et seq.; ***and either***

*[(2)]***(1)*** The project is to be built with funds provided pursuant to section 202 of the Federal Housing Act (12 U.S.C.A. 1701q)*[;]* and

[(3) The] ***the*** monthly rents will be subsidized by funds provided pursuant to section 8 of the U.S. Housing Act of 1937 (42 U.S.C.A. 1437); ***or***

(2) The project is to be built with funds provided pursuant to section 515 of Title V of the Housing Act of 1949 as amended (42 U.S.C.A. 1485), and the monthly rents will be subsidized by funds provided pursuant thereto;*

ii. The project is a rental housing project which meets all of the following conditions:

(1) The project will be located in a municipality which is, or has been at one time, designated as an Urban Aid Municipality as defined by the Department of Community Affairs;

(2) Twenty percent of the housing units will be occupied by low income households as defined pursuant to the Fair Housing Act (N.J.S.A. 52:27D-301 et seq., N.J.A.C. 5:92-1.3 and N.J.A.C. 5:14-1.3(a));

(3) The project is receiving, or has a commitment from the Department of Community Affairs to receive grants or loans through either the Urban Multi-Family Production Program, P.L. 1988, c.47, or the Neighborhood Preservation Balanced Housing Program implemented by the Department of Community Affairs at N.J.A.C. 5:14; and

(4) The housing project consists of buildings or structures to be occupied for residential, rental purposes only, and the units will remain rental for no less than 15 years if the project is receiving or has a commitment to receive a grant or loan through the New Jersey Urban Multi-Family Production Program, or for the amount of time set forth at N.J.A.C. 5:14 if the project is receiving or has a commitment to receive a grant or loan through the Neighborhood Preservation Balanced Housing Program;

iii. Occupancy of the proposed housing project is limited solely to households of low and moderate income as defined pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and the project meets all of the following conditions:

(1) The housing project consists of buildings or structures to be occupied for residential purposes only;

(2) The owner of the proposed housing project is, or will be, a public entity or a nonprofit corporation or association, including, but not limited to, a mutual housing sponsor as defined at N.J.S.A. 52:27D-59 et seq.; and

(3) The project is receiving, or has a commitment to receive public funding pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. in accordance with all applicable rules adopted by the Council of Affordable Housing at N.J.A.C. 5:91 and 5:92, the Department of Community Affairs at N.J.A.C. 5:14 and/or the New Jersey Housing and Mortgage Finance Agency at N.J.A.C. 5:80; or

iv. Occupancy of the proposed housing project is limited solely to households of low or moderate income, and the project has been approved by the Council on Affordable Housing (COAH) as part of a "Regional Contribution Agreement";

5. If an existing building or group of buildings constructed prior to the effective date of the sewer connection ban with lawfully constructed, individual subsurface sewage disposal systems is certified by the *[local health]* ***administrative*** authority and proven to the satisfaction of the Department to be currently creating a health hazard due to sewage overflow, contamination of the waters of the State, or other malfunction and a New Jersey professional engineer, geologist or soil scientist who is knowledgeable of soils and subsurface disposal system design certifies that the system cannot be reasonably rehabilitated and submits appropriate supporting documentation acceptable to the Department;

6. If the project is for a ground water remedial action which has been approved by the Department's Site Remediation Program and for which no other feasible discharge alternatives exist including on-site treatment and discharge to ground water, or discharge to an alternate surface water location. Exemptions will not be granted under this category for projects located in areas subject to a sewer connection ban due to inadequate conveyance capacity or in situations where the additional discharge will create bypasses or other health hazards at treatment plants that have reached their design capacity, unless adequate provisions for conveyance are included in the project scope;

7. If a project is for a not-for-profit organization that serves a fundamental public need such as providing food/shelter and other

essential services regardless of race, creed or religion, to the needy or people with disabilities, meets the criteria for a tax exempt charitable organization under section 501(c)(3) of the Internal Revenue Code, and no alternative to the proposal exists, then the applicant may apply for a sewer ban exemption. The above conditions in this paragraph, by themselves, are not adequate to entitle the applicant to an exemption and the Department shall rule on applications based on the amount of anticipated flow, the progress the affected sewerage authority has made toward resolving the reason for the ban imposition, and the feasibility of alternative discharge methods or alternate facility sites.

8. If the municipality, prior to November 3, 1986, has issued a building permit, or preliminary or final subdivision approval, provided that construction of improvements has taken place, the remaining construction covered by such permit or approval may be eligible for an exemption, providing the applicant shows that, in good faith reliance upon the permit or approval, substantial expenditures have been made by the applicant for physical improvements to the property prior to the effective date of the ban.

i. The payment of taxes, the purchase price, expenditures for preparation of engineering and architectural plans and for legal fees, and other costs not expended for physical improvements to the land shall be ineligible for consideration in determination of "substantial expenditures."

ii. All claims for eligible expenditures shall be accompanied by certified true copies of contracts, receipts or invoices. An unverified list of expenses is not acceptable for establishing expenditures. In addition, the applicant shall submit an estimate of the total project cost with a certification that the estimate is true and accurate.

iii. For the purposes of this paragraph, "substantial expenditures" shall mean those eligible costs in excess of:

(1) 25 percent of the cost of those projects whose total cost is equal to or less than $100,000;

(2) $25,000 plus 10 percent of the costs in excess of $100,000 for those projects whose total cost is less than $10,000,000 but more than $100,000; or

(3) $1,015,000 plus five percent of the project costs in excess of $10,000,000 for those projects whose total cost exceeds this amount.

7:14A-22.23 Delegation

(a) Except as stated in (g) below, the Department may delegate its authority to approve or disapprove sewer ban exemption applications, to a municipality or sewerage authority in accordance with the provisions of this subchapter.

(b) Any municipality or sewerage authority, which is the owner of the affected sewerage facilities, may make an application to the Department to be considered as a delegated agency for the purpose of this subchapter. To be considered for delegation by the Department, the sewerage authority or municipality shall satisfy all of the following:

1. The sewerage authority or municipality shall demonstrate that it is capable of effectively implementing the rules, regulations and standards adopted by the Department for administration of the sewer ban exemption program; and

2. The sewerage authority or municipality shall have sufficient resources, including qualified staff to implement the delegated ban exemption program.

(c) If the sewer ban exemption program or portion thereof is delegated by the Department, the affected sewerage authority or municipality shall comply with the following:

1. The delegated agency shall adopt an ordinance or resolution containing all required provisions of the rules, and include provisions for enforcement and administration of the program.

2. The delegated ***sewerage*** authority ***or municipality*** shall submit a quarterly report with a list of approvals or denials of projects, including the project scope and location, a certification by the appropriate official that all projects granted approval meet the requirements of this subchapter. If no actions were taken during the quarter, a statement to this effect shall be submitted to the Department.

3. The delegated ***sewerage*** authority ***or municipality*** shall execute a binding memorandum of understanding with the Department specifying, at a minimum, each party's authority and obligations, and the specific review standards, monitoring and record keeping requirements for the delegated agency.

(d) The Department shall review the delegation arrangement and its effectiveness at least every three years from the date of initial approval, and reserves the right to rescind any previously issued delegation of authority for any valid reason.

(e) In the event that the Department amends any of the rules in this subchapter, the delegated agency shall implement the amended rules as of their effective date.

(f) Delegation pursuant to this subchapter shall not waive the Department's right to monitor and inspect any documents or project sites or to seek fines or penalties pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(g) Sewer ban exemption applications submitted pursuant to N.J.A.C. 7:14A-22.22(a)3, (a)6 and (a)7 (public need, ground water remediation and not-for-profit organization projects) shall not be delegated.

(h) Any ***sewerage*** authority or municipality accepting delegation pursuant to these provisions shall review and approve or deny projects in accordance with the provisions of this subchapter and applicable provisions contained in N.J.A.C. 7:14A-23.

7:14A-22.24 Requests for adjudicatory hearings

(a) ***Subject to the limitation on third-party hearing rights specified in (e) below,*** *[Any]* ***any*** interested person who considers himself or herself aggrieved by the approval or denial of a treatment works approval may request an adjudicatory hearing in accordance with the procedures specified in N.J.A.C. 7:1C-1.9 of the "Rules and Regulations Governing 90 Day Construction Permits".

(b) ***Subject to the limitation on third-party hearing rights specified in (e) below,*** *[Any]* ***any*** interested person aggrieved by the approval or denial of a sewer ban exemption request by the Department may request an adjudicatory hearing within 30 days of receipt of the Department's denial. Adjudicatory hearing requests shall be in writing and shall be accompanied by:

1. A copy of the approval or denial and the same documents that were submitted with the application;

2. A statement specifying which of the Department's reasons for denial are contested; and

3. Additional statements describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

(c) Requests for hearing shall be sent to the Department's Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, CN-402, Trenton, New Jersey 08625-0402.

(d) All hearings pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(e) Nothing in this section shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14B-3.1 through 3.3 (P.L. 1993, c.359).

SUBCHAPTER 23. TECHNICAL REQUIREMENTS FOR TREATMENT WORKS APPROVAL APPLICATIONS

7:14A-23.1 Purpose

The purpose of this subchapter is to establish technical requirements for the approval of the design, construction and operation of domestic and industrial treatment works so that wastes are properly collected, conveyed and treated before discharge to the waters of the State.

7:14A-23.2 Scope

(a) These rules apply to individuals, sewerage authorities, municipalities, governmental agencies, private firms and all persons who propose to design, construct and/or operate any treatment works for the collection, conveyance or treatment of domestic or industrial wastes in the State of New Jersey, and for which a treatment works approval from the Department is required pursuant to N.J.A.C. 7:14A-22.

(b) These rules establish specific criteria and standards for the construction and operation of treatment works. In promulgating these requirements, the Department recognizes that, at times, deviations from these requirements may be necessary to address specific circumstances. The Department will consider deviations from these design criteria provided that appropriate documentation addressing the need for deviation and justification for the proposed design is submitted with the treatment works approval applications and includes a signed and sealed statement from the design engineer attesting to the treatment works ability to meet the purposes intended.

(c) These rules do not specify any technical standards explicitly for the construction of industrial treatment works due to the high degree of variability of the wastestreams, and treatment process options available to deal with the various pollutants that may be present at an industrial facility. Because of this variability, it would not be prudent to impose specific technical standards on facilities where such standards may not be appropriate. It is the responsibility of the design engineer to design industrial treatment works to meet all applicable Federal, State or local limitations, conditions, and/or requirements, including, but not limited to, the requirements of a facility's NJPDES or NPDES permit. When appropriate, the general technical standards specified in this subchapter for domestic waste treatment and conveyance systems may be used.

7:14A-23.3 Projected flow criteria

(a) The values specified below are to be used in computing the projected flow to wastewater conveyance and treatment facilities and when making an application for a treatment works approval pursuant to N.J.A.C. 7:14A-22. The specific measurement unit listed for each category shall be used as the basis for the projected flow. No additional provisions for inflow and infiltration are required. For the purposes of design only, other values, proposed by the design engineer, through actual water usage data, may be accepted at the Department's discretion, with an appropriate safety factor. However, all determination concerning whether or not any specific project requires a treatment works approval and/or sewer ban exemption shall be based upon the projected flow criteria established below. ***These criteria are not mandated to be used by sewerage authorities as a basis for establishing local user fees and/or connection fees.***

Type of Establishment	Measurement Unit	Gallons Per Day
*[Residential Dwellings		
Single Family	Per Dwelling	300
Duplex units, townhouses,	1 Bedroom	150
condominiums, apartments	2 Bedrooms	225
	3 or more Bedrooms	300]*
***Residential Dwellings**		
(single family home,		
duplex units, townhouses,		
condominiums, apartments)		
1 bedroom unit	**Per Dwelling**	**150**
2 bedroom unit	**Per Dwelling**	**225**
3 bedroom unit or larger	**Per Dwelling**	**300***
Transit dwelling units		
Hotels	Bedroom	75
Lodging houses and tourist homes	Bedroom	60
Motels and tourist cabins	Bedroom	60
Boarding houses (max. permitted occupancy)	Boarder	50
Camps		
Campground/mobile rec. vehicle/tent	Site	100
Parked mobile trailer site	Site	200
Children's camps	Bed	50
Labor camps	Bed	40
Day camps—no meals	Person	15
Restaurants (including washrooms and turnover)		
Average restaurant	Seat	35
Bar/cocktail lounges	Seat	20
Fast food restaurant	Seat	15
24 hour service restaurant	Seat	50
Curb service/drive-in restaurant	car space	50
Clubs		
Residential	Member	75
Nonresidential	Member	35
Racquet club	(per court per hour)	80
Bathhouse with shower	Person	25
Bathhouse without shower	Person	10
Institutions (includes staff)		
Hospitals	Bed	175
Other institutions	Bed	125
Schools (includes staff)		
No shower or cafeteria	Student	10
With cafeteria	Student	15
With cafeteria and showers	Student	20
With cafeteria, showers and laboratories	Student	25
Boarding	Student	75

Automobile service stations		
Service bays	per filling position	125
Mini-market	per bay	50
	Sq. Ft.	*[0.125]* ***0.100***
Miscellaneous		
Office buildings (gross area)	Sq. Ft.	*[0.125]* ***0.100***
Stores and shopping centers (gross area)	Sq. Ft.	*[0.125]* ***0.100***
Factories/warehouses (add process wastewater)	Employee	25
with showers, (add process wastewater)	Employee	40
Laundromats	Per machine	580
Bowling alleys	Alley	200
Picnic Parks (restrooms only)	Person	10
Picnic Parks with showers	Person	15
Fairgrounds (based upon average attendance)	Person	5
Assembly halls	Seat	3
Airports (based on passenger use)	Passenger	3
Churches (worship area only)	Seat	3
Theater (indoor)	Seat	3
Dinner theater	Seat	20
Catering/Banquet Hall	Person	20
Sports stadium	Seat	3
Visitor Center	Visitor	5

(b) Flow for facilities that have combined uses shall be determined by the summation of all appropriate projected flow values for each use.

(c) The Department recognizes that the table in (a) above may not cover all establishments and facilities, and in particular facilities that require an industrial treatment works approval. In the event that a facility is not covered, the applicant shall propose the projected flow based upon operation of similar facilities or best professional judgment. The Department reserves the right to accept, modify or deny the proposed flow values.

7:14A-23.4 Plans and specifications submitted to the Department with treatment works approval applications

(a) Maps, drawings, plans and profiles submitted as part of a treatment works approval application shall conform to the following:

1. Plans shall be drawn to standard scale and show the entire area of the project, including a general site plan;

2. The name of the New Jersey licensed professional engineer responsible for the design and his or her signature and embossed seal shall appear in the title block of each sheet of the submitted plans;

3. In the event that there is more than one sheet of plans, all shall be bound together and an index provided;

4. Plans shall not exceed 30 inches by 42 inches in size;

5. Streams and wetland areas, if present, shall be clearly indicated;

6. Plans shall show municipal boundaries, property lines, easements and all existing and proposed streets, including the existing and proposed surface elevations at all street intersections where sewer lines are proposed; and

7. All existing and proposed structures, sanitary sewers and combined sewers, both above and below ground, shall be shown and clearly labeled.

(b) Symbols used on submitted drawings shall conform to the following:

1. Existing and future sewers shall be shown by standard conventions;

2. All topographical symbols and conventions used shall conform to those of the United States Geological Survey; and

3. Elevations shown shall meet the following requirements:

i. Elevations of the surfaces of streets shall be placed outside the street lines, opposite their respective locations;

ii. Elevations of sewer inverts shall be shown at intersections, ends of lines, and wherever a change in sewer grade occurs;

iii. The elevation of sewers shall be written close to the point to which they refer, parallel with the sewer lines and between the street lines;

iv. The elevations of surfaces shall be drawn to the nearest 0.1 foot and those of the sewer inverts to the nearest 0.01 foot; and

v. All elevations shall be referenced to the North American Vertical Datum of 1988.

(c) The horizontal distances and stationing between manholes, grades in percent and sewer sizes and materials shall be shown for all proposed sewer lines.

(d) All sewer appurtenances, such as manholes, siphons and pumping stations shall be designated on the plans by appropriate symbols and referenced by a legend.

(e) Plans labeled preliminary are not acceptable for review unless a note is added to each sheet submitted stating that the plans are final with respect to sanitary sewer design.

(f) Plans submitted for treatment works that are already constructed shall show the "as-built" conditions (as determined through field investigation) and the title block of each sheet shall include the term "as-built."

(g) Profiles and construction details shall meet the following requirements:

1. Profiles shall indicate all manholes, pumping stations, sanitary, combined or industrial sewer lines, concrete encasements, sleeves, and any significant crossings such as storm sewers, potable water lines or utility lines.

2. In the case of stream crossings, elevations of stream beds, normal flow lines and the type of sewer pipe with the length of concrete encasement, as required by N.J.A.C. 7:14A-23.6(b), shall be indicated.

3. The size and gradients of sewers, surface elevations and sewer inverts shall be shown at or between each manhole.

4. Profiles of gravity and forced sewer lines shall be drawn to standard scale with all symbols indicated in the legend.

5. Detail drawings of all sewer appurtenances, such as manholes, drop manholes, inspection chambers, siphons, pumping stations, force main connections into manholes and other related items shall accompany the general sewer system plans.

6. For sewage treatment plants, in addition to all other requirements, the plans shall contain the following:

i. A general plan showing site boundaries including areas reserved for future expansions;

ii. All buildings or building lots within 500 feet of the plant property;

iii. A detail plan of the various units and structures which comprise the plant; and

iv. Detail plans showing a flow diagram, and longitudinal and transverse sections sufficient to explain the construction of each unit including hydraulic gradient.

(h) Specifications for the construction of treatment works shall be directly applicable to the engineering (including hydraulic) features of the proposed project and shall meet the following minimum requirements:

1. Detailed information shall be included on the construction methods and materials proposed for use so as to provide the construction contractor with the specific details necessary to satisfy the project design; and

2. Specifications shall address the following:

i. The quality of materials and workmanship;

ii. The operating characteristics and equipment rating;

iii. Allowable infiltration/exfiltration and the testing procedures to be followed;

iv. Requirements for all mechanical and electrical equipment necessary for the treatment works; and

v. A program for maintaining the operation of existing sewerage systems during construction.

7:14A-23.5 Engineering design reports to be submitted to the Department with treatment works approval applications

(a) Engineering reports required to be submitted pursuant to N.J.A.C. 7:14A-22.8 for domestic treatment systems shall, at a minimum, include:

1. A complete description of the selected waste treatment system;

2. For the modification of an existing system which has not previously been granted a treatment works approval, the capacities of the existing units and a brief description of the operation of each, and a statement concerning which units are existing and which are proposed at the time of the application. If there exists a previously issued treatment works approval for the subject facility, the date of issuance and the TWA number shall be provided;

3. The basis and computations for the projected wastewater flow;

4. Hydraulic profiles of the flow of wastewater through the system;

5. A unit by unit mass balance for all discharge parameters;

6. The ultimate disposal location of all effluent;

7. The basis and computations for average and peak flow requirements;

8. The expected composition of the influent and effluent from the treatment system including the average, maximum and minimum values of the pollutant parameters specified in the facility's NJPDES permit;

9. An evaluation of the quantity and quality of any and all residuals generated and projected to be generated, including a hydraulic profile and unit by unit mass balance for the flow of residuals through the system;

10. Documentation of adequate storage and handling facilities for residuals;

11. Provisions for the ultimate management of residuals pursuant to the State Solid Waste Management Plan and/or the Statewide Sludge Management Plan, as applicable. For proposed upgrading or expansion of domestic treatment works, sludge management planning forms may be submitted pursuant to the Statewide Sludge Management Plan, Appendix K, to satisfy this requirement;

12. Details of flow monitoring and control, alarm systems, auxiliary power, storage facilities for treatment chemicals and wastes, and a plan for bypassing units during construction or maintenance; and

13. A signed and sealed statement from the New Jersey licensed professional engineer who designed the treatment works attesting to the proposed treatment works' ability, as designed, to meet the requirements of this subchapter and to attain all applicable discharge limits.

(b) For treatment works applications involving the temporary or permanent use of holding tanks, the engineering reports required to be submitted by N.J.A.C. 7:14A-22.13 and 22.8 shall include:

1. A description of the high water alarm to be provided to alert the responsible persons that the holding tank has reached 75 percent of its capacity and which will allow sufficient time to take appropriate measures to prevent overflows;

2. A description of provisions for aeration at a rate of two cubic feet per minute per 1,000 gallons to prevent septic conditions and solids settling;

3. Identification of a source of washdown water for routine maintenance and emergency situations, adequately protected by a backflow prevention device;

4. A description of the holding tank area, including adequate measures to protect it from vandalism and safeguards for public health and safety;

5. Engineering drawings containing construction details for all system components;

6. Specifications including construction practices and operation and maintenance procedures; and

7. Sizing of holding tanks which, at a minimum, provides two days of waste storage, as determined in accordance with the projected flow requirements in N.J.A.C. 7:14A-23.3.

(c) Engineering reports required to be submitted for projects involving the use of equalization tanks within a collection system, pursuant to N.J.A.C. 7:14A-22.15, shall include the following:

1. A description of the method for placing the tank into operation and the timing and procedure for releasing the effluent back into the collection system, including quantity of flow and duration held;

2. Average and peak flow requirements;

3. A description of the high water alarm to be provided to alert the responsible persons that the equalization tank has reached 75 percent of its capacity and which allows sufficient time to take appropriate measures to prevent overflows;

4. A description of the equalization tank area, including adequate measures to protect it from vandalism and safeguards for public health and safety such as covers, overflow protection, fencing, etc.;

5. The engineering drawings containing construction details for all system components; and

6. The specifications including construction practices and operation and maintenance procedures.

(d) Engineering reports required to be submitted pursuant to N.J.A.C. 7:14A-22.14 and 22.8, for flow diversion, shall include, but are not limited to, the following:

1. The existing and anticipated average and peak flow events within the collection system;

2. The ultimate disposal location of all effluent; and

3. A report outlining the procedures to be used in the hauling/diversion operation, including, but not limited to, the location at which the wastewater will be withdrawn, the frequency and time of withdrawal, and the effect that the procedure may have upon the treatment capabilities of both treatment facilities.

(e) Engineering reports required to be submitted pursuant to N.J.A.C. 7:14A-22.8, for industrial treatment works approval applications shall include, but are not limited to:

1. A complete description of waste treatment system;

2. A mass balance and, if temperature change across any unit will exceed 10 degrees Celsius, a heat balance;

3. The ultimate destination of all wastewater, sludge and residuals;

4. Average and peak flow requirements and rationale for design;

5. A listing of all pollutants, including regular and intermittent flows, and expected composition that may enter the system;

6. The composition and quality of all sludge generated, name and registration number of the sludge hauler, frequency and parameters for periodic analysis;

7. Documentation of adequate storage and handling facilities for residuals;

8. Provisions for the ultimate management of residuals pursuant to the State Solid Waste Management Plan and/or the Statewide Sludge Management Plan, as applicable;

9. The expected composition of effluent from the treatment system;

10. A listing of any standards, ordinances, permits, court orders, contracts, etc. which regulate the discharge;

11. An evaluation of the capability of the system to meet the most stringent applicable effluent limitation for each pollutant parameter

from the NJPDES permit or other authorizations such as an administrative or judicial consent order;

12. Potential spills from within the industrial facility which may enter the treatment system and provisions for treatment and containment;

13. Provisions for metering and monitoring of the effluent;

14. A discussion of: instrumentation, reliability of system components, storage and handling facilities, provisions for treatment during construction, safety features, laboratory facilities and analytical capabilities; and

15. A plan for bypassing units during maintenance or down time.

7:14A-23.6 Gravity sewer design

(a) Proposed sewerage systems shall connect into downstream sewer lines and pump stations that have adequate conveyance capacity.

(b) Gravity sanitary sewers, including outfalls, shall be designed to carry at least twice the estimated average projected flow when flowing half full. In the case of large interceptor sewer systems, consideration may be given to modified designs. In addition, sanitary sewer conveyance systems shall meet the following requirements:

1. Materials used in sewer construction shall be acceptable to the Department for the purposes and conditions they are intended to serve;

2. Sewers shall be designed with the following minimum hydraulic slopes (grades producing velocities of greater than 10 feet per second are not recommended unless supported by adequate justification acceptable to the Department):

PVC Pipe (Polyvinylchloride)

Pipe diameter (based on Kutter's or Manning's formula with n = 0.01)	Fall in feet per 100 feet of sewer
8 inches	0.30
10 inches	0.20
12 inches	0.15
***14 inches**	**0.12***
15 inches	0.10
***16 inches**	**0.09**
18 inches	**0.075**
20 inches	**0.065**
21 inches	**0.06**
24 inches	**0.05**
27 inches	**0.042**
30 inches	**0.035**
36 inches	**0.028***

All Other Pipe Material (based on Kutter's or Manning's formula with n = 0.013)

Pipe Diameter	Fall in feet per 100 feet of sewer
8 inches	0.40
10 inches	0.29
12 inches	0.22
14 inches	0.17
15 inches	0.16
16 inches	0.14
18 inches	0.12
20 inches	0.10
21 inches	0.095
24 inches	0.080
27 inches	0.067
30 inches	0.058
36 inches	0.046

i. When grades or sizes less than those specified in this paragraph are proposed, justification for the use of such grades shall be provided with the treatment works approval application.

ii. The minimum diameter of sewer extensions shall be eight inches, however, consideration will be given to the use of smaller diameter sewers for lateral connections;

3. Sewers crossing streams and located within 10 feet of the stream embankment, or where site conditions so indicate, shall be constructed of steel, reinforced concrete, *[cast]* ***ductile*** iron or other suitable material;

4. Sewers conveying sanitary flow, combined sanitary and stormwater flow, or industrial flow shall be separated from water mains by a distance of at least 10 feet horizontally. If such lateral separation is not possible, the pipes shall be in separate trenches with the sewer at least 18 inches below the bottom of the water main, or such other separation as approved by the Department;

i. Where appropriate separation from a water main is not possible, the sewer shall be encased in concrete, or constructed of *[ductible]* ***ductile*** iron pipe using mechancial or slip-on joints for a distance of at least 10 feet on either side of the crossing. In addition, one full length of sewer pipe should be located so both joints will be as far from the water line as possible. Where a water main crosses under a sewer, adequate structural support for the sewer shall be provided. The Department may also require additional structural support for storm sewers crossing over sewer lines;

5. Any sewer within 100 feet of a water supply well or a below-grade reservoir shall be constructed of steel, reinforced concrete, ductile iron or other suitable material, shall be completely watertight and shall be tested for watertightness after installation;

6. The construction of sewer lines through storm sewer pipes or manholes will not be approved;

7. Sewer lines, including force mains and laterals, shall be constructed at least three feet below the proposed grade (as measured from the top of the pipe to the grade elevation);

8. Sewer pipes, including force mains and laterals, shall be sized to adequately convey the projected contributory flow in accordance with this subchapter. In general, sewer lines that are larger than hydraulically necessary to carry the projected flow and for which the larger size is proposed only for the purpose of achieving the minimum slope requirements specified in this section are not permitted;

9. Sewer lines shall not be approved for the use of storage or detention of sewage unless they are designed as an integral part of an existing combined sewerage system (sanitary/storm) where in-line storage is being proposed as a corrective measure to prevent the discharge of untreated wastewater from the treatment works;

10. New sewerage systems or extensions shall be designed as separate systems, in which all water from roofs, cellars, streets and other areas is excluded; except that separate connections to an existing combined system may be approved when it is demonstrated to the satisfaction of the Department that no other alternative is feasible. In addition, the Department may permit, on a case-by-case basis, the introduction of contaminated stormwater from containment areas into sanitary sewers; *[and]*

11. To minimize the development of septic conditions, the Department may require special operational and/or maintenance procedures for treatment works if the initial contributory flows to the treatment works will be substantially below the design capacity*[.]* ***; and***

12. When a smaller sewer joins a larger one, the invert of the larger sewer should be lowered sufficiently, or the smaller pipe raised sufficiently, to maintain the same energy gradient. An approximate method for securing these results is to place the 0.8 depth point of both sewers at the same elevation.

(c) For sewers other than circular in cross section, the submitted data shall include the geometrical shape, dimensions and hydraulic characteristics of the proposed sewer.

(d) Approval for curved sewers will be considered by the Department only under the following circumstances:

1. Areas where curved streets comprise the general layout, or the use of curved sewers would permit substantial savings in cost to avoid deep cuts due to rocks or obstructions;

2. The minimum diameter of the sewer is eight inches and the minimum radius of curvature is 100 feet; and

3. Manhole spacing does not exceed 300 feet.

(e) All sanitary sewers, manholes, and cleanouts shall be tested by an infiltration, exfiltration or pressure test after being flushed

and before being placed into use. The maximum rate of infiltration/exfiltration shall not exceed 100 gallons per inch diameter per mile per day.

7:14A-23.7 Inverted siphons

(a) Inverted siphons shall be constructed of *[cast]* ***ductile*** iron or other approved material and shall not have less than two barrels.

(b) Provisions shall be made for rodding and flushing.

(c) A velocity of 3.0 feet per second shall be maintained and flow control gates in chambers shall be provided.

7:14A-23.8 Manholes

(a) Manholes shall be provided at the ends of each sewer line and at intersections and at all changes in grade, size or alignment.

(b) Distances between manholes shall not exceed 400 feet for sewers 18 inches or less in diameter and 500 feet for sewers greater than 18 inches in diameter.

(c) A drop pipe shall be provided for sewers entering manholes above the manhole invert whenever the difference in elevation is two feet or more.

(d) No manholes or connections to a sanitary sewer system are permitted within 100 feet of a public water supply well or a below-grade reservoir.

(e) Adequate provisions shall be made for ventilation.

(f) Watertight manhole covers are required for all street elevations less than 10 feet above the North American Vertical Datum of 1988 and wherever the top of a manhole may be flooded by street runoff or high water. These manholes shall be properly protected, of watertight construction, and shall be tested for watertightness after installation.

(g) The minimum diameter of manholes is 48 inches; larger diameters are preferable for large diameter sewers. A minimum access diameter of 22 inches shall be provided.

7:14A-23.9 Outfalls

(a) Ocean outfalls from municipal wastewater treatment works shall extend at least 1,000 feet in length beyond the mean low water mark. Manholes are required on the shore end of all gravity outfalls.

(b) Outfalls, other than those to the ocean, shall be submerged and so located as to accomplish effective dispersion of flow.

7:14A-23.10 Wastewater pumping stations

(a) Raw sewage pumping stations shall conform to the following requirements:

1. Sewage shall be screened before pumping. Comminutors may be approved in lieu of screens, however, the requirement for screening raw sewage may be waived, at the Department's discretion, for individual, privately owned pumping stations;

2. Pumping stations shall provide for stage pumping, preferably by the use of variable speed pumps, so as to eliminate, as far as practical, surges of flow to or through the treatment plants;

3. Pump stations shall be provided with two power sources, one as a back-up;

4. Automatic sound alarms, operating independently of the main power system, shall be installed to give warning of high water, power failure, or breakdown. Such alarm systems shall *[extend by wire]* ***be telemetered*** to a police station or other staffed location so that competent emergency assistance can be obtained on a 24 hour basis;

5. Pumping stations shall be protected against flooding and adequate provision shall be made for access to the stations during storm events;

6. Adequate light and ventilation shall be provided at all pumping stations;

i. Where operational or maintenance duties are required in enclosed areas or pits, forced ventilation by appropriate means shall be provided with sufficient capacity to induce at least 12 air changes per hour;

ii. Appropriate equipment to guard against explosion shall be utilized; and

7. Adequate fresh-water facilities shall be provided to permit routine washdown and cleaning operations at all pumping stations;

i. Where a domestic water service connection is provided to a pumping station, the water supply shall be adequately protected by a backflow prevention device;

ii. Connections between potable water lines and wastewater pumps or sewers is not permitted.

(b) At least two pumps, each designed to handle peak flows equivalent to 2.5 times the average daily flow (using the Department's projected flow criteria specified in N.J.A.C. 7:14A-23.3) shall be provided. If more than two pumps are provided their capacities shall be such that, upon failure of the largest pump, the remaining pumps can handle peak flows.

(c) When ejectors are provided as the method of raising sewage, at least two compressor units (one as a standby) are required and shall be so interconnected that the standby unit will commence operation in the event of failure of the one in use.

(d) Pumps installed in dry wells shall operate under a positive suction head ***unless specifically designed and manufactured with appropriate features to allow for proper operation otherwise***.

(e) A means of flow measurement shall be provided in municipally owned, regional pumping stations.

(f) Shut-off valves shall be provided on suction and discharge piping, which shall be flanged or otherwise removable, and check valves shall be provided on all discharge lines. Shut-off valves shall be accessible during all operating conditions.

(g) Force main velocities of less than two feet/second at normal pumping rates will not be approved. Properly designed air release valves shall be provided on the high points of the force main and cleanouts *[shall be provided on low points of the force main]* ***are recommended on low points of the force main in cases where necessary for operational and maintenance reasons***.

(h) The use of low pressure force mains is permitted in only those circumstances when all other means of sewage conveyance have been explored and it has been demonstrated to the satisfaction of the Department that the use of low pressure force mains is the most prudent alternative available.

7:14A-23.11 Submersible wastewater pumps

(a) In addition to the requirements specified at N.J.A.C 7:14A-23.10, submersible wastewater pumps shall meet the following additional requirements:

1. Submersible pumps and motors shall be designed specifically for raw sewage use, including total submersion during a portion of each pumping cycle;

2. Submersible pumps shall be readily removable and replaceable without dewatering the wet well or disconnecting any piping in the wet well;

3. The motor control center shall be located outside the wet well and be protected by a conduit seal or other appropriate measures meeting the requirements of the National Electrical Code, to prevent the atmosphere of the wet well from gaining access to the control center. The seal shall be so located that the motor may be removed and electrically disconnected without disturbing the seal; and

4. Winch and guide rails shall be provided to facilitate pump removal.

(b) An effective method to detect shaft seal failure or potential seal failure shall be provided, and the motor shall be of squirrel-cage type design without brushes or other arc-producing mechanisms.

7:14A-23.12 Dry wells and wet wells

(a) The construction of dry wells and wet wells for sewage pumping stations shall meet the following requirements:

1. Dry and wet wells shall be completely separated and have adequate ventilation and drainage;

2. Dry wells and wet wells shall have a means of entrance and exit, preferably by a stairway;

3. Dry wells shall have sufficient accessible space for the repair and removal of pumps;

4. The detention time of a wet well shall not exceed ten minutes when the flow is at the average dry weather rate. The detention time is calculated by dividing the volume of the wet well (volume

between the pump on and the pump off switch levels) by the projected flow for the pumping station;

i. Wet well detention times greater than 10 minutes may be approved by the Department for small pump stations that cannot meet this requirement due to the minimum available size of the wet well and an estimated low volume daily wastewater flow. If longer detention times are proposed, additional measures necessary to prevent the development of septic conditions may be required;

ii. To minimize the development of septic conditions during the early phases of pump station operation, the Department may require special operational and/or maintenance procedures particularly when the initial contributory flows will be substantially below the approved design flow;

5. The base of pump station wet wells shall slope at least 45 degrees toward the pump suctions to prevent solids accumulation; and

6. A sump pump or other effective method to drain accumulated water from the dry well to the wet well and to prevent sewage from entering the valve pit during surcharged wet weather conditions shall be provided.

7:14A-23.13 Wastewater treatment plants

(a) Adequate treatment shall be provided for all wastewater before discharge into the waters of the State.

1. The minimum level of sewage treatment shall be as specified by the Department in the applicable NJPDES permit.

2. The design of the proposed treatment system shall be adequate to meet all NPDES or NJPDES permit requirements, and shall take into consideration the topography of the plant site, receiving waters, operating costs and effects of any industrial waste component.

(b) Treatment plants shall be designed to produce an effluent which will consistently meet the limitations specified in the applicable NPDES or NJPDES permit and be conducive to the attainment and maintenance of such water quality criteria for the various classifications of surface and ground waters of the State.

(c) Siting requirements for wastewater treatment plants are as follows:

1. Treatment plants shall be located as far from existing or future residential structures as practical;

2. To the extent possible, the treatment plant units shall not be situated within 500 feet of the plant property lines. If this is not possible the Department may impose additional requirements concerning plant design, location, landscaping and operation;

3. Treatment plants shall be raised above the flood elevation level, or adequately flood proofed. For the purposes of this requirement, the flood elevation level is considered to be one foot above the 100 year flood elevation for non-delineated waterways and up to the Flood Hazard Design Flood Elevation for delineated waterways (see N.J.A.C. 7:13); and

4. The plant layout shall be designed for ease of operation, safety and accessibility.

(d) A suitable operating building shall be provided meeting the following requirements:

1. The building shall be heated, ventilated and lighted and contain an office, workshop, laboratory, storage space, drinking water, toilet, lavatory, and shower facilities;

2. An adequate supply of water under pressure shall be installed. Any domestic service connection shall be protected by an approved backflow prevention device acceptable to the Department; and

3. Taps supplying non-potable water shall be clearly labeled "Unfit for Drinking."

(e) Treatment plant sites shall be appropriately landscaped and graded.

(f) Drains shall be installed and soil stabilized to prevent washing into tanks, basins or filters and to prevent erosion.

(g) The following safety features shall be incorporated into the treatment plant design:

1. At a minimum, railings, guards, and handrails shall be provided;

2. Flame traps at all gas outlets, a blower and hose, and adequate ventilation of enclosures shall be provided;

3. Non-slip treads on stairs shall be provided;

4. Warning signs shall be posted in hazardous locations;

5. A readily accessible first aid kit shall be provided; and

6. The plant site shall be secure and enclosed by a fence with lockable gates.

(h) Treatment plants shall be provided with an adequate auxiliary source of power that is capable of maintaining the necessary plant functions to assure compliance with the facility's NJPDES permit.

1. When a plant is not staffed on a 24-hour basis, the auxiliary source of power shall have the ability to be automatically activated.

2. Emergency generators shall be tested regularly and maintained in proper working order at all times.

(i) An alarm system operating on an independent source of power shall be provided for all treatment plants when 24-hour supervision is not provided.

1. The alarm system shall extend to a police station or other location where competent 24-hour assistance can be obtained in an emergency.

(j) All electrical equipment work shall comply with the Fire Underwriters' regulations and with the National Electric Code.

(k) Adequate means shall be provided for dewatering all treatment units for inspection and maintenance while still maintaining NJPDES permit compliance.

(l) Piping located under plant units shall be encased in concrete.

(m) Plant designs which propose the use of bypass lines that would circumvent treatment units and allow untreated or partially treated wastewater to be discharged will not be approved by the Department. The need for such bypassing is to be eliminated by providing adequate auxiliary treatment facilities.

