



# NEW JERSEY REGISTER

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## THE JOURNAL OF STATE AGENCY RULEMAKING

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**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: OCTOBER 19, 1992**  
See the Register Index for Subsequent Rulemaking Activity.

**NEXT UPDATE: SUPPLEMENT NOVEMBER 16, 1992**

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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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NEW JERSEY REGISTER, MONDAY, DECEMBER 21, 1992

# EXECUTIVE ORDERS

(a)

## OFFICE OF THE GOVERNOR

Governor Jim Florio

Executive Order No. 68(1992)

### State Council on Adult Education and Literacy

Issued: October 29, 1992.

Effective: October 29, 1992.

Expiration: Indefinite.

WHEREAS, on July 25, 1991, the Congress of the United States enacted P.L. 102-73, referred to as the National Literacy Act of 1991, Federal Public Law (hereinafter the "NLA"); and

WHEREAS, the public interest of the citizens of the State of New Jersey requires that the State shall do all that is or may be required to secure for the State the benefits of federal appropriations under the Adult Education Act, P.L. 102-73, as amended by the NLA for all purposes specified therein; and

WHEREAS, the NLA provides for the establishment of a State advisory council on adult education and literacy; and

WHEREAS, coordination and cooperation between the various State agencies can be enhanced by a policy development and oversight body that is independent from the various State agencies and departments and the day-to-day operation of adult education and literacy programs; and

WHEREAS, improving family literacy to enable parents to be effective first teachers and support their children's educational progress and achieving universal literacy by the year 2000 are national goals developed by the President and the Governors of the 50 states; and

WHEREAS, New Jersey has recently passed legislation permanently establishing the State Employment and Training Commission (hereinafter the "Commission") with a broad mandate to develop and assist in the implementation of a State employment and training policy that will create a coherent, integrated system of employment and training programs; and

WHEREAS, the implementation by the Commission of its responsibility for overall coordination of employment and training programs must include adult education and literacy programs as a vital component of the State's employment and training policy; and

WHEREAS, coordination and cooperation between the Commission and the State's advisory council on adult education and literacy will strengthen the State's capacity to maintain a suitable climate for continued economic development by meeting the needs of industry for a workforce fully trained in modern and emerging technologies; and

WHEREAS, this coordination can best be achieved by creating an advisory council and establishing procedures that will ensure an effective working relationship between the council and the Commission as well as with agencies and departments;

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

1. There is hereby established the State Council on Adult Education and Literacy (hereinafter referred to as the State Council) which shall:

(a) meet with the State agencies responsible for adult education and literacy training during the planning year to advise on the development of a State plan for literacy and for adult education that fulfills the literacy and adult education needs of the State, especially with respect to the needs of the labor market, economic development goals, and the needs of individuals in the State;

(b) advise the Governor, the State Departments of Education and Higher Education, and other State agencies concerning:

(1) The development and implementation of measurable State literacy and adult education goals consistent with section 342(c)(2) of the Adult Education Act as amended, especially with respect to:

(i) improving levels of literacy in the State by ensuring that all appropriate State agencies have specific objectives and strategies for such goals in a comprehensive approach;

(ii) improving literacy programs in the State; and

(iii) fulfilling the long-term literacy goals of the State;

(2) the coordination and monitoring of State literacy training programs in order to progress toward the long-term literacy goals of the State;

(3) the improvement of the quality of literacy programs in the State by supporting the integration of services, staff training and technology-based learning and the integration of resources of literacy programs conducted by various agencies of State government; and

(4) the development of the private sector initiatives that would improve adult education programs and literacy programs, especially through public-private partnerships;

(c) review and comment on the plan submitted pursuant to section 356(h) of the Adult Education Act as amended and submit such comments to the U.S. Secretary of Education and the Commissioner of Education;

(d) measure progress on meeting the goals and objectives established pursuant to paragraph (b)(1) above;

(e) recommend model systems for implementing and coordinating State literacy programs for replication at the local level;

(f) develop reporting requirements, standards for outcomes, performance measures, and program effectiveness in State programs that are consistent with those proposed by the Federal Interagency Task Force on Literacy.

(1) approve the plan for program reviews and evaluations required in section 352 of the Adult Education Act, as amended, and participate in the implementation and dissemination of such program reviews and evaluations;

(2) advise the Governor, the State Legislature, the State Employment and Training Commission, and the general public of the state of the findings of such program reviews and evaluations; and

(3) include its comments and recommendations in any report of such evaluations;

(g) promote family literacy by working with the Department of Education to develop programs to get parents involved in their children's education and opportunities for parents to receive literacy training at school sites;

(h) report to the Governor on the extent to which the individuals who are members of special populations are provided with equal access to quality adult education and literacy programs; and

(i) make recommendations to the Governor on ways to create greater incentives for joint planning and collaboration between the adult education system and the job training system at the State and local levels; and advise the Governor, the State Board of Education, the State Employment and Training Commission, the Commissioner of Education, and the Commissioner of Labor regarding such evaluation, findings and recommendations.

2. The chairpersons of the Commission and Council shall analyze and organize the current work and structure of their respective bodies to assist the activities and functions of the State Council and to facilitate a collaborative framework for addressing lifelong learning and workforce readiness issues.

3. The Council shall be composed of the Governor or his designee, representatives, appointed by the Governor, of the Department of Higher Education, Department of Education, Department of Human Services, Department of Commerce, Department of Labor, Department of Community Affairs, and the Department of Corrections and a minimum of fifteen, and maximum of twenty-five individuals appointed by the Governor who shall be broadly representative of citizens and groups within the State having an interest in adult education and literacy, including representatives from the following:

(a) public and private elementary, secondary and higher education;

(b) public and private sector employment;

(c) recognized State labor organizations;

(d) private literacy organizations, voluntary literacy organizations, and community-based literacy organizations in the State;

(e) representatives of:

(1) the State job training agency;

(2) the State Library program;

(3) the economic development agency;

(4) teachers who have demonstrated outstanding results in teaching children or adults to read; and

(5) individuals who have participated in, and benefited from, adult education and literacy programs.

(f) In making appointments to the State Council, appropriate representation should be given to urban and rural areas, women, persons with disabilities and racial and ethnic minorities, and due consideration shall be given to those persons who serve on a private industry council under the Job Training Partnership Act or on State councils established under other related federal acts and to those persons who are members of the State Employment and Training Commission and who possess the qualifications necessary to serve on the State Council.

(g) Members, other than State agency representatives, shall serve for terms of three years, except that, of the initial appointees pursuant to this Executive Order, one-third of the members shall serve for terms of one year; one-third of the members shall serve for terms of two years; and the remaining members shall serve for terms of three years. The term of any member of the State Council who is also a member of the Commission shall be the same as his or her term on the Commission. Any individual appointed to fill an unexpired term shall serve for the unexpired portion of the term.

(h) Two co-chairs of the Council shall be designated by the Governor from among the Council's members.

4. The functions of the State Council shall be in accordance with Section 332 of the Adult Education Act, as amended by P.L. 102-73 and consistent with P.L. 1989, c. 293 and the State Council shall be assigned in, but not of, the Department of Education.

5. The State Council is authorized to apply for and receive funds under the Adult Education Act to obtain the services of such professional, technical and clerical personnel as may be necessary to enable it to carry out its functions under the Adult Education Act (P.L. 102-73) pursuant to section 331(c) and section 332(a)(2). The State Council is also authorized to apply for other funds to carry out its functions under this Executive Order.

6. The State Council shall meet as soon as practicable after certification has been accepted by the U.S. Secretary of Education. The time, place and manner of meeting, as well as State Council operating procedures and staffing, shall be as provided by the rules of the State Council, except that such rules must provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning the adult and literacy education programs of the State. One number more than one-half of the members on the Council shall constitute a quorum for the purpose of transmitting recommendations and proposals to the Governor, but a lesser number of members may constitute a quorum for other purposes.

7. This Order shall take effect immediately.

**(a)**

**OFFICE OF THE GOVERNOR  
Governor Jim Florio  
Executive Order No. 69(1992)**

**Day Off for Employees in Executive Departments of  
State Government—November 27, 1992**

Issued: November 9, 1992.

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

1. November 27, 1992, the day following Thanksgiving, shall be granted as a day off to employees who work in the Executive Departments of State Government and who are paid from State funds or from federal funds made available to the State, whose functions, in the opinion of their appointing authority, permit such absence.

2. An alternate day off shall be granted to the aforementioned category of employees whose functions, in the opinion of their appointing authority, precludes such absence on November 27, 1992.

**(b)**

**OFFICE OF THE GOVERNOR  
Governor Jim Florio  
Executive Order No. 70(1992)**

**Development of Plan for Consolidation and  
Coordination of Personnel Functions**

Issued: November 17, 1992.

Effective: November 17, 1992.

Expiration: Indefinite.

WHEREAS, this Administration is committed to improving the efficiency of its operations, eliminating duplication of functions and achieving cost savings wherever feasible; and

WHEREAS, the Commissioner of Personnel has the responsibility and authority, pursuant to N.J.S.A. 11A:3-1, to establish and administer a State classification plan; and

WHEREAS, the Commissioner of Personnel has the authority, pursuant to N.J.S.A. 11A:3-7, to establish and administer an equitable State employee compensation plan; and

WHEREAS, the Commissioner of Personnel, pursuant to N.J.S.A. 11A:2-11, is vested with the authority to plan, evaluate, administer and implement personnel policies and programs in State government; to develop programs to improve the efficiency and effectiveness of the public service; to set standards and procedures for review and to render final administrative decisions on classification and salary appeals; to maintain a management information system; and to assist the Governor in general workforce planning and personnel matters; and

WHEREAS, these statutory provisions in the Civil Service Reform Act establish the Department of Personnel as the human resource agency which administers in a uniform fashion classification, compensation, workforce planning and related functions in the Executive Branch of State government; and

WHEREAS, there is a need to consolidate personnel functions where appropriate in a human resource agency reporting to the Governor, in order to ensure the effective and efficient management of personnel policies and programs, and this is especially critical since the Fiscal Year 93 Appropriations Act reduced the availability of funds for human resource administration; and

WHEREAS, such efforts shall promote savings for State government as well as greater efficiencies and coordination of personnel policies and procedures; and

WHEREAS, pursuant to N.J.S.A. 11A:11-2, the Commissioner of Personnel has the discretionary authority to direct the consolidation of personnel functions in the Executive Branch within the Department of Personnel; and

WHEREAS, the goals of Civil Service reform which began in 1986 need to be reaffirmed, especially in this economic climate, to continue to promote the goals of efficiency and economy; and

WHEREAS, although the Department of Personnel has been empowered to act as the State department with principal oversight responsibility for classification and compensation matters, the heads of the principal Departments are appointing authorities within the law and require sufficient authority over personnel matters to effectively manage their ongoing responsibilities to the public; and

WHEREAS, it is the public policy of this State, pursuant to N.J.S.A. 11A:1-2, to provide public officials with appropriate appointment, supervisory and other personnel authority to execute properly their constitutional and statutory responsibilities; and

WHEREAS, the Commissioner of the Department of Personnel has a role to assist the various departments to help them meet their business needs;

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

1. Commissioner shall develop a plan for the consolidation and coordination of personnel functions that balances the needs and benefits of central personnel administration and the management needs of the department and agency heads. The plan should address, but not be limited to, classification, compensation and workforce planning in the Executive Branch of State government, and provide for the transfer, if appropriate to the Department of Personnel such employees, positions,

funding, facilities, equipment, powers, duties and functions from throughout the Executive Branch as necessary to effectuate such consolidation and coordination.