(n) Treatment units should be designed for the population and wastewater flow that is anticipated 10 years or more after the completion of construction.

(o) Unless accurate data justifying a lesser design are submitted and approved by the Department, the hydraulic design of piping, channels, flumes and pumps shall be based on not less than 250 percent of projected flow, and treatment units shall be designed so as to provide adequate treatment to meet all NJPDES permit effluent conditions.

1. Where recirculation is employed, the resulting additional flow from this source shall be considered in the design.

2. Organic loading shall be based upon a minimum five-day B.O.D. content of 250 mg/l for domestic sewage, to which B.O.D. values for industrial wastes shall be added. For existing sewer systems, higher B.O.D. values may be used if an analyses based on composite samplings indicate a higher actual B.O.D.

3. For systems designed to treat wastewater from proposed or recently constructed buildings which have been equipped with water conservation devices or designed to be served by wastewater treatment and recycling systems, appropriate adjustments for higher B.O.D. values and reduced volume of wastewater should be considered in the treatment unit design.

(p) Flow equalization at the treatment facility is suggested in cases where the ratio of peak (maximum instantaneous) to average daily flow exceeds 2.5.

7:14A-23.14 Measuring, recording, and sampling requirements at treatment plants

(a) At treatment plants, a means for continuous measuring, indicating and recording of the sewage flows shall be installed.

(b) Meters shall be installed in such a manner and location so as to provide a true indication of actual flow.

(c) All wastewater treatment plant designs shall include provisions in terms of number and location for sampling and monitoring as required by its NJPDES permits, Sludge Quality Assurance Reports, Bioassay, and Local Pretreatment Discharge Limits.

1. At a minimum, all wastewater treatment facilities shall be designed and constructed to provide for the collection of representative samples as follows:

i. Influent quality before introduction of recycled waste which may be incorporated within the wastewater facility's processes (for example, wastewater quality prior to introduction of supernatant from sludge thickening or digestion and prior to the introduction of scrubber water from sludge incineration etc.);

ii. Effluent quality after the last treatment plant unit at the point of discharge;

iii. Sludge at a location meeting the requirements established under the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4. In addition, the provisions for sludge sampling shall meet the following minimum requirements:

(1) Sludge sampling points shall be established at a location which assures homogeneity and best represents the physical and chemical quality of all sludge which is removed from the treatment works for ultimate management;

(2) Sludge sampling points shall provide for sample collection at the frequency required under the Sludge Quality Assurance Regulations; and

(3) Sampling equipment shall be constructed of materials which will not contaminate or react with the sludge (for example, galvanized or zinc coated items may not be used); and

iv. Wastewater quality after every treatment unit.

2. In specific cases, the Department may require the installation of additional sampling points and equipment to assure adequate collection of technical data relevant to protection of the environment or public health.

(d) Monitoring chambers shall meet the following minimum requirements:

1. The monitoring chamber shall be constructed of a permanent and durable material with an opening large enough for access by both sampling personnel and equipment.

i. The sampling chamber shall have a minimum seven foot ceiling clearance;

ii. Electrical outlets shall be provided so that 24 hour sampling equipment can be accommodated; and

iii. The access door or manhole shall have a minimum opening of 24 inches and shall be lockable;

2. An accurate flow measuring device with a totalizer and recording equipment with a documented regular calibration program shall be provided;

3. High water alarms shall be included in all sumps;

4. Pickup probes for all monitoring and sample collection devices shall be provided;

5. All influent streams into the public sewer which are required to be monitored by the applicable permit shall be free of external sources of water (for example, supernatant return, stormwater runoff, unless such runoff is being monitored, tidal water, etc.);

6. A back flow prevention device shall be installed if pumping or flowing to a force main;

7. If the sampling chamber is not in a secured area, it shall be surrounded by a chain link fence;

8. The sampling chamber shall be accessible by motor vehicle; and

9. Adequate lighting and ventilation shall be provided and the area shall be free of any safety hazard.

7:14A-23.15 Screening and comminution

(a) All sewage treatment plants shall be provided with a means for screening or comminuting coarse material in the sewage. Except in small plants with a design capacity of less than 150,000 gallons per day, screening equipment shall be of the mechanical type.

(b) Operation of mechanically cleaned devices shall be continuous or automatically controlled.

(c) Bar screens shall conform to the following:

1. Bars of nonmechanical screens preceding treatment plants shall be spaced so that the maximum clearance between bars is not greater than 1½ inches and not less than one inch;

2. Clear openings for mechanically cleaned screens shall not be less than ⅝ inch;

3. Bar clearance for coarse racks or screens preceding mechanically cleaned screens or comminutors shall not exceed 1¾ inches;

4. At sewage pumping stations, openings in bar screens shall be at least one inch smaller than the solid size which can be handled by the pump;

5. Motors shall be of the type suitable for operation in a damp atmosphere if placed below ground;

6. The screen chamber shall be designed to provide a velocity through the screen of not less than one foot per second at average flow and not more than three feet per second, based on the screen openings projected vertically between the invert and the crown;

7. Hand-cleaned screens shall be inclined from 30 degrees to 45 degrees from horizontal; and

8. Where only one mechanical screen is provided, auxiliary hand-cleaned screens shall be provided for use in case of failure of the mechanically cleaned screens.

(d) Disposal of screenings shall be in conformance with the following:

1. Adequate facilities shall be provided for prompt removal, handling and sanitary disposal of screenings;

i. A platform shall be provided at the top of hand-raked screens; and

ii. Appropriate containers shall be provided for removal of screenings;

2. An appropriate method shall be provided for drainage of screenings, both on the platform and in containers, such that water content is not a limitation to ultimate disposal. The disposal and treatment method for the drainage from the screenings shall be indicated;

3. Where screen chambers are located substantially below grade, a suitable hoist shall be provided. Such chambers shall have a stairway and adequate lighting; and

4. Screen chambers shall be adequately ventilated. Where required, forced draft fans with explosion-proof motors shall be installed.

(e) Comminutors shall be in conformance with the following:

1. Comminuting devices shall have slots not less than ¼ inch wide and be designed to cut or shred material below the surface of the sewage. Comminuting capacity shall be adequate to handle peak flows when the largest unit is out of operation;

2. A bypass screen shall be provided except where there are multiple units; and

3. Gates shall be provided to isolate each channel, and provisions shall be made for the removal of mechanisms for repair and maintenance.

7:14A-23.16 Grit removal equipment

(a) Except in small sewage treatment plants with a design flow of less than 150,000 gallons per day, mechanical grit removal devices shall be provided.

(b) Grit chamber channels and flumes shall be designed to produce velocities of not less than 0.5 foot per second and not greater than one foot per second. Detention shall be adequate to deposit grit coarser than 0.20 millimeters.

(c) All grit chambers shall be provided with a means for washing the grit and return of washwater to wastewater flow.

(d) Grit removal facilities shall include adequate means for the collection and temporary storage of grit material prior to sanitary disposal.

1. A stairway or ladder shall be provided for entrance if the unit is four feet or more below ground level.

2. Adequate lighting and ventilation shall be provided.

3. Provisions for dewatering shall be made such that water content is not a limitation to ultimate disposal.

4. Provisions for the treatment and disposal method for drainage of the grit shall be provided.

7:14A-23.17 Settling tanks

(a) Multiple units or independent compartments shall be provided except in small installations of less than 150,000 gpd design flows.

(b) Channels shall be designed to maintain a velocity of one foot per second at 50 percent of design flow.

(c) Baffling shall be provided to dissipate inlet velocity and diffuse flow equally across the cross section of the tank. Baffles shall also be provided to retain scum in primary tanks. Scum collectors shall be provided.

(d) Weirs shall be adjustable.

(e) The minimum slope of the side walls of sludge hoppers shall be 1.7 vertical to 1.0 horizontal.

(f) The use of upward flow settling tanks may be considered when accompanied by supporting data on their hydraulic characteristics and results of operation in actual plants.

(g) Walls of settling tanks shall extend at least 18 inches above the surrounding ground surface.

(h) Mechanical means shall be provided for the collection and removal of sludge from settling tanks, and shall meet the following design requirements:

1. Primary tanks, except those preceding the activated sludge process, shall have a surface settling rate that does not exceed 600 gallons per square foot per day of design flow, and a minimum water depth of six feet;

2. Inlets shall be designed to dissipate inlet velocity promptly so as to diffuse the flow and to prevent short-circuiting; and

3. Adjustable outlet weirs shall be provided.

(i) Final settling tanks shall be designed according to the following:

Type of Treatment	Side Water Depth	Maximum Surface Settling Rate gals./sq. ft./day (At Design Flow)
Standard Rate Trickling Filter	6 feet minimum	1,000
High Rate Trickling Filter	8 feet minimum	800
Activated Sludge (2.0 m.g.d. and less design flow)	8 feet minimum	800
Activated Sludge (Over 2.0 m.g.d. design flow)	10 feet minimum	1,000

7:14A-23.18 Chemical coagulation

(a) This method of sewage treatment is considered to be a degree of treatment intermediate between sedimentation, and sedimentation plus oxidation. Chemical coagulation will not be considered as a substitute for oxidation.

(b) Coagulants shall be applied to the sewage in a suitable and approved form proportional to the sewage flow.

(c) A chamber or tank for the rapid and thorough mixing of the sewage and coagulants shall be provided with a detention period of not less than one minute based on design flow.

(d) Two or more flocculation tanks, with individual controls, shall provide a combined detention period of between 20 and 30 minutes. Diffused air or paddles with a slow rotary motion shall be provided for continuous agitation of the full content of the flocculation tanks.

(e) The automatic control of apparatus for feeding chemicals shall include equipment to provide variation in chemical dosage with variation in sewage flow.

7:14A-23.19 Trickling filters

(a) Trickling filters of the "standard rate" or "high rate" type may be used for the treatment of sewage amenable to treatment by a biological process.

(b) Filters shall be preceded by effective preliminary treatment and shall be followed by individually controlled and mechanically cleaned settling tanks.

(c) When the average five-day B.O.D. of the raw sewage exceeds 325 parts per million, two stages of trickling filter treatment are required, with or without intermediate sedimentation. Consideration may be given to designs providing supplementary preliminary treatment in the case of strong sewages or industrial wastes.

(d) The sewage shall be distributed uniformly over the filter so that at least 95 percent of the surface area receives sewage directly.

1. Distribution devices may be actuated by twin siphons, pumps or gravity discharge from preceding treatment plant units.

(e) The filter media may be crushed rock, manufactured material, or other approved material. Manufactured media shall be resistant to ultraviolet degradation, disintegration, erosion, aging, all common acids and alkalies, organic compounds, and fungus and biological attack. In addition, manufactured media shall be structurally capable of supporting a person's weight or a suitable walkway shall be provided to allow for distributor maintenance.

1. Where applicable, the upper 18 inches of the filter bed shall have a loss, measured by the 20-cycle sodium sulfate test, of less than ten percent and the balance shall pass the 15-cycle test.

2. Wear shall not exceed 20 percent after 500 revolutions of Los Angeles Rattler Test as determined by the current ASTM Standard, Designation No. C-131.

3. Rock media shall be approximately cubical in shape, free from dust, clay, sand or fine material and of a size that passes a four-inch screen and is retained on a 2½ inch screen.

4. Material shall be screened or forked, and washed to remove fine grains and shall be so placed as to avoid breaking the underdrains.

(f) The underdrainage system shall be resistant to the action of sewage wastes and shall cover the entire floor. Inlet openings into the underdrains shall have an unsubmerged gross combined area equal to at least 15 percent of the surface area of the filter. Use of half-tile for underdrains will not be approved.

1. Lateral underdrains shall have a minimum slope of one percent.

2. Main underdrain and effluent channels shall be designed to provide a velocity of not less than two feet per second.

3. The entire underdrainage system shall be designed to permit free passage of air, and be of such size that not more than 50 percent of the cross sectional area of the flow channels in the underdrains will be submerged during operation of the filter at the maximum design rate. Provisions shall be made for flushing lateral underdrains from the main drain or head channel.

(g) Standard rate trickling filters shall be designed as follows:

1. The volume of sewage to be treated by standard rate filters shall not exceed 14,400 gallons per day per 1,000 cubic feet of filtering media and the average rate of organic loading shall not exceed 15 pounds of five-day B.O.D. per thousand cubic feet per day.

2. The average rate of application during dosing periods shall not exceed 22 gallons per thousand cubic feet of media per minute. The time intervals between dosing cycles to the filter shall not exceed five minutes at design flow.

3. The minimum depth of filtering media at any point in the filter, measured from the top of the underdrains to the surface of the media, shall not be less than five feet, and the maximum depth shall not exceed eight feet.

4. Means for Psychoda fly control, such as provisions for backflooding and filter flushing, shall be provided. The application of chemicals is discouraged unless other forms of control have been ineffective and the use of chemicals shall be in conformance with all other applicable laws, ordinances and regulations.

5. Means shall be provided for recirculating a portion of the effluent from intermediate or final settling tanks during periods of low flow.

6. The Department will consider other suggested loading rates to address manufactured media if supported by appropriate engineering documentation.

(h) High rate trickling filters shall be designed as follows:

1. Organic loading to high rate filters shall not exceed 67 pounds of five-day B.O.D. per thousand cubic feet of filter media per day, based on the total volume of the filters.

2. The depth of filtering media at any point in the filter, measured from the top of the underdrain block to the surface of the media, shall not be less than five feet nor more than eight feet. The distributor shall clear the media by not less than eight to nine inches; and the filter retaining walls shall not be less than three inches higher than the media.

3. High rate trickling filters shall be equipped with rotary distributors and flushing devices shall be provided at the outer end of each distributor arm.

4. Provisions shall be made for controlled recirculation to maintain a continuous application rate of not less than 230,000 gallons per 1,000 square feet per day. Devices to measure flows to the filter and the recirculated effluent shall be provided.

5. The number and capacities of the recirculation pumps shall be such that the conditions of (h)4 above can be met if the largest pump for each point of return is out of service unless other provisions are made which will achieve adequate and effective degree of treatment if power or pump failure occurs.

6. The Department will consider other suggested loading rates to address manufactured media if supported by appropriate engineering documentation.

(i) Under conditions where treatment of unusually strong sewage is necessary and two-stage filtration is adopted, intermediate settling

tanks may be required, with suitable sludge and scum removal devices to provide a detention period of one hour based upon projected flow.

7:14A-23.20 Rotating biological contactors

(a) Rotating biological contactors (RBC) process may be used when wastewater is amenable to biological treatment.

(b) RBCs shall be preceded by properly designed settling facilities. Efficient grease and scum removal devices shall be provided. *[In addition, flow equalization shall be provided when the ratio of peak (maximum instantaneous) to average daily flow exceeds 2.5.]*

(c) At least four stages shall be provided for secondary treatment applications. Additional stages may be necessary for nitrification and additional BOD removal.

(d) Permanent buildings or covers shall be used to protect the RBC units from sunlight and winter weather. Provisions shall be made for access to the RBC units for observation and repairs. Buildings shall have adequate ventilation, heating, and humidity control, and an internal hoisting device for the removal of the shaft/media assembly. Covers shall be made in removable sections, or have some other means of allowing removal and replacement of the shaft/media assembly.

(e) Drive systems shall be variable speed and may be mechanical or air driven. Air driven systems shall have positive air flow metering and control to each RBC unit.

1. Bearing units shall be self-aligning and shall be located outside of media covers to allow easy access for lubrication and maintenance.

2. A provision for auxiliary power during power outages is required.

(f) Operation and maintenance requirements, including biofilm control, drive train and radial support arm maintenance and repair, and media/shaft repair and replacement, shall be considered in the design and layout of RBC treatment systems. Provisions shall be made for positive flow control to each stage, allowing flexibility in feeding and discharge. Tank depth and configuration shall be such that solids are not deposited in the tank; also, provisions shall be made for draining the tank.

(g) To avoid system failure, flexibility shall be considered in RBC designs. Flexibility can be achieved by having variable rotational speed, the ability to periodically reverse rotational direction, supplemental aeration, or the potential for chemical addition (for example, hydrogen peroxide or chlorine).

(h) Final settling shall provide a detention time of not less than 90 minutes, with a maximum surface settling rate of 600 gpd/sq. ft. and a weir overflow rate not greater than 5,000 gallons per day per linear foot. Higher surface settling and weir overflow rates may be used if the contactor is to be followed by tertiary treatment.

7:14A-23.21 Activated sludge

(a) The activated sludge process may be used when wastewater is amenable to biological treatment.

(b) The design data outlined in this section are presumed to achieve a removal of 90 percent or more of the B.O.D. and suspended solids susceptible to treatment from sewage of normal characteristics and may not be appropriate where only partial removals are intended.

(c) Provisions for pre-chlorination of the raw sewage shall be made depending on the condition of the influent.

(d) The design of plants which may receive abnormally strong concentrations of wastewater, or require an unusual aeration period or special equipment, may be considered for approval as an activated sludge process upon presentation of appropriate supporting data obtained from existing installations that demonstrate the efficiency of the process.

(e) Settling tanks for the activated sludge process shall be designed in conformance with the following:

1. A skimming tank, or equivalent, shall be provided for wastewater which contains greater than 100 milligrams per liter (mg/l) of oil or grease;

2. Except in small sewage treatment plants with a design capacity of less than 150,000 gallons per day, a minimum of two preliminary settling tanks shall be provided with a total capacity that provides a detention period of 90 to 150 minutes and a maximum surface settling rate of 1,000 gallons/square foot/day based upon design flow;

3. For plants having a design capacity of 2.0 M.G.D. or less, final settling tanks shall have a minimum eight foot side water depth and a maximum surface settling rate of 800 gallons per square foot per day. For plants with a design capacity of more than 2.0 M.G.D. final settling tanks shall have a minimum 10 foot side water depth and a maximum surface settling rate of 1,000 gallons per square foot per day;

4. Final settling tanks shall be provided in multiple units except in small installations;

5. Mechanical means shall be provided for the collection and removal of sludge from all settling tanks; and

6. The use of upward flow settling tanks may be considered when accompanied by supporting data on their hydraulic characteristics and results of operations in actual plants.

(f) If the incoming wastewater to an activated sludge system contains less than 2.0 parts per million dissolved oxygen, pre-aeration of the pre-settled wastewater is required before the admixture of returned sludge.

(g) Aeration tanks for the activated sludge process shall be designed in conformance with the following:

1. Multiple units, capable of independent operation, shall be provided for all installations;

2. Total required detention period of aeration tanks, based upon 125 percent of design flow, shall not be less than six hours. If provisions are made for the re-aeration of the returned sludge before admixture with the pre-settled sewage, a lesser detention period in the aeration tanks can be considered (the greater the return sludge aeration period, the less the required mixed liquor detention period);

3. Applied loading shall not exceed 38 pounds of B.O.D., exclusive of return sludge, per 1,000 cubic feet of tank volume;

4. Liquid depths of not less than 10 feet, nor more than 15 feet, shall be provided; and

5. Means to minimize foaming in aeration tanks shall be provided.

(h) All inlets and outlets shall be equipped with suitable devices for controlling the flow to each tank unit and to withdraw any unit from service. Velocity between bays or around baffles shall not exceed 0.5 feet per second.

1. Channels and pipes shall be designed to provide self-cleaning velocities, or shall be equipped with mechanical devices for maintaining solids in continuous suspension.

(i) Devices shall be provided for indicating rates of flow of pre-settled effluent, return sludge, air to each tank unit, and total volume of wasted sludge. These devices shall also totalize and record as well as indicate flows.

(j) Requirements for air supply are as follows:

1. Air requirements at all times shall be sufficient to:

i. Maintain at least two parts per million of dissolved oxygen in all parts of the aeration tank;

ii. Maintain sufficient turbulence to maintain intimate contact of sludge particles with sewage; and

iii. Prevent deposition of solids in any part of aeration unit.

2. Aeration capacity at standard temperature and pressure shall be at least 1.5 cubic feet per gallon of incoming raw sewage plus the capacity required for reaeration of returned sludge.

3. Blowers shall be in multiple units and of such capacity that full operation requirements can be met with the largest unit out of service.

4. Blower capacity required to deliver air to channels, sludge pumps, foam-control pumps, or similar demands shall be in addition to that required for tank aeration as specified in 1 above.

5. The air diffuser system shall be capable of delivering 150 percent of normal requirements. Normal requirements are considered to be 1,000 cubic feet per pound of B.O.D. to be removed from the sewage entering aeration tanks.

6. Air filters shall be capable of supplying a continuous air supply having a dust content of not more than 0.5 milligrams per 1,000 cubic feet.

7. Each blower shall be equipped with a silencer.

8. Aeration plates, tubes or jets shall be designed to permit removal for inspection or cleaning, and for maintaining an even distribution of air throughout the aeration tanks.

9. Individual assembly units of diffusers shall have a substantially uniform pressure loss and shall be equipped with control valves with indicator markings.

(k) Return activated sludge pumps or air lifts shall have variable combined capacity, capable of pumping at least 25 percent of the projected flow with the largest single unit out of service. Normal return sludge capacity shall be at least 50 percent of the average dry-weather sewage flow.

1. In addition to capacity required for return sludge pumping, waste sludge pumping facilities shall be provided with a minimum capacity not less than 0.5 percent of design flow, or 10 gallons per minute, whichever is larger.

2. The means for the further treatment and management of waste activated sludge shall be specified.

(l) Extended aeration systems shall be designed in accordance with the following:

1. Screening equipment consisting of a comminuting device with a bar screen in parallel is required.

2. Aeration tanks shall provide a detention period of at least 24 hours based upon design flow without recirculation. At least two tanks shall be provided in plants with design capacities of 100,000 gallons per day or more.

3. Air blower equipment shall be at least in duplicate and shall have capacity with the largest unit out of service to provide either at least three cubic feet per minute per foot length of aeration tank or at least 2,100 cubic feet of air per pound B.O.D. of raw sewage, whichever is greater. Equipment shall provide for variation in the volume of air to be delivered in at least three steps. Additional air capacity shall be provided if required for air lifts or other needs.

4. Provisions shall be made for the future installation of froth-breaking spray equipment, if necessary.

5. Final settling tanks shall provide at least a 3.5 hour detention period based upon design flow without recirculation.

i. Two or more tanks shall be provided on installations having capacities of 100,000 gallons per day or more.

ii. For tanks with hopper bottoms, the upper third of depth of hopper may be considered as effective settling capacity.

6. Return sludge capacity of at least 100 percent of design sewage flow shall be provided.

7. Appropriate means, such as a V-notch weir, shall be provided for measurement of sewage flow. For installations having capacities of 100,000 gallons per day or more, indicating-recording-totalizing equipment is required.

8. Waste sludge holding tanks with a capacity of at least one cubic foot per capita shall be provided.

(m) Contact stabilization systems shall be designed in accordance with the following:

1. Screening equipment consisting of a comminuting device with a bar screen in parallel is required.

2. Combined volumes of the contact aeration and sludge reaeration tanks shall provide a detention period of at least nine hours based on design flow without recirculation.

i. Aerobic digester tanks shall provide a capacity of at least three cubic feet per capita.

ii. At a minimum, duplicate tanks shall be provided in sewage treatment plants with design capacities of 100,000 gallons per day or more.

iii. When anaerobic digestion is employed, the design of the drying beds must be in conformance with N.J.A.C. 7:14A-23.28.

3. Air blower equipment shall be at least in duplicate, and shall have capacity with the largest unit out of service to provide at least 1,600 cubic feet of air per pound B.O.D. of raw sewage for contact aeration sludge reaeration and aerobic digester requirements.

i. The proposed equipment shall provide for variation in the volume of air to be delivered in at least three steps.

ii. Additional air capacity shall be provided if required for air lifts or other needs. The air supply requirements stated in (j)1 through 9 above also apply to contact stabilization.

7:14A-23.22 Intermittent sand filters

(a) For intermittent sand filters, at least two filter units shall be provided.

(b) Sod and similar coverings over intermittent sand filters are prohibited.

(c) Loading requirements for intermittent sand filters are as follows:

1. Organic loading of five-day B.O.D. shall not exceed 3.8 pounds per 1,000 square feet per day;

2. With acceptable primary treatment of normal sewage, volumetric loading shall not exceed 2,875 gallons per 1,000 square feet per day. For stronger sewage the rate of filtration shall be proportionately lower.

3. For chemical coagulation and sedimentation the volumetric loading shall not exceed 5,750 gallons per 1,000 square feet per day.

4. For standard or high rate trickling filters or activated sludge followed by secondary settling tanks, the volumetric loading shall not exceed 9,200 gallons per 1,000 square feet per day.

5. For schools, camps, and institutions, not having a full-time treatment plant operating staff, volumetric loading should not exceed 1,150 gallons per 1,000 square feet per day for primary tank effluent.

(d) Intermittent sand filter media shall be in conformance with the following:

1. Clean graded gravel shall be placed in at least three layers over the entire floor of the bed and around the underdrains and to a depth of at least six inches. Grading for the three layers shall be 1½ inches to ¾ inch, ¾ inch to ¼ inch and ¼ inch to ⅛ inch.

2. Underdrains shall have maximum spacing not exceeding six feet and shall be at least four inches in diameter, or of equivalent area.

3. Pipes shall be laid on a firm base with open joints with a space of approximately ¼ inch between ends.

i. A single layer of muslin, cheese cloth, burlap or other suitable material shall be wrapped around each joint of open joint underdrains.

ii. Tar paper or other waterproof material may not be used.

iii. Perforated clay or other approved perforated pipe may be used for underdrains.

4. Sand with an effective size of 0.3 to 0.6 millimeters and a uniformity coefficient of not more than 3.5 shall be provided to a depth of at least 30 inches. The sand shall be free from clay, loam or silt.

(e) Intermittent sand filter dosing shall be in conformance with the following:

1. A dosing tank or its equivalent with a capacity to dose each filter at least twice a day shall be provided. Where practical, a dosing tank or equivalent shall have a maximum detention time of two hours based upon the design flow.

2. The dosing tank volume shall be such that each filter bed will be covered to a depth not less than two nor more than four inches with each dose.

3. Siphons shall have a discharge capacity, at minimum head, of at least 100 percent in excess of the maximum rate of inflow to the dosing tank, and at average head, at least one cubic foot per second per 5,000 square feet of each filter bed.

(f) Intermittent sand filter distribution shall be in conformance with the following:

1. A rotary distributor may be used if nozzles are adjusted so flow will not erode the sand bed.

2. Troughs or piping used for distribution of the settled sewage over the filter surface shall be so located that the maximum lateral travel distance is not more than ten feet. Provision shall be made at each discharge port for adjustment of the flow.

3. Splash slabs shall be provided at each point of discharge.

4. A drain opening from troughs or discharge piping shall be provided.

(g) The base of the filter shall be either enclosed with concrete or lined with a material that has a permeability no faster than 10^{-7} cm/sec.

(h) Rapid sand filter design shall be in conformance with the following:

1. The use of rapid sand filters may be considered where treatment beyond secondary treatment is required and where skilled operational personnel will be present.

2. In general, rates shall not exceed three gallons per square foot per minute; backwash facilities shall be provided; the sand bed should not be less than 20 inches in depth; and suitable underdrainage of graded gravel shall be provided.

3. Operating head on the filter shall not exceed eight feet.

(i) The use of micro-strainers is acceptable when additional treatment such as reduction in B.O.D. and suspended solids is required after secondary treatment and final settling, and will be considered when accompanied by an engineer's report that contains complete data on the installation and accompanied by suitable plans.

7:14A-23.23 Chlorination

(a) Chlorination devices shall be of the solution feed type, installed in duplicate or with duplicate essential parts. Chlorinators shall be of an automatic feed type for sewage treatment plants with a design capacity of greater than 150,000 gallons per day.

(b) Chlorinating devices shall be designed in accordance with the following:

1. The devices shall be placed in separate rooms with an outside entrance only and shall be provided with adequate ventilation.

2. Rooms containing chlorinating devices shall have doors that open outward.

3. Provisions for heating during the winter season are required.

4. Suitable gas masks shall be provided and maintained in good operating condition, and shall be stored in an accessible location outside the chlorine room.

5. An automatic alarm*[, or an]* ***and*** observation window to permit visual inspection without opening the door, should be provided.

(c) For reduction in fecal coliform, a chlorine contact period of at least 30 minutes, based upon design flow, shall be provided in a separate baffled tank, and a contact period of not less than 20 minutes shall be providing during peak hourly flow. For reduction of enterococci or other pathogenic indicators increased contact periods and/or application rates may be required.

(d) Provisions shall be made for the thorough mixing of the disinfectant and the sewage before discharge to the chlorine contact tank.

(e) Scales shall be provided for determining chlorine consumed, and a suitable means for measuring residual shall also be provided.

(f) If hypochlorite feeders are provided, duplicate solution tanks each having at least 36 hours storage capacity are recommended.

(g) Automatic chlorinators with residual recorders and alarm systems to indicate chlorinator failures are required.

(h) Capacity of chlorinators shall be in conformance with the following:

1. For disinfection, the capacity of chlorinators shall be adequate to produce a concentration of residual chlorine in the effluent so as to dependably and consistently reduce the fecal coliform concentration to that specified in the applicable discharge permit. For normal domestic sewage the following minimum dosing capacities are required:

Type of Treatment	Dosage (Based on Average Design Flow)
Raw Sewage	30 ppm
Primary Sedimentation Effluent	20 ppm
Trickling Filter Plant Effluent	15 ppm
Activated Sludge Plant Effluent	10 ppm
Sand Filter Effluent	10 ppm

2. For reduction of enterococci or other pathogenic indicators increased contact periods and/or application rates may be required.

7:14A-23.24 Dechlorination

(a) Dechlorination chemicals shall be applied in an area where the flow is turbulent and short circuiting is minimal, immediately preceding discharge of the effluent. A contact period of one to five minutes is recommended.

(b) If sulfur dioxide is utilized for dechlorination, safety precautions similar to those for chlorination systems are required, including the provision of self-contained breathing apparatus. Steps shall be taken to prevent the accidental interconnection of chlorine and sulfur dioxide lines to avoid an explosion hazard.

7:14A-23.25 Ultraviolet disinfection

(a) The following provisions apply to the design of ultraviolet disinfection (UV) systems:

1. The turbidity and color of the wastewater shall be addressed in the design. Treatment of the influent wastewater prior to the UV units by intermittent sand filtration, or other filtration, as approved by the Department, is recommended. Removable screens, located upstream of the UV unit, are recommended to prevent debris from entering the system.

2. Wastewater shall pass over the UV source in a thin film, so that the maximum depth of penetration is no greater than two inches. The UV contact time shall be dictated by water absorbance and film thickness.

3. A UV intensity sensor shall be installed at the maximum depth from the source with an alarm to alert operators when the UV level falls below acceptable levels. The UV intensity reading shall be displayed by a meter on the control panel. UV sensors shall be properly maintained to insure reliable, accurate readings.

4. The UV unit shall be protected from dust, excessive heat, and freezing temperatures. Adequate ventilation of heat-generating electrical components shall be provided.

i. An alarm system shall be provided to alert the operator of excessive temperatures in the ballast power panel.

5. When utilizing a closed channel UV system two separate units, or one UV unit and another approved form of disinfection, each capable of treating peak flow, shall be provided.

6. Open channel UV systems shall be equipped with a sufficient number of bulbs such that a safety factor of at least 125 percent will be provided. Separate electrical racks shall also be provided to permit maintenance of the system without removing the entire unit from service.

7. Electrical wiring shall be properly sized and the wire covering shall be resistant to UV radiation effects.

(b) UV lamps/sleeves shall be chemically cleaned semi-annually if automatic wipers are present, or three to four times per year if automatic wipers are not present. A clean water supply equipped with a back flow prevention device shall be available at all times.

(c) UV bulbs shall be replaced when dead life occurs (60 percent of initial emission).

7:14A-23.26 *[Sludge]* ***Anaerobic sludge*** digestion and management

(a) The Department does not examine plans covering fire and explosive hazards, heat controlling equipment or safety devices and such safeguards are the responsibility of the design engineer.

(b) Supernatant liquor from sludge digestion tanks shall be returned downstream of the influent monitoring points to the raw sewage except that at activated sludge plants, or other plants utilizing air as a method of biological treatment, provisions may be made for disposal in aeration or reaeration tanks. The wastewater treatment facility shall be designed to treat the increased pollutant concentration and hydraulic loading of the supernatant or means shall be provided for separate treatment.

(c) The minimum diameter of all sludge pipes shall be eight inches for gravity flow and six inches for sludge pumping.

(d) A fresh-water hydrant near the sludge digestion tanks is recommended, and, if present, shall be provided with a suitable backflow-prevention device.

(e) Provisions shall be made for the introduction of chemicals into all sludge storage or digestion tanks.

(f) Digesters which are proposed to be utilized to satisfy stabilization requirements shall be designed to meet the requirements of a Process to Significantly Reduce Pathogens as defined in 40 CFR 257 and in Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established under 33 U.S.C.A. §§1251 et seq.

(g) Sludge digestion tanks shall be in conformance with the following:

1. Two or more separate units shall be provided, a single digestion tank may be approved if the plan and report show all emergency provisions and the proposed use is for small installations (design capacity of less than 150,000 gpd) where alternate sludge storage is available for emergency use without creating a local nuisance, and where pumps and piping are available for such emergency.

2. Suitable equipment to insure mixing or circulation of the tank contents shall be provided for primary digesters.

3. The proportion of tank depth to area shall be such as to permit the formation of a reasonable depth of supernatant liquor.

4. Tank bottoms shall slope toward the withdrawal pipe not less than three inches per foot. Flat bottom tanks will not be approved.

5. At least two access manholes of adequate size shall be provided in the top of the digester in addition to the gas dome. An access manhole in the side wall of the tank is recommended.

6. In the case of multiple tanks, a provision shall be made to direct the raw sludge to any tank. In circular tanks the raw sludge inlet shall be at a point that is removed from the overflow or supernatant draw-offs by a distance at least equal to the radius of the tank. In rectangular tanks the raw sludge inlet shall be at the opposite end from the overflow and digested sludge draw-off lines.

7. An emergency overflow shall be provided. Provisions shall be made for sampling and removal of supernatant from several levels.

8. Means shall be provided for sampling of digested sludge in accordance with N.J.A.C. 7:14A-23.14. Digested sludge withdrawal piping shall extend from the center and bottom of circular tanks. Means shall be provided for backflushing digested sludge withdrawal piping. Adequate transfer piping shall be provided.

9. Unheated primary anaerobic digestion tanks will not be approved.

10. The mixing of the contents of anaerobic digesters by air is prohibited.

(h) Separate sludge digestion capacity shall be in conformance with the following:

1. Separate sludge digestion capacity shall be as follows, unless acceptable justification is submitted for an alternate design:

Type of Plant	Minimum Cubic Feet per Capita
Primary	2 to 3
Primary plus standard filter	2.5 to 3
Primary plus high rate filter	3 to 4
Chemical coagulation	4 to 6
Activated sludge	4 to 6

2. Larger volumes of sludge digestion capacity shall be provided for smaller plants.

3. The sludge digestion capacity shall be increased when industrial wastes and/or garbage solids are present, and may be reduced if the sludge is thickened. Volumes shall be computed on the basis of the bottom sloping up 30 degrees from the horizontal unless mechanical sludge collection is employed.

(i) Anaerobic digestor gas collection shall meet the following general requirements:

1. Waste gas burners shall be provided for excess gas.

i. Burners shall be placed at least 25 feet away from structures if placed at ground level, or may be located on roofs of buildings provided they are remote from digestion tanks.

ii. Burners shall be equipped with pilot lights and means for igniting manually, and shall be equipped with flame traps.

2. All enclosures containing gas piping or apparatus shall be equipped with forced draft ventilation either of the wind-driven or motor-operated type. If of the motor type, the design shall be such that the motor does not come in contact with gases; or spark-proof motors shall be used.

3. A gas meter shall be provided and a bypass installed.

4. Boilers utilizing gas shall be located in a separate enclosure having adequate means of ventilation and preferably located at ground level.

5. All gas lines shall have suitable flame traps and other safety equipment.

(j) Anaerobic digestor heating shall meet the following general requirements:

1. Preference shall be given to means of external heating by means of a heat exchanger. Heating capacity shall be adequate to maintain sludge at 85 to 95 degrees Fahrenheit at all times. Suitable controls shall be provided for automatic operation.

2. Thermometers shall be provided to show temperatures of sludge in the digester, and the sludge going to and from the heat exchanger. Thermometers shall also be provided to show the temperature of the water going to and from the heating coils or heat exchanger.

3. An auxiliary fuel shall be provided, such as oil or commercial gas.

7:14A-23.27 Sludge pumps

(a) Duplicate sludge pumps shall be provided and shall be so arranged with appropriate valves such that either may be used, in emergencies, for handling either raw or digested sludge.

(b) The capacity of each pump for handling raw sludge shall be such as to remove sludge from hoppers of settling or concentration tanks in not less than one hour nor more than two hours. Pump capacity shall be adjustable.

(c) A minimum positive head of 24 inches shall be provided at the suction side of centrifugal pumps and is desirable for all types of pumps. Maximum dynamic suction lift of plunger pumps shall be 10 feet.

(d) Sludge sampling facilities shall be provided in accordance with N.J.A.C. 7:14A-23.14. The size of valve and piping shall be at least 1½ inches.

(e) Pressure gauges shall be provided on the discharge line of sludge pumps to denote pumping and to indicate unusual discharge heads due to clogging.

7:14A-23.28 Drying beds for residuals

(a) The following table of requisite areas applies to domestic sewage, the sludge of which is digested by an anaerobic method. Based upon the physical and chemical characteristics of the residual (for example, domestic/industrial, solids concentration, and/or method of prior stabilization) appropriate adjustments can be made to the following table. Written justification for any adjustments or alternative designs shall be provided in the engineer's report. However, under most circumstances drying beds will not be approved for dewatering unstabilized sewage sludge unless appropriate provisions to control odors have been included.

Type of Treatment	Area in sq. ft./capita Open Beds	Glass Covered Beds
Primary	1.50	60 percent
Standard Rate Filter	1.75	of the area
High Rate Filter	1.75	of open
Activated Sludge	2.00	beds
Chemical Precipitation	2.25	

(b) The following are minimum requirements governing the design of drying beds and phragmites reed beds:

1. Not less than two beds or compartments shall be provided;

2. For conventional sand drying beds:

i. Gravel shall be at least 12 inches deep with the top at least six inches above underdrains. Gravel shall be graded from ⅛ to one inch in effective diameter; and

ii. Depth of sand shall be at least six inches and shall consist of clean coarse sand.

3. All drying beds shall be provided with underdrains of bell and spigot vitrified clay tile pipe, porous tile, perforated pipe, or other suitable material or drainage. Lateral drains shall be at least four inches in diameter laid with open joints. *[Burlap or similar material]* ***An acceptable engineering fabric**** shall be provided around joints. Drains shall be spaced not more than eight feet apart on center and have a minimum slope of one percent.

4. The permeability of the bottom and side walls shall not be greater than 1×10^{-7} cm/sec and shall extend 15 to 18 inches above

the sand surface. Walls shall be at least six inches above the surrounding ground elevation to prevent soil from washing on beds;

5. Means shall be provided to facilitate the removal of dried sludge from drying beds;

6. Influent piping shall provide for uniform distribution of residuals across the entire drying bed area. Splash slabs shall be provided.

7. Residual bed effluent shall be treated and suitable means shall be provided for the satisfactory management of the residual cake.

8. The capacity of the beds shall be sufficent to process the residuals generated to prevent any day to day accumulations.

9. Drying beds proposed to be utilized to satisfy stabilization requirements shall be designed to meet the requirements of a Process to Significantly Reduce Pathogens (as defined in 40 CFR 257 and in Part 4-I of the Statewide Sludge Management Plan) or equivalent criteria established under 33 U.S.C.A. §§1251 et seq. For Phragmites reed beds, a minimum capacity to allow three weeks between loadings to the same bed at the projected sludge production shall be provided. Additional capacity to allow for bed evacuation is recommended.

7:14A-23.29 Residual dewatering lagoons

(a) The use of lagoons for the drying of residuals is permissible provided that:

1. The lagoons shall be sufficiently isolated from existing and possible future residences as to afford such residences reasonable protection from odors or other nuisances which may arise from the operation of such lagoons;

2. The permeability of the bottom and sides of the lagoon shall not exceed 1×10^{-7} cm/sec, for solid waste classes I.D. 12, 73, and 74 as defined by N.J.A.C. 7:26-2.13(g). For other solid waste I.D. classes of residuals, the bottom and side permeability shall be approved by the Department, on a case-by-case basis, after evaluating the specific chemical characteristics of the residuals to be dewatered;

3. The area provided shall be at least double that specified for open drying beds, and a sufficient number of lagoon units shall be available to permit withdrawals from service and cleaning at necessary intervals. The means provided for residual removal, ultimate management and resting intervals shall be indicated;

4. Shallow residual dewatering lagoons shall meet the requirements of N.J.A.C. 7:14A-23.32(d);

5. Residuals shall be properly stabilized prior to discharge to the lagoon as defined at 40 CFR 257 and in Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established pursuant to 33 U.S.C.A. §§1251 et seq.; and

6. Means shall be provided for obtaining representative samples of the residual prior to discharge to the residual lagoon pursuant to the measuring, recording, and sampling requirements in N.J.A.C. 7:14A-23.14.

7:14A-23.30 Mechanical dewatering of residuals

(a) For installations where residuals are mechanically dewatered, mechanical dewatering equipment shall be provided in duplicate unless nuisance-free storage of residuals is provided in a manner approved by the Department.

1. Duplicate installation shall include duplicate conditioning equipment, conveyors, feeders and other appurtenances.

2. Capacity shall be sufficient to process the residuals generated to prevent any day-to-day accumulation.

3. The engineer's report shall include complete data on capacity, residual volume to be handled, conditioning methods, and equipment, chemical storage and satisfactory management of residual cake.

4. The plans shall show provisions for housing the dewatering equipment, for ventilation and odor control, for handling and/or loading the residual cake and the area and method proposed for ultimate management.

5. Filtrate collection and treatment shall be provided and indicated.

7:14A-23.31 Stabilization of residuals

(a) All residuals stabilization equipment shall be designed to meet the requirements of 40 CFR 257 and Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established pursuant to 33 U.S.C.A. §§1251 et seq.

(b) Residual composting operations, or expansions shall be designed in accordance with the following requirements:

1. Active composting and curing operations shall be enclosed and vented and shall be in compliance with the Department's air pollution control rules at N.J.A.C. 7:27.

2. All transfer conveyors and associated equipment shall be constructed of fire resistant materials.

3. Composting systems shall be designd to achieve a minimum total solids content of 40 percent in dewatered sludge and bulking agent mixtures prior to the commencement of composting.

4. Composting systems shall be designed to produce a sludge derived product that has a final solids content between 50 and 60 percent.

5. The aeration system shall be designed to distribute *[oxygen]* ***air*** evenly throughout the composting mass, to maintain aerobic conditions, and to control temperatures within acceptable ranges in active composting pursuant to ***(b)***6 below.

6. Aeration equipment shall, at a minimum, be capable of delivering 350 cubic feet per minute per dry ton of composting mass during active composting. The Department may accept the operation of high rate aeration equipment at lower rates of air supply where the permittee can demonstrate that the composting temperature range is between 55 degrees Celsius and 65 degrees Celsius for three days pursuant to 40 C.F.R. Part 257 and between 45 degrees Celsius and 65 degrees Celsius thereafter to assure the activity of decomposition microbes.

7. For design purposes, the capacity of equipment shall be based upon the assumption that *[ninety]* ***90*** percent of the bulking agent utilized in the residual only composting process will be wood chips within a range of two inches × two inches × 0.5 inch and 1.25 inches × 1.25 inches × 0.25 inch. Where other bulking agents ***or wood chips not within this range*** are to be used in the process, the engineering report shall address equipment capacity and the suitability of the alternative bulking agent***/wood chip size***.

8. In vessel compost processes which utilize wood chips as a bulking agent shall be designed such that a minimum of 95 percent of the bulking agent specified will pass through a number four mesh screen and a minimum of 95 percent will be retained by a number eight screen.

9. The design of the temperature monitoring system shall be capable of demonstrating compliance with the temperature requirements stated in (b)6 above, or equivalent criteria established under 33 U.S.C.A. §§1251 et seq.

10. Leachate collection and treatment shall be provided.

11. Equipment capable of adequately mixing bulking agent and dewatered sludge to the desired porosity, structure, and moisture content prior to composting shall be provided.

12. Dewatering equipment shall be designed to provide the proper residual solids content for effective composting.

13. Storage capacity for six months production of compost product shall be provided, unless suitable alternative contingency arrangements, as acceptable to the Department, are demonstrated.

14. The total time for active composting, curing and product storage shall not be less than 90 days, of which 10 to 21 days shall be active composting and 30 days shall be curing.

15. The maximum height of a static pile shall not exceed seven feet.

16. Compost and curing pads shall provide for drainage away from piles and shall have a minimum slope of two percent.

17. Screening equipment shall be sized to screen the total annual compost production within a six month period.

18. Curing pile designs shall provide aeration either through the installation of aeration equipment, or through mechanical turning at least two times per week. For compost curing on pads, the maximum height of the curing piles shall not exceed 10 feet.

7:14A-23.32 Storage of residuals or septage; and septage handling

(a) All new, upgraded, or expanded domestic treatment works shall be designed to provide adequate residuals storage capacity based on anticipated downtimes (that is weather, maintenance

closures, etc.) of the ultimate residual management alternative. This design shall insure the continual, uninterrupted operation of all residual production/processing activities when the ultimate residual management alternative cannot be utilized.

(b) The design of sludge or septage storage facilities shall:

1. Prevent overtopping from normal or abnormal operations, overfilling, wind and wave action, precipitation, run-on and run-off, malfunctions of equipment, and human error;

2. Specify materials that have the appropriate physical and chemical properties, wall thickness, and structural integrity to prevent massive failure due to climatic conditions, pressure gradients, and daily operational stresses;

3. Provide for the periodic removal of stored residuals, cleaning, and inspection;

4. Prevent the migration of residuals to ground water and/or surface waters;

5. Provide for adequate collection and treatment of supernatant or leachates where applicable;

6. Permit residuals sampling and collection pursuant to N.J.A.C. 7:14A-23.14; and

7. Include overflow prevention devices and/or high level alarms and automatic shut off valves on influent lines.

(c) Slurry tanks shall be designed to provide for mechanical mixing equipment capable of homogenizing stored residuals for removal and sampling.

(d) Surface impoundments shall be designed in accordance with the following conditions:

1. A depth indicator (gauge) which indicates residuals quantities in storage shall be provided.

2. A fence shall be provided around the surface impoundment to prevent unauthorized access or entry.

3. Surface impoundment liners shall conform to the following design requirements:

i. The permeability of the liner materials shall be no greater than 1×10^{-7} cm/sec for the material being contained. Permeability shall be determined by utilizing the liquid portion of the intended contents to be stored.

ii. The liner shall be adequately supported by a foundation or base so as to resist any pressure gradients that may cause settlement, compression, or uplift.

iii. Liners shall be of materials that are capable of resisting failures caused by: pressure gradients, including static head and hydrogeologic forces, physical contact with the contents, climatic conditions, and stresses associated with installation and daily operations.

4. The design shall provide for a minimum freeboard level of two feet.

5. Mechanical mixing equipment capable of homogenizing stored residuals for removal and sampling shall be provided.

6. When flow is to, from, or between impoundments, all interconnections shall be piped or lined with an impervious material and other appropriate safeguards to prevent both the degradation/erosion of impoundment banks or dikes, and discharges to groundwater.

7. Surface impoundments shall be utilized to store only stabilized residuals that have met the stabilization requirements for pathogen reduction and vector attraction specified in 40 CFR 257 and Part 4-I of the Statewide Sludge Management Plan or equivalent criteria established under 33 U.S.C.A. §§1251 et seq.

8. Surface impoundments require an application be submitted for a NJPDES permit for potential groundwater discharges pursuant to N.J.A.C. 7:14A-10.7.

(e) Bunker silos, pads, and storage sheds shall be in conformance with the following:

1. The storage surfaces of bunker silos, pads, and storage sheds shall be designed with a minimum slope of two percent to permit the drainage of leachate away from storage piles for collection and treatment.

2. The management and treatment method for the drainage from bunker silos, pads or storage sheds shall be indicated.

3. Storage surfaces shall be constructed of reinforced concrete, asphalt, or other suitable material capable of preventing discharges to groundwater.

(f) Septage handling/receiving facilities shall be designed to provide the following:

1. An unloading ramp for the haul trucks with a hard surface sloped to a drain to facilitate the cleaning of any spillage and washing the haul truck, connector hoses, and fittings. The ramp drainage shall be a tributary to treatment facilities and shall exclude excessive stormwater;

2. A flexible hose fitted with an easy connect coupling to provide a direct connection from the haul truck to the receiving facility;

3. Washdown water with adequate pressure, a hose, and a spray nozzle for cleaning the receiving station and the haul trucks. If a potable water source is utilized, it shall be protected with a suitable backflow prevention device;

4. An adequate off-line septage receiving tank which allows for the collection of representative samples from any truckload of waste accepted for discharge at the wastewater treatment plant. The receiving tank shall be designed to provide complete draining and cleaning by means of a sloped bottom equipped with a drain sump. The design shall also provide for adequate mixing, testing, uniform septage strength, and chemical addition for treatment or odor control purposes;

5. Screening, grit, and grease removal as appropriate to protect downstream treatment units;

6. Valving and piping designed with sufficient operational flexibility so as to control the flow rate and point of discharge of septage to the wastewater treatment plant;

7. Laboratory facilities for determining septage strength and/or toxicity to the wastewater treatment processes; and

8. Any pumps provided for the handling of septage shall be of the non-clogging design and shall be capable of passing three inch diameter solids.

7:14A-23.33 New treatment methods and technologies

(a) Designs for new treatment methods or for methods not included in these rules shall be accompanied by detailed supporting data from full scale tests performed under competent supervision. In evaluating the acceptability of applications for new treatment methods, or for technologies not included in these rules, the Department shall utilize the best available information including, but not limited to, texts, reports and U.S. Environmental Protection Agency publications that contain research, test, and design information relevant to the applicant's proposal.

(b) The Department may disapprove new treatment methods if in its opinion such disapproval is in the interest of environmental protection.

7:14A-23.34 Closure requirements for wastewater treatment units

(a) This section applies to any and all wastewater and sludge facilities and equipment permanently removed from use or operation *[including, but not limited to, wastewater treatment plants, collection systems, pump stations, holding tanks, sludge digesters, and sludge dewatering equipment]* ***at NJPDES permitted facilities*** The intent of this section is to protect public safety and health and to assure that no contamination of ground or surface water will occur as a result of removing such facilities and equipment for service either through the act of closure or through continuing the discharge of pollutants into or through the equipment; or through leaking leaching, or discharge of pollutants from wastewater or residuals remaining in facilities or equipment which has been removed from use but remains on site.

(b) The closure of a wastewater treatment facility or equipment means either the termination of the source of wastewater or sludge or the permitted conveyance of wastewater or sludge to an alternate location (such as a regional facility) in such a manner that no further treatment storage or conveyance of wastewater or sludge is performed by the facility.

(c) Wastewater treatment works closures shall conform with the following procedures:

1. On or before 60 calendar days prior to taking the facility or certain operating equipment out of service a permittee shall:

i. Submit to the *[Division of Facility Wide Enforcement]* ***Wastewater Facilities Regulation Program*** the following information concerning closure activities:

(1) The date the facility will cease operation or the date that discharge to specific operating equipment will cease;

(2) The date the influent and effluent pipes will be sealed;

(3) *[Proof of submission to the Wastewater Facilities Regulation Program, plans]* ***Plans*** (signed and sealed by a New Jersey licensed professional engineer) for final disposition of the physical facilities, including all treatment units, outfall line, and all mechanical and electrical equipment and piping;

(4) *[Proof of submission to the Wastewater Facilities Regulation Program, plans]* ***Plans*** (signed and sealed by a New Jersey licensed professional engineer) for elimination of all equipment and/or conditions that could possibly pose a safety hazard, either during or after shut-down of operations;

(5) Verification that there are no lines in the collection system which are cross connected (receiving both sanitary and storm water) or which do not contain adequate conveyance capacity as defined in N.J.A.C. 7:14A-1.9;

(6) The name of the licensed individual responsible for the maintenance and operation of the wastewater pumping station and/or wastewater collection or treatment systems that are still to be maintained; and

(7) *[A]* ***Proof of a*** request ***to the Division of Enforcement Field Operations*** for a site inspection to verify cessation of the discharge. The Division of *[Facility Wide Enforcement]* ***Enforcement Field Operations*** may be contacted by writing to:

Director
Division of *[Facility Wide Enforcement]*
Enforcement Field Operations
CN 029
Trenton, New Jersey 08625-0029
Attn: Water & Hazardous Waste Enforcement; and

ii. Notify the Wastewater Facilities Regulation Program, in writing, concerning any deactivated lagoons or other actual or potential discharges to ground water which may exist at the site. The Wastewater Facilities Regulation Program may be contacted by writing to:

[Administrator] ***Assistant Director***
Wastewater Facilities Regulation Program
CN 029
Trenton, New Jersey 08625-0029

2. Proper management and/or removal of all residual materials (collected grit and screenings, scums, sand bed material, and dried or liquid sludges), as well as filter media, and all other solids from the treatment process that may remain in the abandoned treatment works is required.

i. The permittee shall submit to the Wastewater Facilities Regulation Program proof of ownership of or contractual arrangement with an operation or operations permitted to manage all such waste materials. A contract with a hauler will only be accepted as proof of proper waste management if documentation of management at an approved site or sites is included. In addition, all necessary State or Federal permits/approvals must accompany the submission.

ii. Sludge quality assurance reports which are representative of the sludge removed following closure shall be submitted. Where quality information is not available, new samples shall be obtained and analyzed upon closure. All sludge samples and analyses shall be prepared in accordance with the Sludge Quality Assurance Regulations, N.J.A.C. 7:14-4.

iii. All residual material shall be removed within 180 calendar days after the facility is taken out of service. Proof of proper residuals management shall be submitted to the Wastewater Facilities Regulation Program within 30 calendar days after their removal. The dates of removal and quantities removed shall be specified.

3. Upon completion of closure activities, a permittee must complete a "Certification of Closure" form (form can be obtained by contacting the Division of *[Facility Wide Enforcement]* ***Enforcement Field Operations***) which will provide certification that all waste materials have been properly managed, and that the remaining components of the facility have been properly secured regarding public health and safety. This form shall be completed after closure activities cease, signed in the presence of a Notary Public, and submitted to the Wastewater Facilities Regulation Program. Incomplete Certifications of Closure are unacceptable and will be returned to the permittee.

(d) Upon satisfaction of closure requirements specified in (c) above, the Division of *[Facility Wide Enforcement]* ***Enforcement Field Operations*** shall be contacted, in writing, to schedule a final site inspection ***of any treatment works which had a NJPDES discharge permit to verify that influent and effluent pipes have been sealed and that all solid and residual materials related to the treatment process have been removed***.

(e) Upon satisfactory completion of the items specified in (c) and (d) above, an "Application for Termination" (application may be obtained from the Division of *[Facility Wide Enforcement]* ***Water Quality or the Division of Enforcement Field Operations***) from the New Jersey Pollutant Discharge Elimination System shall be completed and submitted to the Wastewater Facilities Regulation Program, Bureau of Permit Management with a copy to the appropriate permitting bureau. The application form includes information concerning the facility, its NJPDES permit number, the nature of the discharge, and a certification to the effect that the closure has been performed in accordance with all submissions made to the Department. Applications received before completion of items (c)1 through 3 above, shall not be processed and shall be returned for resubmission upon satisfactory completion of all closure requirements by the permittee.

7:15-5.18 Future wastewater jurisdictions, service areas, and domestic treatment works

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

(f) The wastewater management plan shall document the basis for the estimated flows attributed to residential, commercial, and industrial sources under (d)8 and (e)3 above. Where actual, accurate gauging is available for a sewer system already in existence, such gauging shall be used in preparing these flow estimates, with an allowance for future changes in wastewater flow. There shall be a reasonable relationship between these flow estimates and sewer service areas identified under (c)4 and 5 above. There shall be a reasonable relationship, consistent with (b) above, between these sewer service areas and residential, population estimates under (d)7 and (e)2 above. The average domestic flow from new development, exclusive of industrial flows, shall be calculated utilizing the projected flow criteria found at N.J.A.C. 7:14A-23.3. In instances where future specific residential dwelling types are unknown, the residential flow calculation may be computed using 75 gallons per capita per day. No additional provisions for inflow and infiltration shall be made as the above flows include allowances for inflow and infiltration.

(g)-(i) (No change.)

(a)

DIVISION OF WATER QUALITY

Water Pollution Control Act Rules

Readoption: N.J.A.C. 7:14

Proposed: February 22, 1994 at 26 N.J.R. 1038(a).
Adopted: April 26, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Filed: April 27, 1994 as R.1994 d.256, **without change.**

Authority: N.J.S.A. 13:1D-9, 58:10A-1 et seq., 58:10A-21 et seq., 58:11-49 et seq., 58:11-64 et seq., 58:1A-1 et seq., P.L. 1988, c.56, 57, and 63.

DEPE Docket Number: 03-94-01/28.

Effective Date: April 27, 1994.
Expiration Date: April 27, 1999.

Summary of Public Comments and Agency Responses:

On February 22, 1994, the New Jersey Department of Environmental Protection and Energy ("Department") proposed to readopt N.J.A.C.

7:14 without amendments. This rule includes the following three subchapters:

Subchapter 2 "Construction of Wastewater Treatment Facilities"

Subchapter 4 "Sludge Quality Assurance"

Subchapter 8 "Civil Administrative Penalties and Requests for Adjudicatory Hearings"

Three persons submitted written comments as follows: Thomas Detweiler for the Chemical Industry Council, Edward Hogan, Esq. for the Business and Industry Association, and Frank Sole for the Commerce and Industry Association. The comments and the Department's responses are set forth below.

1. COMMENT: Frank Sole, Director of Government Relations, Commerce and Industry Association of New Jersey, and Thomas J. Detweiler, Associate Director, Chemical Industry Council of New Jersey, requested that the written comment period be extended to provide a greater opportunity to review the proposed readoption and provide more extensive comments.

RESPONSE: The Department believes that the 30-day period provided for the submission of written comments was appropriate. The regulated community is aware of the existing rules codified at N.J.A.C. 7:14, and the Department proposed to readopt these rules without any additions or changes. As stated in the summary of the proposal, the Department anticipates proposing amendments to the Sludge Quality Assurance rules (subchapter 4) in the summer of 1995. At that time, the public will be afforded an opportunity to comment upon proposed changes to this portion of N.J.A.C. 7:14. In addition, as explained in the responses below, the Department is reexamining subchapter 8, the rules governing the assessment of civil administrative penalties and requests for adjudicatory hearings, and may propose amendments later this year. However, the Department determined that a thoughtful examination of the existing rules and the development of amendments could not be properly completed before the chapter's expiration date of April 27, 1994. The Department is therefore readopting this chapter without changes at this time. The Department welcomes and will continue to accept and consider further comments.

2. COMMENT: Edward A. Hogan, Esq., of Porzio, Bromberg and Newman, representing the New Jersey Business and Industry Association, Thomas J. Detweiler, Associate Director, Chemical Industry Council of New Jersey, and Frank Sole, Director of Government Relations, Commerce and Industry Association of New Jersey, commented that the ranges in the penalty matrix at N.J.A.C. 7:14-8.5 are exceptionally high, resulting in the assessment of penalties that are excessive and unreasonable, and should therefore be revised.

RESPONSE: The Department is committed to applying the penalty rule in a sensible and principled manner to avoid the assessment of unreasonable or excessive penalties. The Department is reviewing the penalty matrix and its application to determine whether and to what extent adjustments to the matrix are appropriate. The Department therefore reserves the right to review and make changes, where appropriate, to the penalty matrix and its application.

The Department recognizes that the assessment of excessive or unreasonable penalties, even in a limited number of cases, threatens the credibility and thereby diminishes the effectiveness of its enforcement program. Accordingly, as illustrated by comparing the penalties assessed in 1992 with those assessed in 1993, the Department has attempted to more judiciously apply the existing rules in an effort to avoid unreasonable or excessive penalties. The Department implemented new policies in 1991 for the assessment of penalties based upon the existing penalty rule. Under these policies, the Department performs a more thorough and fact-intensive review of the circumstances surrounding each case to better ensure that all relevant factors in the penalty rules are adequately considered and properly applied, and that the penalty assessment properly reflects the particular circumstances of the case. The implementation of these new policies has contributed to a marked reduction from 1992 to 1993 in the amount of penalties assessed. For example, in the $250,001 to $500,000 penalty range, the Department initiated 15 penalty actions assessing a total of $4.79 million in 1992, compared with six penalty actions assessing a total of $2 million in 1993. Similarly, in the $100,001 to $250,000 penalty range, the Department initiated 24 penalty actions assessing a total of $3.65 million in 1992, compared with 17 penalty actions assessing a total of $2.54 million in 1993. In the $25,001 to $100,000 penalty range, the Department initiated 88 penalty actions assessing a total of $4.73 million in 1992, compared with 57 penalty actions assessing a total of $2.55 million in 1993.

3. COMMENT: Edward A. Hogan, Esq., of Porzio, Bromberg and Newman representing the New Jersey Business and Industry Association, Thomas J. Detweiler, Associate Director, Chemical Industry Council of New Jersey, and Frank Sole, Director of Government Relations, Commerce and Industry Association of New Jersey, commented that the statutory limitation on the Department's ability to compromise a penalty by more than 50 percent of the assessed amount further contributes to the imposition of excessive and unreasonable penalties.

RESPONSE: Prior to the enactment of P.L. 1990, c.28, the Department assessed significantly higher penalties, and would substantially compromise the assessed penalty during settlement negotiations, sometimes by considerably more than 50 percent. Since the enactment of P.L. 1990, c.28, the Department has been mindful of the limitation imposed upon its authority to compromise a penalty assessment. By the time the Water Pollution Control Act (WPCA) amendments became effective in July 1991, the Department had revised its enforcement policies, including the application of the penalty matrix. The Department now conducts a more thorough and fact-intensive review of the circumstances surrounding each case in order to ensure that all relevant factors in the penalty rules are adequately considered and properly applied, and that the penalty assessment properly reflects the particular circumstances of the case.

As a result of the institution of these new policies, penalty assessments have decreased dramatically. The Department assessed a total of $56.9 million in penalties for violations of the WPCA in 1990, $23.7 million in 1991, $17.5 million in 1992 and $22.1 million in 1993. (The amount assessed in 1993 is skewed by the assessment of civil penalties in two especially serious cases totaling $12.4 million. When these cases are excluded, the amount assessed in 1993 is $9.7 million, which is more reflective of the downward trend in penalty assessments).

The penalties assessed since 1991 more closely reflect the actual circumstances of each case and more thoroughly contemplate the factors prescribed in the rules. Substantial reductions in penalty assessments are not appropriate when the intitial assessments are properly calculated. Thus, the Department no longer substantially compromises penalty assessments in settlement negotiations, in accordance with the statute's proscription. If a penalty assessed in a particular case is perceived to be unreasonable or excessive, the problem, and therefore the remedy, lies in the initial assessment.

4. COMMENT: Edward A. Hogan, Esq., Thomas J. Detweiler, and Frank Sole, commented that because the penalty matrix provides for the assessment of penalties that are higher than the minimum mandatory penalties for serious violations prescribed by P.L. 1990, c.28, the rules exceed the intent of the 1990 amendments to the statute.

RESPONSE: The Department does not agree that it has exceeded the Legislature's intent by establishing a matrix providing for the assessment of penalties in amounts that may be greater than the minimum mandatory penalties prescribed by P.L. 1990, c.28.

The statute requires that the Department adopt a uniform policy for the assessment of civil administrative penalties, and that this policy take into account:

> the type, seriousness, including extent, toxicity and frequency of a violation based upon the harm to public health or the environment resulting from the violation, the economic benefits from the violation gained by the violator, the degree of cooperation or recalcitrance of the violator in remedying the violation, any measures taken by the violator to avoid a repetition of the violation, any unusual or extraordinary costs directly or indirectly imposed on the public by the violation other than costs recoverable pursuant to paragraph (3) or (4) of subsection c. of this section [costs for cleaning up discharges and damages to natural resources caused by discharges], and any other pertinent factors that the commissioner determines measures the seriousness or frequency of the violation, or conduct of the violator. N.J.S.A. 58:10A-10d(1)(b).

The existing rules at N.J.A.C. 7:14-8.5 establish a matrix with nine penalty ranges based upon the seriousness of the violation and the conduct of the violator. The Department determines the seriousness of the violation to be major, moderate or minor, and the conduct of the violator to be major, moderate or minor, and identifies the corresponding penalty range within the matrix. The Department then assesses a penalty at the midpoint of the applicable range, and can adjust the penalty within the range to an amount higher or lower than the midpoint based upon the following factors.

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts upon the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violation or the violator.

For example, the matrix provides a penalty range between $1,000 and $2,500 for violations for which the Department has determined both the seriousness of the violation and the conduct of the violator to be minor. The Department must assess a penalty at the midpoint of the range. The midpoint between $1,000 and $2,500 is $1,750. The Department may adjust the penalty to $1,000, the bottom of the range, or to $2,500, the top of the range, if one or more of the factors listed above are determined to be present and warrant such an adjustment.

Thus, under the existing rules, the Department may assess penalties at the minimum mandatory amount prescribed by P.L. 1990, c.28, when the seriousness of the violation and the conduct of the violator are determined to be minor, and one or more of the factors listed above are determined to be present and warrant such an adjustment. The Department believes this penalty matrix is consistent with the mandatory civil administrative penalty provisions and the requirements for a uniform penalty policy set forth in the WPCA.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:14.

(a)

ENFORCEMENT

Water Pollution Control Act
Civil Administrative Penalties and Requests for Adjudicatory Hearings
Financial Assurance for Penalty Payment Schedules
Adopted Amendment: N.J.A.C. 7:14-8.3

Proposed: December 6, 1993 at 25 N.J.R. 5395(a).
Adopted: May 4, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Filed: May 10, 1994 as R.1994 d.277, **without change.**

Authority: N.J.S.A. 58:10A-4 and 58:10A-10.
DEPE Docket Number: 58-93-10/282.

Effective Date: June 6, 1994.
Expiration Date: April 27, 1999.

Summary of Public Comments and Agency Responses:

On December 6, 1993, the Department of Environmental Protection and Energy (Department) proposed amendments to its rules governing civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (WPCA), as amended by the Clean Water Enforcement Act, P.L. 1990, c.28 (CWEA). The existing rules required that persons seeking to pay a civil administrative penalty over a period of more than 90 days must post financial assurance with the Department in the full amount of the penalty. The amendments to those rules allow for a lesser amount of financial assurance, depending upon the circumstances of the person seeking the payment schedule and the circumstances of the violation in question.

During the public comment period ending January 5, 1994, the Department received comments from one person. The commenter is Judith A. Thornton, Executive Director, New Jersey Manufactured Housing Association (NJMHA).

A summary of the comments, and the Department's responses, follows:

1. COMMENT: NJMHA recommended that the Department finalize and adopt the amendment of the financial assurance requirements for extended penalty payment schedules in cases arising under the WPCA. As the Department has recognized, it is impracticable to require financial assurance in the full amount of the penalty in these cases, and requiring financial assurance in this amount places the alleged violator in an untenable position.

RESPONSE: The Department agrees with the commenter, and appreciates the support for the amendment.

2. COMMENT: N.J.A.C. 7:14-8.3(g)2i provides that in establishing the amount of financial assurance to be required, the Department may consider the amount of the penalty. NJMHA noted that the amount of the penalty need not always result in an increased amount of financial assurance. In some cases, the size of the penalty may be totally unrelated to the environmental impact of the violation or the alleged violator's willingness to comply.

RESPONSE: The Department agrees with the commenter. The amount of the penalty is only one of several factors listed in the rule that will be relevant in determining the amount of financial assurance to be required. The Department will weigh all of the factors relevant in a particular case, including the alleged violator's compliance history and other factors related to the nature and extent of the risk of default on the payment schedule.

3. COMMENT: NJMHA suggested that the length of a payment schedule may be related to the alleged violator's financial condition. Those alleged violators that do not have funds readily available are the same ones who also need longer payout schedules, and may also have the most difficulty in providing financial assurance. Thus, to require increased financial assurance from those alleged violators may result in a continuation of the unfair effect that the Department seeks to mitigate under the amendment.

RESPONSE: The Department agrees with the commenter in part. All other factors being equal, a longer payment schedule normally provides for lower installment payments. The alleged violator's inability to make higher installment payments is therefore one of the reasons for establishing a longer payment schedule.

However, the length of the payment schedule is a relevant factor in determining the amount of financial assurance that will tend to ensure good faith compliance with the payment schedule. The purpose of the financial assurance is to protect against the risk of default on the payment schedule. As a general rule, the risk of default tends to be greater when the payment schedule is longer. In addition, if the longer payment schedule is made necessary by the alleged violator's financial constraints, the risk of default will again tend to be greater. Accordingly, the Department continues to believe that the length of the payment schedule is one factor to be considered.

Nonetheless, the length of the payment schedule is only one of several factors to be considered. In the circumstance cited by the commenter, other factors will be present that will tend to reduce the amount of financial assurance that is necessary. Most importantly, the amount of the installments payable over a given period (for example, one year) will tend to be lower as the length of the payment schedule increases. In that circumstance, a lesser amount of financial assurance would still enable the Department to collect installments as they came due by drawing on the financial assurance. Accordingly, this circumstance is reflected in N.J.A.C. 7:14-8.3(g)2ii as a factor that could reduce the amount of financial assurance required.

In addition, if posting the financial assurance could impair the alleged violator's financial ability to make expenditures for pollution control and/or pollution prevention, that fact would be relevant in determining the amount of financial assurance. See N.J.A.C. 7:14-8.3(g)vi.

4. COMMENT: NJMHA proposed that the Department include an alternative that would eliminate the need for financial assurances in appropriate cases after consideration of the facts and circumstances presented. NJPDES permittees face real economic constraints, and shifting limited resources to obtain financial assurance does not serve the Department's program goals.

RESPONSE: The Department believes that the rule already addresses the commenter's concern. The rule provides for consideration of the facts and circumstances that could be presented, and does not constrain the Department from doing as the commenter suggests in an appropriate case.

5. COMMENT: NJMHA stated that it would be appropriate for the Department to reassess the remaining financial assurance requirements in place pursuant to the WPCA and propose similar modification where permitted by the Act. Those requirements result in unfairness and hardship similar to that which results from the requirement being amended in this rulemaking.

RESPONSE: The other financial assurance requirements in N.J.A.C. 7:14-8 are mandated by the WPCA, as amended by the CWEA. Accordingly, the Department does not have the statutory authority to revise those requirements.

Full text of the adoption follows:

7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties, and affirmative defenses

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

(g) In its discretion the Department may enter into an agreement with a violator, in which the Department agrees to accept payment of a civil administrative penalty in installments over time. Such an agreement shall be in writing. The Department shall not enter into any such agreement if payment in full is due more than 90 days after execution of the agreement unless:

1. The violator is a local agency; or

2. The violator posts financial assurance with the Department upon execution of the agreement pursuant to one of the financial assurance mechanisms in Appendix D or in another form the Department individually approves in writing for this purpose. The financial assurance shall be in an amount that the Department reasonably determines will tend to ensure good faith compliance with the agreement. In determining the amount, the Department may consider any or all of the following factors:

i. The amount of the penalty;

ii. The amount and frequency of the installment payments due under the agreement;

iii. The duration of the agreement;

iv. Other remedies, aside from drawing upon the financial assurance, that the Department may exercise under the agreement if an installment payment is not timely made or if some other requirement of the agreement is not satisfied, and the extent to which such other remedies will tend to ensure compliance with the agreement;

v. The violator's history of compliance, including without limitation its history of compliance with other schedules for the payment of penalties assessed by the Department;

vi. Expenditures that the violator has made or has agreed to make for purposes of pollution control and/or pollution prevention; and

vii. Other specific circumstances of the violator relating to the tendency of the financial assurance to ensure compliance with the agreement or indicating the extent to which financial assurance is necessary to ensure compliance with the agreement.

(h)-(i) (No change.)

(a)

ENVIRONMENTAL REGULATION

Waiver of Executive Order No. 66(1978)
The New Jersey Pollutant Discharge Elimination System
N.J.A.C. 7:14A

Take notice that Governor Christine Todd Whitman has been informed by the Department of Environmental Protection and Energy (Department) that the New Jersey Pollutant Discharge Elimination System (NJPDES) rules, N.J.A.C. 7:14A, are due to expire June 2, 1994, pursuant to Executive Order No. 66(1978). These rules implement the NJPDES permitting requirements of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

The Department originally adopted the NJPDES rules on March 6, 1981 in order to assume delegation of the Federal permitting system pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and has adopted numerous amendments since then. However, the Department has identified many ways in which the current system may be improved to be more efficient, understandable and responsive and is in the process of substantially restructuring the NJPDES permitting program. On February 1, 1993, the Department issued a Notice of Opportunity for Interested Party Review in the New Jersey Register in order to solicit comments on various options to restructure the NJPDES system (See 25 N.J.R. 411(a)).

The major component of the proposed restructuring of the NJPDES program is the proposed use of a watershed approach to permitting. The Department held two public Round Tables and received extensive oral and written comments on the Interested Party Review document. Based on this process, the Department is presently writing a proposal document which will repeal the existing NJPDES chapter at N.J.A.C. 7:14A and replace it with an entirely new chapter.

Due to the scope of the changes being proposed and the extent of the public comments that are anticipated, the Department does not anticipate that the new chapter will be adopted prior to the June 2, 1994 expiration of N.J.A.C. 7:14A. Given this ongoing process for the extensive overhaul of the existing chapter, Governor Christine Todd Whitman has determined that the Department has met the spirit and intent of Executive Order No. 66(1978) by ensuring that the NJPDES rules remain necessary, adequate, and responsive for the purpose for which they were promulgated.

Therefore, by the authority vested in her by Executive Order No. 66(1978), Governor Christine Todd Whitman on May 10, 1994, directed that the five year sunset provision of Executive Order No. 66(1978) be waived for N.J.A.C. 7:14A, and the expiration date for the existing rules be extended for a period of one year from June 2, 1994 to June 2, 1995.

OTHER AGENCIES

(b)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Notice of Administrative Correction
Hazardous Discharge Site Remediation Fund
Application for Financial Assistance; Approval Process for Financial Assistance
N.J.A.C. 19:31-8.7 and 8.9

Take notice that the New Jersey Economic Development Authority has discovered two typographic errors in the text of N.J.A.C. 19:31-8.7 and 8.9, adopted effective April 18, 1994 at 26 N.J.R. 1706(c). At N.J.A.C. 19:31-8.7(h), the word "association" at the end of the second sentence should be "application," and the phrase "financial assistance of guarantee" in N.J.A.C. 19:31-8.9(d)1i should be "financial assistance or guarantee." See R.1994 d.192. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

19:31-8.7 Application for financial assistance

(a)-(g) (No change.)

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority members at a public meeting. Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the [association] **application**. The applicant has no right to have its application presented to the Members.

19:31-8.9 Approval process for financial assistance

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

(d) If there has been no veto, a formal commitment letter, notice of approval of financial assistance or grant, is issued to the applicant.

1. The notice of approval will contain all terms, conditions and collateral required by the Authority, and will include, among other things, that:

i. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's financial assistance [of] **or** guarantee. The life insurance must name the Authority as beneficiary and collateral assignee; and

ii. (No change.)

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

(a)

CASINO CONTROL COMMISSION

Casino Licensees
Operation Certificate

Adopted New Rules: N.J.A.C. 19:43-7 and 19:47-8.5
Adopted Amendments: N.J.A.C. 19:40-1.2; 19:41-1.4; 19:43-6.2, 9.1, 10.1 and 14.1, 19:45-1.1, 1.3, 1.10, 1.11, 1.14, 1.32 and 1.34; 19:46-1.10, 1.16, 1.19 and 1.20; and 19:47-2.5, 2.6 and 5.2

Proposed: December 20, 1993 at 25 N.J.R. 5893(a).
Adopted: April 29, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: May 3, 1994 as R.1994 d.265, **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. 5:12-35, 63(c), 69, 70(f), (h), (i) and (j), 96, 99, 100, 104, 106, 119, 121 and 194.

Effective Date: June 6, 1994.
Expiration Dates: N.J.A.C. 19:40—August 24, 1994;
N.J.A.C. 19:41—April 15, 1995;
N.J.A.C. 19:43—December 21, 1997;
N.J.A.C. 19:45—August 15, 1997;
N.J.A.C. 19:46—April 15, 1998;
N.J.A.C. 19:47—April 15, 1996.