2. The Commissioner shall submit no later than 60 days from the date of this Executive Order the consolidation plan to the Governor for review and approval. Upon the approval of the Governor, the Commissioner may, pursuant to the approved plan, direct the consolidation and coordination of personnel functions, including, but not limited to, classification, compensation and workforce planning, in the Executive Branch and the transfer of the Department of Personnel, if appropriate, of such employees, positions, funding, facilities, equipment, powers, duties and functions to effectuate such consolidation and coordination. The Commissioner shall organize these functions in such units as the Commissioner determines are necessary for the efficient operation of the Department and to properly support the appointing authorities and all State employees in personnel matters.

3. The plan shall include a statement of the problems being addressed by the proposed consolidations and detail the proposed changes, the staffing needs, the division of duties between the operating departments and agencies and the Department of Personnel, and shall address the transfer of staff and resources to implement the plan.

4. The plan shall be developed in consultation with the affected department and agency heads.

5. Each department, division, or agency in the Executive Branch of State government shall cooperate fully with the Commissioner and make available to the Commissioner such information, personnel and assistance necessary to effectuate the purposes of this Order.

6. Within six months, the Commissioner shall submit to the Governor a report on the implementation of this Order after consultation with the Cabinet.

7. This Order shall take effect immediately.

(a)

**OFFICE OF THE GOVERNOR  
Governor Jim Florio  
Executive Order No. 71(1992)  
Governor's Advisory Council on Volunteerism and  
Community Service**

Issued: November 20, 1992.  
Effective: November 20, 1992.  
Expiration: Indefinite.

WHEREAS, thousands of citizens of the State of New Jersey from every age group and from all walks of life volunteer countless hours of service in order to help others in their communities; and

WHEREAS, these volunteers work to build strong community organizations, to promote issues in the public interest and to help their fellow citizens in need; and

WHEREAS, neighborhoods, towns, cities and the state benefit to a great extent from the contributions of individuals and groups volunteering their time and service; and

WHEREAS, volunteerism promotes good citizenship and responsibility to the community; and

WHEREAS, state government can promote volunteerism and community service by providing leadership, coordination, and recognition; and

WHEREAS, the federal National and Community Service Act of 1990 encourages a concerned body of citizens to join and work together for the common good; and

WHEREAS, New Jersey seeks to involve all sectors of the state in cooperative community service efforts to help create "One New Jersey" by including students from kindergarten through college, participants in New Jersey Youth Corps, and schools and communities in the urban special needs districts; and

WHEREAS, implementation and coordination of statewide efforts to enhance volunteerism and service to the community, including those

funded by the Commission on National and Community Service, can best be achieved by reconstituting and renaming the Governor's Advisory Committee on Public/Private Volunteer Partnerships to act as advisors to the Governor, the New Jersey Office of Volunteerism and the Department of Higher Education.

NOW, THEREFORE, I, JIM FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of this State, do hereby ORDER and DIRECT:

1. The Governor's Advisory Committee on Public/Private Volunteer Partnerships shall be renamed the Governor's Advisory Council on Volunteerism and Community Service.

2. The Advisory Council shall be composed of not more than 42 individuals appointed by the Governor and shall be broadly representative of community service and shall reflect the ethnic and economic diversity of the State of New Jersey.

a. The Commissioners of the Departments of Community Affairs, Education, Human Services, Health and Labor, the Chancellor of Higher Education, the Attorney General, the Chairman of the State Employment and Training Commission, the Executive Director of the Administrative Office of the Courts, or their designees, shall serve on the Advisory Council as ex officio members.

b. One representative of a federal volunteer program shall serve on the Advisory Council as an ex officio member.

c. The public members shall consist of representatives from volunteer associations or organizations, youth-serving organizations, the non-profit sector, business, and education, including students. The public members may also include representatives from organized labor, low-income groups, and/or persons who volunteer or are engaged in service to the community.

d. All members of the Advisory Council shall serve without compensation. Public members shall serve for terms of three years, except those public members of the Governor's Advisory Committee on Public/Private Volunteer Partnerships whose terms have not expired shall be reappointed to serve out the remainder of their terms as members of the Advisory Council. Appointments to currently vacant positions shall be made for terms of one, two or three years so that one third of the appointments to the Advisory Council are made each year.

e. Advisory Council vacancies shall be filled by the Governor for the remainder of the unexpired term.

3. The Governor shall designate a Chairperson from among the public members of the Advisory Council.

4. The Advisory Council shall:

a. Encourage the expansion of volunteerism and community service in the State of New Jersey by advising and supporting the New Jersey Office of volunteerism and the Department of Higher Education;

b. Identify and prioritize the important community needs and identify the resources to meet those needs through volunteerism and community service;

c. Recognize and reward successful examples of community partnerships, service projects, and volunteerism and to provide those models to other communities facing those challenges;

d. Involve New Jersey's youth, businesses, individuals and groups to work together to strengthen and meet the needs of New Jersey's communities;

e. Advise the Governor on volunteer, community service and service learning for youth issues.

5. The time, place, and manner of meeting, as well as Advisory Council operating procedures, shall be established by the Advisory Council, except that such rules must provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning volunteerism and community service in the State.

6. The Advisory Council shall receive administrative support from the New Jersey Office of Volunteerism, but shall not obligate any funds of that office or of any other department, office, division or agency of the State.

7. The Department of Higher Education shall be considered the lead State agency in administering grants awarded through the Commission on National and Community Service.

8. This Order shall take effect immediately.

# REORGANIZATION PLANS

(a)

## OFFICE OF THE GOVERNOR

Governor Jim Florio

### Notice of a Plan for the Transfer of the Division of Juvenile Services and Related Functions from the Department of Corrections to the Department of Human Services

**Take notice** that, on November 30, 1992, Governor James J. Florio hereby issues the following Reorganization Plan (No. 003-1992) providing for the transfer of the Division of Juvenile Services and related functions from the Department of Corrections to the Department of Human Services.

#### GENERAL STATEMENT OF PURPOSE

The Division of Juvenile Services was created in 1978 by the Commissioner of Corrections pursuant to his authority under Public Law 1976, Chapter 98 (N.J.S.A. 30:1B-1 et seq.). The Division fulfills the obligations and mandate of the Department of Corrections regarding youthful offenders by, first, protecting the public from juvenile criminal offenders; second, separating youthful offenders from the adult offender population; and third, creating an environment which encourages rehabilitation of offenders and their reintegration into the community.

The purpose of this Reorganization Plan is to implement the recommendation of the Governor's Cabinet Action Group on Juvenile Justice to create an efficient governmental structure which protects the public from further criminal acts by adjudicated youth and best promotes the rehabilitation of juvenile offenders in the most appropriate setting. Through its research, the Action Group found that a comprehensive program would need to be established, one that provides a number of alternatives, ranging from secure placement in juvenile institutions for violent youth offenders to day treatment type programs in the youth's community to reintegrate the rehabilitated offender or non-violent offender into the community.

The Cabinet Action Group recognized the great variety of human service needs of those youth committed to the Division of Juvenile Services in the Department of Corrections. These juveniles require a myriad of services in the areas of mental health, developmental disabilities, health, substance abuse and remedial education. Additionally, many of these youth come from dysfunctional or non-existent families or from communities in crisis, and they are often victims of neglect, physical, psychological, or sexual abuse.

In the course of its work, the Cabinet Action Group examined the services delivered by the major state departments with the purpose of recommending the placement of the Division of Juvenile Services in the state-level department which best matches the services required by these juveniles. It became evident that the present position of the Division of Juvenile Services within the Department of Corrections is not the best placement in terms of service delivery or for providing rehabilitative services in the most appropriate setting. In fact, because of the paramount problems stemming from the unrelenting increase in the adult offender population, the Department of Corrections is not designed to provide the sanctions and services needed by juveniles, resulting in the Division of Juvenile Services accessing services and resources outside of the Department. Therefore, the present placement of the Division is not the most efficient for accessing services or for long-term cost efficiency.

In examining all the other possible state-level departments, i.e., Department of Human Services, Department of Law and Public Safety, Department of Community Affairs, Department of Health, and Department of Education, it became evident that the Department of Human Services is the most appropriate.

The Department of Human Services already provides many of the services required by youth committed to the Division of Juvenile Services, namely, mental health, services for the developmentally disabled, abused and neglected, case management, and educational services. In addition, the Department of Human Services has experience with providing secure 24-hour care. As a result, the recommendation by the Governor's Cabinet

Action Group on Juvenile Justice is to transfer the Division of Juvenile Services from the Department of Corrections to the Department of Human Services.

This transfer of the Division of Juvenile Services from the Department of Corrections to the Department of Human Services recognizes the inter-relationship of the already existing services in the Department of Human Services and the needs of youth committed to the Division of Juvenile Services. This Plan will develop a rational approach to the juvenile delinquency problem by better implementing a range of services as designed in the Code of Juvenile Justice enacted in 1982. The Reorganization Plan is designed to protect society from further criminal acts by these juveniles, increase the efficiency of service delivery to these youth, increase the chances of rehabilitation and break the cycle of crime. It will also provide the state with a structure for future improvements to the juvenile justice system.

This Reorganization Plan proposes that all the institutions, programs, personnel, powers and responsibilities constituting the Division of Juvenile Services in the Department of Corrections, except as hereinafter provided, be transferred to the Department of Human Services, thereby creating a Division of Juvenile Services in the Department of Human Services. All statutory and administrative powers and responsibilities of the Commissioner of Corrections as they apply to juveniles committed to the Department of Corrections will be transferred to the Commissioner of Human Services.

These actions will promote the policy objectives of protecting the public while increasing the efficiency of providing a coordinated range of rehabilitative services in the most appropriate environment for juvenile offenders. By moving the secure care institutions for juveniles into the Department of Human Services, restrictive facilities and services will be available for those juveniles who are a danger to the public. For juveniles who do not pose a danger to the public, the new placement of the Division will more easily match the needs of these troubled juveniles to services offered through the Department of Human Services. The effective programs already begun by the Division of Juvenile Services in the Department of Corrections can be more easily augmented. Additionally, placement of Juvenile Services in the Department of Human Services will enable the Division to be in a position to access additional federal funds for health care and rehabilitation programs. The result will be a better designed, more efficient and cost-effective approach to rehabilitating juveniles in New Jersey.

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

1. Promote more effective management of the Executive Branch and its departments because it will more appropriately group similar functions within already existing agencies;
2. Promote better and more efficient execution of the law by integrating the State's mandate to protect the public from juvenile offenders, provide services to at-risk youth and rehabilitate adjudicated juveniles;
3. Group, coordinate and consolidate functions in a more consistent and practical way according to major purposes; and
4. Eliminate duplication and overlapping of effort by consolidating certain functions and result in a more efficient use of state and federal funds.

#### THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

A. This reorganization provision will transfer the Division of Juvenile Services from the Department of Corrections to the Department of Human Services. This transfer of placement will better enable the Division to provide services to rehabilitate and remediate the problems of juvenile offenders. In addition, this transfer of placement will better enable the Commissioner of Human Services to plan for and implement programs which prevent young people from becoming involved with or further involved with the juvenile justice system. Further, this transfer will assist the Department of Human Services in its attempt to obtain federal funding for programs needed by, and/or already provided to, these juveniles with state funds.