Agency Note: The Casino Control Act (Act) was amended on December 21, 1993, subsequent to the publication of this proposal in the New Jersey Register. See P.L. 1993, 292. Upon adoption of the proposal, the Commission is making minor substantive changes not requiring further public notice or comment in order to conform the proposal to the legislative amendments. N.J.A.C. 19:45-1.11(b)1viii and xi, 19:45-1.11(b)7x and 19:43-7.8(b)1 will reflect the enactment of N.J.S.A. 5:12-71.1, which permits a casino licensee to exclude or eject a person known to it to have three or more convictions of a crime or offense committed in or on the premises of any casino hotel.

Subsequent to the publication of this proposal, the Commission approved the adoption of three other separate proposals, which recodify several definitions (26 N.J.R. 486(a)), implement the rules of the game of poker (26 N.J.R. 1380(a)) and permit the use of automated dealing shoes (26 N.J.R. 344(a)). This adoption on operation certificates has one section, N.J.A.C. 19:40-1.2, in common with the definitional adoption, another section, N.J.A.C. 19:45-1.11, in common with the poker adoption and a third section, N.J.A.C. 19:46-1.19, in common with the automated dealing shoe adoption. Each of these sections will be changed upon adoption to reflect the intervening amendments from the other three proposals, which became effective while the operation certificate proposal was pending and consequently were not included in that proposal at the time of its publication.

Summary of Agency-Initiated Changes:

Under N.J.A.C. 19:41-1.4 and 19:43-7.8 as proposed, a casino licensee is to exclude people from all restricted areas, including the casino floor and the casino simulcasting facility, unless they are authorized to be present in those areas because they are properly credentialed employees of the casino licensee. A separate exception is created to allow members of the public into the public areas of the casino room and casino simulcasting facility.

Pursuant to N.J.S.A. 5:12-70c, it is appropriate for the Commission to prescribe procedures which limit the ability of a casino licensee's employees to gain access to restricted areas, which may include the casino floor or the casino simulcasting facility. However, it is incongruous to label the public areas of the casino floor or a casino simulcasting facility as a "restricted area" with respect to the general public. Thus, this adoption notice removes that incongruity, while at the same time preserving a casino licensee's right to restrict its employees' access to "public" as well as restricted areas. Such changes are consistent with the intent of the proposal and therefore can be made at adoption without further public notice or comment. Language changes at N.J.A.C. 19:43-9.1 and 10.1 also reflect these changes.

Nor is further public notice or comment necessary for the changes being made upon adoption to N.J.A.C. 19:43-7.3(b). An approved set of blueprints will necessarily be the "final" set, so that word may be deleted from N.J.A.C. 19:43-7.3(a) without changing the intent of the section. Further, the changes made throughout N.J.A.C. 19:43-7.3(b)4, 5, 8, 10 and 12 merely clarify that a cashiers' cage window is to be identified on a blueprint by its "window" number, a slot booth by its "booth" number, etc.

Upon review of the procedures proposed in N.J.A.C. 19:45-1.32(d)2, the Commission has elected to leave the language unchanged and consequently it is declining to adopt the language found in the proposal which were editorial changes only and which will be recodified upon adoption at N.J.A.C. 19:45-1.32(e).

N.J.A.C. 19:46-1.16 is being clarified at adoption to provide that dice inspections will ensure that the dice are in a condition to assure fair play and otherwise conform to the Act and the rules of the Commission.

Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), the Department of Community Affairs (DCA), Sands Hotel and Casino (Sands), Caesars Atlantic City (Caesars), TropWorld Casino and Entertainment Resort (TropWorld), Resorts International Hotel, Inc. (Resorts), Bally's Park Place, Inc. and GNOC CORP. (Bally's), Harrah's Casino Hotel (Harrah's), Trump Taj Mahal Casino Resort (Taj Mahal), Trump's Castle Casino Resort (Castle), and Showboat Casino Hotel (Showboat).

COMMENT: The Division commented that it interposes no objection to the proposal.

RESPONSE: The Commission accepts the Division's comments, as evidenced by this adoption.

COMMENT: DCA comments that sections of the proposal, including, but not limited to, N.J.A.C. 19:43-6.2 and 19:43-7.7, appear to violate those provisions of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119, et seq.) which DCA asserts confer exclusive jurisdiction on it. DCA suggests that a statement already found in the proposal at N.J.A.C. 19:43-7.6(b) be added elsewhere in the proposal to make clear that a casino licensee must obtain all necessary approvals, and not just that of the Commission, before it may begin construction or make alterations.

RESPONSE: N.J.A.C. 19:43-7.7 is intended to apply only to pit reconfigurations which can be made without DCA approval. If the proposed reconfiguration implicates DCA oversight, then N.J.A.C. 19:43-7.6, and not N.J.A.C. 19:43-7.7, applies.

To clarify that point at adoption, the Commission is making technical changes to N.J.A.C. 19:43-7.7, which do not need further public comment or notice, to provide that a casino licensee cannot make changes through an alternate pit configuration that require Federal, State or local building code approval without first obtaining that approval, and that the need for such approval will require review under N.J.A.C. 19:43-7.6 rather than N.J.A.C. 19:43-7.7.

Additional technical changes are being made on adoption to N.J.A.C. 19:43-7.6 and 7.7 in order to make clear that a casino licensee initiates the process by submitting a description of the proposed physical changes to its casino or casino simulcasting facility, that the inspection of the completed physical changes will be based on a comparison of the changes to the blueprints and description submitted, and that the configuration of a casino licensee's gaming pits will be in accordance with the approved blueprints.

COMMENT: Sands has filed a letter with one general and 12 specific comments, in which Caesars, Resorts and Bally's join. TropWorld agrees with all the recommended amendments contained in Sand's comments. Thus, a Commission response to Sands should be treated as a response to those commenters who joined with Sands. However, the Commission will separately respond to any comments presented by those commenters joining with Sands that raise additional matters not addressed in Sands' comments.

As a general comment, Sands states that regulations which attempt to codify "standard" conditions imposed on casino licensees should not apply to casino licensees which were in operation prior to the effective date of those regulations, especially if the condition in question was never imposed directly on a particular casino licensee. In Sands' view, the Commission's publication of regulations that codify standard conditions bears "a clear and distinct waiver" that those regulations do not apply to existing casino licensees.

RESPONSE: The Commission rejects Sands comment. The Commission has broad authority under the Act to promulgate regulations of general applicability. The Commission is responsible for implementing the Act, which includes promulgating regulations that the Commission,

in its judgment, deems necessary to fulfill the policies of the Act. N.J.S.A. 5:12-63c. That includes the authority to adopt, amend or repeal, consistent with the policy and objectives of the Act, such regulations as the Commission deems "necessary or desirable for the public interest in carrying out the provisions of" the Act. N.J.S.A. 5:12-69a.

Necessarily, the policies and objectives of the Act, and what is in the public interest, are not static. The philosophy espoused by Sands, however, suggests that once a set of requirements is in place, the Commission is thereafter foreclosed from making any changes to those requirements. The Act does not so limit the Commission's authority.

Effective regulation of the casino industry requires that the Commission respond to changing circumstances, as well as initiate changes that are consistent with its grant of authority. Towards that end, the Commission sees fit to codify those conditions which it generally prescribed for all casino licensees at the time they were granted operation certificates.

Although the Commission's goal, as stated in the proposal, was to identify those conditions which were universally imposed, and thereby create a body of regulations with which all casino licensees would presumably already be in compliance, the Commission would fail in its responsibility if it were to ignore a valid policy decision embodied in a particular condition by not making it universally applicable simply because the condition was not specifically imposed on one or more casino licensees. Moreover, the regulatory process cannot be captive to the past if what was done in the past requires change, and notwithstanding that, in any one instance, a proposed regulation has no operation certificate as a precursor.

COMMENT: Sands' first specific comment is to proposed N.J.A.C. 19:41-1.4(g)1i, which requires a temporary license credential to contain, among other things, information about the restricted areas to which the employee wearing the credential is entitled to access. In Sands' view, the proposed regulation would require the temporary license credential to contain a list of the names of the areas to which the employee could obtain access, whereas Sands presently provides that information through a system of access codes relating to such areas as approved by the Commission.

RESPONSE: The Commission, by way of amendments not requiring further public comment, is amending N.J.A.C. 19:41-1.4(g)1i to make clear, consistent with the original intent of the proposal, that the information regarding the restricted areas to which access may be obtained only needs to be identified on the temporary credential in a manner approved by the Commission, which will leave undisturbed the access code systems that are presently in place.

COMMENT: Sands comments that the proposed amendments to N.J.A.C. 19:41-1.4(g)5 would require employees to go to the security podium on the casino floor in order to obtain a temporary license credential, whereas Sands security personnel presently distribute such credentials from the timekeeping booth at the employee entrance to the facility.

RESPONSE: To the extent that the Sands internal controls already permit the distribution of temporary credentials from its timekeeping booth rather than the security podium, the Commission sees no conflict with the proposed regulation. To clarify that point, the Commission, upon adoption, is deleting the phrase "from that location" in the proposed version of N.J.A.C. 19:41-1.4(g)5.

COMMENT: The proposed amendments to be codified at N.J.A.C. 19:41-1.4(i)2 require, among other things, an employee to report the loss or destruction of an access badge to the casino security department, whereas N.J.A.C. 19:41-1.4(j)2 requires the employee to apply to that department for a replacement access badge. Sands comments that it issues initial and replacement access badges, but not temporary license credentials, from its license department rather than its casino security department. Thus, Sands recommends an amendment to both N.J.A.C. 19:41-1.4(i) and (j) to allow casino licensees to select the department which is notified of the loss or destruction of an access badge and from which a replacement access badge is eventually issued.

RESPONSE: Accepted in part and rejected in part. Promptly reporting the loss or destruction of an access badge to the casino security department allows that department to best perform its duty of providing overall security for restricted areas. N.J.A.C. 19:45-1.11(b)7. Moreover, the casino security department is responsible for the distribution of temporary license credentials, N.J.A.C. 19:41-1.4(g)5, so that it is appropriate for the Commission to require an employee to report the loss or destruction of an access badge at least to that department as provided in N.J.A.C. 19:41-1.4(i)2. Of course, a casino licensee may also require its employees to report the loss to any other department, provided that such a report creates no incompatible function.

On the other hand, issuing a replacement access badge from a department other than casino security does not negatively impact on regulatory concerns, so long as adequate provision is made for such transactions in a casino licensee's internal controls. To the extent that Sands already has an approved system of internal controls which permits its license department to issue replacement access badges, Sands' proposed amendment to N.J.A.C. 19:41-1.4(j)2 is consistent with the original intent of the proposal and appropriate language, not requiring further public notice or comment, to that paragraph is being added upon adoption. A corresponding deletion of the phrase "employee access badges" in N.J.A.C. 19:45-1.11(b)7vii is also required as indicated in the adoption.

COMMENT: The proposed amendment to be codified at N.J.A.C. 19:43-6.2(a)8ii requires the doors to slot machine repair rooms to have alarms that audibly signal the security podium whenever a door to the room is opened. Sands suggests that there are an extensive number of times throughout a day that the doors to the room are opened, which would render the alarm meaningless or require a security officer to devote almost all of his or her time to monitoring the flow of traffic into and out of the room. Furthermore, Sands contends that any slot machine which may have been tampered with in the room would be inspected prior to being put in service on the casino floor.

Caesars also recommends deletion of the requirement and questions the purpose served by the alarm and the response security is to make upon being so notified. Caesars separately objects to the requirement found in N.J.A.C. 19:43-6.2(a)8i that there be CCTV coverage for the slot repair room.

RESPONSE: Rejected. Having an alarm on the doors to the repair rooms is one of several methods to control the security of the equipment in the room. If an officer at the security podium does not have advance notice of a departure from or an entry into the room, the alarm system will provide an excellent warning that sensitive equipment may be at risk. Thus, it would behoove a casino licensee to establish a system for those entering or exiting the room to notify security of their anticipated entry into or exit from the room.

As for Caesars questions, presumably one of its security officers will investigate whenever he or she is alerted by the alarm that an unannounced entry or exit has occurred. Moreover, history has demonstrated that slot machines are put in service without a prior inspection, notwithstanding the requirements of N.J.A.C. 19:45-1.38(b) and 19:46-1.28, 1.29 and 1.30. Thus, the Commission is adopting the requirement that the slot repair room have CCTV coverage and an alarm on the doors to the room.

COMMENT: The proposed amendment to be codified at N.J.A.C. 19:43-6.2(a)12iii requires emergency exits from the casino or casino simulcasting facility to have an electrical system that alerts the Division at its on-site offices whenever the door has been opened. Sands objects to the requirement as unnecessary and expensive for an existing casino licensee to implement especially because, in its view, the Division office may not be staffed at the time the alarm is activated or, if it is staffed, the alarm will not provide the Divison with any useful information.

Caesars' comments are similar to those of Sands, although it does mention that a patron's innocent and inadvertent opening of an emergency exit would not warrant security intervention.

RESPONSE: Rejected. The proposal was developed in cooperation with the Division, which specifically requested the requirement found in N.J.A.C. 19:43-6.2(a)12iii. While the Commission understands a casino licensee's need to be cost conscious, recent events in Atlantic City underscore the need for heightened security measures in and around a casino. Caesars is correct that not every opening of an emergency exit will raise law enforcement concerns. On the other hand, the Commission believes it is more prudent to have a system in place that detects both innocent and illicit uses of the exits.

COMMENT: Sands comments that it should not be required to have a metal door with a one-way mirror on the detention area used for those individuals taken into custody, nor does it perceive the need for a separate detention area for male and female detainees as required by the proposal at N.J.A.C. 19:43-6.2(a)13i and ii. Sands suggests that its present door with a "peep-hole" is safer than the one-way mirror, and that it has long operated without the separate detention facilities.

Caesars also separately comments on this part of the proposal and suggests that it is "too broadly written" and should be confined to simply requiring enclosed facilities for the detention of individuals taken into custody. Caesars also recommends that the Division's on-site detention facilities are adequate and no further area is required.

RESPONSE: Rejected. The required one-way mirror affords an easier method of monitoring the person in detention than the device suggested by Sands, which would require the person doing the monitoring to be stationed at the door and constantly using the device in order to observe the activity in the room. As for the separate facilities, it must be assumed that the person in custody exhibited behavior that deviated from the norm and that was of such a magnitude as to require, in the judgment of security or law enforcement personnel, the detention of the individual in the first place. In such a volatile setting, privacy and safety concerns may arise that would make it more difficult for security or law enforcement personnel to maintain order in a situation where an individual has already demonstrated aberrant behavior. To minimize that risk, separate facilities are appropriate.

COMMENT: The proposed amendments to be codified at N.J.A.C. 19:43-7.3(b)1i require each casino licensee's blueprints to contain a grid that will be used to identify, by number, the location of various types of gaming equipment in a casino or a casino simulcasting facility. Sands asserts that the proposal is ambiguous. Caesars separately makes similar comments.

RESPONSE: Accepted in part and rejected in part. Among the meanings for the word "grid" is that of a "basic system of reference lines for a region, consisting of straight lines intersecting at right angles," from which one can plot the coordinates of a point on the grid. Random House College Dictionary. Such a grid is commonly found on maps as an aid for locating a point on the map, and the word was similarly used in the proposal.

Many casino licensees submit blueprints with grids as described above. Part of the purpose of the proposal, however, is to specify how to determine what the location number is for each piece of gaming equipment listed in N.J.A.C. 19:43-7.3(b)1i. To the extent that another means of accomplishing that goal is as effective as a "grid," regulatory purposes are thereby served. Thus, the use of "grid" for that purpose is unnecessary so long as the regulations elsewhere provide for location numbers to be assigned to the gaming equipment listed in N.J.A.C. 19:43-7.3(b)1i, as well as for zone numbers or letters to be assigned to a group of slot machines.

At present, the definition of "location number" found in N.J.A.C. 19:45-1.1 only applies to slot machines. Recodifying that definition in N.J.A.C. 19:40-1.2 and adding thereto the types of gaming equipment described in N.J.A.C. 19:43-7.3(b)1i accomplishes the same regulatory purposes as the use of the grid. Likewise, those purposes will be preserved by the inclusion of a definition for zone number or letter. Accordingly, such changes will be made upon adoption and do not necessitate further public notice or comment.

Of course, casino licensees may continue to submit blueprints with grids as a general aid for locating an area on the blueprint that corresponds to an area on the casino floor or in the casino simulcasting facility. Also useful are legends on the blueprint that assign a specific symbol to each type of table game, which symbol is used to show the location of, for instance, a craps table, and to readily distinguish that type of table from a sic bo table, for example.

COMMENT: As for N.J.A.C. 19:43-7.3(b)11, Sands comments that a blueprint need not contain the location number of each bill changer. Rather, Sands recommends that the blueprint should merely state the location at which a bill changer is authorized for use. Caesars separately makes a similar comment.

RESPONSE: Rejected. N.J.A.C. 19:45-1.38(a) already requires each casino licensee to file with the Commission a floor plan on which each slot machine and bill changer on the casino floor is identified by location number. To the extent that a casino licensee submits a blueprint as its required "floor plan," N.J.A.C. 19:43-7.3(b)11 imposes no new obligation and, by requiring the location number, is consistent with N.J.A.C. 19:45-1.38(a). For any casino licensee which elects to submit a floor plan separately from its blueprint, the Commission believes it is reasonable for each document to contain the same information regarding a casino licensee's bill changers.

Of course, given that each bill changer on the casino floor will be in the same location as its slot machine, a single location number on the blueprint may be used to refer to both pieces of equipment, provided that each slot machine that has a bill changer is clearly marked on the blueprint.

COMMENT: The proposed amendment to N.J.A.C. 19:45-1.10(b)1iii requires that there be closed circuit television (CCTV) coverage of the cashiers cage and "each office and area ancillary thereto." Sands comments that the quoted language is susceptible of various interpretations and could lead to what it characterizes as an "embarrassing regulatory suggestion" that would require CCTV coverage of the restrooms in the cashiers cage. Showboat separately submitted comments to the same effect.

RESPONSE: Accepted in part and rejected in part. At least four casino licensees have a condition attached to their operation certificates which requires either that a CCTV camera be located in each office of the cashiers cage, or that the offices in the cage have unobstructed transparent openings through which cameras located outside the office can observe the activities in the office. Thus, the Commission perceives no reason to dispense with CCTV coverage for those offices in the cage where sensitive transactions relating to cage functions will be occurring.

On the other hand, intruding into the personal privacy of a casino licensee's employees is not necessary under circumstances where there are other measures in place to ensure the security of sensitive cage functions, such as the requirement that general cashiers operate with an imprest fund. N.J.A.C. 19:45-1.15(c)1. Of course, the Commission retains the authority to require CCTV coverage of any area, but the exercise of that authority may be more appropriate on a case-by-case basis. N.J.A.C. 19:45-1.10(b) already provides the Commission with that flexibility by specifying a non-exhaustive list of the requirements of a CCTV system. Consequently, N.J.A.C. 19:45-1.10(b)1iii is being adopted to require CCTV coverage for only the cage and its ancillary offices, thereby leaving for a case-by-case determination whether cameras in ancillary areas are required.

COMMENT: The proposed amendment to be codified at N.J.A.C. 19:45-1.10(d)5 requires a casino licensee to record in its surveillance log the meter reading that corresponds with the observation and recording of suspected criminal activity. Sands comments that such meter readings are unreliable for locating the point on the tape where the recorded activity occurred, which it asserts can more accurately be located through the use of the date and time superimposed on the videotape.

RESPONSE: Accepted in part and rejected in part. If a videotape unit has a meter or counter, the information from that device supplements the date and time as a means of locating the point on the tape when a particular event was recorded. Consequently, the meter reading should be recorded on the surveillance log.

Nevertheless, if a casino licensee can demonstrate that videotape technology has advanced so that a suitable alternative to the meter reading is available, the licensee should be allowed to avail itself of that technology and dispense with the meter reading. Consequently, N.J.A.C. 19:45-1.10(b)2 is being amended upon adoption to provide for that flexibility. A corresponding change upon adoption is also being made to N.J.A.C. 19:45-1.10(d)5, along with a correction of a typographical error to the cross-reference imbedded in that section.

COMMENT: The proposed amendment to N.J.A.C. 19:45-1.10(d)8 requires a casino licensee to record in its surveillance log the time at which the surveillance department notified the security department of a CCTV equipment malfunction. Sands, along with Caesars, TropWorld, Resorts, Bally's, Showboat, Harrah's, Taj Mahal and Castle, comment that requiring surveillance to notify security of a camera malfunction compromises the independence of those departments.

RESPONSE: Accepted in part and rejected in part. Although the casino licensees may be interpreting the proposed amendment as requiring every CCTV malfunction to be reported to security, the proposal only requires that a casino licensee record in the surveillance log the times at which security is apprised of a malfunction. Obviously, if security is not notified, then no time need be recorded.

The Commission rejects the suggestion that security should never be informed when the surveillance system fails. Casino security will necessarily need to be informed so that it can provide additional on-site coverage to those areas which have been "blacked-out" due to a camera malfunction. It also seems to the Commission that a prudent security supervisor, in the event that a camera is inoperative, would want to be apprised of that fact in order to reschedule the transportation of assets to a time when there will be a videotape recording of the shipment. These situations, and many others, should all be addressed in a casino licensee's internal control submission as provided in N.J.A.C. 19:45-1.3(a)3. To clarify that point, the Commission, upon adoption, is adding that cross-reference to N.J.A.C. 19:45-1.10(d)8.

COMMENT: Sands comments that posting a notice in each monitoring room as required by N.J.A.C. 19:45-1.10(i) is "offensive" because it singles out a specific group of employees, that is, those in the surveillance department, for a constant reminder of their duty to cooperate with the Commission and the Division.

RESPONSE: Rejected. Although the Commission agrees that the duty to cooperate universally applies in a casino setting, it is especially important for surveillance employees to be aware of that responsibility in order to ensure that information deemed relevant to the regulators is timely monitored and recorded as requested.

COMMENT: Caesars comments that the proposed amendments to N.J.A.C. 19:46-1.20(a) deprived the Commission of the discretion to review gaming equipment by mandating a review of all such equipment prior to use in a casino or casino simulcasting facility. Caesars also comments that requiring the review of "related devices" would cause the mandatory review of, for instance, data processing equipment and sic bo electrical devices, which Caesars asserts were not previously subject to such review. If N.J.A.C. 19:46-1.20(a) is amended at all, Caesars recommends elimination of the list of items to which the section applies.

RESPONSE: Rejected. If the existing regulation were left unchanged, the Commission would continue to have the discretion to review all gaming equipment prior to use, which it routinely exercises in all cases. The use of slot machines and bill changers subsequent to their movement within or into a casino is already subject to the Commission's prior written approval (N.J.A.C. 19:45-1.38(b)), and N.J.A.C. 19:46-1.20 was simply redrawn to implement current practice by which all gaming equipment is submitted for regulatory review prior to use.

Of course, the level and scope of review will continue to depend upon the particular piece of equipment. For instance, a Commission inspector may be able to perform any necesssary review of a drop box during the course of opening and closing the box in the count room. N.J.A.C. 19:45-1.16d, 19:45-1.17 and 19:45-1.33.

As for the comments regarding data processing equipment and sic bo electric devices, those pieces of equipment are specifically listed in the currently codified version of N.J.A.C. 19:46-1.20(a) and will continue to be subject to review. Moreover, the Commission believes that maintaining the list of specific items in N.J.A.C. 19:46-1.20(a) will cause less confusion than deleting those provisions.

COMMENT: Caesars comments that the proposed amendments appearing at N.J.A.C. 19:41-1.4(b) and at N.J.A.C. 19:43-9.1(a)8 create "unwarranted confusion."

RESPONSE: Rejected. The sections as proposed state the requirements that the Commission intends to impose and, consequently, no change is necessary.

COMMENT: The proposed amendments to N.J.A.C. 19:45-1.34(b)2 require each slot booth to be equipped with an approved electrical system that enables a slot cashier to send an audible and visual signal to the casino security department whenever there is an emergency. Under TropWorld's present system, the audible signal is transmitted directly to hotel security, which then relays the information to casino security.

RESPONSE: Rejected. Casino security will necessarily be required to respond whenever there is an emergency at a slot booth. Diverting the audible signal to hotel security creates the possibility that the signal will not reach, or will be delayed in its transmission to, casino security. Consequently, the Commission will require as a matter of general policy that both the audible and visual signal be given to casino security.

COMMENT: Showboat comments that N.J.A.C. 19:45-1.10(d)3 intrudes into its employees' privacy by requiring their name to be recorded on the surveillance log, whereas Showboat only records the "employee number."

RESPONSE: Rejected. The Commission does not perceive there to be any validity to Showboat's asserted privacy concern on behalf of its employees. Such a concern might be more apparent if the surveillance logs were in the public domain. In the Commission's view, it is a separate matter if a Showboat employee with access to the log improperly discloses information from the log.

COMMENT: The proposed regulation to be codified at N.J.A.C. 19:45-1.10(d)4 requires a casino licensee to record in its surveillance log the times at which a video or audio tape recording is stopped or started. Showboat comments that its surveillance operators continuously run their tapes throughout their shifts, so that the start and stop times of the tapes coincide with the beginning and end of their shifts.

RESPONSE: Rejected. Showboat presumes that there will never be a time when a separate tape is started just to record a particular activity that is being observed. Because such a possibility exists, the Commission will adopt the requirement as proposed.

COMMENT: Showboat comments that a discard rack in blackjack should not be required to have a mark to indicate the height of a stack of cards being used with the rack. N.J.A.C. 19:46-1.10(i). According to Showboat, "humidity and shuffling affect the cards ... causing them to swell and bend."

RESPONSE: Rejected. As stated in the Summary to the proposal, the purpose of the requirement is to provide a dealer with a reasonably reliable means of ensuring that no cards are missing from the decks in use. If the cards that Showboat uses are so susceptible to the problems it describes, the solution is for Showboat to use different cards rather than for the Commission to eliminate the requirement.

COMMENT: Taj Mahal comments that its emergency exits have tempered glass doors, some of which do not have "panic bars," whereas N.J.A.C. 19:43-6.2(a)12i requires all emergency exits to have locking metal doors which can be opened from inside the casino or casino simulcasting facility without using a key.

RESPONSE: The security of a casino licensee's emergency exits is a legitimate regulatory concern. However, fire safety issues are also present.

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

19:40-1.2 Definitions

(a) The following words and terms are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) and are used in the rules of the Commission as defined in that Act:

...

["Restricted casino areas"]

...

(b) The following words and terms, when used in the rules of the Commission, shall have the following meanings, unless the context clearly indicates otherwise*[.]***:***

"Access badge" is defined in N.J.A.C. 19:41-1.4(b).

...

"Casino licensee" or "licensed casino" means the holder of any license, issued pursuant to the Casino Control Act, that authorizes the ownership or operation of a casino and, if applicable, of a casino simulcasting facility.

...

"Count room" is defined in N.J.A.C. 19:45-1.32.

...

"Establishment" means a casino hotel complex, meeting the requirements of the Casino Control Act, wherein gaming or simulcast wagering is conducted or gaming devices are used in connection with gaming.

...

"Gaming guide" is defined in N.J.A.C. 19:47-8.5.

"Hard count room" is defined in N.J.A.C. 19:45-1.32.

...

"Location number" means the unique number assigned to each site on a casino floor or in a casino simulcasting facility that contains the following: a pit and each table game located therein, a slot machine and any bill changer attached thereto or incorporated therein, an automated coupon redemption machine, a credit voucher machine or a self-service pari-mutuel machine.

...

"Operation certificate" means a certificate issued by the Commission which certifies that operation of a casino and, if applicable, of a casino simulcasting facility conforms to the requirements of the Act and applicable regulations.

...

"Public area" means the areas in each casino and casino simulcasting facility that are open to the public in accordance with a casino licensee's internal controls.

...

"Restricted areas" or "restricted casino areas" means the cashier's cage, the soft count room, the hard count room, the slot booths and runway areas, the interior of table game pits, the surveillance room and catwalk areas, the slot machine repair room and any other area specifically designated by the Commission as restricted elsewhere in the rules of the Commission in a casino licensee's operation certificate.

...

"Security podium" is defined in N.J.A.C. 19:41-*[1.4(g)(5)]* ***1.4(g)5***.

...

"Slot zone" means a specified area on a casino floor that contains one or more slot machines.

...

"Soft count room" is defined in N.J.A.C. 19:45-1.32.

...

"Zone letter" or "zone number" means the unique alpha or numeric designation assigned to each slot zone.

...

19:41-1.4 Employee license credentials and access badges; display; temporary credentials; obligation to obtain renewed credentials

(a) Each casino key employee and casino employee shall wear in a conspicuous manner his or her employee license credential issued by the Commission at all times while employed in *[the casino room, the casino simulcasting facility or]* a ***public or*** restricted area including, without limitation, the casino and casino simulcasting facility floors, the cashiers' cage and satellite cages, the count rooms, the catwalk areas and the surveillance room.

(b) Each employee of a casino licensee shall wear in a conspicuous manner a badge or similar form of identification (an "access badge") as required pursuant to his or her employer's internal controls submitted in accordance with N.J.A.C. 19:43-9.1(a)8 for purposes of identifying the restricted areas in the employer's establishment to which that employee may obtain access in the course of the performance of his or her normal duties.

(c) No casino licensee shall permit any of its employees to work in *[the casino room, the casino simulcasting facility or any other]* ***a public or*** restricted area unless the employee is wearing his or her access badge as required by this section and, in the case of any casino key employee or casino employee, also is wearing his or her license credential as required by this section.

(d) Notwithstanding (a) through (c) above, the Chairman may, upon written request by a casino licensee and upon a showing of good cause, exempt certain positions, titles or persons from the requirements of this section. The Chairman may delegate the authority to make such determinations to the Director of the Division of Licensing.

(e) Each casino licensee shall provide each casino key employee and casino employee required to wear a Commission license credential and access badge pursuant to this section with a license holder, which shall contain the name of the casino hotel facility and shall permit the prominent display of the information contained on the license credential and access badge. Thirty days prior to the use of any such license holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

(f) A temporary license credential may be issued by the casino security department of a casino licensee to a casino key employee or casino employee who does not have the license credential or access badge on his or her person, or whose license credential or access badge has been lost or destroyed, to enable the employee to enter *[the casino room, the casino simulcasting facility or any other]* ***a public or*** restricted area to perform employment duties, if the casino security department:

1.-2. (No change.)

3. Verifies that the employee is authorized to obtain access to the ***public and*** restricted areas in which he or she will be working while in possession of the temporary license credential;

4. Confirms the above employment, access and licensure information with the supervisor of the employee;

Recodify 4. as 5. (No change in text.)

6. Immediately notifies the Commission inspection booth in writing that a temporary license credential has been issued, which notice shall include:

i. (No change.)

ii. A list of the ***public and*** restricted areas to which the employee may obtain access while wearing the credential;

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

(g) A temporary license credential issued pursuant to (f) above shall:

1. Contain the following information:

i. The name and license number of the employee to whom it was issued, and the ***public and*** restricted areas***, identified in a manner approved by the Commission,*** to which the employee is permitted access while wearing the credential;

ii. (No change.)

iii. A conspicuous statement printed on the face thereof which provides that the credential is void 24 hours after the time of its issuance;

Recodify existing iii.-iv. as iv.-v. (No change in text.)

2. Be void 24 hours after the time of its issuance;

3. Be worn in a conspicuous manner by the employee to whom it is issued;

4. Be sequentially numbered; and

5. Be stored in the offices of the casino security department adjacent to the casino floor (the "security podium") and distributed by that department *[from that location]* in accordance with the casino licensee's internal controls submitted to and approved by the Commission in accordance with N.J.A.C. 19:43-9.1(a)8.

Recodify (g) as (h) (No change in text.)

(i) Any holder of a Commission license credential or an access badge shall promptly report the loss or destruction of:

1. A Commission license credential to the Commission through its Division of Licensing; and

2. An access badge to the casino security department of the casino licensee by which such holder is employed.

(j) As soon as possible following the loss or destruction of a license credential or an access badge, the person to whom the license credential or access badge was originally issued shall apply ***to***:

1. *[To the]* ***The*** Commission for a replacement license credential; and

2. *[To the]* ***The*** *[casino licensee's security]* department ***of the casino licensee responsible for the issuance of replacement access badges in accordance with the casino licensee's internal controls*** for a replacement access badge.

19:43-6.2 The hotel

(a) No casino license shall be issued unless the casino shall be located within an approved hotel which conforms in all respects to all facilities requirements of the Act and unless, in accordance with sections 1, 6, 27, 70, 83, 98, 100, 103, and 136 of the Act and the rules of the Commission, such approved hotel:

1.-6. (No change.)

7. Contains a closed circuit television (CCTV) system approved by the Commission;

8. Contains specifically designated and secure areas for the inspection, repair and storage of gaming equipment which, in the case of each slot machine repair room, shall include, at a minimum:

i. CCTV coverage of the room; and

ii. An alarm device, approved by the Commission, that is connected to each door to the room and that audibly signals, at a minimum, the security podium whenever a door to the room is opened;

9. (No change.)

10. Conforms with the provisions relating to barrier-free design for providing facilities for the physically handicapped in public buildings;

11. Contains facilities suitable for all family, cabaret and pub entertainment requirements;

12. Has each emergency exit from the casino floor or, if applicable, from the casino simulcasting facility, equipped with:

[i. Metal doors covering such exits with a locking mechanism which permits each such door to be opened only from inside the casino or casino simulcasting facility without using a key;]

[ii.] ***i.*** An audible alarm system, approved by the Commission, that produces a loud warning sound, discernible in the vicinity of the exit, whenever the emergency door is opened and that can only be deactivated and reset by a key maintained and controlled by the casino security department; and

*[iii.]***ii.*** An electrical system, approved by the Commission, which audibly and visually notifies the Division at its offices in the approved hotel whenever each emergency door is opened;

13. Contains adequate enclosed facilities which the casino licensee shall maintain for the detention of individuals taken into custody by its security department, the Division or any authorized law enforcement agency, which facilities shall include, at a minimum, the following:

i. Separate detention areas for male and female detainees;

ii. A metal door with a one-way mirror;

iii. A bench or other sitting apparatus which is permanently affixed to the enclosed facility and to which the person in custody can be handcuffed with as little discomfort to that person as is reasonably possible under the circumstances.

iv. Adequate lighting and a fire extinguisher, each of which is inaccessible to the person in custody; and

v. A secured toilet facility that provides reasonable privacy and safety;

14. Contains suitable space, equipment, partitions and supplies, adequately maintained by the casino licensee, to meet the Commission's continuing needs at the facility, including, at a minimum, the following:

i. A booth and interview room adjacent to the casino floor for the Commission's inspectors to perform their responsibilities effectively, which shall include monitors in the inspection booth that are capable of receiving the signal generated by each camera approved for use as part of the casino licensee's CCTV system;

ii. Adequate parking spaces in the approved hotel, or in lots or a parking garage ancillary thereto, which are clearly marked for Commission use only;

iii. Adequate computer equipment, both at the inspection booth and in the office of the Commission's principal inspector, to meet the Commission's continuing data-processing and related needs; and

iv. Such other facilities and office space elsewhere in the approved hotel as the Commission shall direct during the course of performing audit, compliance or other reviews at the approved hotel; and

15. Contains suitable space, equipment, partitions and supplies, adequately maintained by the casino licensee, to meet the Division's continuing needs at the approved hotel in order for the Division to perform its duties and responsibilities effectively, including, at a minimum, the following:

i. A direct telephone line between the Division's office in the approved hotel and the monitoring rooms required by N.J.A.C. 19:45-1.10 and the casino licensee's security podium;

ii. Adequate parking spaces in the approved hotel, or in lots or a parking garage ancillary thereto, which are clearly marked for Division use only; and

iii. Such other facilities and office space elsewhere in the approved hotel as the Division shall require during the course of performing audit, compliance or other reviews at the approved hotel.

SUBCHAPTER 7. OPERATION CERTIFICATE

19:43-7.1 Operation certificate; standards for issuance

(a) Except for the test period pursuant to N.J.A.C. 19:43-7.2, each casino licensee responsible for the operation of a casino and a related casino simulcasting facility, if any, shall obtain an operation certificate prior to opening such casino or casino simulcasting facility to the public, and prior to conducting:

1. Gaming in such casino; or

2. Simulcast wagering or any gaming permitted in such casino simulcasting facility.

(b) To obtain an operation certificate, each casino licensee shall establish to the satisfaction of the Commission that:

1. The casino and, if applicable, the casino simulcasting facility comply in all respects with the applicable requirements of the Act and the rules of the Commission;

2. The casino licensee has implemented necessary management controls and security precautions for the efficient operation of the casino and any applicable casino simulcasting facility;

3. The casino and simulcasting personnel are properly trained and licensed for the efficient performance of their respective responsibilities; and

4. The casino and casino simulcasting facility are prepared in all respects to receive and entertain the public.

(c) Each operation certificate granted by the Commission to a casino licensee shall include, at a minimum, the following information:

1. A statement that such casino licensee has complied with N.J.S.A. 5:12-96a and with (b) above;

2. A list itemizing the authorized games, by category and number, that are permitted in the casino and, if applicable, the casino simulcasting facility; and

3. A list of those areas, not otherwise enumerated explicitly in N.J.S.A. 5:12-43.1 or elsewhere in the rules of the Commission, which the Commission has specifically designated as a restricted area.

19:43-7.2 Operation certificate; test period

(a) Prior to the issuance of an operation certificate for its casino and casino simulcasting facility, if any, each casino licensee shall successfully complete an evaluation or test period in accordance with such terms and conditions as are reasonably calculated to allow the Commission to assess the licensee's entitlement to the issuance of such certificate.

(b) The evaluation or test period shall commence on such date and at such time as the Commission shall establish, and shall continue thereafter until further order of the Commission.

(c) Whenever the Commission delegates to one or more of its members the authority to evaluate a casino licensee's successful completion of a test period, the member or members, acting jointly, shall be authorized to do any of the following unless the full Commission has otherwise reserved that authority to itself:

1. Establish the original length of time and the hours during which such test shall be conducted;

2. Terminate, restrict, limit, extend or otherwise modify such test period or the hours thereof;

3. Upon determining that the casino licensee has successfully completed the test period, establish the effective date of the operation certificate and the scope of the casino licensee's authority to conduct gaming and, if applicable, simulcast wagering thereunder; and

4. Order the casino licensee to take whatever actions are necessary to preserve the policies of the Act and to assure an effective evaluation of the casino licensee during such test period including, among other things, permitting, limiting, restricting or prohibiting the casino licensee from:

i. Accepting coin at the slot machines or currency at the table games during all or any part of such period; and

ii. Allowing the count rooms to process cash.

19:43-7.3 Operation certificate; blueprints of the casino floor, casino simulcasting facility and any *[other]* restricted areas

(a) Prior to the issuance of an operation certificate and the commencement of gaming or simulcast wagering, each casino licensee shall obtain Commission approval for the *[final]* blueprints of its casino floor, casino simulcasting facility, if any, and any *[other]* restricted areas.

(b) Each blueprint required by (a) above shall be filed with the Commission and served on the Division, shall be drawn to one-eighth inch scale, shall be certified by an architect licensed to practice in New Jersey and shall depict, at a minimum, the location of the following:

1. The casino floor and any casino simulcasting facility, including, at a minimum, the *[following information associated therewith:

i. A grid which is consecutively numbered to show the unique location of each pit and each table game therein, and of each slot machine, bill changer, automated coupon redemption machine, credit voucher machine and self-service pari-mutuel machine (each such number to be known as a location number), and which divides the space on the casino floor on which slot machines are permitted

into consecutively numbered or lettered zones (each a zone number or letter); and

ii. For the casino room and the casino simulcasting facility, if any, the]* proposed total square footage *[of each]* ***thereof*** and a clear delineation of the respective perimeter of each;

2. Each gaming pit, noting its pit location number;

3. Each table game, noting its pit and table game location number;

4. Each CCTV camera, noting its type and ***camera*** number;

5. Each slot booth, noting its ***booth*** number;

6. Each cashier's cage and its component offices and areas;

7. Each separate master coin bank;

8. Each window at the cashiers' cage, noting its ***window*** number;

9. Each count room;

10. Each slot machine, noting its location number and zone ***letter or number***;

11. Each bill changer, noting its location number;

12. Each slot stool authorized for use, noting its ***stool*** number, if any;

13. Each automated coupon redemption machine, noting its location number;

14. Each satellite cage and its component offices and areas;

15. Each coin vault;

16. Each area approved for the storage of gaming chips or plaques pursuant to N.J.A.C. 19:46-1.6(c)3 or (d)3;

17. Each room or area approved for the storage of dice or playing cards;

18. Each other room or area that is accessible directly from the casino floor;

19. For those establishments with a casino simulcasting facility:

i. Each simulcast counter and any ancillary simulcast counter, along with their component offices, areas and equipment required by N.J.A.C. 19:45-1.14A(b) or (d);

ii. Each credit voucher machine, noting its location number; and

iii. Each self-service pari-mutuel machine, noting its location number; and

20. Each other area or room designated by the Commission.

(c) Each casino licensee, after obtaining Commission approval of its final blueprints, shall not commence gaming or simulcast wagering until a copy of such blueprints has been delivered to, and receipt thereof acknowledged by an authorized person at, each of the following:

1. The Commission's inspection booth in the establishment;

2. The office of the Commission's principal inspector in the establishment;

3. The Operations Unit of the Commission's Division of Compliance;

4. The Division's office in the establishment;

5. The Division's Casino Operation Section in Atlantic City;

6. The casino licensee's security podium; and

7. The casino licensee's monitoring rooms required by N.J.A.C. 19:45-1.10.

19:43-7.4 Operation certificate; master lists of approved slot machines and table games

(a) Prior to the issuance of an operation certificate and the commencement of gaming or simulcast wagering, each casino licensee shall file with the Commission, at the office of the Commission's principal inspector in the establishment, and serve on the Division, at its office in the establishment, a comprehensive list of the table games in its casino and casino simulcasting facility, if any (the Table Games Master List), and similarly shall file and serve a list of the slot machines in its casino (the Slot Machine Master List).

(b) At a minimum, each Slot Machine Master List shall list each slot machine consecutively by location number and shall contain the following information:

1. The date on which the list was prepared;

2. A description of each slot machine by:

i. Asset, model and serial number;

ii. Computer program number;

iii. Denomination; and

iv. Manufacturer and machine type, noting with particularity whether the machine is a high-boy, has a bill changer attached, or is a progressive machine;

3. The location at which each slot stool is installed;

4. A cross reference for each slot machine by zone and serial number; and

5. Such other information as the Commission may require.

(c) At a minimum, each Table Game Master List shall contain the following information:

1. The date on which the list was prepared;

2. A description of each table by:

i. Type of authorized game;

ii. Location number; and

iii. Serial and table number; and

3. Such other information as the Commission may require.

(d) Each casino licensee, after obtaining permission to alter, modify or reconfigure its casino floor or casino simulcasting facility and the authorized games therein, shall file and serve, in accordance with (a) above, updated master lists of its table games and slot machines to reflect the changes that the Commission has approved.

19:43-7.5 Operation certificate; effective date; duration

(a) Upon the successful completion of the test period, the Commission shall establish the effective date of each operation certificate and the scope of the casino licensee's authority to conduct gaming and, if applicable, simulcast wagering thereunder.

(b) Subject to the Commission's authority to revoke, suspend, limit or otherwise alter an operation certificate in accordance with the terms of the Act and the rules of the Commission, each such certificate, once issued, shall remain in full force and effect indefinitely under such terms and conditions as the Commission may impose, and shall not be altered, modified or amended except in accordance with the Act and the rules of the Commission.

(c) The continued effectiveness of each such certificate shall be a prerequisite for the casino or casino simulcasting facility to which it applies to remain open to the public for the conduct of gaming or simulcast wagering.

19:43-7.6 Operation certificate; amendment to conform to approved alterations

(a) Each casino licensee shall file with the Commission and serve on the Division, in a manner and in a format prescribed by the Commission, ***a description of*** each proposed physical alteration to its casino or casino simulcasting facility which relates to the continued effectiveness of its original operation certificate and any approved amendments thereto, including, without limitation, a *[change]* ***description of proposed changes*** to any of the following:

1. The number of authorized games to be played in the casino and casino simulcasting facility, if any;

2. The configuration or floor plan of the casino or casino simulcasting facility; and

3. Any *[other]* restricted area.

(b) Within three business days of a casino licensee filing ***a description of*** a ***proposed*** change governed by (a) above, the Commission and the Division shall review such change for compliance with the Act and the rules of the Commission. Unless the Commission notifies the casino licensee in writing that the change is disapproved, the casino licensee, after obtaining all approvals required by Federal, State or local government officials and providing a copy or other acceptable written evidence of such approvals to the Commission and the Division, may begin implementing such change upon the earlier of the following:

1. The expiration of such three-day period; or

2. Receipt of written Commission approval for the change.

(c) Each casino licensee, upon final completion of any proposed change to its facility governed by (a) above, shall notify the Commission and the Division thereof by filing, at a minimum, a revised blueprint in the manner prescribed by N.J.A.C. 19:43-7.3(c). Each such blueprint shall be in a format consistent with N.J.A.C. 19:43-7.3 and, in addition to depicting the change that is made to the appli-

cable items enumerated in N.J.A.C. 19:43-7.3(b), shall include the following:

1. A comparison showing:

i. The authorized square footage of the casino room and any applicable casino simulcasting facility in effect immediately prior to initiating any change for which approval is sought; and

ii. The change made to such square footage after giving effect to the proposal for which approval is sought;

2. A clear delineation of the change, if any, made to the perimeter of the casino room and of the casino simulcasting facility, if any; and

3. A narrative from the architect who is certifying the blueprints that clearly describes the change being made by the proposal, noting with particularity any such change to the perimeter of the casino floor or of the casino simulcasting facility.

(d) The Commission and the Division shall inspect the physical change depicted on the blueprint to ensure that it conforms to ***the blueprint and to*** the previously submitted *[plans for]* ***description of*** such proposed change and any properly filed amendments thereto. Following such inspection, the Commission shall notify the casino licensee in writing as to which physical change is approved and which is rejected, whereupon the operation certificate shall be amended to conform to the inspected and approved physical change.

(e) For purposes of this subchapter, a "business day" shall be a calendar day other than:

i. A Saturday or Sunday; or

ii. Any day on which the Commission's main offices are closed because of Federal, State or local holiday, inclement weather, or like circumstance.

19:43-7.7 Operation certificate; temporary amendments for alternate pit configurations

(a) Except as otherwise provided in this section, each casino licensee shall configure the pits in its casino or casino simulcasting facility strictly in accordance with the blueprints provided to the Commission and the Division ***and approved*** at the time the operation certificate originally was issued.

(b) Each casino licensee may temporarily reconfigure, for an initial period not to exceed 30 days, one or more pits by filing an alternate configuration for each such pit with the Commission and the Division at least three business days prior to implementing such alternate configuration. Within that three-day period the Commission shall notify the casino licensee whether the alternate configuration is approved.

(c) The Commission shall issue a temporary certificate of operation authorizing, for an initial period of no more than 30 days, each approved alternate pit configuration. Each such alternate pit shall not *[exceed]* ***:***

1. Exceed* the dimensions approved for the pit that existed immediately prior to the reconfiguration ***; nor***

2. Include any change requiring the approval of any Federal, State or local government building code official without having first obtained that approval and the approval of the Commission in accordance with N.J.A.C. 19:43-7.6*.

(d) Each casino licensee, upon application in accordance with this section, may obtain one extension of no more than 30 days for each temporary certificate of operation issued hereunder.

(e) Each casino licensee shall obtain ***approval for*** any *[other]* changes ***, other than those permitted by this section,*** to the configuration of the pits in its casino and casino simulcasting facility, if any, in accordance with N.J.A.C. 19:43-7.6.

(f) Each pit operating under an approved configuration shall have an electrical system, approved by the Commission, which enables a pit clerk or a pit supervisor to transmit a signal that is audibly and visually reproduced in each of the following locations whenever there is an emergency in the pit:

1. The monitoring rooms required by N.J.A.C. 19:45-1.10;
2. The casino security department; and
3. The Division's office in the casino hotel.

19:43-7.8 Access to ***public and*** restricted areas

(a) No casino licensee shall permit any person to have access to any restricted area*[, including the casino room and any applicable casino simulcasting facility,]* ***in its establishment*** unless such access is *[consistent with the policies of the Act and is obtained]* ***permitted*** in accordance with *[such procedures as are set forth in the Act or the rules of the Commission]* ***the casino licensee's internal controls*.**

(b) *[Notwithstanding (a) above, each member of the public, during or incident to gaming or simulcast wagering activity as a player, shall have unfettered access to the areas of each casino and casino simulcasting facility that are designed to be used by players during, or incident to, such activity, except that any such member shall be denied access thereto if otherwise provided in the Act or the rules of the Commission]* ***Each casino licensee may deny or limit access to any public areas in order to preserve the policies of the Act*, including, but not limited to, the following:**

1. Persons excluded or excludable under N.J.S.A. 5:12-71 and N.J.A.C. 19:48***, or 5:12-71.1***;

2. Employees of casino licensees prohibited from wagering at any game or on casino simulcasting under N.J.S.A. 5:12-100n and N.J.A.C. 19:55-2.8;

3. Underage persons prohibited from gaming and simulcast wagering under N.J.S.A. 5:12-119a and N.J.A.C. 19:42-5.9;

4. Persons seeking to play the game of blackjack to whom the provisions of N.J.A.C. 19:47-2.3(j) apply; *[and]*

5. Players required by a casino licensee to leave the game of poker under N.J.A.C. 19:47-14.16***; and***

6. Employees of a casino licensee for whom access to the public areas of a casino or a casino simulcasting facility is controlled in accordance with a casino licensee's internal controls submitted pursuant to N.J.A.C. 19:43-9.1(a)8*.

(c) Nothing in this section shall limit the authority of Commission members or employees and Division employees or agents from obtaining access to restricted areas during the performance of their respective duties and responsibilities in accordance with the Act and the rules of the Commission.

19:43-9.1 Employee internal controls submission

(a) Each casino licensee or applicant shall, pursuant to N.J.S.A. 5:12-99, submit an original and three copies to the Commission of a description of its internal procedures and administrative and accounting controls concerning employee licensing requirements. Unless otherwise directed by the Commission, an initial submission shall be made at least 60 days prior to the projected date of issuance of a certificate of operation. Each such submission shall be prepared and maintained in a format provided by the Commission; shall contain narrative and, where appropriate, diagrammatic representations of the internal control system to be utilized by the casino licensee or applicant, and shall address, without limitation, the following employee licensing requirements:

1.-5. (No change.)

6. Procedures used to assure the timely renewal of employee licenses;

7. Procedures for the use of license credential holders; and

8. Procedures and a control plan for readily identifying each employee of a casino licensee who is permitted, during the normal course of performing his or her duties or during emergencies, to have access to one or more ***public or*** restricted areas, and for issuing temporary license credentials and plenary access badges.

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

19:43-10.1 Vendor internal controls submission

(a) Each casino licensee or applicant shall, pursuant to N.J.S.A. 5:12-99, submit an original and three copies to the commission of a description of its internal procedures and administrative and accounting controls concerning compliance with the vendor licensing and approval requirements of N.J.S.A. 5:12-92 and 104b. Unless otherwise directed by the Commission, an initial submission shall be made at least 60 days prior to the commencement of purchasing operations by the casino licensee or applicant. Each such submission shall be prepared and maintained in a format provided by the

Commission; shall contain narrative descriptions of the internal control system to be utilized by the casino licensee or applicant, and shall address, without limitation, the following vendor licensing and approval requirements:

1.-5. (No change.)

6. Procedures governing temporary access credentials that identify those vendors, including construction contractors, who are authorized, along with their employees, to have access to the casino, the casino simulcasting facility or any *[other]* restricted area during the course of performing any work on the site of the establishment pursuant to the terms of an agreement with a casino licensee;

7.-8. (No change.)

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

19:43-14.1 Applicability of advertising regulations

(a) (No change.)

(b) The following notices and communications shall not be deemed advertisements for purposes of this chapter, but shall be subject to any review and approval by the Commission otherwise required by the Act or by regulation:

1. Any sign, notice, or other information required to be provided by the Act or by regulation, including, without limitation, the following:

i.-ii. (No change.)

iii. Gaming guides approved pursuant to N.J.A.C. 19:47-8.5;

iv.-v. (No change.)

2. Any signs or other directional devices contained in a casino or casino simulcasting facility for the purpose of identifying the location of authorized games or the locations from which simulcast wagers may be made; and

3. (No change.)

***19:45-1.1 Definitions**

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

...*

["Location number" means the number assigned to an area of the casino floor which identifies the site where the slot machine is positioned.]

19:45-1.3 Licensee's system of internal controls

(a) Each casino licensee shall submit to the Commission and Division a description of its system of internal procedures and administrative and accounting controls in accordance with section 99 of the Act. Such submission shall be made at least 60 days before gaming operations are to commence, unless otherwise directed by the Commission. Each such submission shall contain both narrative and diagrammatic representations of the internal control system to be utilized by the licensee and shall include, without limitation, the following:

1. Administrative controls which include, without limitation, the procedures and records that are concerned with the decision making processes leading to management's authorization of transactions;

2. Accounting controls which have as their primary objectives the safeguarding of assets and the reliability of financial records and are consequently designed to provide reasonable assurance that:

i.-iii. (No change.)

iv. The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

3. Procedures and controls for ensuring, through the use of the casino security department, that the casino and casino simulcasting facility are constantly secure during normal operations and any emergencies due to malfunctioning equipment, loss of power, any natural disaster or any other cause.

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

19:45-1.10 Closed circuit television system; surveillance department control; surveillance department restrictions

(a) Each casino licensee shall install in its establishment a closed circuit television (CCTV) system according to specifications herein and shall provide timely access, on the licensee's premises, to the system or its signal by the Commission or the Division upon request. Each casino licensee, and each member of its surveillance department, shall timely comply with a request from the Commission or the Division for the licensee to perform, at a minimum, any of the following:

1. Display on the monitors in the monitoring room or the Commission inspection booth any event capable of being monitored on the CCTV system; and

2. Make a video and, if applicable, audio recording of, and take a still photograph of, any event capable of being monitored on the CCTV system.

i. The casino licensee shall preserve and store each such recording or photograph in accordance with the directions of the Commission or the Division.

ii. The Commission and the Division shall have unfettered access to each recording or photograph and, upon the request of either, the casino licensee and its personnel shall be denied access thereto.

(b) The closed circuit television system shall include, but need not be limited to, the following:

1. Light sensitive cameras with zoom, scan, and tilt capabilities to effectively and clandestinely monitor in detail and from various vantage points, the following:

i.-ii. (No change.)

iii. The operations conducted at and in the cashiers' cage and each office *[and area]* ancillary thereto;

iv.-x. (No change.)

2. Video units for taping the closed-circuit signal produced by any camera of the system. At a minimum, each such unit shall *[be]*:

i. *[Capable]* ***Be capable*** of superimposing the time and date of the recording on each video tape used with the unit; and

ii. *[Equipped with]* ***Enable the operator of the unit, through the use of*** a meter, counter or other device *[that enables an operator of the unit]* ***, or by a method approved by the Commission,*** to identify the point on such tape at which a particular event was recorded;

3. Audio capability in the soft count room;

4. One or more monitoring rooms in the establishment which, through the surveillance department employees or agents assigned thereto by the casino licensee, shall constantly monitor the activities in the casino, the casino simulcasting facility and elsewhere in the establishment where CCTV coverage is available, and which:

i. May be used as necessary by the inspectors and agents of the Commission and Division; and

ii. Each such room shall contain, as required by the Commission, adequate equipment and supplies for the effective performance of the activities to be conducted therein; and

5. (No change.)

(c) (No change.)

(d) Each casino licensee shall maintain a surveillance log of all surveillance activities in the monitor room. The log shall be maintained by monitor room personnel and shall be stored securely, in a manner approved by the Commission, within the surveillance department in accordance with the retention schedule set forth in N.J.A.C. 19:45-1.8(c)2iii. At a minimum, the following information shall be recorded in a surveillance log:

1. Date and time each surveillance commenced;

2. The name and license credential number of each person who initiates, performs, or supervises the surveillance;

3. Reason for surveillance, including the name, if known, alias or description of each individual being monitored, and a brief description of the activity in which the person being monitoring is engaging;

4. The times at which each video or audio tape recording is commenced and terminated;

5. The time at which each suspected criminal offense is observed, along with a notation of the reading on the meter, counter or device *[required by (c)2ii]* ***specified in (b)2ii*** above that identifies the point on the video tape at which such offense was recorded;

Recodify existing 4. and 5. as 6.-7. (No change in text.)

8. A complete description of the time, date and, if known, the cause of any equipment or camera malfunctions, and the time at

which the security department was apprised of the malfunction ***in accordance with the casino licensee's internal controls submitted pursuant to N.J.A.C. 19:45-1.3(a)3***.

(e)-(h) (No change.)

(i) Each casino licensee shall prominently display a notice in each of its monitoring rooms that advises those present in the room that a casino licensee and its employees are obligated to cooperate with the Commission and the Division, and which notes with particularity those items enumerated in (a) above.

19:45-1.11 Casino licensee's organization

(a) (No change.)

(b) In addition to satisfying the requirements of (a) above, each casino licensee's system of internal controls shall include, at a minimum, the following departments and supervisory positions. Each of these departments and supervisors shall be required to cooperate with, yet perform independently of, all other departments and supervisors. Mandatory departments are as follows:

1. A surveillance department supervised by a casino key employee holding a license endorsed with the position of director of surveillance. The supervisor of the surveillance department shall be subject to the reporting requirements specified in (c) below. The surveillance department shall be responsible for, without limitation, the following:

i.-vii. (No change.)

viii. The detection of the presence in the establishment of any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, ***or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1,*** or of any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119a;

Recodify viii. as ix. (No change in text.)

x. Providing timely notification to appropriate supervisors, the Commission, and the Division upon detecting, and also upon commencing video or audio recording of, any person who is engaging in or attempting to engage in, or who is reasonably suspected of cheating, theft, embezzlement, or other illegal activities, including those activities prohibited in Article 9 of the Act;

xi. Providing timely notification to appropriate supervisors, the Commission and the Division upon detecting, and also upon commencing video or audio recording of, any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, ***or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1,*** or any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119a; and

Recodify x. as xii. (No change in text.)

2.-6. (No change.)

7. A security department supervised by a casino key employee holding a license endorsed with the position of director of security. The security department shall be responsible for the overall security of the establishment including, without limitation, the following:

i.-v. (No change.)

vi. The detainment of each individual as to whom there is probable cause to believe that he or she has engaged in or is engaging in conduct that violates N.J.S.A. 5:12-113 through 116, inclusive, for the purpose of notifying law enforcement or Commission authorities;

vii. The control and maintenance of a system for the issuance of temporary license credentials*[, employee access badges]* and vendor access credentials;

viii. The recordation of any and all unusual occurrences within the casino and casino simulcasting facility for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and, at a minimum, the following information shall be recorded in indelible ink in a bound, laboratory-type notebook from which pages cannot be removed and each side of each page of which is sequentially numbered:

(1)-(5) (No change.)

(6) The security department employee assigned;

ix. The communication in writing to the supervisor of the credit department of accurate and verifiable information which may be relevant in determining a patron's credit worthiness;

x. The identification and removal of any person who is required to be excluded pursuant to N.J.S.A. 5:12-71 or N.J.A.C. 19:48-1.7, ***or who may be excluded or ejected pursuant to N.J.S.A. 5:12-71.1,*** or of any person who is prohibited from entering a casino or a casino simulcasting facility pursuant to N.J.S.A. 5:12-119a; and

xi. The performance of all duties and responsibilities in accordance with the procedures and controls submitted and approved pursuant to N.J.A.C. 19:45-1.3(a)(3).

8.-10. (No change.)

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

19:45-1.14 Cashier's cage; satellite cages; master coin bank; coin vaults

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

(c) The cage shall be designed and constructed to provide maximum security for the materials housed therein and the activities performed therein; such design and construction shall be, at a minimum, as effective as the following:

1. (No change.)

2. Manually triggered silent alarm systems for the cage, its ancillary office space and any related casino vault, which systems shall be connected directly to the monitoring rooms of the closed circuit television system, the security department office, and the Division office;

3.-4. (No change.)

(d)-(h) (No change.)

19:45-1.32 Count rooms; characteristics

(a) Except as provided in (d) below, each casino licensee shall have immediately adjacent to the cashier's cage a room, to be known as the "count room," specifically designated, designed and used for counting the contents of drop boxes, slot cash storage boxes, slot drop buckets and slot drop boxes.

(b) The count room shall be designed and constructed to provide maximum security for the materials housed therein and for the activities conducted therein. Each casino licensee shall design and construct a count room with, at a minimum, the following security measures:

1. A metal door installed on each entrance and exit;

2. Each entrance and exit door shall be equipped with:

i. Two separate locks;

ii. An alarm device, approved by the Commission, which audibly signals the monitoring rooms required by N.J.A.C. 19:45-1.10, the casino security department and the Division's office in the approved hotel whenever a door to the count room is opened at times other than those times for which the casino licensee has provided prior notice pursuant to N.J.A.C. 19:45-1.33(b) or 1.43(b); and

iii. A light system, approved by the Commission, which illuminates one or more lights in the monitoring rooms required by N.J.A.C. 19:45-1.10, in the Division's office in the approved hotel, at each count room door, and at such other locations as the Commission may require, for purposes of maintaining constant surveillance on whether each count room door is open or closed;

3. Each lock required by (b)2i above shall be controlled by a key which is different from:

i. The key to the other lock on that door;

ii. The keys to the locks securing the contents of each drop box, slot cash storage box, and slot drop box; and

iii. The keys to the locks of each slot drop bucket compartment;

4. The key to one of the locks required by (b)2i above shall be maintained and controlled by the casino security department in a secure area within the casino security department, access to which may be gained only by a security supervisor, and the key to the other lock shall be maintained and controlled by a Commission inspector; and

5. The casino security department shall establish a sign-out procedure for all keys removed from the security department.

(c) (No change.)

(d) Each casino licensee may count the contents of slot drop buckets and slot drop boxes in a different room, to be known as the "hard count room," from that used for counting the contents of drop boxes and slot cash storage boxes, in which event the latter room shall be known as the "soft count room." In all other respects the hard count room shall comply with the requirements of this section, except that the hard count room need not contain the audio equipment required by (c)2i and (c)2iii above. In addition, the hard count room shall contain*[:

1. A]* ***a*** fixed-door type or hand-held metal detector to inspect all persons exiting the hard count room*[; and

2.]****(e)**** In addition to the light system required by (b)2iii above, ***each hard count room shall contain*** a separate light system or other device approved by the Commission which shall provide a continuous visual signal at the count room door, the Commission booth and such other locations as the Commission may require whenever any access door to the count room is open while the system is activated. *[Such]* ***The*** light system or device shall *[be in operation only upon activation by a Commission inspector pursuant to N.J.A.C. 19:45-1.43(i)8ii and, during such operation, shall]*:

*[i.]****1.**** *[Provide to the designated locations a continuous]* ***Maintain the*** visual signal *[whenever any door to such room is opened and]* until the system is reset or deactivated; and

*[ii.]****2.**** Be *[deactivated or reset]* ***designed so as to permit its activation, deactivation or resetting*** only by *[a]* ***the*** Commission *[inspector]*.

19:45-1.34 Slot booths

(a) (No change.)

(b) Each slot booth shall be designed and constructed to provide at all times maximum security for the materials housed therein and for the activities performed therein. At a minimum, each slot cashier window shall be equipped with an electrical system, approved by the Commission, which enables a slot cashier or other authorized person in the booth to transmit a signal that is audibly and visually reproduced in each of the following locations whenever an emergency exists:

1. The monitoring rooms required by N.J.A.C. 19:45-1.10;
2. The casino security department of the casino licensee; and
3. The Division's office in the casino hotel.

19:46-1.10 Blackjack table; card reader device; physical characteristics; inspections

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

(i) In order to collect the cards at the conclusion of a round of play as required by N.J.A.C. 19:47-2.6(i) and at such other times as provided in the rules of the Commission, each blackjack table shall have a discard rack securely attached to the top of the dealer's side of the table immediately in front of or to the right of the dealer. The height of each discard rack shall equal the height of the cards, stacked one on top of the other, contained in the total number of decks that are to be used in the dealing shoe at that table; provided, however, that a taller discard rack may be used if such rack has a distinct and clearly visible mark on its side to show the exact height for a stack of cards equal to the total number of cards contained in the number of decks to be used in the dealing shoe at that table. Whenever a double shoe is used at a blackjack table, the same number of decks shall be used in each side of the double shoe, and the height and marking requirements as set forth above for that table's discard rack shall be determined from the number of decks used in one side of the shoe.

19:46-1.16 Dice; receipt; storage; inspections and removal from use

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

(e) All dice shall be inspected and distributed to the gaming tables in accordance with one of the following applicable alternatives:

1. Alternative No. 1: Distribution to and inspection at craps or sic bo tables:

i. (No change.)

ii. At the time of receipt, a boxperson at each craps table and the floorperson at each sic bo table, in order to ensure that the dice ***are in a condition to assure fair play and otherwise*** conform to the Act and the rules of the Commission *[and are otherwise in a condition to assure fair play]*, shall, in the presence of the dealer, inspect the dice given to him or her with a micrometer or any other approved instrument which performs the same function, a balancing caliper, a steel set square and a magnet, which instruments shall be kept in a compartment at each craps table or pit stand and shall be at all times readily available for use by the Commission or the Division upon request of either;

iii.-iv. (No change.)

2. Alternative No. 2: Distribution to and inspection at the pit stand:

i.-ii. (No change.)

iii. To ensure that the dice ***are in a condition to assure fair play and otherwise*** conform to the Act and the rules of the Commission *[and are otherwise in a condition to assure fair play]*, the dice shall be inspected with a micrometer or any other approved instrument which performs the same function, a balancing caliper, a steel set square and a magnet, which instruments shall be kept at the pit stand and shall be at all times readily available for use by the Commission or the Division upon request of either. The inspection shall be performed on a flat surface which allows the dice inspection to be observed through closed circuit television cameras and by any persons in the immediate vicinity of the pit stand.

iv. (No change.)

v. The pit boss shall place extra sets of dice for dice reserve in the pit stand, as follows:

(1)-(2) (No change.)

3. Alternative No. 3: Inspection in primary storage area and distribution to tables:

i. (No change.)

ii. The dice shall be inspected with a micrometer or any other approved instrument which performs the same function, a balancing caliper, a steel set square and a magnet to ensure that the dice ***are in a condition to assure fair play and otherwise*** conform to the Act and the rules of the Commission *[and are otherwise in a condition to assure fair play]*. These instruments shall be maintained in the storage area and shall be at all times readily available for use by the Commission or the Division upon request of either.

iii.-vi. (No change.)

vii. A micrometer or any other approved instrument which performs the same function, a balancing caliper, a steel set square and a magnet shall also be maintained in a locked compartment in each pit stand, and each such instrument shall be at all times readily available for use by the Commission or the Division upon request of either.

viii. (No change.)

(f)-(l) (No change.)

19:46-1.19 Dealing shoes

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

(d) Each manual or automated dealing shoe shall be designed and constructed with such features as the Commission may require to maintain the integrity of the game at which such shoe is used. Such features shall include, at a minimum, the following:

1. (No change.)

2. The sides of the shoe below the base plate shall be transparent or have a transparent sealed cutout;

3. A stop underneath the top of the face plate shall preclude the next card to be dealt from being moved upwards for more than one-eighth inch distance; and

4. Each dealing shoe used in blackjack shall have a mark on the side of the shoe that enables the dealer, after aligning the stack of cards against the shoe in accordance with N.J.A.C. 19:47-2.5(d), to insert the cutting card in such stack so that approximately one quarter of the stack is behind the cutting card.

(e) A baccarat dealing shoe, in addition to meeting the requirements of (d)1 through 3 above, shall also adhere to the following specifications:

1.-3. (No change.)

(f)-(g) (No change.)

19:46-1.20 Approval of gaming and simulcast wagering equipment; retention by Commission or Division; evidence of tampering

(a) Each casino licensee shall submit to the Commission, for its review, inspection and approval after consultation with the Division, each piece of gaming and simulcast wagering equipment, and any other related device, prior to its use, whether initially or following any modification thereto or replacement or movement thereof, in a casino, casino simulcasting facility or hub facility. Each such item, including, without limitation, gaming tables, layouts, roulette wheels, pokette wheels, roulette balls, drop boxes, big six wheels, sic bo shakers, sic bo electrical devices, pai gow shakers, chip holders, racks and containers, scales, count room equipment and counting devices, trolleys, slip dispensers, dealing shoes, dice, cards, pai gow tiles, locking devices, card reader devices, data processing equipment, slot machines and slot bases (see N.J.A.C. 19:41-9.6(b) and 19:46-1.28), pari-mutuel machines, self-service pari-mutuel machines, credit voucher machines and totalisators, shall be subject to review, inspection and approval for, at a minimum, quality, design, integrity, fairness, honesty and suitability.

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

(d) Each casino licensee that has confiscated any item enumerated in (c) above on the reasonable suspicion that such item has been altered or tampered with, or that has confiscated any item enumerated in N.J.A.C. 19:47-8.1 or in Article 9 of the Act on the reasonable suspicion that such item was present in the casino or casino simulcasting facility in violation of the Act or the rules of the Commission, shall preserve such item in the state it was in when so confiscated and shall deliver such item to the Division as soon as possible. A casino licensee's right, if any, to confiscate such items shall exist, if at all, independently of this subsection based on statute, regulation or common law as may elsewhere be provided, and no separate right to confiscate is created hereby. Notwithstanding the foregoing, each casino licensee that has confiscated any such item, whether by such right or under color thereof, nevertheless has a duty to preserve and deliver such item in accordance with this subsection.

19:47-2.5 Shuffle and cut of the cards

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

(d) Once the cutting card has been inserted by the player, the dealer shall take all cards in front of the cutting card and place them to the back of the stack. The dealer shall then take the entire stack of cards that was just shuffled and align them along the side of the dealing shoe which has the mark required by N.J.A.C. 19:46-1.19(d)4. Thereafter, the dealer shall insert the cutting card in the stack at a position at least approximately one-quarter of the way in from the back of the stack. The stack of cards shall then be inserted into the dealing shoe for commencement of play. If the "Bart Carter Shuffle" is utilized, the dealer shall not re-insert the cut card after the stack has been cut by the players.

(e)-(h) (No change.)

19:47-2.6 Procedure for dealing cards

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

(l) Whenever the cutting card is reached in the deal of the cards, the dealer shall continue dealing the cards until that round of play is completed after which the dealer shall:

1. Collect the cards as provided in (i) above;

2. Prepare to shuffle the cards, as follows:

i. Whenever a single dealing shoe is used, the dealer shall remove the cards remaining in the shoe and place them in the discard rack to ensure that no cards are missing; or

ii. Whenever a double shoe is used, the dealer shall remove the cards remaining in the side of the shoe from which the cutting card was drawn and the cards, if any, that were put in a separate segregated area for the discards from that side of the double shoe, after which the dealer shall place those cards face down in the discard rack in order to ensure that no cards are missing; and then

3. Shuffle the cards. If a double shoe is utilized, the shuffle of the cards shall be limited to the side of the shoe from which the cutting card was drawn.

(m)-(o) (No change.)

19:47-5.2 Roulette; payout odds

(a) No casino licensee, its employees or agents shall pay off winning wagers at the game of roulette at less than the odds listed below:

(No change.)

(b) When roulette is played on a double zero wheel and the roulette ball comes to rest around the wheel in a compartment marked zero (0) or double zero (00), wagers on red, black, odd, even, 1 to 18, and 19 to 36 shall not be lost but each player having such a wager shall surrender half the amount on such bet and remove the remaining half. Each casino licensee offering double zero roulette shall provide notice of this rule pursuant to N.J.A.C. 19:47-8.3.

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

19:47-8.5 Patron access to the rules of the games; gaming guides

(a) Each casino licensee shall maintain at its security podium a printed copy of the complete text of the rules of all authorized games and all other information required to be made available to the public pursuant to N.J.S.A. 5:12-100f. This information shall be made available to the public for inspection upon request.

(b) Each casino licensee shall make available to patrons upon request an abridged version of the information required to be made available by N.J.S.A. 5:12-100f. Each such version, to be known as a "gaming guide," may be produced in a printed, video or other format approved by the Commission.

(c) No gaming guide shall be issued, displayed or distributed by a casino licensee unless and until a sample thereof has been submitted to and approved by the Commission. No casino licensee shall issue, display or distribute any gaming guide that is materially different from the approved sample thereof.

(d) Prior to issuing, distributing or displaying a gaming guide that is materially different from the approved sample thereof, each casino licensee shall submit and obtain Commission approval for a sample of the complete guide which contains the material changes.

(e) Each casino licensee may display an approved gaming guide at any location in its establishment. Pursuant to N.J.A.C. 19:43-14.1, each such display does not constitute advertising, nor does such display constitute the contract with or the use or employment of a barker for purposes of N.J.S.A. 5:12-100(l).

(a)

CASINO CONTROL COMMISSION

Applications
Information
Casino Licensees
Applications for Issuance of Employee Licenses or Registration and Natural Personal Qualification
Petitions for Casino Employee Registration
Adopted New Rules: N.J.A.C. 19:41-7.1A and 7.1B, and 19:43-9.5
Adopted Amendment: N.J.A.C. 19:41-7.7

Proposed: March 21, 1994 at 26 N.J.R. 1321(a).

Adopted: May 4, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.

Filed: May 12, 1994 as R.1994 d.280, **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. 5:12-63c, 69a, 70a, 89b, 90b, 91b, 92 and 102b.

Effective Date: June 6, 1994.

Expiration Date: April 15, 1995, N.J.A.C. 19:41;
December 21, 1997, N.J.A.C. 19:43.

Summary of Agency-Initiated Changes:

N.J.A.C. 19:41-7.1A(a)1vii was revised to indicate that an applicant required to be qualified because of his or her position wit an enterprise

licensed pursuant to N.J.A.C. 19:51-1.2A(f) must provide federal tax returns in addition to a Qualifier Disclosure Form (QDF). This change reflects existing procedures.

The filing of qualifers' tax returns is required as part of the application for a on-gaming casino service industry license whenever the Commission determines that such applicant falls within N.J.A.C. 19:51-1.2A(f). This is reflected in the Commission's proposed rules regarding such application (see 26 N.J.R. 1617(a), N.J.A.C. 19:51-1.3A). However, N.J.A.C. 19:41-7.1A(a)1vii was revised upon adoption to provide fair notice to persons required to qualify as part of that application.

The reference to N.J.S.A. 5:12-92d in this subsection was deleted as unnecessary.

Summary of Public Comments and Agency Responses:

Comments were received from Boardwalk Regency Corporation, d/b/a Caesars Atlantic City (BRC); Greate Bay Hotel and Casino, Inc., d/b/a Sands Hotel & Casino, (the Sands) and Adamar of New Jersey, Inc., d/b/a/ TropWorld Casino and Entertainment Resort (TropWorld).

COMMENT: BRC, the Sands and TropWorld all object to proposed N.J.A.C. 19:43-9.5(a)3 which would require a casino licensee to state, as part of a petition requesting the issuance of hotel employee registrations, that it has verified that the applicant is eligible to work and has completed The Employee Eligibility Verification Form (Form I-9) provided by the U.S. Department of Justice Immigration and Naturalization Service. These licensees argue that the Commission should not attempt to regulate their compliance with Federal immigration law.

RESPONSE: The Commission is not attempting to enforce Federal immigration law. Commission regulations provide, at N.J.A.C. 19:41-1.3, that in order to be employed in the operation of a licensed casino, approved hotel or casino simulcasting facility an individual must be either a citizen of or authorized to work in the United States. This provision is designed to ensure copmliance with that regulation. For applicants for casino employee licenses, the Commission is able to rely on the investigations conducted by the Division of Gaming Enforcement prior to licensure to ensure that these requirements are met. For applicants for casino hotel employee registrations the Commission must rely on casino licensees to check an applicant's work authorization. A casino licensee's or applicant's failure to do so means that individuals who are ineligible to work may receive casino hotel employee registrations. Although a majority of these individuals will eventually be discovered by the Division, the delay in doing so will be costly to licensees and applicants who will have expended time and money in orientation and job training. In addition, these individuals must then be afforded a hearing before their registration can be revoked or suspended. The cost of both the Division's investigation and the hearing process can for the most part be eliminated by strict compliance with this regulation.

COMMENT: BRC further argues that the N.J.A.C. 19:43-9.5(a)3 will delay employment for three days because Federal law requires employers to examine evidence of identity and employment within three business days of the date of employment, while this provision would require a casino licensee or applicant to verify an individuals employment eligibility before the employment begins.