Therefore, I hereby order the following reorganization:

1.a. The powers, duties and functions of the Commissioner and the Department of Corrections contained in P.L. 1976, c. 98 (C. 30:1B-1 et seq.) as applied to the commitment, incarceration and rehabilitation of juvenile offenders pursuant to the New Jersey Code of Juvenile Justice, P.L. 1982, c. 77, as amended (C. 2A:4A-20 et seq.), are continued and are transferred to the Commissioner and Department of Human Services, except as hereinafter provided.

b. The powers, duties and functions of the Commissioner and the Department of Corrections concerning the confinement and transfer of juvenile offenders pursuant to P.L. 1918, c. 147, as amended (C. 30:4-81 et seq.), are continued and transferred to the Department of Human Services and the Commissioner of Human Services, except as hereinafter provided.

c. The Division of Juvenile Services of the Department of Corrections, including the functions, powers and duties assigned by the Commissioner of Corrections to it pursuant to P.L. 1976, c. 98 (C. 30:1B-1 et seq.), is continued and is transferred to and constituted as the Division of Juvenile Services in the Department of Human Services.

d. All programmatic, administrative and support staff presently comprising the Division of Juvenile Services, Department of Corrections, are transferred to the Division of Juvenile Services, Department of Human Services, with all of their present powers, duties and responsibilities and any other powers, duties and responsibilities contained herein.

e. A proportionate share of those support services or funds to purchase such services presently housed in the Department of Corrections' Central Office utilized for the support of the Division of Juvenile Services, Department of Corrections shall be transferred from the Department of Corrections to the Department of Human Services. These transfers shall be made by agreement between the Commissioner of Corrections and the Commissioner of Human Services after determining the number and type of positions presently utilized for support of the Division and the appropriateness of transferring personnel, positions or funding.

f. All Corrections Officers and Corrections Officer positions presently assigned to the Division of Juvenile Services, Department of Corrections, are continued and transferred to the Division of Juvenile Services, Department of Human Services. The officers and positions shall keep their present Civil Service titles until such time as the Commissioner of Human Services working in conjunction with the Commissioner of Corrections, the Commissioner of Personnel, and appropriate collective bargaining units, develops a Civil Service title and implementation schedule for use in the Department of Human Services. These Corrections Officers, both in their present positions and new Civil Service title, shall maintain all the powers, duties, responsibilities and rights held by Corrections Officers in New Jersey pursuant to law and regulation. The Commissioner of Corrections shall also provide training by agreement with the Commissioner of Human Services through the Corrections Officers Training Academy for those Corrections Officers and new recruits who shall be employed by the Department of Human Services as Corrections Officers or under any new Civil Service Title developed above.

g. Nothing in this Reorganization Plan shall be construed to deprive any person of any tenure rights or of any right or protection provided him or her by Title 11A of the Revised Statutes, Civil Service, or under any pension law or retirement system.

h. All funding for the education of juvenile offenders designated to be forwarded to the Commissioner of Corrections pursuant to the "State Facilities Education Act of 1979," P.L. 1979, c. 207, as amended (C. 18A:7B-1 et seq.), are redesignated to be forwarded to the Commissioner of Human Services and used accordingly. All federal and state educational grants and contract funds, received for juvenile offenders, are redesignated to be forwarded to the Commissioner of Human Services and used accordingly.

i. The powers, duties and responsibilities of the Office of Education created and established in the Department of Corrections for the education of juvenile offenders pursuant to the "State Facilities Education Act of 1979," P.L. 1979, c. 207, §12 (C. 18A:7B-8) are transferred to the Office of Education created and established in the Department of Human Services pursuant to P.L. 1979, c. 207, §13 (C. 18A:7B-9).

2.a. The New Jersey Training School for Boys created pursuant to P.L. 1918, c. 147, as amended (C. 30:1-7), and previously transferred to the Commissioner of Corrections pursuant to P.L. 1976, c. 98, §8 (C. 30:1B-8), is continued and along with all those juveniles committed thereto by court order, law, classification, regulation or contract, are

hereby transferred from the Department of Corrections to the Division of Juvenile Services, Department of Human Services.

b. The Lloyd McCorkle Training School for Boys and Girls created pursuant to P.L. 1918, c. 147, as amended (C. 30:1-7), and previously transferred to the Commissioner of Corrections pursuant to P.L. 1976, c. 98, §8 (C. 30:1B-8), is continued and along with all those juveniles committed thereto by court order, law, classification, regulation or contract, are hereby transferred from the Department of Corrections to the Division of Juvenile Services, Department of Human Services.

c. The Juvenile Medium Security Center created pursuant to P.L. 1918, c. 147, as amended (C. 30:1-7), and previously transferred to the Commissioner of Corrections pursuant to P.L. 1976, c. 98, §8 (C. 30:1B-8), is continued and, along with all those juveniles committed thereto by court order, law, classification, regulation or contract, are hereby transferred from the Department of Corrections to the Division of Juvenile Services, Department of Human Services.

d. All residential and day care facilities and programs established pursuant to the powers delegated to the Division of Juvenile Services, Department of Corrections, by the Commissioner of Corrections pursuant to his powers contained in P.L. 1976, c. 98 (C. 30:1B-1 et seq.), along with all those youth committed to participate therein by court order, law, classification, regulation or contract, are hereby transferred to the Division of Juvenile Services, Department of Human Services.

e. All furnishings and equipment presently located in the institutions and programs constituting the Division of Juvenile Services, Department of Corrections, are transferred to the Division of Juvenile Services, Department of Human Services.

f. All operating and capital funding demarcated for the institutions and programs constituting the Division of Juvenile Services, Department of Corrections, are to be transferred by agreement between the Commissioner of Corrections and the Commissioner of Human Services for use in the Division of Juvenile Services, Department of Human Services.

3.a. The powers, duties, responsibilities and membership of the Institutional Board of Trustees established for the New Jersey Training School for Boys pursuant to P.L. 1918, c.147, as amended (C. 30:4-1 et seq.), previously transferred to the jurisdiction of the Commissioner of Corrections pursuant to P.L. 1976, c. 98, §21 (C. 30:1B-21), is continued and transferred to the jurisdiction of the State Board of Institutional Trustees of the Department of Human Services. The State Board of Institutional Trustees of the Department of Human Services shall select and appoint members to the Institutional Board of Trustees for the New Jersey Training School for Boys as their existing terms expire, pursuant to N.J.S.A. 30:4-1 et seq.

b. Notwithstanding any provision contained in this Reorganization Plan, the Commissioner of Corrections and the Commissioner of Human Services shall develop a procedure for transferring custody of committed juveniles who have reached the age of 18 during their commitment, from the Department of Human Services to the Department of Corrections in instances where the public safety, safety of juvenile offenders, or control of the program is threatened and necessity requires placement in an adult corrections program.

c. Nothing contained in this Reorganization Plan shall affect or transfer the custody of juveniles convicted of adult offenses pursuant to N.J.S.A. 2A:4A-26 and N.J.S.A. 2A:4A-27.

B. This transfer of the Juvenile Monitoring Unit will ensure inspections of the county detention centers and compliance of the centers to standards developed for juvenile offenders. As one part of the comprehensive system, these detention centers serve a critical role in the juvenile justice system and must also be safe for the juveniles residing therein.

Therefore, I hereby order the following reorganization:

1.a. All functions, powers and duties of the Commissioner of Corrections with respect to all juvenile detention facilities throughout the state pursuant to P.L. 1982, c. 77, §18 (C. 2A:4A-37), are hereby transferred to the Commissioner of Human Services.

b. The powers, duties and responsibilities of the Commissioner of Corrections for establishing standards and monitoring of juvenile detention facilities pursuant to P.L. 1982, c. 77, §18 (C. 2A:4A-37), are hereby transferred to the Commissioner of Human Services. All existing agreements made between county governments and the Department of Corrections concerning juvenile detention centers are hereby modified to transfer the responsibilities, duties and obligations specified in these agreements between the county governments and the Department of Corrections to between the county governments and the Department of Human Services.

c. The Juvenile Detention Monitoring Unit, Department of Corrections, established pursuant to the powers of the Commissioner of Corrections pursuant to N.J.S.A. 30:1B-1 et seq., to fulfill the obligations of the Department of Corrections in monitoring juvenile detention centers throughout the State pursuant to the Federal "Juvenile Justice and Delinquency Prevention Act of 1974," as amended, and pursuant to N.J.S.A. 2A:4A-37, is continued and transferred along with its staff, powers, duties and responsibilities to the Department of Human Services.

C. This reorganization provision changes legal custody of juvenile parolees from the Department of Corrections to the Department of Human Services. The Plan also changes the reporting requirements of the State Parole Board, from the Department of Corrections to the Department of Human Services to ensure an efficient means of fulfilling the mandate of the law under the Parole Act of 1979, P.L. 1979, c. 441 (C. 30:4-123.45 et seq.).

Therefore, I order the following reorganization:

1.a. The powers, duties and functions of the State Parole Board established pursuant to P.L. 1979, c. 441 (C. 30:4-123.45 et seq.), regarding juvenile offenders are continued. The State Parole Board will, however, file all of its reports and recommendations regarding juveniles with the Department of Human Services rather than the Department of Corrections as stipulated in N.J.S.A. 30:4-123.45 et seq. In addition, pursuant to P.L. 1979, c. 441, §15 (C. 30:4-123.59), the legal custody of each juvenile parolee shall be transferred to the Department of Human Services. Supervision of juvenile parolees shall remain under the Bureau of Parole within the Department of Corrections until such time that an agreement between the Commissioner of Human Services and the Commissioner of Corrections in consultation with the State Parole Board effectuates a transfer of this function to the Department of Human Services. At all times supervision of the juvenile parolees shall be in accordance with the rules of the State Parole Board.

b. All funding, programs and positions created to provide juvenile parole services by the Bureau of Parole within the Department of Corrections are continued and shall be transferred to the Department of Human Services by agreement between the Commissioner of Human Services and the Commissioner of Corrections in consultation with the State Parole Board. Such agreement shall also specify appropriate changes in the reporting requirements, funding, positions, and administrative housing and support for the district juvenile parole officers.

D. This reorganization provision will promote closer cooperation among the various departments responsible for the provision of services to troubled youth by coordinating services and making more services available to juveniles in a more timely fashion, thereby preventing juveniles from becoming involved in the juvenile justice system and rehabilitating those juveniles already involved before they commit additional or more serious crimes.

Therefore, I hereby order the following reorganization:

1.a. The Commissioner of Human Services shall establish an Advisory Council on Juvenile Justice. The Advisory Council shall consist of the Commissioner of Human Services, who shall serve as Chairperson; the Attorney General; the Commissioner of Corrections; the Commissioner of Education; the Commissioner of Health; the Commissioner of Labor; the Commissioner of Community Affairs; and the Public Advocate. The Administrative Director of the Courts shall be invited to participate on the Advisory Council.

In addition, the Commissioner as Chairperson of the Advisory Council shall have the authority to appoint any individual or representative, either public or private, necessary for advice on long-term improvement to the juvenile justice system.

Further, the Advisory Council shall work cooperatively with the Judiciary and the Legislature.

b. The Advisory Council shall assist the Commissioner of Human Services to:

1. Expand the range of disposition options available to the Court, consistent with the Code of Juvenile Justice, including the sharing of resources to allow for more appropriate intervention at the local level;

2. Develop a range of services for committed youth, in particular those youth in secure settings under the jurisdiction of the Commissioner of Human Services;

3. Work with the county youth services commissions and assist the Commissioner of Human Services in fulfilling the statutory responsibilities outlined in P.L. 1982, c. 80, §16, as amended (C. 2A:4A-91); and

4. Report to the Governor and the Legislature on an annual basis as to issues, programs, and the setting of budgetary and policy priorities.

c. The Commissioner of Human Services is authorized to call upon any department or agency of state government to provide such information, resources, or other assistance deemed necessary to discharge the responsibilities outlined above.

#### GENERAL PROVISIONS

1. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Commissioner or the Department of Corrections regarding a juvenile or juvenile offender as defined in P.L. 1982, c. 77, as amended (C. 2A:4A-20 et seq.), the same shall mean and refer to the Commissioner or Department of Human Services.

2. All transfers directed by this plan shall be made in accordance with the "State Agency Transfer Act," P.L. 1971, c. 375 (C. 52:14D-1 et seq.).

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

4. If any provisions of this Reorganization Plan, or the application thereof to any person or circumstances, or the exercise of any power or authority hereunder is held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan which can be given effect without the invalid provisions or applications and shall not affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Reorganization Plan are declared to be severable.

A copy of this Reorganization Plan was filed on November 30, 1992, 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 January 29, 1993, 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. This Reorganization Plan shall be implemented on July 1, 1993, or such earlier date as the Governor may designate by Executive Order.

**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 "Reorganization Plans."

(a)

#### OFFICE OF THE GOVERNOR Governor Jim Florio

#### Notice of a Plan for the Reorganization of the Department of Law and Public Safety

**Take notice** that, on November 30, 1992, Governor Jim Florio hereby issues the following Reorganization Plan (No. 004-1992) providing for the reorganization of the Department of Law and Public Safety.

#### GENERAL STATEMENT OF PURPOSE

This Reorganization Plan represents an ongoing effort to streamline and downsize the structure and functions of the Executive Branch in the interests of efficiency and economy, without quantitative or qualitative diminution of services to the public.

This Reorganization Plan is the result of comprehensive, in-depth review and analysis of the structure of the Department of Law and Public Safety. Underlying the Plan is an intent to coordinate the functions of the Department of Law and Public Safety to achieve optimal efficiency in the management and performance of the Department's varied functions and duties. The Plan provides for reallocations of functions so as to promote the efficient and expeditious delivery of services to the public while concomitantly achieving the greatest possible economy. Additionally, the Plan provides for the elimination of advisory committees, boards or commissions whose functions have become superfluous or duplicative.

This Reorganization Plan will consolidate within one agency similar Departmental functions under the Amusement Games Licensing Law, Bingo Licensing Law and Raffles Licensing Law by transferring regulatory responsibilities currently vested in the Director of the Division of Alcoholic Beverage Control under the Amusement Games Licensing Law to the Legalized Games of Chance Control Commission. Likewise, the Plan will reduce the number of divisions in the Department of Law and Public Safety by transferring the State Athletic Control Board to and into the Division of Gaming Enforcement. At the same time, the Division of Gaming Enforcement will assume the investigative and en-

forcement functions of the Board, which parallel those it currently performs under the Casino Control Act.

Under the Plan, the operations of the Office of Consumer Protection are expanded by transferring to it the licensing, registration and enforcement functions of the Bureau of Employment and Personnel Services. The Plan further provides for the transfer of administrative responsibilities under the Drunk Driving Enforcement Fund from the Director of the Division of Motor Vehicles to the Office of Highway Traffic Safety, which will result in a unified and coordinated approach to the Department's responsibilities with respect to highway safety and related grant programs.

Finally, in furtherance of the goal of downsizing and streamlining to the greatest extent possible while preserving a high level of public service, this Reorganization Plan provides for the elimination of the following committees, boards and commissions:

- (1) the Crime Prevention Advisory Committee;
- (2) the Bulk Commodities Advisory Board;
- (3) The Security Advisory Committee;
- (4) the Bio-Analytical Laboratory Advisory Committee;
- (5) the Commission on Missing Persons;
- (6) the Orthoptic Commission; and
- (7) the State Law Enforcement Planning Agency.

With respect to each of the reallocations and eliminations provided for in this Reorganization Plan, I find that one or more of the following purposes will be accomplished:

- (1) the better execution of the laws, the more effective management of the Executive Branch and of its agencies and functions, and the expeditious administration of the public business;
  - (2) a reduction of expenditures and/or an increase in economy to the fullest extent consistent with the efficient operation of the Executive Branch;
  - (3) an increase in the efficiency of the operations of the Executive Branch to the fullest extent practicable;
  - (4) the grouping, coordination and consolidation of agencies and functions of the Executive Branch as nearly as possible according to major purposes;
  - (5) a reduction in the number of agencies by consolidating those having similar functions under a single head, and the abolition of such agencies or functions as are not necessary for the efficient conduct of the Executive Branch; and
  - (6) the elimination of overlapping and duplication of effort.
- For clarity, specific statements of purpose immediately precede the provisions of each reorganization contained in this Plan.

#### THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

A. Pursuant to present statutory authority, P.L. 1959, chs. 108, 109 and 113, as supplemented and amended (C. 5:8-78 to -130), the Amusement Games Control Commissioner, who is also the Director of the Division of Alcoholic Beverage Control, has general regulatory and enforcement authority with respect to the Amusement Games Licensing Law. The responsibilities of the Amusement Games Control Commissioner involve licensing, regulatory and adjudicatory functions as well as investigatory and compliance functions pursuant to the licensing law and regulations promulgated thereunder.

Pursuant to P.L. 1954, c.7, as supplemented and amended, (C. 5:8-1 et seq.), the Legalized Games of Chance Control Commission in the Department of Law and Public Safety possesses parallel authority for the Bingo Licensing Law and the Raffles Licensing Law. The Commission is authorized to conduct investigations of the administration of the Bingo Licensing Law and the Raffles Licensing Law, to receive and investigate complaints as to violations and evasions of said laws in any municipality or municipalities, and to institute prosecutions for the punishment of violations of those laws.

This reorganization will consolidate within one governmental body the similar functions and duties of the Department of Law and Public Safety with respect to the Amusement Games Licensing Law, Bingo Licensing Law and Raffles Licensing Law. Transfer of the functions under the Amusement Games Licensing Law from the Amusement Games Control Commissioner to the Legalized Games of Chance Control Commission will provide for the consolidation within one agency of the similar functions related to those three statutes, and will vest similar duties in a single State agency, thereby eliminating duplication and overlap promoting efficiency and/or economy.

Therefore, I hereby order the following reorganization:

1.a. The Office of the Amusement Games Control Commissioner, created pursuant to P.L. 1959, c.108, sec. 1 (C. 5:8-78) is abolished and the term of office of the Amusement Games Control Commissioner is terminated.

b. All of the functions, powers and duties of the Amusement Games Control Commissioner pursuant to P.L. 1959, chs. 108, 109 and 113, as supplemented and amended (C. 5:8-78 to -130), are continued and transferred to the Legalized Games of Chance Control Commission in the Division of Consumer Affairs in the Department of Law and Public Safety, except that the power granted to the Amusement Games Control Commissioner pursuant to P.L. 1959, c.108, sec. 17 (C. 5:8-94), to appoint an executive officer and any such term of office is terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c.203 (C. 52:14C-2). Specifically, the transfers provided for herein will consolidate similar regulatory functions within one agency, resulting in the more efficient and/or economical functioning of the Executive Branch.

2. Any unexpended funds appropriated or otherwise available to the Amusement Games Control Commissioner, as determined by the Attorney General, are transferred to the Legalized Games of Chance Control Commission, on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Amusement Games Control Commissioner, the same shall mean and refer to the Legalized Games of Chance Control Commission.

B. Pursuant to present statutory authority, P.L. 1985, c.83, as supplemented and amended by P.L. 1988, c.20 (C. 5:2A-3 to -31), the State Athletic Control Board in the Department of Law and Public Safety was created to regulate and supervise events, exhibitions and other performances involving combative sports such as boxing, wrestling and kick boxing in order to protect the well-being of the participants and to promote public confidence and trust in the integrity of these events. The Board's regulatory functions involve licensing, rulemaking and oversight of compliance with the laws and regulations governing these activities.

Under the Casino Control Act, P.L. 1977, c. 110, as supplemented and amended (C. 5:12-1 et seq.), the Division of Gaming Enforcement in the Department of Law and Public Safety is the investigative half of the two part regulatory structure established to regulate and oversee casinos and all persons and entities doing business therewith. Inspection functions performed by the State Athletic Control Board are largely similar in nature to those of the Division of Gaming Enforcement and, because many boxing matches are held in casinos, the functions of these two separate agencies frequently overlap.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and maximize efficiency and economy. Transferring the State Athletic Control Board to the Division of Gaming Enforcement will provide staff economies since personnel of the Division of Gaming Enforcement will be able to provide staff support for State Athletic Control Board functions. The Board will retain its regulatory, licensing and adjudicatory authority. Reassigning inspection and enforcement responsibilities with respect to the activities regulated by the Board to the Division of Gaming Enforcement will streamline the Department and promote overall efficiency and economy by aligning similar functions within one agency.

Therefore, I hereby order the following reorganization:

1.a. The State Athletic Control Board in the Department of Law and Public Safety, created pursuant to P.L. 1985, c. 83, sec. 3 (C. 5:2A-3), together with the State Athletic Control Board Medical Advisory Council, created pursuant to P.L. 1985, c. 83, sec. 8 (C. 5:2A-8), and its powers, functions and duties pursuant to P.L. 1985, c. 83, as supplemented and amended by P.L. 1988, c. 20 (C. 5:2A-3 to -31), with respect to licensing participants and regulating the conditions under which boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests may be held; and to causing to be inspected premises, equipment or documents relevant thereto; and to conducting hearings; are continued and transferred to and into the Division of Gaming Enforcement in the Department of Law and Public Safety, subject to the following allocations of said powers, functions and duties.

b. The position of Commissioner of the State Athletic Control Board and the duties of the Commissioner to assist the board and be responsible for implementation of board directives and policies, established by P.L. 1985, c.83, sec. 5 (C. 5:2A-5) are continued, except that the Commissioner shall be appointed by the Attorney General with the concur-

rence of the State Athletic Control Board, shall serve at the pleasure of and at a salary set by the Attorney General, and shall be subject to the direction and supervision of the Attorney General and the Director of the Division of Gaming Enforcement.

c. The powers granted to the State Athletic Control Board pursuant to P.L. 1985, c. 83, sec. 5 (C. 5:2A-5), to appoint and set the salaries of deputy commissioners, a chief inspector and inspectors, judges, referees and physicians, and any other personnel, are continued and transferred to the Attorney General. Judges, referees and physicians so appointed shall not be deemed to be public employees for purposes of N.J.S.A. 34:13A-1 et seq.

d. The power granted to the State Athletic Control Board pursuant to P.L. 1985, c. 83, sec. 5 (C. 5:2A-5), to exchange data and receive information from the Federal Bureau of Investigation is continued and transferred to the Attorney General, to be exercised through the Division of Gaming Enforcement.

e. The functions, powers and duties of the State Athletic Control Board pursuant to P.L. 1985, c. 83, as supplemented and amended by P.L. 1988, c. 20 (C.5:2A-1 et seq.) to investigate under the laws and regulations related to boxing, wrestling, kick boxing and combative sports exhibitions, events, performances and contests; to conduct background checks and investigate the background of participants; and to make periodic inspections of training facilities; are continued and transferred to the Attorney General, who may exercise some or all of those duties through the Division of Gaming Enforcement.

f. Employees transferred to the Division of Gaming Enforcement pursuant to this reorganization, and all other persons who thereafter may be hired or assigned to perform duties transferred to the Division of Gaming Enforcement pursuant to this reorganization, shall be subject to the restrictions and requirements imposed on Division employees pursuant to P.L. 1977, c.110, as supplemented and amended, including but not limited to the provisions of P.L. 1977, c.110, sec. 56 (C. 5:12-56) and P.L. 1977, c.110, secs. 58 to 60 (C. 5:12-58 to -60), in addition to those restrictions and requirements applicable pursuant to any other law, regulation or as determined by the Director of the Division of Gaming Enforcement, except that transferred employees shall retain their rights pursuant to P.L. 1969, c. 203, sec. 8 (C. 52:14C-8).