RESPONSE: BRC misunderstands both the Federal law and the proposed rule. Pursuant to Federal law a employer may not request evidence of identity and employment eligibility prior to the time of hire. Similarly Commission regulations require that casino hotel employee registrations be issued only after an individual has been hired by a casino licensee or applicant. Verifying an individual's license credential at the time of hire, rather than delaying the three days permitted by Federal law, will save a licensee and applicant the expense of processing, orienting and training employees it may later be required to terminate.

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

19:41-7.1A Application for the issuance of employee licenses or registrations and natural person qualification

(a) An application for the initial issuance of an employee license or registration or for individual qualification shall include the following:

1. A completed original and one photocopy of the appropriate Personal History Disclosure (PHD) Form or Qualifier Disclosure Form (QDF), as follows:

i. An applicant for a casino key employee license, junket representative license, resident director license or an applicant required to qualify pursuant to subsection 102c of the Act by virtue of his or her position with a junket enterprise shall file a PHD-1B as set forth in N.J.A.C. 19:41-5.3;

ii. An applicant for a casino employee license or gaming school employee license shall file a PHD-2A as set forth in N.J.A.C. 19:41-5.4;

iii. An applicant for a casino hotel employee registration shall file a PHD-4A as set forth in N.J.A.C. 19:41-5.5;

iv. An applicant required to qualify pursuant to N.J.S.A. 5:12-85c or e by virtue of his or her position with a casino licensee or applicant shall file the PHD Form required by N.J.A.C. 19:43-2.6;

v. An applicant required to qualify pursuant to N.J.S.A. 5:12-85c, d, or e by virtue of his or her position with a holding company or intermediary company of a casino licensee or applicant shall file the PHD Form required by N.J.A.C. 19:43-2.7;

vi. An applicant required to qualify pursuant to subsections 92a and b of the Act by virtue of his or her position with a casino service industry enterprise or gaming school shall file a PHD-1A as set forth in N.J.A.C. 19:41-5.2; and

vii. An applicant required to qualify pursuant to *[subsections]* ***subsection*** 92c *[and d]* of the Act by virtue of his or her position with a casino service industry enterprise shall file a QDF as set forth in N.J.A.C. 19:41-5.9*[;]*****. If such enterprise is required to be licensed pursuant to N.J.A.C. 19:51-1.2A(f), the applicant shall also provide two copies of his or her Federal tax returns and related documents.***

2. The documents required for identification by N.J.A.C. 19:41-7.2A;

3. A photograph of the applicant, taken within the preceding 12 months, which shall be attached to the original PHD Form or QDF;

4. Either of the following:

i. A certification by the Division that the applicant has been fingerprinted in accordance with N.J.A.C. 19:41-7.7(a)1; or

ii. In the case of an applicant for individual qualification, either the certification required by (a)4i above or the fingerprint impression cards required by N.J.A.C. 19:41-7.7; and

5. Any applicable fee required by N.J.A.C. 19:41-9.11, 9.11A, 9.12, 9.13, 9.14 or 9.15.

(b) Each applicant shall file a complete application pursuant to (a) above with the Commission by mail or in person at the address specified in N.J.A.C. 19:40-3.5(b) and (c), except as otherwise provided in N.J.A.C. 19:41-7.1B.

(c) Except as provided in (d) below, no application shall be accepted for filing unless it includes all application materials required by (a) above, completed in accordance with the requirements of the Act and the rules of the Commission and any instructions included with the PHD Form or QDF.

(d) An applicant for individual qualification shall provide the documents required by (a)2 and (a)4ii above upon the request of the Division.

19:41-7.1B Application for casino hotel employee registration; filing requirements

(a) No casino hotel employee registration shall be issued by the Commission unless:

1. The applicant for registration has an offer of employment from a casino licensee or applicant; and

2. A petition requesting that the Commission issue the registration has been filed by the casino licensee or applicant pursuant to N.J.A.C. 19:43-9.5

(b) A completed application for casino hotel employee registration as set forth in N.J.A.C. 19:41-7.1A shall be filed as follows:

1. The applicant for registration may provide the casino licensee or applicant with his or her written authorization to file the application on his or her behalf pursuant to N.J.A.C. 19:43-9.5(a)4; or

2. The applicant for registration may submit the complete application directly to the Commission by mail or in person at the address specified in N.J.A.C. 19:40-3.5(b) and (c), provided that:

i. The application is accompanied by a written offer of employment from a casino licensee or applicant; and

ii. The applicant provides the casino licensee or applicant with a signed and dated certification stating that he or she has filed a completed application with the Commission.

19:41-7.7 Fingerprinting

Each applicant, licensee, registrant and person required to be qualified shall be fingerprinted under the supervision of the Division without charge, except that an applicant for individual qualification may alternatively submit two sets of classifiable fingerprints on fingerprint impression cards provided by the Commission.

19:43-9.5 Petitions for casino hotel employee registration

(a) In accordance with N.J.S.A. 5:12-91f, no casino hotel employee registration shall be issued by the Commission except upon the petition of a casino licensee or applicant. Such petition shall be in writing and shall include the following:

1. The name and date of birth of the applicant for registration;

2. The position in which the applicant for registration will be employed;

3. A statement by the casino licensee or applicant that it has verified that the applicant for registration is eligible to work and that it has completed the Employment Eligibility Verification Form (Form I-9) provided by the U.S. Department of Justice, Immigration and Naturalization Service; and

4. Either of the following:

i. A completed application for casino hotel employee registration as set forth in N.J.A.C. 19:41-7.1A, which shall be accompanied by a written statement, signed and dated by the applicant for registration and an authorized representative of the casino licensee or applicant, authorizing the casino licensee or applicant to file the application on behalf of the applicant for registration; or

ii. A certification by the applicant for registration that he or she has filed a completed application with the Commission.

(a)

CASINO CONTROL COMMISSION

Notice of Hourly Fee for the Efforts of the Division of Gaming Enforcement on Matters Associated with the Regulating of Sports Events

Take notice that, in accordance with N.J.A.C. 19:41-9.4(e), the Casino Control Commission has determined that an hourly fee of $84.00 per hour shall apply effective May 1, 1994 for the efforts of the Division of Gaming Enforcement on matters associated with the regulation of sports events pursuant to Reorganization Plan No. 004-1992.

(b)

CASINO CONTROL COMMISSION

Casino Licensees; Advertising Casino Simulcasting Facility

Adopted Amendments: N.J.A.C. 19:43-14.2

Proposed: March 7, 1994 at 26 N.J.R. 1209(a).

Adopted: May 4, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.

Filed: May 12, 1994 as R.1994 d.281, **without change.**

Authority: N.J.S.A. 5:12-63(f), 69(a), 70(o), and P.L. 1993 c.292.

Effective Date: June 6, 1994.

Expiration Date: December 21, 1997.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement indicated that it did not object to the proposal.

RESPONSE: Accepted.

Full text of the adoption follows:

19:43-14.2 Criteria governing advertising

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

(e) The following practices shall be prohibited with respect to all advertisements:

1. Any representation or description of the size of a casino or casino simulcasting facility;

2. The use or statement of any information concerning the number of games available at a casino or casino simulcasting facility;

3. The use or statement of any information or representation about odds. For purposes of this section, the term odds shall not be limited to numerical information, and shall include, without limitation, the following:

i.-ii. (No change.)

iii. House advantage, hold, win or any like indication of the probability of winning or losing at a particular casino or casino simulcasting facility or at any authorized game;

4.-6. (No change.)

(f)-(g) (No change.)

(c)

CASINO CONTROL COMMISSION

Accounting and Internal Controls Count Rooms; Characteristics Slot Count; Procedure for Counting and Recording Contents of Slot Drop Buckets and Slot Drop Boxes

Adopted Amendment: N.J.A.C. 19:45-1.43

Proposed: March 7, 1994 at 26 N.J.R. 1209(b).

Adopted: May 4, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.

Filed: May 12, 1994 as R.1994 d.282, **without change.**

Authority: N.J.S.A. 5:12-63(f), 69(a), 70(l), 99(a)8 and 100(c).

Effective Date: June 6, 1994.

Expiration Date: August 15, 1997.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement, the Sands Hotel and Casino, and Harrah's Casino Hotel all indicated that they did not object to the proposal.

RESPONSE: Accepted.

Full text of the adoption follows:

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

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

(i) Procedures and requirements for conducting the hard count shall be as follows:

1. Prior to the first slot drop bucket being emptied and counted, employees of the casino licensee shall:

i. (No change.)

ii. Check, in the presence of the Commission inspector, the accuracy of all weighing and counting equipment, with the exception of coin or slot token wrapping machines, to insure proper calibration for each denomination of coin and slot token; and

iii. (No change.)

2.-7. (No change.)

8. A Commission inspector may, at any time, require the accuracy of any weighing, wrapping or counting equipment, or the amount of any previously weighed, wrapped or counted coin or slot tokens, to be checked or rechecked.

Recodify existing 8.-12. as 9.-13. (No change in text.)

(j) (No change.)

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Shuffle and Cut of the Cards
Adopted Amendments: N.J.A.C. 19:47-3.5, 4.4 and 7.5

Proposed: March 7, 1994 at 26 N.J.R. 1210(a).
Adopted: May 4, 1994 by the Casino Commission, James R. Hurley, Acting Chairman.
Filed: May 12, 1994 as R.1994 d.283, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a) and 100.

Effective Date: June 6, 1994.
Expiration Date: April 15, 1996.

Summary of Public Comments and Agency Responses:

COMMENT: Bally's Park Place, Inc., GNOC, Corp. and Trump's Castle Casino Resort (Trump's Castle) objected to the proposal and believe the lacing requirement should be eliminated in its entirety because it serves no regulatory purpose. Trump's Castle also believes shuffling the cards after lacing would add time to the shuffle and has not been shown to improve game security.

RESPONSE: Rejected. In 1990, the Commission considered a petition jointly filed by all casino licensees seeking the publication of amendments to N.J.A.C. 19:47-3.5 and 7.5 to eliminate the lacing requirement. On March 7, 1990, the petition was denied because the Commission determined that lacing provides an added measure of security in the games of baccarat-punto banco, baccarat chemin de fer and minibaccarat by preventing "clumping" of the cards. "Clumping" can permit players to gain an advantage in these games due to the fact that four to six cards constitute a single game. The Commission continues to believe that lacing serves this purpose and, accordingly, these comments are rejected.

Additionally, if Trump's Castle does not believe that shuffling the cards after lacing improves game security, it does not have to exercise the option to do so.

COMMENT: The Sands Hotel and Casino and the Division of Gaming Enforcement have no objection to the proposed amendments.

RESPONSE: Accepted.

Full text of the adoption follows:

19:47-3.5 Shuffle and cut of the cards

(a) (No change.)

(b) After the cards have been shuffled, the dealer shall lace approximately one deck of cards so that they are evenly dispersed into the remaining stack. After lacing the cards, the dealer calling the game shall, if the casino licensee elects this option, shuffle some or all of the cards again. After lacing the cards and, where applicable, reshuffling them, the dealer calling the game shall offer the stack of cards, with backs facing away from the dealer, to the participants to be cut. The dealer shall begin with the participant seated in the highest number position at the table or, in the case of reshuffle, the last curator and working clockwise around the table, shall offer the stack to each participant until a participant accepts the cut. If no participant accepts the cut, the dealer shall cut the cards. A casino licensee shall indicate in its internal controls submission whether it has elected to reshuffle the cards after they have been laced.

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

19:47-4.4 Shuffle and cut of the cards

(a) (No change.)

(b) After the cards have been shuffled, the dealer shall lace approximately one deck of cards so that they are evenly dispersed into the remaining stack. After lacing the cards, the dealer calling the game shall, if the casino licensee elects this option, shuffle some or all of the cards again. After lacing the cards and, where applicable, reshuffling them, the dealer calling the game shall offer the stack of cards, with backs facing away from the dealer, to the participants to be cut. The dealer shall begin with the participant seated in the highest number position at the table or, in the case of reshuffle, the participant seated to the left of the participant responsible for dealing the cards, and working clockwise around the table, shall offer the stack to each participant until a participant accepts the cut. If no participant accepts the cut, the dealer shall cut the cards. A casino licensee shall indicate in its internal controls submission whether it has elected to reshuffle the cards after they have been laced.

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

19:47-7.5 Shuffle and cut of the cards

(a) (No change.)

(b) After the cards have been shuffled, the dealer shall lace approximately one deck of cards so that they are evenly dispersed into the remaining stack. After lacing the cards, the dealer calling the game shall, if the casino licensee elects this option, shuffle some or all of the cards again. After lacing the cards and, where applicable, reshuffling them, the dealer calling the game shall offer the stack of cards, with backs facing away from the dealer, to the participants to be cut. The dealer shall begin with the participant seated in the highest number position at the table and, working clockwise around the table, shall offer the stack to each participant until a participant accepts the cut. If no participant accepts the cut, the dealer shall cut the cards. A casino licensee shall indicate in its internal controls submission whether it has elected to reshuffle the cards after they have been laced.

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

(b)

CASINO CONTROL COMMISSION

Alcoholic Beverage Control
Classification of Authorized Locations
Standards for Qualification
Conditions of Operation in Type I CHAB Locations
Adopted Amendments: N.J.A.C. 19:50-1.4, 1.5, 2.2 and 3.1
Adopted Repeal: N.J.A.C. 19:50-3.6

Proposed: March 7, 1994 at 26 N.J.R. 1211(a).
Adopted: May 4, 1994 by the Casino Control Commission, James R. Hurley, Acting Chairman.
Filed: May 12, 1994 as R.1994 d.284, **without change.**

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(q), and 103, and P.L. 1993 c.292.

Effective Date: June 6, 1994.
Expiration Date: December 15, 1998.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement indicated it did not object to the proposal.

RESPONSE: Accepted.

Full text of the adoption follows:

19:50-1.4 Classification of authorized locations

(a) Authorized locations shall be classified as follows:

1. All locations authorized pursuant to N.J.S.A. 5:12-103(g)(1) shall be classified as Type I (casino/casino simulcasting facility) locations.

2.-5. (No change.)

(b) The activities permitted in each type of authorized location, subject to applicable laws, rules, and regulations, are as follows:

1. In a Type I location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle, but not in an original container, for on-premises consumption within a casino or casino simulcasting facility.

2. In a Type II location, a CHAB licensee shall be entitled to sell any alcoholic beverage by the glass or other open receptacle for on-premises consumption within a casino hotel but not in a casino or casino simulcasting facility, or from fixed locations outside a casino hotel, but on a casino hotel premises. Examples of Type II locations include, without limitation, showrooms, cabarets, restaurants, meeting rooms, pubs and lounges.

3. In a Type III location, a CHAB licensee shall be entitled to sell any alcoholic beverage in original containers from an enclosed package goods room, not in a casino or casino simulcasting facility, for consumption outside the authorized location.

4. In a Type IV location, a CHAB licensee shall be entitled to sell any alcoholic beverage from a room service location within an enclosed room, not in a casino or casino simulcasting facility, for delivery to a guest room or to any other room in the premises authorized by the Commission, other than a Type I, III or V location.

5. In a Type V location, a CHAB licensee shall be entitled to possess or to store in a fixed location on the premises, not in a casino or casino simulcasting facility, alcoholic beverages intended but not actually exposed for sale.

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

19:50-1.5 Standards for qualification

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

(d) No Type V authorization shall issue to any applicant who does not hold a Type I, II, III, or IV CHAB authorization.

(e) Every employee and agent of a CHAB licensee whose employment or agency includes duties in, on, or about the premises, but not in a Type I authorized location, shall be registered as a casino hotel employee in accordance with section 91 of the Act.

(f) (No change.)

19:50-2.2 Additional operating conditions of CHAB licensees

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

(f) No CHAB licensee shall sell or offer to sell alcoholic beverages at a price below "cost," as defined by the Division of Alcoholic Beverage Control, except that CHAB licensees may serve complimentary alcoholic beverages:

1. In Type I (casino/casino simulcasting facility) authorized locations, at a patron's request, pursuant to section 103(g)(1) of the Act;

2. In Type II (hotel), Type III (package goods) or Type IV (room service) authorized locations, pursuant to sections 99 and 102 of the Act and the Commission's regulations concerning complimentaries;

3.-4. (No change.)

(g)-(h) (No change.)

19:50-3.1 Conditions of operation in Type I (casino/casino simulcasting facility) locations

(a) No alcoholic beverage shall be sold, given or be available for consumption, offered, delivered or otherwise brought to a patron within a casino room or casino simulcasting facility unless so requested by the patron.

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

(e) Alcoholic beverages may be served in a Type I location only when the casino room or casino simulcasting facility is open for gaming activity as provided in section 97(a) of the Act, but shall not be served later than 15 minutes prior to the closing of the casino room or casino simulcasting facility.

(a)

CASINO CONTROL COMMISSION

Persons Doing Business with Casino Licensees
Readoption: N.J.A.C. 19:51

Proposed: March 7, 1994 at 26 N.J.R. 1212(a).

Adopted: April 27, 1994 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: April 27, 1994 as R.1994 d.258, **without change.**

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 70b, 70i, 92 and 94.

Effective Date: April 27, 1994.

Expiration Date: August 15, 1996.

Agency Note: The Commission has set an expiration date of August 15, 1996 for N.J.A.C. 19:51, rather than the five-year expiration date which would otherwise apply pursuant to Executive Order No. 66(1978). Such change is part of a comprehensive revision of the readoption schedule which the Commission intends to implement for all chapters in Title 19.

Summary of Public Comments and Agency Responses:

COMMENT: The Division of Gaming Enforcement (Division) stated that it has no objection to the proposed readoption.

RESPONSE: Accepted.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 19:51.

(b)

CASINO CONTROL COMMISSION

Temporary Adoption of a New Rule and Amendments Accounting and Internal Control Electronic Transfer Credit System

Authority: N.J.S.A. 5:12-69(a) and (e).

Authorized By: Casino Control Commission, Steven P. Perskie, Chairman.

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments and new rule concerning electronic transfer credit systems should be adopted on a permanent basis. The experiment shall be conducted in accordance with temporary rules which will be posted in the casino participating in the experiment and will also be available from the Commission upon request.

Specifically, the test would allow the casino licensee participating in the experiment to use an electronic transfer credit system beginning on or after June 6, 1994 provided the casino licensee meets all terms and conditions established by the Commission. The experiment would continue for the maximum period of time authorized by N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission pursuant to the terms of the experiment.

Should the temporary amendments and new rule prove successful, the Commission will take the steps necessary to permanently adopt them in accordance with the Administrative Procedures Act and N.J.A.C. 1:30.

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session July 20, 1994

Take notice that the following agenda item is scheduled for Notice of Proposal in the June 6, 1994 New Jersey Register and is, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, July 20, 1994 from 3:00 P.M. to 6:00 P.M. in the 8th Floor Training Room, Department of Education, 225 East State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, July 15, 1994.

Rule Proposal: N.J.A.C. 6:30, Adult Education (Certification Requirement)

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

SITE REMEDIATION PROGRAM

Notice of Invitation for Informal Input on Guidance Document for the Remediation of Contaminated Soils

Take notice that the New Jersey Department of Environmental Protection and Energy (DEPE) has released the first edition of the Guidance Document for the Remediation of Contaminated Soils. This guidance document is intended to assist persons conducting remediations in choosing remedial actions which are effective or potentially effective in remediating a site, as determined by DEPE.

DEPE is soliciting input on the usefulness and format of the information provided.

Interested parties may obtain a copy of the Guidance Document for the Remediation of Contaminated Soils by writing or calling:

Roxanne Feasel
Department of Environmental Protection and Energy
Site Remediation Program
CN 413
Trenton, N.J. 08625-0413
(609) 984-2908

The DEPE urges interested parties to submit comments by September 30, 1994 to:

Janine MacGregor
Department of Environmental Protection and Energy
Site Remediation Program
CN 413
Trenton, N.J. 08625-0413

(c)

NEW JERSEY LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY SITING BOARD

Notice of Public Meeting and Availability of the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey

Take notice that the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board and the Radioactive Waste Advisory Committee will hold a series of public information open houses and hearings to advise residents of and seek public input on the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey. The public comment period is June 6 through October 28, 1994. All comments must be submitted to the Siting Board by Friday, October 28, 1994.

Information open houses will be scheduled for June through September. Public hearings are planned for early Fall. The first information open house is scheduled as follows.

Wednesday, June 22, 1994 from 3:00 to 5:00 P.M. and 7:00 to 9:00 P.M.
College Center
Raritan Valley Community College
Somerville, New Jersey

Copies of the Proposed Voluntary Siting Plan for Locating a Low-Level Radioactive Waste Disposal Facility in New Jersey are available from the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, Station Plaza III, 4th Floor, 44 South Clinton Avenue, CN-410, Trenton, New Jersey 08625, 609-777-4247. Directions to the information open house may be obtained and the date and location confirmed by contacting the Siting Board office.

(d)

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

Notice of Public Hearing New Jersey Radiological Emergency Response Plan

Take notice that, pursuant to the Radiation Accident Response Act, N.J.S.A. 26:2D-37 et seq., the Department of Environmental Protection and Energy in cooperation with the Division of State Police will hold public hearings to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan. The **hearings** will be held on the following dates:

Tuesday, July 12, 1994
7:00 P.M.
Fire Training Center
Cemetery Road
Mannington Township, New Jersey

Tuesday, July 19, 1994
7:00 P.M.
Ocean County Office of Emergency Management
Robert J. Miller Air Park, Route 530
Berkeley Township, New Jersey

Tuesday, July 26, 1994
7:00 P.M.
Greenwich Emergency Operations Center (EOC)
Main Street
Greenwich, New Jersey

Representatives of the Bureau of Nuclear Engineering, Department of Environmental Protection and Energy, and the Office of Emergency Management, Division of State Police will attend the hearings and respond to questions and comments from the public.

Copies of the New Jersey Radiological Emergency Response Plan are available for inspection at the following locations:

Office of Emergency Management
State Police Headquarters
West Trenton, New Jersey

Salem County Emergency Management Office
Cemetery Road
Mannington Township, New Jersey

Cumberland County Office of Emergency Management
Bridgeton Avenue
Bridgeton, New Jersey

Ocean County Office of Emergency Management
Robert J. Miller Air Park, Route 530
Berkeley Township, New Jersey

For additional information contact:

Ms. Maryanne Quinn
NJ Department of Environmental Protection and Energy
Bureau of Nuclear Engineering
CN 415
Princeton, New Jersey 08540
Telephone (609) 987-2050

(a)

DIVISION OF PARKS AND FORESTRY

Natural Areas System
Management Plan and Boundary Revision for Farny Natural Area

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and 13:1D-9; and N.J.A.C. 7:5A.

Take notice that in accordance with N.J.A.C. 7:5A-1.8 and 1.12, and the recommendation of the Natural Areas Council (Council), Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy (Department), has adopted a management plan for the Farny Natural Area and revised the boundary of the Natural Area.

The Farny Natural Area, located within Farny State Park in Rockaway Township, Morris County, is a 589-acre State-owned parcel administered by the Department's Division of Parks and Forestry through Ringwood State Park (hereinafter referred to as the administering agency). The natural area is the southernmost parcel of Farny State Park. The area lies approximately three miles north of the town of Denville and immediately northwest of Splitrock Reservoir. The Farny Natural Area was designated to the Natural Areas System in 1978. The Natural Areas System is established and administered pursuant to N.J.S.A. 13:1B-15.4 et seq. and N.J.S.A. 13:1B-15.12a et seq. These statutes give the Department the responsibility of acquiring, maintaining and preserving natural areas as examples of the State's natural heritage and as places of scientific study. Currently the System contains 42 areas totalling nearly 31,000 acres.

The rules governing the Natural Areas System provide guidelines for the preparation of management plans at N.J.A.C. 7:5A-1.8. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long- and short-term management techniques and public uses to ensure preservation of the area in accordance with its management objective (see N.J.A.C. 7:5A-1.8). After a management plan is drafted by the Department and subjected to internal review, it is submitted to the Natural Areas Council, an advisory group to the Commissioner of the Department, for review and comment. The Council may then recommend to the Commissioner that the plan be adopted. Adoption is accomplished through publication of a notice in the New Jersey Register by the Commissioner.

The management objective for the Farny Natural Area is preservation of northern mixed oak-hardwood forest, hardwood swamp forest and rare species habitat (N.J.A.C. 7:5A-1.13(a)16). The management plan for this area primarily specifies actions that will be taken to ensure preservation of several forest communities of the Highlands region that support several State endangered and threatened species. A very significant plant species that occurs within yards of the natural area's eastern boundary is the State endangered three birds orchid *(Triphora trianthophora)*. This is the only confirmed extant occurrence of this species in the State. State endangered or threatened wildlife species associated with the natural area include red-shouldered hawk, barred owl and wood turtle. Management actions include mapping locations and monitoring populations of this and other State endangered and threatened species, reducing illegal use of all terrain vehicles (ATVs) and bicycles, and constructing a visitor parking area to channel visitors to appropriate trails and reduce trespassing. Adoption of this management plan will help to ensure protection of several State endangered and threatened species and will have a long-term positive effect on the public, including those who conduct research and educational activities in the natural area.

Under N.J.A.C. 7:5A-1.12, Boundaries of natural areas, revisions to the boundary of a natural area may be proposed if the boundary change conforms with physical features identifiable in the field and serves to protect the natural area or further its management objective. A boundary change proposal that will result in a net change of not more than 25 percent of the total acreage of the natural area is reviewed by the Council and submitted to the Commissioner of the Department for approval. If approved, the boundary change is effective upon publication of a notice of the boundary change in the New Jersey Register. Through this procedure, the Council has recommended adding to the Farny Natural Area a 33-acre State-owned parcel located in the eastern portion of the natural area between Durham Road and Splitrock Reservoir. This parcel was not previously indicated as part of Farny State Park. Review of the deed of the property that has come to be known as Farny State Park indicated that this 33-acre parcel is a part of what was sold to the Boy Scouts of America by Mrs. Katherine Culver Williams in 1941 and eventually purchased by the State of New Jersey in 1943. Addition of this tract will serve to protect the natural area and further its management objective by preserving additional suitable rare species habitat.

At its September 1, 1993 meeting, the Natural Areas Council reviewed and received staff recommendations on a draft management plan and boundary change proposal prepared by the Department for the Farny Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Farny Natural Area, including revisions to the boundary, and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection and Energy for approval in accordance with the procedure at N.J.A.C. 7:5A-1.8. The Commissioner agreed with all of the recommendations of the Council and approved the Farny Natural Area Management Plan, including the boundary revision, on May 11, 1994.

Following is a summary of the management techniques prescribed in the Farny Natural Area Management Plan along with the reason for each:

1. The administering agency will post signs at all access points stating the prohibition of motorized vehicles on State property by June 30, 1995.

This management technique is included to help ensure the preservation of the State endangered and threatened species in the natural area. All-terrain vehicles (ATVs) can kill or injure wood turtles; degrade and/or destroy wood turtle habitat through erosion and siltation; create disturbance to red-shouldered hawks and barred owls that can cause habitat not to be suitable for nesting or cause established nests to be abandoned; and destroy habitat for the three birds orchid. This technique is also included to inform the public of the prohibition of motorized vehicles on lands administered by the State Park Service as per N.J.A.C. 7:2-3.0.

2. The Division of Parks and Forestry may perform gypsy moth control activities within the natural area upon notification of the Natural Areas Council including a copy of the environmental impact statement (EIS) prepared by the Division. In the event that the Division of Parks and Forestry submits a gypsy moth control plan and EIS for spraying activities at Farny Natural Area, the Jersey City Department of Water will be consulted.

This management technique is in accordance with N.J.A.C. 7:5A-1.9(e)13. Gypsy moth control activities may be needed to preserve the high canopy closure and high percent canopy needed by barred owl and red-shouldered hawk. Consultation with the Jersey City Department of Water is necessary because of the proximity of Splitrock Reservoir to the natural area.

3. The Office of Natural Lands Management (ONLM), in cooperation with the Endangered and Nongame Species Program, will survey/monitor for barred owl, red-shouldered hawk, wood turtle and three birds orchid on a periodic basis and assess future management needs. Should additional locations of these or other endangered or threatened species be discovered in the natural area, they too will be monitored on a periodic basis.

This management requirement was included in the plan to help ensure the preservation of these species, which may be located in the Farny Natural Area and experience various degrees of rarity in the State and nation.

4. The ONLM will provide the administering agency with a map indicating known and possible locations of all endangered and threatened species as well as the extent of their habitat by June 30, 1995. The map will be updated by the ONLM should locations for any additional species be discovered.

This management requirement was included so that the administering agency can more effectively manage the natural area and the species within it, and to ensure consideration of these species in future planning in the natural area.

5. The boundary of the natural area is revised to include a 33-acre State-owned parcel located between the current boundary and Splitrock

Reservoir near Durham Road. The resulting acreage of the Farny Natural Area is 589 acres.

In accordance with N.J.A.C. 7:5A-1.12, revisions to the boundary of a natural area that result in a net change of not more than 25 percent of the total acreage of the natural area may be made by the Department, effective upon public notice, if the boundary change conforms with physical features identifiable in the field or the edge of State ownership and serves to protect the natural area or further its designation objective. The boundary change will further the designation objective by increasing protection of suitable habitat for State endangered and threatened species recorded for Farny Natural Area. The Council approved this boundary change at its meeting of September 1, 1993, in accordance with procedures at N.J.A.C. 7:5A-1.12(h).

6. The administering agency, in conjunction with the ONLM and Jersey City Department of Water, will post State Natural Area boundary signs at trail access points and along the natural area boundary, where practicable, at a maximum of ten per mile by June 30, 1995. These signs will be replaced as needed.

Posting of the boundaries of all natural areas is required in accordance with N.J.A.C. 7:5A-1.9(e)1.

7. The ONLM will provide the administering agency with State Natural Area boundary signs as needed.

The ONLM, which is responsible for overall administration of the Natural Areas System, designs and distributes paper boundary signs for posting of all State Natural Areas.

8. Current uses of the natural area, which include hiking, hunting, bird watching, botanizing and horseback riding, will be allowed to continue in the natural area. The ONLM and the administering agency will continue to monitor the above uses and/or any illegal uses to assess any impacts on the natural features occurring in this area.

The above uses are compatible with preservation of the species and habitats that occur within the natural area.

9. Bicycle riding is prohibited within the natural area. The administering agency will post this prohibition by June 30, 1995.

This prohibition is in accordance with the State Park Service Rules and Regulations at N.J.A.C. 7:2-2.25(l), which state that bicycles are prohibited on historic sites, walkways, natural area trails and hiking trails.

10. Camp fires are prohibited within the natural area. The administering agency will post this prohibition by June 30, 1995.

This prohibition is in accordance with the State Park Service Rules and Regulations at N.J.A.C. 7:2-2.12(a), which state that a person shall not start or maintain any open fire except for small handwarming fires in areas designated for ice fishing, on any lands or frozen waters under the jurisdiction of the State Park Service.

11. The administering agency will negotiate a memorandum of understanding with the Rockaway Township Police Department regarding concurrent enforcement of all or part of the State Park Service Code, N.J.A.C. 7:2, at the natural area by June 30, 1995.

This management requirement is included to allow the administering agency to provide additional enforcement of the area which is more than 20 miles from the administering agency's office. Any memorandum of understanding negotiated under this management technique will be subject to legal review and approval by the Division of Law.

12. The administering agency will construct a gravel roadside parking area on Durham Road capable of accommodating six cars (approximately 25 feet × 80 feet) for hiking trail use by December 31, 1995. If an alternate parking area outside of the current natural area boundary becomes available through State acquisition before or after this parking area is built, the site on Durham Road will be closed or removed from consideration for this use.

This management requirement is included to provide parking to visitors of the natural area. This parking area will direct visitors to the preferred access point while reducing the amount of illegal roadside parking and trespassing. If parking becomes available through nearby State acquisition, this would prevent the need to use a section of the natural area for the parking area.

13. The administering agency will construct a wooden entrance sign and install the sign at the parking area by December 31, 1995. The sign should identify the site as Farny Natural Area and the dimensions and wording should be consistent with the standard entrance sign for a State Park or Forest.

This management requirement is included to identify the natural area for visitors.

14. By June 30, 1995, the administering agency will post signs along the trail near the rifle firing range at Camp Lewis informing the public of the proximity of the firing range. Language on the sign is left to the discretion of the administering agency upon consultation with the Division of Law.

This management requirement is included to alert hikers and other trail users of the proximity of the rifle firing range to the natural area. The range, which is surrounded by an earthen berm, occurs just outside of the natural area boundary on private camp property. Although the range, if properly used, does not present a safety hazard to visitors of the natural area, the sound of close rifle fire could be alarming.

15. The administering agency will contact Camp Lewis staff by June 30, 1995 requesting that a sign be posted at the firing range, notifying range users that visitors to the natural area may be walking on the adjacent trail.

This management requirement is included to inform range users of the possibility of hikers near the firing range so that hiker safety is considered.

16. If the administering agency determines that trail closure is needed for any trail accessible by vehicles, entry will be prohibited using a gate. A key will be provided to the section firewarden.

This management requirement is included to ensure that the section firewarden has access to the natural area to perform fire suppression activities.

17. The administering agency will obtain all applications to conduct research or collect specimens, forward a copy to the ONLM, and provide a response within a reasonable date of application submittal. The administering agency shall coordinate a response with the ONLM.

This requirement is included in accordance with procedures for conducting research and collecting specimens in natural areas as outlined in N.J.A.C. 7:5A-1.10, and to ensure thorough review of all proposals.

18. The administering agency will remove refuse located in the northeast section of the natural area by December 31, 1995.

Rubbish or any other waste material must be removed from the natural area in accordance with N.J.A.C. 7:5A-1.9(e)7.

19. The administering agency will forward any plans that include subsurface disturbance to the Historic Preservation Office for review.

This requirement is included to protect any prehistoric period sites and other cultural remains that may occur within the natural area.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

Department of Environmental Protection and Energy
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(a)

DIVISION OF PARKS AND FORESTRY

Natural Areas System
Management Plan and Boundary Revision for Washington Crossing Natural Area

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and 13:1D-9; and N.J.A.C. 7:5A.

Take notice that in accordance with N.J.A.C. 7:5A-1.8 and 1.12, and the recommendation of the Natural Areas Council (Council), Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy (Department), has adopted a management plan for the Washington Crossing Natural Area and revised the boundary of the Natural Area.

The Washington Crossing Natural Area is a 158-acre tract located within Washington Crossing State Park in Hopewell Township, Mercer County. The tract is characterized primarily by serial woodlands and mixed oak-hardwood forest communities and is administered by the Division of Parks and Forestry through Washington Crossing State Park (hereinafter referred to as the administering agency). The Washington Crossing Natural Area was designated to the Natural Areas System in 1978. The Natural Areas System is established and administered pursuant to N.J.S.A. 13:1B-15.4 et seq. and 13:1B-15.12a et seq. These statutes

give the Department the responsibility of acquiring, maintaining and preserving natural areas as examples of the State's natural heritage and as places of scientific study. Currently the System contains 42 acres totalling nearly 31,000 acres.

The rules governing the Natural Areas System provide guidelines for the preparation of management plans at N.J.A.C. 7:5A-1.8. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long- and short-term management techniques and public uses to ensure preservation of the area in accordance with its management objective (see N.J.A.C. 7:5A-1.8). After a management plan is drafted by the Department and subjected to internal review, it is submitted to the Natural Areas Council, an advisory group to the Commissioner of the Department, for review and comment. The Council may then recommend to the Commissioner that the plan be adopted. Adoption is accomplished through publication of a notice in the New Jersey Register by the Commissioner.

The management objective for the Washington Crossing Natural Area is preservation of natural succession and mixed hardwood forests, and rare species habitat (N.J.A.C. 7:5A-1.13(a)38). The management plan for this area primarily specifies actions that will be taken to ensure preservation of successional and hardwood forest communities that support rare species habitat. The State endangered plant spring avens *(Geum vernum)* occurs within the natural area. This population represents one of the few remaining populations in the State. Management actions include mapping locations and monitoring the State endangered spring avens population, reducing illegal use of all terrain vehicles (ATVs) and bicycles, and reducing the disturbance from radio-controlled aircraft. Adoption of this management plan will help to ensure protection of a State endangered plant species and will have a long-term positive effect on the public, including those who conduct research and educational activities in the natural area.

Under N.J.A.C. 7:5A-1.12, Boundaries of natural areas, revisions to the boundary of a natural area may be proposed if the boundary change conforms with physical features identifiable in the field and serves to protect the natural area or further its management objective. A boundary change proposal that will result in a net change of not more than 25 percent of the total acreage of the natural area is reviewed by the Council and submitted to the Commissioner of the Department for approval. If approved, the boundary change is effective upon publication of a notice of the boundary change in the New Jersey Register. Through this procedure, the Council has recommended deleting from the Washington Crossing Natural Area a 0.8-acre State-owned parcel along Brick Yard Road. This parcel is leased to the Amateur Astronomers Association of Princeton, Inc. for the purpose of astronomical observation. Deletion of this parcel is in accordance with N.J.S.A. 13:1B-15.12a7, which specifies that no land in the Natural Areas System may be leased except by authorizing special legislation. The Council has also recommended that the southern boundary of the natural area be changed to correspond to the Red Dot Trail. This is a minor correction of an error in the boundary and is made in accordance with N.J.A.C. 7:5A-1.12(c). This technical correction will result in a negligible change in acreage of the natural area.

At its December 7, 1993 meeting, the Natural Areas Council reviewed and received staff recommendations on a draft management plan and boundary change proposal prepared by the Department for the Washington Crossing Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Washington Crossing Natural Area, including revisions to the boundary, and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection and Energy for approval in accordance with the procedure at N.J.A.C. 7:5A-1.8. The Commissioner agreed with all of the recommendations of the Council and approved the Washington Crossing Natural Area Management Plan, including the boundary revision, on May 11, 1994.

Following is a summary of the management techniques prescribed in the Washington Crossing Natural Area Management Plan along with an explanation of each:

1. The Office of Natural Lands Management (ONLM) will survey/monitor for spring avens *(Geum vernum)* on a periodic basis and assess future management needs. Should additional locations of this or other endangered or threatened species be discovered in the natural area, they too will be monitored on a periodic basis.

This management requirement is included to help ensure the preservation of this and other State endangered species.

2. The administering agency may continue to cut overhanging vegetation along the Yellow Trail between the long boardwalk and the Equestrian Loop Trail but should avoid cutting so close to the ground that spring avens plants are affected.

Maintenance of existing trails is authorized by N.J.A.C. 7:5A-1.9(e)16iii. This management requirement is included to help ensure the preservation of the State endangered spring avens which sets seed between May and July.