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that transferring the State Athletic Control Board to and into the Division of Gaming Enforcement, and transferring its investigatory duties to that Division, will align similar functions within one agency, resulting in a reduction of expenditures and/or an increase in economy, thereby promoting the overall efficiency of the Executive Branch.

2. Any unexpended balance of funds appropriated or otherwise available to the State Athletic Control Board, including funds from the State Athletic Control Board Account pursuant to P.L. 1985, c. 83, sec. 19 (C. 5:2A-19), are transferred to the State Athletic Control Board in the Division of Gaming Enforcement, or to the Division of Gaming Enforcement as necessary to perform the functions transferred to that Division under this Reorganization Plan, as determined by the Attorney General.

3. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the licensing, regulatory or adjudicative authority of the State Athletic Control Board, the same shall mean and refer to the State Athletic Control Board in the Division of Gaming Enforcement. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the inspection, investigation and enforcement functions of the State Athletic Control Board, the same shall mean and refer to the Division of Gaming Enforcement, as supervised and directed by the Attorney General.

C. Pursuant to present statutory authority, P.L. 1989, c. 331 (C. 52:17B-139.4 to 139.5; C. 34:8-43 et seq.), the Bureau of Employment and Personnel Services in the Division of Consumer Affairs in the Department of Law and Public Safety is charged with licensing private agencies and agents who provide employment services, registering other entities that engage in consulting, placement, or other services pertaining to the obtaining of employment, and otherwise enforcing the laws of this State governing employment services. At the same time, the Office of Consumer Protection in the Division of Consumer Affairs has broad reach through its investigatory and enforcement functions with respect to a wide range of consumer protection matters.

Consolidating the functions of the Bureau of Employment and Personnel Services with those of the Office of Consumer Protection will result in a more efficient system for enforcing the laws governing employment

and personnel services. The consolidation will provide for a greater coordination of functions in the Division of Consumer Affairs and will promote the efficiency and/or economy of the Executive Branch.

Therefore, I hereby order the following reorganization:

1.a. The Bureau of Employment and Personnel Services in the Division of Consumer Affairs in the Department of Law and Public Safety, created by P.L. 1989, c. 331, sec. 2 (C. 52:17B-139.4), is abolished. All of the powers, functions and duties of the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, set forth in P.L. 1989, c. 331 (C. 52:17B-139.4 to 139.5; C. 34:8-43 et seq.), are continued and transferred to the Office of Consumer Protection in the Division of Consumer Affairs in the Department of Law and Public Safety.

b. The position of Chief of the Bureau of Employment and Personnel Services, created by P.L. 1989, c. 331, sec. 2 (C. 52:17B-139.4) is abolished and any term of office terminated. The powers vested in the Chief of the Bureau of Employment and Personnel Services are continued and transferred to the Executive Director of the Office of Consumer Protection in the Division of Consumer Affairs.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that transfer of the functions of the Bureau of Employment and Personnel Services to the Office of Consumer Protection will promote the efficient performance of those functions and of the Division of Consumer Affairs in general.

2. Any unexpended funds appropriated or otherwise available to the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, as determined by the Attorney General, are transferred to the Office of Consumer Protection in the Division of Consumer Affairs on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise reference is made to the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, the same shall mean and refer to the Office of Consumer Protection in the Division of Consumer Affairs. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding reference is made to the Chief of the Bureau of Employment and Personnel Services in the Division of Consumer Affairs, the same shall mean and refer to the Executive Director of the Office of Consumer Protection in the Division of Consumer Affairs.

D. Pursuant to present statutory authority, P.L. 1984, c. 4, sec. 1 (C. 39:4-50.8), the Director of the Division of Motor Vehicles is authorized to receive funds generated through surcharges imposed on defendants convicted of driving while intoxicated under R.S. 39:4-50. The Director is statutorily required to deposit ninety-five percent of those funds into a "Drunk Driving Enforcement Fund" which is to be used to finance a Statewide drunk driving enforcement program, supervised by the Director, and to use the remaining five percent for administrative expenses. Eligible municipal, county, State and interstate law enforcement agencies receive grants from the Fund, in amounts proportionate to the amounts collected through enforcement of R.S. 39:4-50, to be used to augment drunk driving enforcement efforts.

The Office of Highway Traffic Safety in the Department of Law and Public Safety has general responsibility for the receipt and disbursement of federal funds earmarked for traffic safety programs, and for oversight of funded traffic safety programs. Transfer of the functions of the Division of Motor Vehicles with respect to the allocation and administration of the Drunk Driving Enforcement Fund to the Office of Highway Traffic Safety will eliminate duplication of effort by the Department in administering various grant programs and will align and assign similar functions within one agency, thereby promoting overall efficiency.

Therefore, I hereby order the following reorganization:

1. The powers, functions and duties of the Director of the Division of Motor Vehicles in the Department of Law and Public Safety pursuant to P.L. 1984, c. 4, sec. 1 (C. 39:4-50.8), to administer the Drunk Driving Enforcement Fund, supervise the Statewide drunk driving enforcement program established thereunder, and promulgate rules and regulations, are continued and transferred to the Attorney General, to be exercised through the Office of Highway Traffic Safety in the Department of Law and Public Safety under the supervision of the Attorney General, except that the Division of Motor Vehicles shall remain the initial recipient of funds collected through assessment of surcharges on defendants convicted of violating R.S. 39:4-50, and shall be credited with twenty (20%) percent of the administrative assessment for these purposes.

I find that this reorganization is necessary to accomplish the purposes set forth in section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that transfer of responsibility to administer the Drunk Driving Enforcement Fund from the Division of Motor Vehicles to the Office of Highway Traffic Safety will promote the efficiency of the Executive Branch by more closely aligning similar functions within agencies, thereby increasing efficiency and/or economy without reduction in services to the public.

2. Any unobligated balances of the Drunk Driving Enforcement Fund and any unexpended funds appropriated or otherwise available to the Director of the Division of Motor Vehicles with respect to functions pursuant to P.L. 1984, c. 4, sec. 1 (C. 39:4-50.8) transferred by this Reorganization Plan, as determined by the Attorney General, are transferred to the Office of Highway Traffic Safety in the Department of Law and Public Safety on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Director of the Division of Motor Vehicles with respect to the administrative responsibilities under P.L. 1984, c. 4, sec. 1 (C. 39:4-50.8) transferred by this Reorganization Plan, the same shall mean and refer to the Office of Highway Traffic Safety in the Department of Law and Public Safety.

E. Over the years, the Legislature has created numerous committees to advise the Department of Law and Public Safety in fulfilling its statutory missions. These committees have become luxuries we can no longer afford at a time when State Government must do more with fewer resources. The divisions and other agencies within the Department of Law and Public Safety will be able to continue to perform their duties without the input of these formal advisory bodies. Under the Administrative Procedure Act, P.L. 1968, c. 410 (C. 52:14B-1 et seq.), agencies may conduct public hearings on proposed rule changes, and any person who has advice for the agency may provide it. Moreover, pursuant to that Act, any person may petition an agency to promulgate, amend, or repeal a rule.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap, reduce expenditures, and promote efficiency and economy. Abolition of the advisory committees provided for below will promote the overall efficiency of the Executive Branch without substantive reduction in services to the public.

Therefore, I hereby order the following reorganizations:

1.a. The Crime Prevention Advisory Committee in the Police Training Commission in the Division of Criminal Justice in the Department of Law and Public Safety, created pursuant to P.L. 1985, c. 1, sec. 2 (C. 52:17B-77.1), together with its powers, functions and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that elimination of the Crime Prevention Advisory Committee will promote the overall efficiency of the Division of Criminal Justice and the Police Training Commission without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available for the Crime Prevention Advisory Committee, as determined by the Attorney General, are transferred to the Police Training Commission in the Division of Criminal Justice on the effective date of this Reorganization Plan.

c. Whenever, in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the Crime Prevention Advisory Committee, the same shall mean and refer to the Police Training Commission in the Division of Criminal Justice.

2.a. The Bulk Commodities Advisory Board in the Division of Motor Vehicles in the Department of Law and Public Safety, created pursuant to P.L. 1977, c. 259, sec. 6 (C. 39:5E-6), together with its powers, functions and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that elimination of the Bulk Commodities Advisory Board will promote the overall efficiency of the Division of Motor Vehicles without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available for the Bulk Commodities Advisory Board, as determined by the Attorney

General, are transferred to the Division of Motor Vehicles on the effective date of this Reorganization Plan.

c. Whenever in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the Bulk Commodities Advisory Board, the same shall mean and refer to the Division of Motor Vehicles.

3.a. The Security Advisory Committee established pursuant to P.L. 1967, c. 93, sec. 27 (C. 49:3-74), together with its powers, functions and duties, is abolished and the terms of office of its members are terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that elimination of the Security Advisory Committee will promote the overall efficiency of the Bureau of Securities in the Division of Consumer Affairs, without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available to the Security Advisory Committee, as determined by the Attorney General, are transferred to the Bureau of Securities in the Division of Consumer Affairs on the effective date of this Reorganization Plan.

c. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise, reference is made to the Security Advisory Committee, the same shall mean and refer to the Bureau of Securities in the Division of Consumer Affairs.

4.a. The Bio-Analytical Laboratory Advisory Committee under the State Board of Medical Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety, created pursuant to P.L. 1989, c. 153, sec. 17 (C. 45:9-1), together with its functions, powers and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that elimination of the Bio-Analytical Laboratory Advisory Committee will promote the overall efficiency of the State Board of Medical Examiners, without resulting in a reduction of services to the public.

b. Any unexpended funds appropriated or otherwise available to the Bio-Analytical Laboratory Advisory Committee, as determined by the Attorney General, are transferred to the State Board of Medical Examiners in the Division of Consumer Affairs on the effective date of this Reorganization Plan.

c. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise, reference is made to the Bio-Analytical Laboratory Advisory Committee, the same shall mean and refer to the State Board of Medical Examiners.

F. The Commission on Missing Persons, created by P.L. 1983, c. 467, sec. 4 (C. 52:17B-9.9), is responsible for reviewing data and statistics and preparation of a State action plan relating to the problem of missing persons and unidentified bodies, updating the plan annually, and recommending legislation that may be necessary to carry out the purpose of the Act.

That same statute created a Missing Persons Unit within the Department of Law and Public Safety in the Division of State Police. That unit and the persons assigned thereto have a commitment to carry out the provisions of the Act and perform the day-to-day operational mandates of this legislation. Consequently, this unit addresses the operational objectives of the Commission on Missing Persons. In addition, the Attorney General submits an annual report to the Legislature which, among other matters, is to contain suggestions and recommendations for the improvement of planning and coordinating functions to insure the adequate and uniform enforcement of the criminal laws of the State. The Attorney General, through the Division of Criminal Justice, is also authorized and empowered to make studies and surveys of the organization, procedures and methods of operation and administration of all law enforcement agencies within the State with a view toward preventing crime, improving the administration of criminal justice and securing the enforcement of the criminal law. Thus, the Attorney General possesses the authority to conduct studies and recommend legislation concerning missing persons when appropriate.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and reduce expenditures, which will promote efficiency and economy. The abolition of the Commission on Missing Persons will not impair or hinder the primary objectives articulated by the Legislature, but will provide for greater economy and efficiency in the provision of those services.

Therefore, I hereby order the following reorganization:

1.a. The Commission on Missing Persons, created by P.L. 1983, c. 467, sec. 4 (C. 52:17B-9.9), together with its powers, functions and duties, is abolished and the terms of office of its members terminated.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that elimination of the Commission on Missing Persons will promote the overall efficiency of the Department of Law and Public Safety, without resulting in a reduction of services to the public.

2. Any unexpended funds appropriated or otherwise available to the Commission on Missing Persons, as determined by the Attorney General, are transferred to the Division of State Police in the Department of Law and Public Safety on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document, or judicial or administrative proceeding or otherwise, reference is made to the Commission on Missing Persons, the same shall mean and refer to the Division of State Police in the Department of Law and Public Safety.

G. Pursuant to P.L. 1968, c. 114 (C. 45:12A-1 et seq.), the Orthoptic Commission in the State Board of Medical Examiners is constituted to establish standards governing the practice of orthoptics and to register orthoptists. The State Board of Medical Examiners, which oversees the Commission, has more than sufficient expertise to regulate the practice of orthoptics. Moreover, interested individuals or groups are able to advise the Board or petition it to promulgate, amend, or repeal a rule, pursuant to the Administrative Procedure Act, P.L. 1968, c. 410 (C. 52:14B-1 et seq.).

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and reduce expenditures, which will promote efficiency and economy. Elimination of the Orthoptic Commission will result in a more efficient regulatory system without reduction of service to the public.

Therefore, I hereby order the following reorganization:

1. The Orthoptic Commission within the State Board of Medical Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety, created pursuant to P.L. 1968, c. 114, sec. 9 (C. 45:12A-9), is abolished and the terms of its members are terminated. All functions, powers, and duties of the Orthoptic Commission are continued and transferred to the State Board of Medical Examiners in the Division of Consumer Affairs in the Department of Law and Public Safety.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that elimination of the Orthoptic Commission will promote the overall efficiency of the State Board of Medical Examiners, without resulting in a reduction of services to the public.

2. Any unexpended funds appropriated or otherwise available for the Orthoptic Commission, as determined by the Attorney General, are transferred to the State Board of Medical Examiners on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the Orthoptic Commission, the same shall mean and refer to the State Board of Medical Examiners in the Division of Consumer Affairs.

H. The State Law Enforcement Planning Agency has, pursuant to P.L. 1978, c. 176 (C. 52:17B-147(a)), the responsibility to "serve as the State Planning Agency pursuant to the Federal Omnibus Crime Control and Safe Streets Act of 1968, the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and other related Federal or State Acts." In recent years, the availability of federal funds for law enforcement planning purposes has decreased significantly. Over the years, there has been a coincidental reduction in the functions and responsibilities of this planning agency. At the same time, a significant portion of the staff of the Division of Criminal Justice is dedicated to the planning and coordination of the State's law enforcement functions, as well as to public education and deterrence of criminal activity.

A primary purpose of this Reorganization Plan is to coordinate the functioning of the Department of Law and Public Safety in order to eliminate duplication and overlap and reduce expenditures, which will promote efficiency and economy. The State Law Enforcement Planning Agency is no longer necessary and its elimination will reduce duplication and overlap, thereby promoting efficiency and economy.

Therefore, I hereby order the following reorganization:

1. The State Law Enforcement Planning Agency, created by executive order and continued by P.L. 1978, c. 176, sec. 2 (C. 52:17B-143), is abolished. All the functions, powers and duties of the State Law Enforcement Planning Agency are continued and transferred to the Division of Criminal Justice in the Department of Law and Public Safety.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of P.L. 1969, c. 203 (C. 52:14C-2). Specifically, I find that elimination of the State Law Enforcement Planning Agency will promote the overall efficiency of the Executive Branch without resulting in a reduction of services to the public.

2. Any unexpended funds appropriated or otherwise available for the State Law Enforcement Planning Agency, as determined by the Attorney General, are transferred to the Division of Criminal Justice in the Department of Law and Public Safety on the effective date of this Reorganization Plan.

3. Whenever, in any law, rule, regulation, order, contract, document or judicial or administrative proceeding or otherwise, reference is made to the State Law Enforcement Planning Agency, the same shall mean and refer to the Division of Criminal Justice in the Department of Law and Public Safety.

#### GENERAL PROVISIONS

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

2. Unless otherwise specified in this Reorganization Plan, all transfers directed by this Reorganization Plan shall be effected pursuant to the "State Agency Transfer Act," P.L. 1971, c. 375 (C. 52:14D-1 et seq.).

3. If any provisions of this Reorganization Plan or the application thereof to any person, or circumstances, or the exercise of any power or authority hereunder is held invalid or contrary to law, such holding shall not affect other provisions or applications of the Plan which can be given effect without the invalid provisions or applications, or affect other exercises of power or authority under said provisions not contrary to law. To this end, the provisions of this Reorganization Plan are declared to be severable.

4. This Reorganization Plan is intended to protect and promote the public health, safety and welfare, and shall be liberally construed to obtain the objectives and effect the purposes thereof.

A copy of this Reorganization Plan was filed on November 30, 1992, 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 January 29, 1993, 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 January 29, 1993, should the Governor establish such a later date for the effective date of the Plan of Reorganization, or any part hereof, by Executive Order.

**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 pamphlet laws and in the New Jersey Register under the heading of "Reorganization Plans."

(a)

#### OFFICE OF THE GOVERNOR

Governor Jim Florio

#### Notice of Withdrawal of Reorganization Plan No. 002-1992, Reorganization of the Department of Law and Public Safety

**Take notice** that, by letter dated November 30, 1992 to the President of the Senate and the Speaker of the Assembly, Governor Jim Florio has withdrawn the plan for the reorganization of the Department of Law and Public Safety, Reorganization Plan No. 002-1992, which was submitted to and filed with the Senate and Assembly on October 1, 1992 (see 24 N.J.R. 3582(a)). The withdrawal of that Reorganization Plan, in conjunction with the November 30, 1992 filing with the Senate and Assembly of Reorganization Plan No. 004-1992, will permit prompt implementation of the remainder of the plan while the Legislature studies those aspects of the plan related to the Division of Alcoholic Beverage Control.

# RULE PROPOSALS

## PERSONNEL

### (a)

#### MERIT SYSTEM BOARD

#### Selection and Placement Appeals

#### Proposed Amendments: N.J.A.C. 4A:4-6.4 and 6.6

Authorized By: Merit System Board, Anthony J. Cimino,

Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d) and 11A:4-1 et seq.

Proposal Number: PRN 1992-529.

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

Tuesday, January 12, 1993, at 4 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 January 20, 1993 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

The proposed amendments to N.J.A.C. 4A:4-6.4 and 6.6 would transform the examination appeals process from a three-step into a two-step process. Open competitive and promotional candidates would have one level of review before appealing, if they wish, to the Merit System Board, for a final administrative determination. This proposal has been necessitated by a reorganization within the Department of Personnel. This reorganization has resulted, in turn, from an effort within the Department to consolidate its resources with a goal toward expediting the appeals system.

#### Social Impact

The proposed amendments would benefit open competitive and promotional candidates by expediting a thorough review of all disputes related to the examination process. In particular, any modifications that may have to be made to eligible lists as a result of changed scores or a finding of eligibility will occur earlier and be less disruptive to the selection and appointment process.

#### Economic Impact

The proposed amendments would be of economic benefit to both appointing authorities and candidates. Appointing authorities would more quickly obtain the services of qualified individuals who earlier were found ineligible or, through a scoring error, were unreachable for appointment. These individuals would also benefit through appointment to a new job or an increase in income without the longer wait attendant the current three-step appeals process.

#### Regulatory Flexibility Statement

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

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

4A:4-6.4 Review of examination items, scoring and administration

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

(f) The appropriate section of the Department to which the appeal is assigned shall review the appeal and render a written decision and include notification of a right of appeal to the [next level] **Merit System Board**.

[(g)] A party may appeal the first level decision to the next level, as indicated in the decision, within 20 days of its receipt.

1. The appeal shall include all information which was presented at the first level.

2. The appeal shall be reviewed and a written decision rendered which shall advise of a right to appeal to the Merit System Board.]

[(h)](g) A party may appeal the [second] **first** level decision to the Board within 20 days of its receipt.

1. The appeal shall contain all information which was presented to the [other levels] **first level**, plus a copy of the [decisions] **decision** below and shall be forwarded to the Merit System Board, CN 312, Trenton, New Jersey 08625.

2. The Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

[(i)](h) The Board may bypass any other level of appeal for its direct review.

#### 4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5), shall follow the following procedures: 1. An appeal must be filed within 20 days of notice of the action, decision or situation being appealed.

2. The appeal shall be filed with Department of Personnel as indicated on the notice advising of disqualification.

3. The appropriate section of the Department to which the appeal is assigned shall review the appeal and render a written decision and include notification of a right of appeal to the [next level] **Merit System Board**.

[(b)] A party may appeal the first level decision to the next level, as indicated in the decision, within 20 days of its receipt.

1. The appeal shall include all information which was presented at the first level.

2. The appeal shall be reviewed and a written decision rendered which shall advise of a right to appeal to the Merit System Board.]

[(c)](b) A party may appeal the [second] **first** level decision to the Board within 20 days of its receipt.

1. The appeal shall contain all information which was presented to the [other levels] **first level**, plus a copy of the [decisions] **decision** below and shall be forwarded to the Merit System Board, CN 312, Trenton, New Jersey 08625.

2. The Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

[(d)](c) The Board may bypass any other level of appeal for its direct review.

## EDUCATION

### (b)

#### STATE BOARD OF EDUCATION

#### Educational Improvement Plans in Special Needs Districts

#### Fiscal Requirements for District and School Educational Improvement Plans; Demonstrably Effective Improvement Strategies and Programs

#### Proposed New Rules: N.J.A.C. 6:8-9.4 and 9.8

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:7D-3, 27, 28, 32 and 35.

Proposal Number: PRN 1992-524.

Submit written comments by January 20, 1993 to:

Elise E. Greene-Smith, Rules Analyst  
 N.J. Department of Education  
 225 West State Street, CN 500  
 Trenton, New Jersey 08625-0500

The agency proposal follows:

#### Summary

The Quality Education Act of 1990 (QEA), P.L. 1990 c.52, with its subsequent amendments, c.62, provides increased funding for education to poorer urban districts in New Jersey. At the same time that the law increases fiscal resources to the poorer urban districts, designated the special needs districts, it also requires increased accountability for the use of the funds by these districts. The educational improvement plans (EIPs) required by law are the mechanisms for that increased accountability.

Recently, the State Board approved rules in N.J.A.C. 6:8-9 which strengthened the educational improvement plans to ensure district and school accountability and to encourage significant school reform in the special needs districts (See 24 N.J.R. 3535(b)).

The proposed rules amend the rules on educational improvement plans to specify minimum amounts of funds which must be used by districts and schools to implement demonstrably effective improvement strategies and programs. In addition, the proposed rules require the Commissioner to develop a list of such strategies and programs, and to submit the list for State Board approval annually.

A review of the amendments follows:

N.J.A.C. 6:8-9.4, Fiscal requirements for district and school educational improvement plans.