3. When the long boardwalk on the Yellow Trail needs repair, the administering agency will place a short boardwalk in the area indicated in Figure 2 in the management plan instead of rebuilding the long boardwalk in place. The administering agency will obtain any required freshwater wetlands and/or stream encroachment approvals from DEPE's Land Use Regulatory Program before construction of the proposed boardwalk that will replace the long boardwalk on the Yellow Trail indicated in Figure 2 in the management plan.

This management requirement is included to decrease the cost and maintenance associated with rebuilding another long boardwalk. The Commissioner hereby approves this boardwalk relocation in accordance with N.J.A.C. 7:5A-1.9(e)5, which states that construction of new structures may be undertaken provided the structures directly or indirectly contribute to the management objective. This structure will contribute to the management objective of preservation of the mixed hardwood forest by preventing trampling of vegetation by the public in a wetland portion of the trail system.

4. The ONLM will provide the administering agency with a map indicating the known location of the State endangered spring avens, a written description and an illustration of the plant by December 31, 1994. The map will be updated by the ONLM should locations for this species or any additional species be discovered.

This management requirement was included so that the administering agency can more effectively manage the natural area and the species within it, and to ensure consideration of these species in future planning in the natural area.

5. The Division of Parks and Forestry may perform gypsy moth control activities within the natural area only after Natural Areas Council review and approval of a gypsy moth control plan, including a spraying program environmental impact statement (EIS), prepared by the Division. The EIS must contain specific reference to impacts of gypsy moth control activities on lepidoptera, rare and endangered species and other non-target species.

The Commissioner hereby approves of gypsy moth control activities to preserve the mixed hardwood forest in the natural area. Natural Areas Council review and approval of a specific gypsy moth control plan and EIS is required prior to implementation of each control event.

6. The administering agency will post State Natural Area boundary signs at trail access points and along the natural area boundary, where practicable, at a maximum of 10 per mile by December 31, 1994. These signs will be replaced as needed.

Posting of the boundaries of all natural areas is required in accordance with N.J.A.C. 7:5A-1.9(e)1.

7. The ONLM will provide the administering agency with State Natural Area boundary signs as needed.

The ONLM, which is responsible for overall administration of the Natural Areas System, designs and distributes paper boundary signs for posting of all State Natural Areas.

8. Lands leased by the Amateur Astronomers Association of Princeton, Inc. for the purpose of astronomical observation are excluded from the natural area under the boundary change procedure at N.J.A.C. 7:5A-1.12.

In accordance with N.J.S.A. 13:1B-15.12a7, no land in the Natural Areas System may be leased except for authorizing special legislation.

9. The southern boundary of the natural area, as indicated on natural area boundary maps filed in the ONLM, will be changed to correspond to the Red Dot Trail. This is a correction to the boundary under N.J.A.C. 7:5A-1.12(c) and is technical in nature.

Due to a technical error, maps filed in the ONLM show the southern boundary as corresponding to trails other than the Red Dot Trail, which has been generally recognized as the boundary in this area. Therefore, a minor correction will be made to the filed maps. This change will also be reflected in maps distributed by the administering agency. In accordance with N.J.A.C. 7:5A-1.12(c), the Department may correct errors in the boundary of a natural area effective upon publication of notice of the correction in the New Jersey Register.

10. Current uses of the natural area, which include hiking, bird watching, botanizing, horseback riding and nature center educational programs, will be allowed to continue in the natural area. The ONLM and the administering agency will continue to monitor the above uses and/or any illegal uses to determine any changes in the impact on the natural features occurring in this area.

The above uses will continue to be allowed in the natural area because they are compatible with preservation of the species and natural communities that occur within the natural area.

11. The administering agency will attempt to reduce illegal ATV and bicycle use in the natural area by posting signs at all access points stating the prohibition on motorized vehicles and bicycles and by employing such techniques as placing a gate, guard rail or boulder at access points, including the end of Nedsland Avenue, by December 31, 1994.

This management technique is included to help ensure the preservation of the natural communities and species of the area. Motorized vehicles are prohibited on lands administered by the State Park Service in accordance with N.J.A.C. 7:2-3.0. Bicycles are prohibited in the Park in accordance with State Park Service Rules and Regulations at N.J.A.C. 7:2-2.25(l) except for the designated mountain bike trail located east of the natural area and on roadways within the park.

12. Upon expiration of the current special-use permit (March 1994) granted to the Washington's Crossing Radio Controlled Flyer's Association, Inc. the administering agency will revise any future agreements so that the southern extent of their flyover area will be the natural area boundary.

This management requirement is included because remote controlled planes can be heard throughout the natural area and create a disturbance as well as a safety hazard to visitors and wildlife. The Delaware River corridor is an important flyway for migratory birds and this activity may prevent nesting by some of these birds. The natural area boundary provides a distinct visible boundary beyond which planes should not be flown.

13. The administering agency will obtain all applications to conduct research or collect specimens, forward a copy to the ONLM, and provide a response within a reasonable date of application submittal. The administering agency shall coordinate a response with the ONLM.

This requirement is included in accordance with procedures for conducting research and collecting specimens in natural areas as outlined in N.J.A.C. 7:5A-1.10, and to ensure thorough review of all proposals.

14. The administering agency will modify maps distributed to the public to accurately reflect the locations of trails within the natural area.

Field examination has revealed that the current map of the State Park containing mapped trails within the natural area is incomplete and somewhat inaccurate. Correction of the map upon its next revision will better serve the visiting public.

15. The administering agency will close unmarked trails to visitors by felling small trees or placing posts in the ground.

These trails are not represented on the trail map for the area and can be confusing to the visitor. Many of these trails are created and/or used illegally by ATV's and bicyclists. There already are an adequate number of marked trails to access the natural area and closing of the unmarked trails and revegetation of the trail corridors may be pursued by the administering agency at its own discretion.

16. The administering agency will forward any plans that include activities that may disturb historical features of the natural area to the New Jersey Historic Preservation Office for review.

This requirement is included to help ensure preservation of any historical features within the natural area. It is likely that historical features are present within the natural area since it is adjacent to the Washington Crossing Historic Site.

17. The administering agency will remove surface refuse located in the northeast section of the natural area at two locations along Brick Yard Road by March 31, 1996. Use of land within the natural area for this purpose will be discontinued.

In accordance with N.J.A.C. 7:5A-1.9(e)7 prohibited activities in a natural area include dumping, burying, or spreading of garbage, trash, or other materials.

18. The administering agency will remove the vandalized bird blind and bird feeders near the nature center by December 31, 1994.

In accordance with N.J.A.C. 7:5A-1.9(e)7 structures having no historic, scientific or habitat value may be demolished and removed unless such structures are deemed essential for administrative purposes.

19. A new bird blind, planned for relocation within the natural area, may be constructed by the administering agency only after Natural Areas Council review of the building plan prepared by the Division.

The Commissioner hereby approves construction of a new bird blind in accordance with N.J.A.C. 7:5A-1.9(e)5 which states that new structures or enlargement of existing structures may be undertaken provided the structures directly or indirectly contribute to the management objective. Natural Areas Council review and approval of construction plans is still required prior to construction.

20. The administering agency may continue to maintain the successional fields near the nature center for educational purposes.

Preservation of successional fields is a component of the management objective for this natural area and will contribute towards interpretation and education. In accordance with N.J.A.C. 7:5A-1.9(e)12, habitat manipulation may be undertaken if preservation of a particular habitat type or species of native flora or fauna is included in the management objective of the natural area.

21. The administering agency may resurface the entrance road and parking area within the natural area. The extent of such resurfacing should only include the current footprint of the entrance road and parking area.

In accordance with N.J.A.C. 7:5A-1.9(e)3, vehicular access lanes may be maintained within a natural area but may not be enlarged in any manner except upon approval by the Commissioner.

22. The Nature Center may be rebuilt or expanded in its current location or the immediate vicinity only after Natural Areas Council review and approval of the construction/renovation plans.

The Commissioner hereby approves of construction of a new nature center or expansion of the current nature center in accordance with N.J.A.C. 7:5A-1.9(e)5 which states that new structures or enlargement of existing structures may be undertaken provided the structures directly or indirectly contribute to the management objective. Natural Areas Council review and approval of construction plans is still required prior to construction.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

Department of Environmental Protection and Energy
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
Trenton, New Jersey 08625

This notice is published as a matter of public information.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on May 5, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. The amendment updates the Jefferson Township Wastewater Management Plan to include the Cozy Lake School in the on-site ground water disposal facility service area for facilities with a design capacity of less than 20,000 gallons per day (gpd). The on-site ground water disposal facility serving the Cozy Lake School is proposed to be expanded to serve approximately 322 students with a corresponding wastewater flow of 4,830 gpd.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutues or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast and Upper Raritan Water Quality Management Plans Public Notice

Take notice that on May 5, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning (SWQMP) rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast and Upper Raritan Water Quality Management Plans was adopted by the Department. This amendment provides a Wastewater Management Plan (WMP) for New Providence Borough. The WMP identifies the sewer service areas to the New Providence Sewage Treatment Plant (STP), the Joint Meeting of Essex and Union Counties (JMEUC) STP, and the Berkeley Heights STP. By agreement, the New Providence STP is currently permitted to pump up to 1.5 million gallons per day (mgd) of wastewater to the JMEUC STP. The WMP proposes an increase in the maximum allowable flow to be pumped to the JMEUC STP from 1.5 mgd to 3.0 mgd to allow for treatment of all dry weather and some wet weather flows generated within the New Providence plant's service area. This proposal amends the JMEUC WMP. The New Providence STP discharges to the Passaic River and the JMEUC STP discharges to the Arthur Kill. This proposal allows for an increase in the interbasin transfer of wastewater. In addition, a water quality study will be required to determine effluent limits for the flows above 3.0 mgd discharged from the New Providence STP.

This amendment proposal was noticed in the New Jersey Register on August 16, 1993. Comments on this amendment were received during the public comment period and are summarized below with the Department's responses.

The following comments were received from the North Jersey District Water Supply Commission (NJDWSC) and the Hackensack Water Company (HWC) in objection to the proposed amendment:

COMMENT: Under the proposed amendment, discharges into the Passaic River from the New Providence STP are to be eliminated except for such occasions when the flow into the New Providence STP exceeds the flow pumped to the JMEUC STP. Thus, the contribution of flow to the Passaic River will be reduced from between 0.25 mgd and 0.70 mgd except during times of excess flow into the New Providence STP.

The NJDWSC and HWC are concerned that termination of the continuous discharge to the Passaic River from the New Providence STP would reduce water availability. Water availability is estimated by defining the "safe yield," or the amount of water that can be provided if the drought of record was repeated. In the case of the Passaic River and its tributaries, it is the amount of water that the reservoirs of the basin can provide if the 1960s drought reoccurred. Since a portion of river flow that is pumped to the reservoirs of the basin is composed of treated wastewater, the concern is that cessation of New Providence's continuous discharge would reduce the basin's safe yield. This safe yield is the basis for the NJDWSC and HWC water diversion rights within the basin. A specific amount of water has already been allocated through water diversion permits and if part of this water is put into the Arthur Kill instead of the Passaic River, New Providence will be reallocating some of NJDWSC's and HWC's entitlement. The purveyors indicated that approval of the wastewater transfer and its consequent effect on water availability would place the Water Quality Planning Act and the Water Supply Management Act and their respective rules in conflict with each other.

RESPONSE: The Water Supply Element of the Department, in conjunction with the water supply purveyors that are concerned, recently re-evaluated the analysis that was originally used to define the safe yield of the basin. It was concluded that a substantial increase of treated sewage discharges since at least 1979 from both in-basin and out-of-basin supplies would more than counter balance impacts on the purveyor's safe yield due to termination of the relatively minor continuous discharge from the New Providence STP.

In light of the above, and in conjunction with anticipated water quality improvements and the assumed cost difference between the proposal and upgrading the New Providence STP for continuous discharge, the Department has concluded that the proposed transfer of additional wastewater to the JMEUC STP is both approvable and consistent from a water supply and water quality management planning perspective and in the Borough's best economic interests. The Department notes, however, that the projected cost differential is based on assumptions regarding the final effluent limits for the proposed intermittent discharge from the New Providence STP during wet weather flow conditions. These assumptions will need to be verified through the mechanisms provided by the New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, including a water quality study to determine effluent limits. Additional planning may be necessary if the results of the study do not prove cost effective.

Outside of the above, the Department does recognize that the cessation of sizable treated wastewater discharges in reservoir watersheds could in fact reduce the safe yield of these storage facilities in the future, especially as surface water quality standards evolve and become more stringent. As such, the Department intends to develop and implement policy through the SWQMP rules that would discourage these forms of transfers where the wastewater serves as a safe and reliable component of the watershed's available water supply. To proceed with policy development and implementation, the Department has recently proposed and provided for public review an interested party review document on the conceptual changes to the SWQMP rules which included draft interbasin transfer policies. The goal of these policies is no significant reduction of a watershed's ability to support water supply yields, dilution for effluent flows from wastewater treatment systems, and ecosystems. As proposed, the policies would discourage any significant reduction in water supply yields to public water supply systems with water allocation permits.

COMMENT: The Borough's proposed project and WMP must be rejected because they do not comply with the following additional requirement of the SWQMP rules:

In preparing amendments to areawide WQMPs, the following policies shall be adhered to:

... Expansion or upgrading of existing regional DTW ["domestic treatment works"] is generally preferable to construction of additional DTW that would produce additional direct discharges to surface water at new locations [N.J.A.C. 7:15-3.4(l)1 (emphasis added)].

Instead of continuing the discharge of treated effluent back into the Passaic River, the Borough now proposes to send its discharge to an entirely different facility, that is, the JMEUC STP, "that would produce additional direct discharges to surface water at new locations," that is the Arthur Kill.

RESPONSE: Because the JMEUC STP is an existing regional facility which already accepts a portion of the New Providence STP's flow, and no new surface water discharges are proposed by this amendment, the Department has determined that the Borough's proposal to send additional flow to the JMEUC STP is consistent with the policies specified at N.J.A.C. 7:15-3.4(l)1. Note that the Department anticipates modifying these policies, through modification of the SWQMP rules, to better balance benefits and cost (that is, to water supplies) of regional systems.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plant); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans Public Notice

Take notice that on April 29, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan and Upper Delaware Water Quality Management Plans was adopted by the Department. This amendment, submitted by Mount Olive Township, adopts a wastewater management plan (WMP) for the Township. The WMP allows for: expansion of the Clover Hill and Mount Olive Upper Elementary School wastewater treatment facilities; expansion of the Mount Olive Villages

Sewer Company wastewater treatment facilities and service area; several new wastewater treatment facilities discharging to ground water; and abandonment of the Equity Plaza wastewater facilities with conveyance of flows to the Musconetcong Sewerage Authority (MSA) sewage treatment plant. The WMP identifies areas to be served by the Hackettstown Municipal Utilities Authority (HMUA), the MSA, on-site ground water discharge facilities less than 20,000 gallons per day (gpd), and on-site ground water discharge facilities less than 2,000 gpd.

This amendment proposal was noticed in the New Jersey Register on February 7, 1994. Comments on this amendment were received during the public comment period and are summarized below with the DEPE's responses.

COMMENT: Comments were received from the HMUA regarding minor corrections which were needed in order to provide accurate and up-to-date information relevant to the HMUA service area and facility (that is, dry sewer areas, HMUA permitted flow).

RESPONSE: The minor corrections were made to the WMP.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plant); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Raritan Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Upper Raritan Water Quality Management (WQM) Plan. This amendment was submitted by Yannaccone Associates, Inc. on behalf of Gill St. Bernard's School. This amendment would expand the sewer service area of the Environmental Disposal Corporation sewage treatment plant, located in Bedminster Township, to include the Gill St. Bernard's School property which straddles the Chester Township (Lot 1, Block 5) and Borough of Peapack-Gladstone (Lot 1, Block 2.02) municipal boundary. This would be accomplished via connection to the existing Peapack-Gladstone sanitary sewer system. The existing on-site septic systems presently serving the school would be eliminated. This proposal would amend the Chester Township, Bedminster Township, and Borough of Peapack-Gladstone Wastewater Management Plans.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Raritan WQM Plan. All information relating to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the amendment to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEPE address cited above with a copy sent to Mr. John W. Jeske, Jr., Business Manager, Gill St. Bernard's School, St. Bernard's Road, P.O. Box 604, Gladstone, New Jersey 07934-0604. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Mercer County Water Quality Management Plan

Public Notice

Take notice that on May 5, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Mercer County Water Quality Management Plan was adopted by the Department. This amendment was submitted on behalf of Toll Brothers Incorporated and amends the Washington Township Wastewater Management Plan (WMP) to include the "Washington Greene" housing project site located at Block 25, Lots 9, 10, 11, 15, 19, 20, 21, 22, 33, 34, 35, 36, 41, and portions of Lots 2 and 43 (also of Block 25) south of Munn's Run to the sewer service area of the Hamilton Township Water Pollution Control Facility. The ultimate buildout of the "Washington Greene" housing project site results in 93 single family homes discharging a wastewater flow of 28,000 gallons per day. This amendment also adds Block 25, Lots 18.01, 18.02, 18.03, 23, 24, 40, 44, 45, and 49 to the sewer service area of the Hamilton Township Water Pollution Control Facility. These lots include nine privately owned homes currently served by the Hamilton Township Water Pollution Control Facility but not presently identified within the Washington Township WMP.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

HEALTH

(c)

DIVISION OF FAMILY HEALTH SERVICES

New Jersey Medically Underserved Index N.J.A.C. 9:16-1

Public Notice

Take notice that in accordance with N.J.A.C. 9:16-1, a list of medically underserved areas shall be specified annually by the Commissioner of Health. A "medically underserved area" means an urban or rural area or population group within the State of New Jersey which has a medical or dental manpower shortage as determined by the Commissioner of Health, or a public or not-for-profit private health care facility or other facility which is so designated. The State-designated medically underserved areas are used to place primary care physicians and dentists participating in the New Jersey Primary Care Physician and Dentist Loan Redemption Program. The Loan Redemption Program is intended to promote access to primary care services by improving the distribution of primary health care personnel.

The following geographic areas have been designated as medically underserved by the Commissioner of Health based on the New Jersey Medically Underserved Index (NJMUI). The Index was developed to rank New Jersey's municipalities with populations of 5,000 or more according to indicators that are potentially indicative of a lack of access to comprehensive and timely primary health care services. Municipalities with populations of 30,000 or more were evaluated according to eight economic and health status indicators. Municipalities with populations of 5,000 to 29,999 were evaluated according to four economic indicators; the values for health status indicators were generally too small to provide valid statistics. The indicators may change from year to year as more appropriate indicators are identified for use in the Index.

The economic and health status indicators in the 1993 Index include:

- Percent of Population below 100 Percent of Poverty Level—1990
- Percent of Population below 200 Percent of Poverty Level—1990
- Percent of Population Unemployed—1992
- Per Capita Personal Income—1985, 1987 and 1989
- Teenage Fertility Rate per 1,000 Population—1989-1991
- Hospital Discharges for Preventable Diabetes Conditions per 100,000 Population—1986-1989
- Age Adjusted Death Rates per 100,000 Population—1989-1991
- Years of Potential Life Lost per 100,000 Population—1989-1991

The geographic areas listed below are arranged according to relative rank, from highest to lowest.

Municipalities with Populations of 30,000 or more

Atlantic City City
Camden City
Newark City
Trenton City
East Orange City
Paterson City
Jersey City City
New Brunswick City
Passaic City
Irvington Township
Perth Amboy City
Elizabeth City
Plainfield City
Union City City
Lakewood Township

Municipalities with Populations of 5,000 to 29,999

Bridgeton City
Penns Grove Borough
Salem City
Paulsboro Borough
Asbury Park City
Fairfield Township (Cumberland County)
Pleasantville City
North Wildwood City
Keansburg Borough
Buena Vista Township
Orange City Township
Glassboro Borough
Commercial Township
New Hanover Township
Lower Township
Long Branch City
North Hanover Township
Middle Township
Maurice River Township
Woodbury City
Burlington City
Mount Holly Township
Gloucester City City (Camden County)
Millville City
Clayton Borough
Phillipsburg Town

Geographic areas that are not designated on the Index can be considered on a case-by-case basis by the Commissioner of Health, if adequate documentation can be provided to support the designation.

Health Professional Shortage Areas (HPSAs), as designated by the Federal Division of Shortage Designation within the Department of Health and Human Services, are eligible for the placement of physicians and dentists participating in the New Jersey Primary Care Physician and Dentist Loan Redemption program.

To receive additional information on the Index, call Ms. Viktoria Wood at 609-984-0709.

(a)

THE COMMISSIONER

Notice of Invitation for Certificate of Need Applications for the Establishment or Expansion of Home Health Agencies

Take notice that in accordance with the provisions of N.J.A.C. 8:33-4.1(a), Len Fishman, Acting Commissioner, New Jersey Department of Health, is inviting certificate of need applications for the establishment or expansion of home health agencies in accordance with the provisions of N.J.A.C. 8:33, N.J.A.C. 8:33L, N.J.A.C. 8:42 and N.J.S.A. 26:2H-1 et seq.

Geographic area to be served: Statewide

Date application is due: July 1, 1994

Date completeness review decision issued: September 15, 1994

Date local advisory boards will review the applications and submit recommendations to the Commissioner and the State Health Planning Board: On or before November 1, 1994

Date State Health Planning Board will review the applications and submit recommendations to the Commissioner: On or before December 15, 1994

Applications may be requested from and must be filed with:

Certificate of Need Program
New Jersey State Department of Health
CN 360
Trenton, NJ 08625-0360
609-292-6552

Applications must also be filed with: Local advisory board(s) serving the region of the proposed service

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HUMAN SERVICES

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Action on Petition for Rulemaking Out-of-State Hospital Reimbursement

Petitioner: Children's Seashore House, Philadelphia, Pennsylvania.

As Represented By: Norris, McLaughlin & Marcus, Attorneys-at-Law.

Authority: N.J.A.C. 10:52-1.17.

Take notice that on April 5, 1994, the Department of Human Services (DHS) received a petition for rulemaking with regard to the Medicaid reimbursement system for out-of-State hospital reimbursement (see 26 N.J.R. 2152(b)). The petitioner asked that DHS revise N.J.A.C. 10:52-1.17(b) and (d) to eliminate the five percent reduction in the rates paid to out-of-State non-DRG hospitals providing inpatient care to New Jersey Medicaid recipients. The petitioner claimed that the Department's Division of Medical Assistance and Health Services (DMAHS) reimburses petitioner for inpatient services to New Jersey Medicaid recipients at a rate equal to 95 percent of the per diem rate set for the petitioner by the Pennsylvania Department of Public Welfare, which administers Pennsylvania's Medicaid program. The petitioner claimed that other out-of-State hospitals that are reimbursed according to DRG rates receive 100 percent of the rates established by their home-state Medicaid agencies. The petitioner claimed that the five percent cut imposed by DMAHS "cannot be squared with the so-called Boren Amendment which required Medicaid rates be 'reasonable and adequate to meet the necessary costs of an efficiently operated hospital'."

The petition was duly considered pursuant to law. DMAHS has reviewed all available information and believes that the reimbursement to the out-of-State non-DRG hospitals is reasonable and adequate to meet

the necessary costs of an efficiently operated hospital. It is reasonable for the New Jersey Medicaid program to make an adjustment, to promote cost containment, to the non-DRG rates paid by other states in order to provide incentives for efficiency.

The petition for further formal rulemaking is accordingly being denied. Final notice of action on this petition will be mailed to the petitioner. Interested persons may obtain a copy of the petition for rulemaking by writing Henry W. Hardy, Administrative Practice Officer, Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625-0712.

(a)

DEVELOPMENTAL DISABILITIES COUNCIL

Notice Concerning Information on Funds Available During Federal Fiscal Years 1994 and 1995

Take notice that the New Jersey Developmental Disabilities Council (NJDDC) is a Federally mandated planning and advisory agency located "in but not of" the New Jersey Department of Human Services.

While NJDDC's mandate prohibits the provision of direct service, it does provide grants for research and demonstration projects whose outcomes are designed to improve the lives of people with developmental disabilities and their families.

Contracts are let in response to competitive bid procedures; NJDCC does not fulfill unsolicited requests for funding. Priority areas of interest include employment, education, institutional closure, and personal assistance services.

For more information on funds available during Federal fiscal years 1994 and 1995, please write on organization letterhead to Rachel Hickson, Planner, NJDDC, CN 700, Trenton, NJ 08625. Please be sure to include the organization's Federal ID Number.

INSURANCE

(b)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Notice of Action on Petition for Rulemaking Unfair Claims Settlement Practices

N.J.A.C. 11:2-17

Petitioner: New Jersey Hospital Association.
Authority: N.J.S.A. 52:14B-4(f); N.J.A.C. 11:1-15.

Take notice that on October 7, 1993, the Department of Insurance (Department) received a petition for rulemaking from the New Jersey Hospital Association requesting that the Department amend rules set forth at N.J.A.C. 11:2-17 entitled "Unfair Claims Settlement Practices." A notice acknowledging receipt of the petition and setting forth the proposed amendments in their entirety was filed with the Office of Administrative Law on November 24, 1993 and appeared in the December 20, 1993 New Jersey Register (see 25 N.J.R. 6065(a)). The Department deferred its response to the proposal for further deliberations to be concluded no later than April 29, 1994.

The petition is intended to accomplish three objectives which are summarized as follows: (1) establish the means by which first party claimants, third party claimants, health care facilities and providers of health care may obtain from insurers immediate preauthorization or verification of insurance covering prospective patients, including verification standards and sanctions against insurers for providing erroneous or misleading information; (2) establish standards to protect health care facilities and providers of health care from inappropriate payment delays by insurers including partial payment requirements and specific time requirements for claims under review; and (3) establish rules for the payment of benefits based on the timing of claims submitted including reservations of benefit dollars for claims to be audited.

The Commissioner certifies that the petition was duly considered pursuant to law. Upon due deliberation, the Commissioner finds as follows:

1. The petitioner proposes to delete the rules set forth at N.J.A.C. 11:2-17.7(e)1i and ii which, pursuant to legislative mandate, were adopted November 10, 1992 to conform existing regulations to provisions of the Health Care Cost Reduction Act (P.L. 1991, c.187) at N.J.S.A. 17B:26-12.1 and 17B:27-44.1. Both the statutes and the rules call for all health insurance claims to be paid no later than 60 days after the insurer receives written notice of claim. The payment period may be extended if the insurer contests a claim (or part thereof) upon written notice within 45 days of receipt of the claim; or requests additional information from the insured concerning a claim that the insurer is contesting. In the latter case, the insurer must pay or deny the claim within 90 days of the insurer's receipt of the additional information. Any proposed deletion of or substantive amendments to these rules would be contrary to legislative mandate and would therefore require legislative action.

2. The petitioner proposes new rules which would require insurers, particularly automobile insurers providing personal injury protection coverage, to respond to requests for preauthorization or verification of coverage—including detailed claims information—"within 48 hours." Payment of personal injury protection coverage benefits is governed by N.J.S.A. 39:6A-5 which was recently amended by the Legislature to **extend** the term allowed for claims payment by insurers from 30 to 60 days. Accelerating even the initial part of the claims paying process to require it to take place "within 48 hours" would result in a drastic and unwarranted change which the Commissioner, even if favorably inclined, clearly lacks the authority to promulgate. Here again, the petitioner would be best advised to seek a legislative rather than regulatory remedy.

3. The petitioner proposes new language at N.J.A.C. 11:2-17.14(c) that goes well beyond the purpose of subchapter 17 which is primarily to identify what constitutes unfair claims settlement practices and to provide penalties for violations. Proposed subsection (c) would, in effect, require the Commissioner to supersede existing civil remedies with his own determination of insurer liability including amounts to be recovered by aggrieved health care facilities and providers of health care in cases involving failure by insurers to provide preauthorization or effectively verify coverage.

4. The petitioner proposes to add a new section to N.J.A.C. 11:2-17 entitled "Prompt investigation and settlement of health insurance claims" even though N.J.A.C. 11:2-17.7 already sets forth "rules for prompt investigation and settlement of claims." It would appear that the proposed new language is intended to replace the N.J.A.C. 11:2-17.7 language proposed for deletion (see discussion at 1 above). In any event, the proposed new language contains unduly stringent "guidelines and requirements" intended to govern audits of health insurance claims. For example, insurers would be required to notify health care facilities or providers of health care of their intention to audit a claim "within 30 days of the patient's discharge or date of service." There are many instances when the insurer is not even informed of the date of service until months afterwards. The proposed new language would also require insurers to reimburse the health care facility or provider of health care "at least 80 percent of the charges billed" upon notification of the intent to audit. In cases subsequently shown to involve fraud or failure on the provider's part to meet the test of medical necessity, the insurer would be left to recoup reimbursement amounts already paid. The Commissioner finds this to be unsatisfactory.

5. The petitioner proposes to add new language that would require the Commissioner, upon notice, to conduct hearings "to investigate the issues in dispute between insurers and health care facilities and providers of health care services about the timing of billing and unpaid charges due to the exhaustion of benefits under the claimant's insurance plan or contract." The Commissioner seriously questions the advisability of according hearing status to the resolution of such disputes.

The Commissioner believes that the regulatory mechanisms currently in place are adequate to keep the medical claims system operating to the benefit of insurance consumers and the medical community. Any additional notification, verification or other requirements imposed upon insurers at this time would either be unduly burdensome or must be considered by the Legislature. Further, any such measures would unnecessarily complicate the current process, ultimately increasing the costs thereof.

For all of the reasons set forth above, the Petition is denied.

(a)

NEW JERSEY INDIVIDUAL HEALTH COVERAGE PROGRAM BOARD

Notice of Action on Petition for Rulemaking N.J.A.C. 11:20-1.1, Exhibit F Public Notice

Petitioner: New Jersey Optometric Association.

Take notice that on December 10, 1993 the New Jersey Individual Health Coverage Program ("IHC") Board received a petition for rulemaking concerning N.J.A.C. 11:20-1.1, Exhibit F, the individual health benefits HMO policy form, Section V(b), "Specialist Doctor Benefits."

The petitioner requested that the IHC Board amend the list of "Specialist Doctor Benefits" to specifically name optometry as a covered specialist benefit for reimbursement under the standard HMO Policy form.

On February 7, 1994, the IHC Board published a notice in the New Jersey Register to provide notice of the receipt of the petition for rulemaking and of the Board's decision to refer the matter to the Board's Technical Advisory Committee for further deliberations in accordance with N.J.A.C. 1:30-3.6 with the intent to make a final determination on or before April 10, 1994 (see 26 N.J.R. 862(a)).

The deliberations of the TAC have been completed and the IHC Board has fully considered the petition and the recommendation of the TAC. The IHC Board has determined that an amendment to the list of "Specialist Doctor Benefits" to specifically name optometry as a covered specialist benefit for reimbursement under the standard HMO policy form is not necessary at this time.

The IHC Board first considered the issue of expressly including optometry in the list of Specialist Doctor Benefits on the standard HMO policy form when it was raised in a comment to the proposed rule. Upon final adoption of the rule, the IHC Board did not believe it was necessary to list optometry because the list of Specialist Doctor Benefits is not exclusive; rather, section V(b) of the standard HMO policy form specifically states that "[s]ervices include, but are not limited to, the following" and proceeds to list 19 examples of the most common specialist services. Moreover, optometry is not listed in the exclusions in section IV of the standard HMO policy form. Furthermore, the form's definition of "covered services" lists the criteria used to determine whether a service will be covered by the carrier. It is clear from those criteria that medically necessary services performed by a licensed optometrist, upon referral by the primary care physician, would be covered. The IHC Board responded to this effect in its responses to the public comments in the IHC Board's final rule promulgating the standard HMO policy form.

Upon completion of the TAC's review, the IHC Board again considered the petition in light of all specialty services not expressly named in the standard HMO policy form, including optometry, and determined that a further clarification is not necessary at this time. The TAC determined that the absence of a specific mention of optometry in the list of Specialist Doctor Benefits would have no effect on policyholders' access to optometry since all referrals to specialists are made by an HMO primary care physician rather than the policyholder. Therefore, the IHC Board hereby denies the petition for the reasons set forth above.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(b)

DIVISION OF LEGISLATIVE AND REGULATORY AFFAIRS

Notice of Receipt of and Action on Petition for Rulemaking Optometry as Specialist Doctor Benefit in HMO Plan Covered Services at N.J.A.C. 11:21-1.1

Petitioner: New Jersey Optometric Association.

Take notice that on March 4, 1994, the New Jersey Optometric Association ("petitioner") filed a petition with the Department of Insurance ("Department") requesting an amendment to N.J.A.C. 11:21-1.1 to include optometry as a covered service.

Specifically, petitioner is requesting an amendment to Exhibit G at N.J.A.C. 11:21, the New Jersey Small Employer Health Benefits Program ("Program") rules adopted by the Program's Board of Directors ("Board") on October 15, 1993 establishing standard small employer health benefits plans and policy forms pursuant to N.J.S.A. 17B:27A-17 et seq., as amended by P.L. 1993, c.162, and specifically setting forth the benefits, limitations and exclusions of each plan. Exhibit G in the Appendix to N.J.A.C. 11:21 sets forth the Health Maintenance Organization ("HMO") Benefit Plan. Petitioner seeks to amend Exhibit G at Section V(b) to include optometry as a covered specialist benefit for reimbursement under the Program's HMO Plan.

In accordance with N.J.A.C. 11:1-15.2(a)4, the Department's rules applicable to petitions for rulemaking pursuant to N.J.S.A. 52:14B-4(f), a petitioner seeking to petition the Department to promulgate, amend or repeal a rule is required to submit to the Commisisoner, inter alia, references to the authority of the Department to take the requested action. Petitioner in its petition for rulemaking identifies both the Department and the Board as respondents, and states that "the respondent is the administrative agency charged by law with the regulation of the practice of insurance and charged with the proposal and adoption of rules regarding the New Jersey Small Employer Health Benefits Program pursuant to the authority of N.J.S.A. 17B:27A-17 et seq." N.J.S.A. 17B:27A-19 specifically authorizes the Board, rather than the Department, to "... establish a standard form for each of the five plans which shall be offered ..." under the five small employer health benefits plans. The rules and exhibits at N.J.A.C. 11:21 were proposed and adopted by the Board under signature of the Board's Chair, and were neither proposed nor adopted by the Department.

In accordance with N.J.A.C. 1:30-3.6 and 11:1-15, and after thorough review of the petition, the Department is denying petitioner's request. N.J.A.C. 11:21 and Exhibit G of the Appendix thereto were adopted by the Board under its specific authority granted by N.J.S.A. 17B:27A-19. Therefore, the Department has determined that jurisdiction for action on the petition properly rests with the Board.

LAW AND PUBLIC SAFETY

(c)

DIVISION OF MOTOR VEHICLES

Notice of Contract Carrier Applicant

Take notice that Acting Director C. Richard Kamin, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed for a Contract Carrier Permit:

CONTRACT CARRIER (NON-GRANDFATHER)
L L & L Sabatine, Inc.
R.D. 3, BP 8
Saylorsburg, PA 18353

Protests in writing and verified under oath may be presented to the Acting Director, Division of Motor Vehicles, 225 E. State St., CN 162, Trenton, NJ 08666, within 20 days (June 26, 1994) following the publication of an application.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, a single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	4/21/97
1:5	9/13/96
1:6	4/21/97
1:6A	3/19/95
1:7	4/21/97
1:10	4/21/97
1:10B	9/13/96
1:11	4/21/97
1:13	4/21/97
1:13A	2/3/99
1:14	7/15/96
1:20	4/21/97
1:21	4/21/97
1:30	1/25/96
1:31	4/21/97

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:1-4	Exempt (28 C.F.R. Part 35)
2:2	3/7/99
2:3	8/21/94
2:5	8/21/94
2:6	EXPIRED RULES
2:9	8/19/96
2:16	1/22/96
2:17	5/31/96
2:18	8/5/96
2:19	10/1/95
2:20	10/1/95
2:21	8/5/96
2:22	6/26/97
2:23	5/28/98
2:24	4/2/95
2:32	5/13/97
2:33	3/6/94
2:34	1/2/95
2:48	10/25/95
2:50	5/1/97
2:52	5/1/95
2:53	1/10/96
2:54	Exempt (7 U.S.C. 601 et seq., 7 C.F.R. 1004)
2:68	10/29/98
2:69	12/20/98
2:70	8/20/95
2:71	7/2/98
2:72	7/2/98
2:74	7/2/98
2:76	7/31/94
2:90	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95
3:4	8/17/97
3:6	3/1/96
3:7	9/12/95
3:11	5/1/94
3:12	6/15/97
3:13	1/21/97
3:14	3/7/99
3:16	6/18/95
3:17	6/13/96
3:18	12/24/97
3:19	3/15/96
3:21	1/24/97
3:22	5/12/94
3:23	7/6/97
3:24	8/18/94
3:25	7/23/97
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:29	8/5/96
3:32	11/1/98
3:33	9/18/94
3:38	9/11/97
3:41	10/11/95
3:42	3/10/98

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
4A:1	9/22/97
4A:1-5	Exempt (28 C.F.R. Part 35)
4A:2	9/22/97
4A:3	8/5/98
4A:4	5/12/98
4A:5	9/22/97
4A:6	12/22/97
4A:7	9/22/97
4A:8	1/16/95
4A:9	9/22/97
4A:10	9/22/97

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:1	2/5/95
5:2	4/10/94
5:3	7/30/98
5:4	9/1/97
5:5	Exempt (28 C.F.R. Part 35)
5:10	8/26/98
5:11	3/9/99
5:12	12/27/94
5:13	6/22/97
5:14	11/9/95
5:15	5/1/94
5:18	1/4/95
5:18A	1/4/95
5:18B	1/4/95
5:18C	2/5/95
5:19	1/15/98
5:20	9/3/96

N.J.A.C.	Expiration Date
5:22	2/5/95
5:23	2/3/98
5:24	7/10/95
5:25	2/19/96
5:25A	4/20/97
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	5/27/98
5:31	12/1/94
5:33	8/6/95
5:34	12/3/95
5:37	1/7/96
5:50	9/17/98
5:51	8/11/98
5:52	1/2/95
5:70	4/22/97
5:71	6/4/95
5:80	4/20/95
5:91	12/7/97
5:92	2/7/96
5:93	6/6/99
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95
5A:3	2/3/97
5A:4	2/3/97
5A:5	9/21/97
5A:7	Exempt (28 C.F.R. Part 35)

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	12/8/98
6:3	6/7/98
6:5	10/22/95
6:7	1/2/95
6:8	12/11/96
6:9	5/3/98
6:11	9/21/95
6:12	3/8/96
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	10/8/98
6:24	1/11/96
6:26	8/3/97
6:28	2/10/99
6:29	2/8/95
6:30	6/6/99
6:31	11/16/94
6:39	8/14/94
6:43	8/10/95
6:46	4/10/97
6:51	8/5/96
6:53	4/10/97
6:64	9/14/97
6:68	2/26/95
6:70	10/17/94
6:78	10/8/98

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

N.J.A.C.	Expiration Date
7:1	8/15/95
7:1A	5/22/97
7:1C	6/15/95
7:1D	9/13/98
7:1E	9/3/96
7:1F	4/16/97
7:1G	9/29/94
7:1H	7/13/95
7:1I	2/22/99
7:1J	1/4/98
7:1K	3/1/98
7:2	10/7/96
7:3	6/21/98
7:4	8/17/97
7:4A	9/18/94
7:4B	12/6/98
7:5	11/19/95
7:5A	6/17/98
7:5B	6/24/98
7:5C	1/16/95
7:7	9/12/94
7:7A	3/16/97
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/98
7:9	1/18/96
7:9A	8/21/94
7:9B	1/18/96
7:10	9/1/94
7:11	5/3/98
7:12	11/24/97
7:13	7/14/94
7:14	4/27/99
7:14A	6/2/95
7:14B	11/18/97
7:15	10/2/94
7:18	7/3/96
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/8/98
7:22	12/27/96
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26A	11/18/96
7:26B	11/18/97
7:26C	5/17/98
7:26E	6/7/98
7:27	Exempt
7:27A	12/4/94
7:27B	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	11/24/97
7:31	6/18/98
7:32	7/6/98
7:36	10/29/98
7:38	9/18/95
7:45	1/28/99
7:50	Exempt
7:60	3/2/97
7:61	5/17/98

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:2	8/16/98
8:2A	12/20/98
8:7	9/14/95
8:8	4/12/94
8:9	2/14/96
8:13	9/8/97

N.J.A.C.	Expiration Date
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
8:21A	8/3/97
8:22	7/11/96
8:23	12/13/94
8:24	4/14/98
8:25	5/11/98
8:26	4/12/96
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	4/20/97
8:33	7/27/95
8:33A	11/25/97
8:33B	7/27/95
8:33C	9/8/97
8:33E	12/20/95
8:33F	11/16/94
8:33H	9/8/97
8:33I	2/16/95
8:33J	4/24/94
8:33K	3/27/94
8:33L	6/6/96
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:33Q	11/19/95
8:33R	12/11/94
8:33S	10/4/98
8:34	11/1/98
8:35A	9/8/97
8:36	12/20/98
8:38	4/3/94
8:39	6/14/98
8:40	12/6/96
8:41	6/21/98
8:41A	2/18/97
8:42	8/17/97
8:42A	6/19/94
8:42B	6/14/98
8:43	10/4/98
8:43A	8/16/98
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:44	4/20/95
8:45	2/7/95
8:51	9/17/95
8:52	12/11/96
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/4/96
8:65	6/17/96
8:66	3/5/95
8:66A	3/5/95
8:70	6/14/98
8:71	5/16/99
8:80	4/6/97
8:100	7/20/97

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	9/30/98
9:2	5/4/95
9:3	9/27/93
9:4	9/26/96
9:5	4/1/96
9:6	4/30/95
9:6A	3/15/98
9:7	11/6/97
9:8	10/15/95
9:9	8/16/98
9:11	4/11/99
9:12	4/11/99
9:14	4/11/95
9:15	8/21/94
9:16	1/19/98
9:17	2/22/99

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1A	5/12/98
10:2	12/11/96
10:3	10/22/98
10:4	Exempt (28 C.F.R. Part 35)
10:6	1/7/96
10:7	1/21/97
10:8	1/3/99
10:11	1/16/95
10:12	12/23/96
10:13	7/18/93
10:14	5/7/98
10:15	1/1/95
10:15A	1/1/95
10:15B	1/1/95
10:15C	1/1/95
10:16	12/21/97
10:31	5/13/99
10:35	9/21/97
10:36	12/29/97
10:37	11/2/95
10:37A	6/6/99
10:37B	5/2/99
10:38	4/29/96
10:38A	7/19/98
10:40	4/25/99
10:41	4/18/99
10:42	8/19/96
10:43	8/21/94
10:44A	11/8/98
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	8/17/97
10:50	2/27/96
10:51	9/7/98
10:52	2/8/95
10:53	4/27/95
10:53A	11/2/97
10:54	2/15/96
10:55	3/8/95
10:56	8/21/96
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	1/3/99
10:63	11/28/94
10:64	2/22/96
10:65	2/19/96
10:66	12/6/98
10:67	2/19/96
10:68	6/28/96
10:69	5/14/98
10:69A	3/26/98
10:69B	10/21/98
10:70	6/7/96
10:71	12/24/95
10:72	8/24/97
10:73	7/15/96
10:80	9/27/98
10:81	8/24/94
10:82	8/24/94

N.J.A.C.	Expiration Date
10:83	11/2/97
10:84	1/18/99
10:85	12/20/94
10:86	9/21/97
10:87	12/21/98
10:89	5/24/95
10:90	10/14/92
10:91	9/4/95
10:95	Exempt
10:97	4/15/99
10:99	6/4/95
10:109	2/4/96
10:120	7/9/96
10:121	7/16/95
10:121A	11/25/97
10:122	5/16/99
10:122A	Exempt
10:122B	1/4/98
10:122C	1/4/98
10:122D	1/4/98
10:122E	1/4/98
10:123	7/13/95
10:123A	8/17/97
10:124	11/4/97
10:125	6/4/95
10:126	10/6/98
10:126A	5/7/95
10:127	8/16/98
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	10/7/97
10:132	10/25/96
10:133	1/4/98
10:133A	1/4/98
10:133B	1/4/98
10:133C	1/4/98
10:133D	11/1/98
10:141	2/7/94
10:150	10/22/97

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	6/1/97
10A:1-3	Exempt (28 C.F.R. Part 35)
10A:2	2/5/95
10A:3	9/16/96
10A:4	5/7/96
10A:5	6/17/96
10A:6	10/27/97
10A:8	8/19/97
10A:9	2/18/97
10A:10	7/9/97
10A:16	7/6/97
10A:17	2/3/97
10A:18	5/27/97
10A:19	4/25/99
10A:20	2/18/97
10A:21	2/4/96
10A:22	3/7/99
10A:23	7/6/97
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/97
10A:35	4/15/96
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:1-3	Exempt (28 C.F.R. Part 35)
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/15/98
11:6	7/6/98
11:7	9/25/97
11:10	7/12/95
11:12	9/27/96
11:13	11/10/97
11:15	10/26/94
11:16	1/31/96
11:17	4/15/98
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94
11:19	2/1/98
11:20	8/13/98
11:21	10/15/98

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:3	11/24/98
12:5	10/18/98
12:6	9/24/98
12:7	Exempt (28 C.F.R. Part 35)
12:15	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/5/98
12:19	7/2/95
12:20	8/14/94
12:23	4/4/99
12:35	7/16/95
12:40	2/5/95
12:41	1/14/99
12:45	12/29/98
12:51	11/22/96
12:55	12/16/96
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/19/98
12:61	12/16/96
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/8/98
12:112	8/27/98
12:120	5/3/95
12:175	11/10/98
12:190	2/1/98
12:195	6/14/98
12:196	8/6/95
12:200	8/3/95
12:210	12/16/96
12:235	5/3/96

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:1	Exempt (28 C.F.R. Part 35)
12A:9	5/28/98
12A:10-1	10/13/94
12A:11	4/30/98
12A:12	9/21/92
12A:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95

N.J.A.C.	Expiration Date
12A:100	7/17/96
12A:120	7/27/98
12A:121	11/15/98

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	6/9/98
13:1C	Exempt (28 C.F.R. Part 35)
13:1D	4/18/99
13:2	7/24/95
13:3	5/17/98
13:4	1/17/96
13:10	3/25/99
13:13	7/16/95
13:14	9/16/96
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	7/29/98
13:27	2/20/95
13:28	5/14/98
13:29	5/23/95
13:30	3/12/95
13:31	11/20/96
13:32	10/21/97
13:33	3/12/95
13:34	10/22/98
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	8/27/95
13:39	6/19/94
13:39A	6/21/96
13:40	8/3/95
13:40A	12/16/96
13:41	7/17/95
13:42	11/1/98
13:43	8/26/98
13:44	8/7/94
13:44B	11/2/97
13:44C	7/8/98
13:44D	8/7/94
13:44E	7/1/96
13:44F	6/15/97
13:44G	1/4/98
13:45A	11/9/95
13:45B	9/21/97
13:46	9/4/95
13:47	1/27/97
13:47A	10/2/97
13:47B	2/10/99
13:47C	6/9/94
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/98
13:51	9/16/96
13:54	11/18/96
13:57	5/16/99
13:59	7/30/95
13:60	1/16/97
13:61	3/5/95
13:62	3/19/95
13:63	8/19/96
13:70	1/25/95
13:71	1/25/95
13:72	1/19/98
13:75	6/5/94
13:76	4/16/98
13:77	1/22/98
13:78	11/24/98
13:79	10/22/98
13:80	9/17/95
13:81	8/6/95
13:82	4/18/99

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	6/1/97
14:3	5/6/96
14:5	12/2/96
14:5A	1/4/98
14:6	9/3/96
14:9	4/1/96
14:10	9/6/96
14:11	3/1/98
14:12	11/4/96
14:17	3/21/99
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:6	1/16/95
14A:8	1/16/95
14A:11	1/16/95
14A:13	EXPIRED RULES
14A:14	1/28/99

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:1	Exempt (28 C.F.R. Part 35)
15:2	4/12/98
15:3	8/19/96
15:5	7/6/97
15:10	4/15/96

PUBLIC ADVOCATE—TITLE 15A

N.J.A.C.	Expiration Date
15A:2	12/27/94

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	10/1/95
16:1A	6/16/94
16:1B	Exempt (28 C.F.R. Part 35)
16:4	9/16/96
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/9/98
16:25A	5/13/98
16:26	9/5/94
16:27	4/8/96
16:28	5/7/98
16:28A	5/7/98
16:29	5/7/98
16:30	5/7/98
16:31	5/7/98

N.J.A.C.	Expiration Date
16:31A	5/7/98
16:32	2/8/95
16:38	10/15/95
16:41	9/8/97
16:41B	7/2/95
16:41C	5/4/97
16:41D	3/21/99
16:43	5/10/95
16:44	3/24/99
16:45	9/18/94
16:46	3/24/99
16:47	4/20/97
16:49	2/8/95
16:50	12/6/98
16:51	2/14/97
16:53	7/17/94
16:53B	4/15/99
16:53C	5/13/98
16:53D	4/8/99
16:54	7/6/98
16:55	5/13/98
16:56	8/7/94
16:60	5/13/98
16:61	5/13/98
16:62	2/26/95
16:72	3/20/96
16:73	5/18/97
16:74	12/16/96
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	12/17/95
16:79	9/12/96
16:80	10/5/98
16:81	10/5/98
16:82	9/5/94
16:83	1/19/98
16:84	11/1/98
16:85	11/1/98

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/1/98
17:2	11/8/94
17:3	12/20/98
17:4	6/8/95
17:5	11/30/95
17:6	12/20/98
17:7	12/19/93
17:8	10/15/95
17:9	8/23/98
17:10	5/1/98
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	5/2/96
17:19	3/8/95
17:20	6/1/98
17:25	5/26/94
17:27	10/6/98
17:28	8/17/95
17:29	9/26/95
17:30	3/11/97
17:32	3/19/98
17:33	4/17/94
17:40	11/19/95
17:41	4/1/96
17:42	9/8/97

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	11/1/98
18:3	3/14/99
18:5	3/14/99
18:6	3/14/99
18:7	3/14/99
18:8	2/24/99
18:9	6/4/98
18:12	10/4/98
18:12A	10/4/98
18:14	10/4/98
18:15	10/4/98
18:16	10/4/98
18:17	10/4/98
18:18	3/14/99
18:18A	2/3/97
18:19	3/14/99
18:21	2/19/96
18:22	2/24/99
18:23	2/24/99
18:23A	9/4/95
18:24	6/4/98
18:25	2/19/96
18:26	6/4/98
18:35	6/4/98
18:36	3/19/95
18:37	7/23/95
18:38	2/1/98
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	3/29/98
19:3A	11/4/96
19:3A-3	Exempt (28 C.F.R. Part 35)
19:3B	3/29/98
19:4	3/29/98
19:4A	3/29/98
19:6	5/6/96
19:8	5/17/98
19:9	9/13/98
19:10	9/5/94
19:11	8/20/95
19:12	7/17/96
19:14	8/20/95
19:16	7/17/96
19:17	6/7/98
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:30-7	Exempt (28 C.F.R. Part 35)
19:31	8/20/95
19:40	8/24/94
19:40-6	Exempt (28 C.F.R. Part 35)
19:41	4/15/95
19:42	8/15/95
19:43	12/21/97
19:44	12/15/96
19:45	8/15/97
19:46	4/15/98
19:47	4/15/96
19:48	8/15/98
19:49	9/18/97
19:50	12/15/98
19:51	8/15/96
19:53	12/15/95
19:54	12/15/94
19:55	1/19/98
19:61	3/2/97
19:65	10/5/97
19:75	1/11/99

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 April 4, 1994 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

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 MARCH 21, 1994

NEXT UPDATE: SUPPLEMENT APRIL 18, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 2151 and 2620	June 7, 1993	25 N.J.R. 5729 and 6084	December 20, 1993
25 N.J.R. 2621 and 2794	June 21, 1993	26 N.J.R. 1 and 280	January 3, 1994
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993	26 N.J.R. 1739 and 1904	May 2, 1994
25 N.J.R. 4813 and 4980	November 1, 1993	26 N.J.R. 1905 and 2166	May 16, 1994
25 N.J.R. 4981 and 5382	November 15, 1993	26 N.J.R. 2167 and 2510	June 6, 1994
25 N.J.R. 5383 and 5728	December 6, 1993		

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1:1-9.4	Accelerated proceedings	26 N.J.R. 284(a)	R.1994 d.173	26 N.J.R. 1493(a)
1:1-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	Family Development hearings: withdrawal of proposal	26 N.J.R. 1744(a)		
1:10-1.1, 14.2, 14.3	Family Development hearings: reproposal	26 N.J.R. 1744(b)		
1:13A-11.1	Subpoenas	26 N.J.R. 1276(a)	R.1994 d.293	26 N.J.R. 2255(a)
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		
	Most recent update to Title 1: TRANSMITTAL 1994-1 (supplement March 21, 1994)			
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2:3	Livestock and poultry importation	26 N.J.R. 1908(a)		
2:5	Quarantines and embargoes on animals	26 N.J.R. 1908(b)		
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions	26 N.J.R. 1181(a)	R.1994 d.271	26 N.J.R. 2256(a)
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:69-1.11	Commercial values of primary plant nutrients	26 N.J.R. 1560(a)		
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1994-2 (supplement March 21, 1994)			
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3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)		
3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:1-6.6	Department examination charges	26 N.J.R. 1560(b)		
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)	R.1994 d.208	26 N.J.R. 1827(a)
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11	Investments	26 N.J.R. 1909(a)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)		
3:32-3	Mutual holding companies	26 N.J.R. 1213(a)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)	R.1993 d.295	25 N.J.R. 2687(a)
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		
	Most recent update to Title 3: TRANSMITTAL 1994-2 (supplement March 21, 1994)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			

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4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.9	Make-up examinations	26 N.J.R. 1183(a)	R.1994 d.285	26 N.J.R. 2256(a)
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5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)		
5:23-2.5	Uniform Construction Code: increase in dwelling size	26 N.J.R. 1910(a)		
5:23-2.23, 4.20	UCC: testing of blackflow preventers	26 N.J.R. 1911(a)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
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5:23-5.5	Licensed electrical inspectors: administrative correction	_____	_____	26 N.J.R. 1495(a)
5:23-5.19	UCC: elevator inspector HHS requirements	26 N.J.R. 1912(a)		
5:25-2.5	New home warranties and builder registration: denial of registration	26 N.J.R. 1913(a)		
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5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)		
5:80-9.14, 9.15	Housing and Mortgage Finance Agency: rent increases for projects without Federal rent subsidies and for low/market rate projects	26 N.J.R. 1188(a)		
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5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)		
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5:92-1.1, 1.3	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)	R.1994 d.290	26 N.J.R. 2300(a)
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7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)		
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:6	Repeal (see 13:82)	26 N.J.R. 744(a)	R.1994 d.205	26 N.J.R. 1673(a)
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7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7	Coastal Permit Program: extension of comment period	26 N.J.R. 1561(a)		
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7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:7E-3.43	Coastal zone management: administrative correction regarding special urban areas	26 N.J.R. 1561(b)		
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7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)		
7:12-1.2, 2.1, 2.2, 3.2, 4.1, 9.1	Shellfish growing water classifications	26 N.J.R. 789(a)	R.1994 d.201	26 N.J.R. 1632(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)		
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)	R.1994 d.256	26 N.J.R. 2459(a)
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)	R.1994 d.277	26 N.J.R. 2461(a)
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A	NJPDES permitting program: waiver of Executive Order No. 66(1978) expiration date	————	————	26 N.J.R. 2462(a)
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)	R.1994 d.278	26 N.J.R. 2413(b)
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
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7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-5	1994-95 Game Code	26 N.J.R. 1913(b)		
7:25-6.22	1994-95 Fish Code: snapping turtles, bull frogs and green frogs	26 N.J.R. 1047(a)	R.1994 d.234	26 N.J.R. 2021(a)
7:25-18.1	Flounder management	Emergency (expires 6-12-94)	R.1994 d.230	26 N.J.R. 1885(a)
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)	R.1994 d.248	26 N.J.R. 2021(b)
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7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)	Expired	
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)		
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7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
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7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
7:27-25.1, 25.3, 25.8	Control and prohibition of air pollution by vehicular fuels	26 N.J.R. 1048(a)		
7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
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8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 1057(a)	R.1994 d.229	26 N.J.R. 2025(a)
8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 2025(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill-patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)	R.1994 d.279	26 N.J.R. 2266(a)
8:38-1–3	Health Maintenance Organizations	26 N.J.R. 1624(a)		
8:39	Long-term care facilities: standards for licensure	26 N.J.R. 1772(c)		
8:42A	Licensure of alcoholism treatment facilities	26 N.J.R. 1625(a)		
8:43D	Health Care Administration Board bylaws	26 N.J.R. 1627(a)		
8:43H	Licensure of rehabilitation hospitals	26 N.J.R. 1628(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
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8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
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8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
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8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)	R.1994 d.243	26 N.J.R. 2028(a)
8:71	Interchangeable drug products	26 N.J.R. 1190(b)	R.1994 d.242	26 N.J.R. 2025(a)
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9:9-1.23	NJHEAA reporting of loan status credit bureaus	26 N.J.R. 893(a)	R.1994 d.240	26 N.J.R. 2097(a)
9:11	Educational Opportunity Fund program: procedures and policies	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
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9:12	Educational Opportunity Fund program support	26 N.J.R. 711(a)	R.1994 d.226	26 N.J.R. 1857(a)
9:18	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 1486(a)		
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10:15C-1.1	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1637(a)
10:15C-1.1	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	———	———	26 N.J.R. 2098(a)
10:17	Child placement rights	26 N.J.R. 1563(a)		
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10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)		
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10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)	R.1994 d.227	26 N.J.R. 1828(c)
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)		
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)	R.1994 d.292	26 N.J.R. 2271(b)
10:40	Division of Developmental Disabilities: organizational rules	Exempt	R.1994 d.249	26 N.J.R. 2098(b)
10:41	Division of Developmental Disabilities: administration	26 N.J.R. 81(a)	R.1994 d.196	26 N.J.R. 1656(a)
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10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)		
10:60-1.4	Covered home health services: administrative correction	———	———	26 N.J.R. 2285(a)
10:60-5	Home care services: Traumatic Brain Injury Program	26 N.J.R. 1566(a)		
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10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		

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10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs: administrative correction	_____	_____	26 N.J.R. 2098(a)
10:82	Aid to Families with Dependent Children (AFDC)	26 N.J.R. 1584(a)		
10:82-5.3	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:84-1.2	Program administration: administrative correction	_____	_____	26 N.J.R. 1657(b)
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10:97	Commission for the Blind and Visually Impaired: Business Enterprise Program	26 N.J.R. 725(b)	R.1994 d.209	26 N.J.R. 1841(a)
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)	R.1994 d.231	26 N.J.R. 2100(a)
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10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		

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10A:4-1.2, 1.3	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)	R.1994 d.182	26 N.J.R. 1506(a)
10A:4-4.1	Inmate prohibitions: failure to keep scheduled appointment	26 N.J.R. 1287(a)	R.1994 d.264	26 N.J.R. 2285(b)
10A:4-4.1, 5.1, 5.2, 5.3	Inmate prohibitions: misuse of electronic equipment	26 N.J.R. 1286(a)	R.1994 d.254	26 N.J.R. 2129(a)
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10A:19	Public information	26 N.J.R. 1287(b)	R.1994 d.255	26 N.J.R. 2129(b)
10A:20-4.20, 4.21, 4.22, 4.45	Community release programs	26 N.J.R. 1757(a)		
10A:20-4.20, 4.21, 4.22, 4.45	Community release programs	26 N.J.R. 1938(a)		
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10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
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11:5-1.28	Real Estate Commission: requirements for prelicensure schools and instructors	26 N.J.R. 730(a)		
11:5-1.28	Real Estate Commission: correction to proposal concerning requirements for prelicensure schools and instructors	26 N.J.R. 1194(b)		
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11:19-4	Financial Examinations Monitoring System: data submission requirements for domestic life/health insurers	26 N.J.R. 1195(a)		
11:20-2.17	Individual Health Coverage Program: assessments for reimbursable net paid losses	26 N.J.R. 1200(a)	R.1994 d.165	26 N.J.R. 1507(b)
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12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)	R.1994 d.190	26 N.J.R. 1663(a)
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12A:10-1	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		
	Most recent update to Title 12A: TRANSMITTAL 1994-1 (supplement January 18, 1994)			
LAW AND PUBLIC SAFETY—TITLE 13				
13:1D	Attorney General: petitions for rules	26 N.J.R. 330(a)	R.1994 d.193	26 N.J.R. 1666(a)
13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
13:4	Housing discrimination	26 N.J.R. 1942(a)		
13:9-1.1	Housing discrimination	26 N.J.R. 1942(a)		
13:10	Division on Civil Rights: multiple dwelling reports	26 N.J.R. 901(a)	R.1994 d.203	26 N.J.R. 1666(b)
13:13	Housing discrimination	26 N.J.R. 1942(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)	R.1994 d.252	26 N.J.R. 2135(a)
13:20-34.2, 34.3	Division of Motor Vehicles: license plates' identifying marks	26 N.J.R. 1487(a)		
13:20-39.1, 39.2, 39.3, 39.5, 39.9	Special automobile registration plates for non-profit organizations	26 N.J.R. 331(a)	R.1994 d.175	26 N.J.R. 1516(a)
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:21-24	Division of Motor Vehicles: defensive driving courses	26 N.J.R. 1592(a)		
13:23	Division of Motor Vehicles: driving schools	26 N.J.R. 1299(a)		
13:27-3	Board of Architects: scope of architectural services	25 N.J.R. 5439(a)	R.1994 d.169	26 N.J.R. 1517(a)
13:27-5.8, 8.15	Board of Architects: licensure examination fees	26 N.J.R. 1490(a)		
13:27-6.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:28-5.1	Board of Cosmetology and Hairstyling: fee schedule	26 N.J.R. 1947(a)		
13:29-1.6, 1.7	Board of Accountancy: applications for original examination and for reexamination	26 N.J.R. 1217(a)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.18	Board of Dentistry: licensee continuing education	26 N.J.R. 1948(a)		
13:31-1.3	Board of Examiners of Electrical Contractors: licensing examination	26 N.J.R. 1218(a)		
13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)		
13:31-1.10	Board of Examiners of Electrical Contractors: duty of licensee to return pressure seal	26 N.J.R. 1594(a)		
13:33-4.1	Board of Ophthalmic Dispensers and Ophthalmic Technicians: contact lens dispensing	26 N.J.R. 1595(a)		
13:34-1.1	Board of Marriage Counselor Examiners: examination fee	26 N.J.R. 1301(a)	R.1994 d.287	26 N.J.R. 2293(a)
13:35-2A.9, 2A.11, 6.13	Certified midwife practice: prescriptive authority	25 N.J.R. 4583(a)	R.1994 d.170	26 N.J.R. 1520(a)
13:35-2B, 6.14	Board of Medical Examiners: physician assistants	25 N.J.R. 5099(b)		
13:35-5.1	Board of Medical Examiners: release of contact lens specification to patient	26 N.J.R. 1219(a)		
13:35-6.5	Board of Medical Examiners: permissible charges for copies of patient records	25 N.J.R. 4862(a)	R.1994 d.119	26 N.J.R. 1522(a)
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.10	Board of Medical Examiners: licensee testimonial advertisements	26 N.J.R. 1219(b)		
13:35-6.17	Board of Medical Examiners: professional fees and investments	25 N.J.R. 5441(a)		
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:36-7.1	Board of Mortuary Science: handling and embalming bodies dead of infectious or contagious disease	26 N.J.R. 1302(a)	R.1994 d.288	26 N.J.R. 2293(b)
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)	R.1994 d.212	26 N.J.R. 1876(a)
13:37-12.1	Board of Nursing: fees for certification of nurse practitioner	26 N.J.R. 1490(b)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)	R.1994 d.289	26 N.J.R. 2293(c)
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39	Board of Pharmacy rules	26 N.J.R. 1596(a)		
13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)		
13:39A-2.3	Board of Physical Therapy: public forum on direct supervision of physical therapist assistants	26 N.J.R. 1604(a)		
13:40-7.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)		
13:40A-4.1–4.9	Board of Real Estate Appraisers: licensee continuing education	26 N.J.R. 903(a)	R.1994 d.251	26 N.J.R. 2137(a)
13:41-4.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44	Board of Veterinary Medical Examiners: practice standards	26 N.J.R. 1951(a)		
13:44D	Board of Public Movers and Warehousemen: licensee standards	26 N.J.R. 1758(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:44G-1–5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)	R.1994 d.189	26 N.J.R. 1524(a)
13:44G-5.1, 5.2, 5.3	Board of Social Work Examiners: licensure and certification	26 N.J.R. 1604(b)		
13:45A-14.7	Office of Consumer Protection: unit price labeling	26 N.J.R. 1306(a)	R.1994 d.257	26 N.J.R. 2138(a)
13:45A-16.1	Home improvement practices: security protection devices	26 N.J.R. 1605(a)		
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)	R.1994 d.204	26 N.J.R. 1667(a)
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)	R.1994 d.176	26 N.J.R. 1535(a)
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:47C	Weights and measures: general commodities	26 N.J.R. 1761(a)		
13:57	Uniform Crime Reporting (UCR) system	26 N.J.R. 905(a)	R.1994 d.250	26 N.J.R. 2139(a)
13:60	Motor carrier safety	26 N.J.R. 1307(a)	R.1994 d.253	26 N.J.R. 2140(a)
13:70-14A.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1955(a)		
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(a)		
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1956(b)		
13:71-23.8	Thoroughbred racing: administration of phenylbutazone on day of race	26 N.J.R. 1957(a)		
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:75	Violent Crimes Compensation Board: practice and procedure	26 N.J.R. 1491(a)		
13:82	Boating rules	26 N.J.R. 744(a)	R.1994 d.205	26 N.J.R. 1674(a)
	Most recent update to Title 13: TRANSMITTAL 1994-3 (supplement March 21, 1994)			
PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14				
14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:17	Office of Cable Television: practice and procedure	26 N.J.R. 96(a)	R.1994 d.194	26 N.J.R. 1683(a)
14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		
14:18-10.5	Cable television: monitor point tests	26 N.J.R. 104(a)	R.1994 d.236	26 N.J.R. 2146(a)

Most recent update to Title 14: TRANSMITTAL 1994-1 (supplement February 22, 1994)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1994-1 (supplement February 22, 1994)

STATE—TITLE 15

15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		
15:10-8	Certification of electronic voting systems: public hearing and extension of comment period	25 N.J.R. 4864(a)		

Most recent update to Title 15: TRANSMITTAL 1993-3 (supplement December 20, 1993)

PUBLIC ADVOCATE—TITLE 15A

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TRANSPORTATION—TITLE 16

16:6	Relocation assistance and right-of-way acquisition	26 N.J.R. 1958(a)		
16:26	Bureau of Electrical Engineering	26 N.J.R. 1764(a)		
16:28-1.5	Speed limit zones along Route 37 in Ocean County	26 N.J.R. 1958(b)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Washington Township	26 N.J.R. 1959(a)		
16:28-1.10	Speed limit zones along U.S. 46, including U.S. 1, 9 and 46, in Dover	26 N.J.R. 1960(a)		
16:28-1.18	Speed limit zones along Route 34 in Aberdeen and Matawan	26 N.J.R. 1765(a)		
16:28-1.41	School zone along U.S. 9 in Lower Township, Cape May County	26 N.J.R. 1765(b)		
16:28-1.41	Speed limit zones along U.S. 9 in Ocean County	26 N.J.R. 1960(b)		
16:28-1.67	Speed limit zones along U.S. 202 in Somerset County	26 N.J.R. 1316(b)	R.1994 d.262	26 N.J.R. 2299(a)
16:28-1.69	Speed limit zones along U.S. 130, including parts of I-295, U.S. 30 and U.S. 206 in Salem County	26 N.J.R. 1766(a)		
16:28-1.72	Speed limit zones along U.S. 206, including U.S. 206 and 130, in Morris County	26 N.J.R. 1961(a)		
16:28-1.96	Speed limit zones along Route 45 in Gloucester County	26 N.J.R. 1962(a)		
16:28-1.106	Speed limit zones along Route 31 in Clinton Township	26 N.J.R. 1963(a)		
16:28-1.132	Speed limit zones along Route 47 in Middle Township	26 N.J.R. 1767(a)		
16:28-1.182	Speed limits along Wyckoff Mills Road in Howell Township	26 N.J.R. 1767(b)		
16:28-1.183	Speed limits along Frontage Road in Union Township, Hunterdon County	26 N.J.R. 1768(a)		
16:28A-1.22	No stopping or standing zones along Route 31 in East Amwell Township	26 N.J.R. 1768(b)		
16:28A-1.23	No stopping or standing zones along Route 33 in Manalapan Township	26 N.J.R. 1963(b)		
16:28A-1.28	Restricted parking and stopping along Route 40 in Hamilton Township, Atlantic County	26 N.J.R. 1769(a)		
16:28A-1.33	No stopping or standing zones on Route 47 in Gloucester County: administrative correction	_____	_____	26 N.J.R. 1537(a)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.113	No stopping or standing zones along Route 33 (Business) in Manalapan Township	26 N.J.R. 1964(a)		
16:30-3.10	Lane usage along I-287 in Morris County: administrative correction	_____	_____	26 N.J.R. 1690(a)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships	26 N.J.R. 908(a)	R.1994 d.263	26 N.J.R. 2299(b)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-7.3	Limited access prohibition along Route 55 Freeway in Cumberland, Salem, and Gloucester counties	26 N.J.R. 1769(b)		
16:30-7.6	Limited access prohibitions along Route 18 Freeway in Monmouth and Middlesex counties	26 N.J.R. 1965(a)		
16:30-7.7	Limited access prohibitions along Route 42 Freeway in Gloucester and Camden counties	26 N.J.R. 1964(b)		
16:31-1.3	Turn prohibitions on Route 46 in Mount Olive Township, Morris County	26 N.J.R. 1771(a)		
16:31-1.8	Turn prohibitions on Route 47 in the City of Vineland, Cumberland County	26 N.J.R. 1770(a)		
16:31-1.34	Turn prohibitions along Route 52 in Ocean City	26 N.J.R. 332(a)	R.1994 d.179	26 N.J.R. 1537(b)
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:44	Construction services	25 N.J.R. 4727(a)	R.1994 d.198	26 N.J.R. 1690(b)
16:46	Drawbridge operations	26 N.J.R. 755(a)	R.1994 d.199	26 N.J.R. 1694(a)

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16:47-4.13	State Highway Access Management Code: administrative correction	———	———	26 N.J.R. 2299(c)
16:50-8.9, 11	Employer Trip Reduction Program: employee transportation coordinator training; disclosure of information	25 N.J.R. 5452(a)		
16:50-15	Employer Trip Reductiion Program tax credit	26 N.J.R. 756(a)		
16:51	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:53	Autobuses	26 N.J.R. 1606(a)		
16:53B	Jurisdictional assignments for railroad overhead bridges	26 N.J.R. 1203(a)	R.1994 d.232	26 N.J.R. 2146(b)
16:53D	Autobus carrier Zone of Rate Freedom	26 N.J.R. 1205(a)	R.1994 d.214	26 N.J.R. 1841(b)
16:53D	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
16:56	Airport safety improvement aid	26 N.J.R. 1607(a)		
16:72-1.1, 1.2, 1.5, 2.2, 2.4	NJ TRANSIT: procurement policies and procedures	26 N.J.R. 908(b)	R.1994 d.211	26 N.J.R. 1842(a)
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TREASURY-GENERAL—TITLE 17				
17:2-1.4	Public Employees' Retirement System: replacement of member-trustee who declines to serve	25 N.J.R. 5113(a)	R.1994 d.259	26 N.J.R. 2299(d)
17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 108(a)	R.1994 d.162	26 N.J.R. 1537(c)
17:3-1.1	Teachers' Pension and Annuity Fund: conduct of Board meetings	25 N.J.R. 5762(b)	R.1994 d.161	26 N.J.R. 1537(d)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 108(b)	R.1994 d.163	26 N.J.R. 1538(a)
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
17:16-62.11	State Investment Council: Common Pension Fund A realized appreciation	26 N.J.R. 1771(b)		
17:16-63.11	State Investment Council: Common Pension Fund B realized appreciation	26 N.J.R. 1772(a)		
17:16-67.11	State Investment Council: Common Pension Fund D realized appreciation	26 N.J.R. 1772(b)		
	Most recent update to Title 17: TRANSMITTAL 1994-1 (supplement January 18, 1994)			
TREASURY-TAXATION—TITLE 18				
18:2-3.9	Payment of taxes by Electronic Funds Transfer	26 N.J.R. 1612(a)		
18:3	Alcoholic Beverage Tax	26 N.J.R. 758(a)	R.1994 d.183	26 N.J.R. 1695(a)
18:5	Cigarette Tax Act rules	26 N.J.R. 759(a)	R.1994 d.184	26 N.J.R. 1695(b)
18:6	Unfair Cigarette Sales Act rules	26 N.J.R. 760(a)	R.1994 d.185	26 N.J.R. 1696(a)
18:7	Corporation Business Tax	26 N.J.R. 761(a)	R.1994 d.186	26 N.J.R. 1696(b)
18:18	Motor Fuels Tax	26 N.J.R. 777(a)	R.1994 d.187	26 N.J.R. 1706(a)
18:19	Motor fuels retail sales	26 N.J.R. 778(a)	R.1994 d.188	26 N.J.R. 1706(b)
	Most recent update to Title 18: TRANSMITTAL 1994-2 (supplement March 21, 1994)			
TITLE 19—OTHER AGENCIES				
19:2	South Jersey Transportation Authority: rules of operation; Atlantic City Expressway	26 N.J.R. 1966(a)		
19:3, 3A, 4, 5	Hackensack Meadowlands Development District rules	26 N.J.R. 1970(a)		
19:8-2.11	Garden State Arts Center: sale of merchandise on property	26 N.J.R. 1318(a)	R.1994 d.235	26 N.J.R. 2146(c)
19:9-1	Traffic control	26 N.J.R. 337(a)		
19:31-8	Economic Development Authority: Hazardous Discharge Site Remediation Fund	25 N.J.R. 4468(a)	R.1994 d.192	26 N.J.R. 1706(c)
19:31-8.2, 8.3	Hazardous Discharge Site Remediation Fund	26 N.J.R. 1612(b)		
19:31-8.7, 8.9	Hazardous Discharge Site Remediation Fund: administrative correction	———	———	26 N.J.R. 2462(b)
19:31-9	New Jersey Boat Industry Loan Guarantee Fund	26 N.J.R. 1613(a)		
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TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-1.2	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:40-1.2	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:40-1.2	Removal of coin, slot tokens and slugs from slot machines	26 N.J.R. 1620(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:40-3.3	Establishment of qualification by required individuals	26 N.J.R. 782(a)	R.1994 d.218	26 N.J.R. 1842(b)
19:40-4.1, 4.2, 4.8	Confidential information	26 N.J.R. 1434(a)		
19:41-1.3	Keno	26 N.J.R. 115(a)		
19:41-1.3	Casino employment: U.S. citizenship or Federal authorization to work	26 N.J.R. 339(a)	R.1994 d.171	26 N.J.R. 1538(b)
19:41-1.4	Casino operation certificate	25 N.J.R. 5893(a)	R.1994 d.265	26 N.J.R. 2463(a)
19:41-1.5, 1.6, 1.7	Casino employment requirements	26 N.J.R. 779(a)	R.1994 d.215	26 N.J.R. 1845(a)
19:41-1.6	Casino employee license position endorsements	26 N.J.R. 910(a)		
19:41-5.6, 5.6A	Business entity disclosure forms	26 N.J.R. 1437(a)		
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-7.1A, 7.1B, 7.7	Applications for issuance of employee licenses or registration and natural person qualification	26 N.J.R. 1321(a)	R.1994 d.280	26 N.J.R. 2474(a)
19:41-8.8	Reapplication for license, registration, qualification or approval after denial or revocation	26 N.J.R. 1993(a)		
19:41-9.4	Division of Gaming Enforcement: hourly fee for efforts associated with sports events matters	————	————	26 N.J.R. 2476(a)
19:41-9.8, 9.9, 9.9A, 9.11A, 9.12, 9.13, 9.14, 14.6	License periods and fees	26 N.J.R. 780(a)	R.1994 d.216	26 N.J.R. 1846(a)
19:41-9.16	Listing of endorsements on casino employee licenses	26 N.J.R. 911(a)	R.1994 d.217	26 N.J.R. 1847(a)
19:41-11.1–11.4	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)	R.1994 d.220	26 N.J.R. 1847(b)
19:42-3.6	Casino licensee application requirements; renewal of casino license	26 N.J.R. 1615(a)		
19:43-2.2–2.7A	Establishment of qualification by required individuals	26 N.J.R. 782(a)	R.1994 d.218	26 N.J.R. 1842(b)
19:43-5, 11	Casino licensee application requirements; renewal of casino license	26 N.J.R. 1615(a)		
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