Proposed new rule N.J.A.C. 6:8-9.4 sets forth specific minimums for financial support of district and school EIPs. Subsection (a) requires at a minimum the dedication of 70 percent of all current expense budget increases above the State average cap percentage increase, to the implementation of demonstrably effective improvement strategies and programs.

Subsection (b) requires that, for 1993-94, \$50.00 per pupil be allocated to each school for the implementation of demonstrably effective improvement strategies and programs to be determined by the school planning team. Beginning in 1994-95, the per pupil allocation at the school level is raised to \$100.00.

Subsection (c) specifies that the Commissioner must reallocate funds, if he or she determines that the amount dedicated to demonstrably effective improvement strategies and programs at the district and/or school levels is insufficient.

N.J.A.C. 6:8-9.8, Demonstrably effective improvement strategies and programs

Proposed new rule N.J.A.C. 6:8-9.8 directs the Commissioner to develop a list of demonstrably effective improvement strategies and programs which districts and schools use to target funds and to develop their educational improvement plans.

Subsection (a) states that for the 1993-94 school year, this list shall be developed by the Commissioner in consultation with experts in the field.

Subsection (b) describes the procedure for subsequent years. Beginning with the 1994-95 school year, the Commissioner shall annually convene an advisory panel which includes researchers and practitioners to develop the list.

Subsection (c) and (d) allow districts to request special approval from the Commissioner to implement demonstrably effective strategies and programs which are not included on the list or to allocate some of the designated funds to address critical facilities needs.

#### Social Impact

The proposed new rules directly affect the over 260,000 students in the 436 schools in the 30 special needs districts. The proposed rules target funds within the educational improvement plans at the district and school level to demonstrably effective strategies and programs. These rules will increase accountability at the district and school levels to ensure that funds provided by the State will result in improved student outcomes.

#### Economic Impact

As a result of the proposed new rules, districts and schools will be required to target specific amounts of funds to the implementation of demonstrably effective improvement strategies and programs. The amount targeted at the district level will depend on the relationship between the State average cap percentage current expense budget increase and each district's current expense budget increase. At the school level, \$50.00 per pupil will be allocated during the 1993-94 school year for strategies and programs selected by the school planning team and \$100.00 per pupil, beginning with the 1994-95 school year. At \$50.00 per pupil, approximately \$13 million would be targeted at the school level during 1993-94. At \$100.00 per pupil approximately \$26 million

would be targeted at the school level from 1994-95 on. The amount targeted at the school level is included as part of the amount targeted at the district level.

#### Regulatory Flexibility Statement

The adoption of these proposed new rules will impose no reporting, recordkeeping or other compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. All requirements of these amendments affect only the 30 special needs public school districts in New Jersey.

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

#### 6:8-9.4 Fiscal requirements for district and school educational improvement plans

(a) **Special needs districts shall at a minimum dedicate 70 percent of all current expense budget increases above the state average cap percentage increase to the implementation and/or continuation of demonstrably effective improvement strategies and programs, identified as per N.J.A.C. 6:8-9.8. Part of this minimum amount shall be allocated to schools as specified in (b) below.**

(b) **For the 1993-94 school year, the district shall allocate a minimum of \$50.00 per pupil to each school for the implementation and/or continuation of demonstrably effective improvement strategies and programs selected by the school planning team. Beginning with the 1994-95 school year, the district shall increase the amount allocated to each school to a minimum of \$100.00 per pupil. The provisions of this subsection shall apply to all special needs districts, regardless of the amount of funds dedicated pursuant to (a) above.**

(c) **If the Commissioner determines that the amount of funds dedicated to demonstrably effective improvement strategies and programs at the district or school level is insufficient to meet student needs, the Commissioner shall order a reallocation pursuant to N.J.A.C. 6:8-9.1(e).**

Recodify existing N.J.A.C. 6:8-9.4 through 9.6 as 6:8-9.5 through 9.7 (No change in text.)

#### 6:8-9.8 Demonstrably effective improvement strategies and programs

(a) **For the 1993-94 school year, the Commissioner, in consultation with experts in the field, shall develop a list of demonstrably effective improvement strategies and programs in the areas listed in N.J.A.C. 6:8-9.3(a)6 to be used by special needs districts as per N.J.A.C. 6:8-9.4 in developing the 1993-94 educational improvement plans at the district and school levels.**

(b) **Beginning with the 1994-95 school year, special needs districts and schools shall select from a list of demonstrably effective improvement strategies and programs, in meeting the requirements in N.J.A.C. 6:8-9.4, to be developed as follows:**

1. **By July 15, 1993 and annually thereafter, the Commissioner shall convene an advisory panel which includes researchers and practitioners from institutions and agencies such as colleges and universities, educational laboratories, foundations, business and industry, social and human services agencies, and school districts to review and update the list of improvement strategies and programs.**

2. **By October 1, 1993 and annually thereafter, the advisory panel shall present its recommendations to the Commissioner.**

3. **After reviewing the recommendations of the advisory panel, the Commissioner shall present a recommended list of strategies and programs to the State Board for approval. Advanced notice(s) of the State Board meeting at which the recommended list of demonstrably effective improvement strategies and programs will be considered shall be published in the New Jersey Register.**

4. **Once the list of demonstrably effective improvement strategies and programs has been approved by the State Board, the list shall be published in the New Jersey Register.**

(c) **Districts may request special approval from the Commissioner to implement demonstrably effective improvement strategies and programs which are not included on the recommended list.**

(d) **Districts may request special approval from the Commissioner to allocate some of these designated funds to address critical facilities needs.**

# ENVIRONMENTAL PROTECTION AND ENERGY

(a)

## ENVIRONMENTAL REGULATION

### Storm Water Management

#### Proposed Readoption: N.J.A.C. 7:8

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 40:55D-1 et seq. and 58:10A-1 et seq.

DEPE Docket Number: 54-92-11.

Proposal Number: PRN 1992-527.

Submit written comments by January 20, 1993 to:

Richard J. McManus, Esq., Director  
Office of Legal Affairs  
Department of Environmental Protection  
and Energy  
CN 402  
Trenton, New Jersey 08625-0402

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), the Stormwater Management Rules, N.J.A.C. 7:8, are set to expire on February 5, 1993. The Department of Environmental Protection and Energy (Department) is proposing to readopt this chapter without change. The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purposes of which they were originally promulgated. It should be noted that the Department will be revising these rules as a component of its developing Statewide Nonpoint Source Management Program. However, to prevent the rules from expiring early next year, the Department is proceeding with the readoption without change.

As stated, the Department is in the process of developing a Statewide Nonpoint Source Program. The current stormwater management rules will be updated and expanded as a major aspect of this Program. The Department recognizes the importance of public input into this process, and, therefore, the Statewide strategy and the proposed revisions to the stormwater management rules will proceed through an interested party review process to receive public input. Notification of the interested party review appears in the Public Notice section of this issue of the New Jersey Register. This approach will take time; consequently, the existing rules are being readopted without change so that this chapter does not expire.

The existing Stormwater Management Rules were promulgated pursuant to the New Jersey Stormwater Management Act, P.L. 1981, c.32, which amends and supplements the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. These rules contain stormwater management requirements and controls designed to be preventive in nature and applied during the site plan review process. The rules require municipalities to develop stormwater management plans and ordinances within a specified timeframe provided that a 90 percent grant for the preparation of such a plan has been made available to the municipality. These rules apply to the development of all stormwater management plans and ordinances in the State of New Jersey.

N.J.A.C. 7:8-1 addresses the general requirements of the rules including the purpose and authority of the rules, definitions found in the rules, applicability of the rules, program information and the relationship of the rules to other permitting programs.

N.J.A.C. 7:8-2.1 outlines the objectives for the stormwater management rules. These objectives address both flooding issues as well as water quality concerns. N.J.A.C. 7:8-3.1 identifies the planning process that is required to be used for stormwater management. Planning for stormwater management is divided into two phases. In Phase I the general planning necessary to prepare a stormwater management control ordinance occurs. Under Phase II long term comprehensive planning of alternative preventive and remedial stormwater management measures and programs takes place. Each municipality must prepare a stormwater management control ordinance which implements the plan.

N.J.A.C. 7:8-2.3 requires that both the stormwater management plans and ordinances be submitted to the designated county planning agency

or county/water resources association, as appropriate, for approval. The implementing ordinance cannot take effect without county approval, although their failure to approve or disapprove the ordinance within 60 days will be deemed an approval.

N.J.A.C. 7:8-3.4 specifies the minimum standards for stormwater management that must be applied to major developments. Local plans and ordinances that require a greater degree of control are acceptable as long as the objectives of the rules are met. The standards address flood and erosion measures, water quality controls, detention basins in flood plains, alternatives to detention basins, and maintenance and repair procedures.

#### Social Impact

The readoption of these rules will cause no change from the status quo. The readopted rules will continue to have a positive effect upon those persons living in areas where a stormwater management plan and implementing ordinance are adopted. Where development occurs, flooding and pollutants from excess stormwater runoff may pose a threat to public health, life and property. The standards in these rules have been designed to: (1) offset potential flooding and nonpoint source pollution problems; (2) encourage water recharge; (3) protect the integrity of stream channels for their biological functions as well as for drainage; (4) reduce soil erosion from any new area of construction; and (5) to protect the adequacy of bridges and culverts. The citizens of New Jersey will benefit from these rules by experiencing less flooding resulting in a decrease in damages to health and property caused by flood events. Also, these rules help to control pollutants associated with stormwater. Improved water quality will result from this reduction in pollutant loadings, benefiting citizens throughout the State of New Jersey.

#### Environmental Impact

The readoption of these rules will cause no change from the status quo. The rules will continue to have a positive environmental impact by maintaining the mechanism for developing standards for stormwater management and control. Beach closings and water use impairments have been attributed to pollutants associated with stormwater runoff. Development and land use activities contribute greatly to types and amount of pollutants that are found in stormwater runoff. It is imperative to incorporate controls at the site plan review level when stormwater management controls can be implemented with the greatest impact and efficiency. Once development has occurred, these controls are much more costly and less effective. These rules, through the creation of a stormwater management plan and implementing ordinances, allow municipalities to require controls for developments at the site plan level. By incorporating stormwater control measures at the site planning level the necessary steps toward addressing pollution problems associated with stormwater runoff are taken before development begins. Controlling pollution associated with stormwater preserves the integrity of the environment and will lead to improvements in water quality providing a positive environmental impact to the citizens of New Jersey.

#### Economic Impact

The readoption of these rules will cause no change from the status quo. The rules will continue to have a minor economic impact on municipalities. Municipalities that were offered grant money and did not accept it may be required to adopt stormwater management plans and ordinances in the future without funding. Although these rules make noncomplying municipalities subject to possible penalties under the Water Pollution Control Act, municipalities can avoid such penalties by complying with N.J.S.A. 40:55D-93 et seq. and N.J.A.C. 7:8. In addition, compliance with approved stormwater management ordinances may result indirectly in slightly higher costs for future development. However, the end result is expected to be a reduction in losses from flood and environmental damages.

#### Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed readoption of N.J.A.C. 7:8 will not impose reporting, recordkeeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The stormwater management rules only apply to municipalities preparing stormwater management plans and ordinances in accordance with the New Jersey Stormwater Management Act, P.L. 1981, c.32, which amends and supplements the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Full text of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:8.

## (a)

**ENVIRONMENTAL REGULATION  
OFFICE OF REGULATORY POLICY  
Notice of Opportunity for Public Input  
Stormwater Management and Nonpoint Source  
Pollution Control**

Take notice that the New Jersey Department of Environmental Protection and Energy is hereby seeking public input on its plans to formulate revisions to the existing Stormwater Management Regulations (N.J.A.C. 7:8) to adequately address nonpoint source pollution that emanates from stormwater runoff. The Department is seeking public comment that will be used to amend the existing Stormwater Management Regulations in developing comprehensive stormwater management requirements as a component of its Statewide Nonpoint Source Management Program.

Stormwater runoff is a fundamental component of the hydrologic cycle. Statewide comprehensive stormwater management, effectively implemented on a watershed basis, is essential for maintaining watershed hydrology and protecting, maintaining, and enhancing water quality throughout the State. Stormwater can cause problems when land development creates impervious surfaces in a watershed that destroys natural drainage patterns to surface waters and disrupts ground water infiltration. These changes not only increase the total volume of stormwater runoff and the rate of discharge to receiving waters, but may also result in increased pollutant loads picked up by that runoff. Comprehensive stormwater management considers all of these variables together within the context of a regional plan.

Estimates based on preliminary work done in 94 municipalities located within Monmouth, Ocean, Atlantic and Cape May Counties suggest that in those towns alone there are more than 7,000 stormwater outfalls discharging varying amounts of nonpoint source pollutants into the State's estuaries and the ocean. The types of pollutants discharged from these stormwater outfalls may be as diverse as lawn fertilizers, bacteria, oil and grease, solvents, road salts, animal feces, and toxics found in many common household items. The sources and types of these pollutants are directly related to diverse lifestyles and land uses and often emanate from the way we conduct ourselves in all aspects of our lives, and not from easily regulated discrete sources.

The large number of stormwater discharges and diffuse nature of nonpoint source pollution have proven to be scientific and technically complex problems. The potentially small contribution of each pollution source to stormwater runoff also presents a difficult set of regulatory and enforcement issues. It is precisely this diffuse nature of stormwater runoff and nonpoint source pollution that raises important considerations about attempting to apply traditional regulatory approaches to control them. Through this public notice and review the Department is seeking recommendations for alternative approaches for controlling nonpoint source pollution carried by stormwater runoff.

Water quality and effluent standards established in existing regulations are generally designed to control relatively constant wastewater flows during dry weather conditions and cannot be easily applied to stormwater discharges. Stormwater discharges, highly variable both in volume and pollutant concentration, require careful monitoring of particular rain events over time. Stormwater impacts vary with the timing and intensity of each event. Reliable and valid water samples are frequently difficult to obtain. Pollutant loadings typically will vary seasonally, but are also influenced by the intensity, duration, and frequency of storms, as well as by different land uses.

Aside from regulatory concerns, existing implementation of stormwater management practices is often inadequate for effective nonpoint source control because too much emphasis has historically been placed on strict engineering solutions. In current practice, stormwater control is simply addressed on a site-by-site analysis. Detention basins, or other structural devices, are then incorporated into a site plan in its final stages of development. These devices function primarily to control runoff volume with little or no design consideration for on-site NPS control and comprehensive watershed quality and hydrology. The devices are then often forgotten after construction and not maintained. Over time, water quality degradation continues to increase. Ultimately, these devices fail causing flood damage and further water quality impacts with substantial cleanup

and repair costs. This common occurrence has made the Department increasingly aware that it is necessary to integrate stormwater management and nonpoint source pollution control early into the development planning and design process to account for, and mitigate, potential pollution and flooding problems efficiently and cost-effectively.

The New Jersey Stormwater Management Act (P.L. 1981, c. 32) enacted in 1981 calls for municipalities to develop stormwater management plans and ordinances. Originally, the Stormwater Management Regulations (N.J.A.C. 7:8) developed by DEPE focused on flood control. The rules were later expanded to begin to address water quality as well.

The success of the program has been hindered administratively by the stipulation that municipalities had to comply within certain timeframes only if they received a grant for 90 percent of the cost. The grants that are made available to municipalities do not exceed \$5,000. Present rules may require an expansion in scope to lead to more comprehensive watershed planning aimed at pollution prevention. In this way, the Stormwater Management Act may provide an important link between the Department and municipalities to explore new directions and initiatives for meeting current stormwater and nonpoint source management needs in the State.

One of the fundamental revisions to the existing regulations could be to require the development of regional and municipal stormwater management and nonpoint source control program plans and ordinances within well defined timeframes. Depending on the extent of public interest expressed during this interested party review and to effectuate revision recommendations, legislative amendments to the Stormwater Management Act (P.L. 1981, c. 32) also may be pursued by the Department.

Another option for revising the regulations would require that the development of regional and municipal plans be coordinated between municipalities through the creation of regional stormwater management agencies. These agencies would function to develop and administer regional stormwater management and nonpoint source control plans. Implementation of these plans would be coordinated with other regional agencies and between municipalities through the development of consistent municipal stormwater and nonpoint source control plans adopted into local subdivision and site plan approval processes. The regional agencies also would ensure long term maintenance and funding for future program implementation. This is only one option and there are others that should be considered and explored.

Under this proposal, the regional agencies would be organized as stormwater management utilities and would function in a similar capacity as existing utility authorities that manage other sewerage facilities around the State. As with other public utilities the proposed stormwater utilities would provide a service with the ability to charge for those services; usually in the form of a user charge. All fees charged would be obligated into a dedicated fund to finance local and regional stormwater and nonpoint source management activities.

It is anticipated that stormwater utilities activities would include basic inspection and maintenance services for storm sewer system cleaning and necessary repairs on a scheduled year-round basis. Continued awareness and support for stormwater and NPS management would be promoted by the utilities through effective educational programs and public participation mechanisms. In addition, the utilities would provide technical assistance to municipalities and review and approve all new stormwater management facilities constructed within their region to ensure consistency with regional plans. The utilities also would identify existing stormwater systems needs and establish programs for retrofitting them for NPS control and water quality improvement.

In anticipation of these rule revisions, and as part of the Department's ongoing Statewide NPS Management Program development activities, the Department has been developing technical guidance that may be used by municipalities and regional utilities to meet the proposed revision requirements to the regulations. "The Stormwater and Nonpoint Source Pollution Control Best Management Practices Manual" is an update and major revision to the existing guidance that was prepared for the original Stormwater Management Regulations, *A Guide to Stormwater Management Practices in New Jersey*. Unlike the original guidance the new Manual represents a change in thinking about management needs for stormwater and NPS pollution. The Manual identifies proven technologies and concepts in planning that should be considered for effective stormwater management and NPS control.

The guidance procedures outlined in the manual are most applicable to new development and redevelopment. However, certain concepts and practices contained in it can and should be applied to correct problems

in existing developments. Recognizing the different stormwater and best management practice control needs across the State, the manual allows for flexibility in the design of stormwater management plans and provides guidance for tailoring NPS and stormwater control mechanisms to specific local situations.

The structure of the manual follows the format of an effective stormwater and nonpoint source control program. Best management practices which address water quality and quantity issues through preventative measures are given first priority. Land use measures, density controls, site design, pollutant loading controls, and waste minimization are preferred over managing stormwater with "traditional" structural control devices. All of these components must be integrated into a stormwater management system to ensure effectiveness. In addition, these factors cannot be viewed within the physical boundaries of the site, but should be placed within a regional watershed context. Finally, best management practices are not permanent and self sustaining. Long-term viability can only be provided by regular maintenance programs and reinforcing education.

The manual presents general strategies for connecting best management practices selection and implementation to resource protection. An introduction to land uses and associated pollutant loadings as well as common pollutants and their potential impacts also is provided.

To implement the essential technical components contained in the new Manual, the Department is developing a revised Model Stormwater Ordinance to assist municipalities with their adoption of necessary stormwater and NPS control requirements into local land use law. The purpose of the ordinance is to identify appropriate onsite measures that can address adverse stormwater impacts caused by land development which can be implemented through the site plan and subdivision review process, and to establish responsibility for continued maintenance, repair and safety of stormwater management facilities prior to the construction of such facilities.

In addition the Department is presently developing a watershed priority list for the State. This prioritization primarily will serve as the basis for coordinating future environmental program direction within the Department and will delineate functional watershed areas that will be targeted for implementation activities. It is proposed that regional stormwater utilities be established to coincide with these delineated priority watershed areas.

Interested persons are encouraged to comment on the proposed revisions described above. Other relevant issues and concerns that commenters consider to be pertinent to the proposal also will be accepted for review and consideration. In particular, during this Interested Party Review the Department will use the comments it receives for answering questions that coincide with the following topical areas:

- **Technical Requirements**—Are existing Statewide stormwater management requirements adequate for regional control? What should be added or deleted? Do most municipalities maintain effective and consistent stormwater controls?

- **Delegation**—What agencies or levels of government are most appropriate to administer regional stormwater management requirements? Are there existing agencies that already implement, and could easily assume responsibility for, regional stormwater management or, would new structures need to be organized? What responsibility should these organizations have?

- **Authority**—What authority should stormwater agencies be empowered with to effectively carry out regional responsibilities? Should they have total authority or should it be shared with other organizations?

- **Coordination**—How should regional stormwater management requirements be coordinated? What role should the state, counties and municipalities play in a regional scheme? How do these roles relate to existing stormwater requirements and implementation mechanisms? Are there existing policies or requirements that make regional stormwater management difficult? If so, what changes should be made and by whom? Are there existing policies and requirements that work well and should be considered for implementing regional stormwater management?

- **Funding**—How should regional stormwater management be financed? What types of fiscal arrangements need to be established in the State? Who should be eligible for funding? Should funding be derived from fees or other sources? Are there estimates on how much capital is needed to initiate regional stormwater management programs within a particular drainage area?

As part of the Department's ongoing Statewide NPS Management Program development, the following materials have been prepared and are available. This information may be useful for providing commenters with additional insights to the direction the Department is presently following and assist them with answering the above questions. They include:

1. Nonpoint Source Assessment and Management Program Plan.
2. Stormwater and Nonpoint Source Pollution Control Best Management Practices Manual (draft).
3. Model Stormwater Control Ordinance (draft).
4. Industrial Stormwater Permitting Regulations.
5. Phase I & II Sewage Infrastructure Improvement Act Regulations (Stormwater Drainage System Mapping and Monitoring Requirements for Certain Coastal Communities).
6. Coastal Zone Management Draft 6217 Program Guidance—Coastal Nonpoint Source Pollution Control.
7. Coastal Zone Management "G" Guidance—Management Measures for Sources of Nonpoint Pollution in Coastal Waters.
8. Federal Register, 40 CFR Part 122: National Pollutant Discharge Elimination System, Request for Comment on Alternative Approaches for Phase II Stormwater Program.

To obtain copies of this information please direct all requests to the Office of Regulatory Policy at (609) 292-2113.

The Department will conduct a **public meeting** on Wednesday, January 13, 1993 at 1:00 P.M. in the Public Hearing room located on the first floor of the Department of Environmental Protection and Energy building at 401 E. State Street, Trenton, New Jersey, to receive both written and oral comment on this interested party review.

**Additional written comment** may be submitted to the Department until January 20, 1993 addressed to:

Martin Bierbaum, Administrator  
Office of Regulatory Policy  
Department of Environmental Protection and Energy  
CN 423  
Trenton, NJ 08625-0402

(a)

## ENVIRONMENTAL REGULATION

### Notice of Administrative Corrections

#### Surface Water Quality Standards

#### Proposed Recodification with Amendments: N.J.A.C. 7:9-4 to 7:9A-1

**Take notice** that the Department of Environmental Protection has discovered printing errors in the proposed text of N.J.A.C. 7:9B-1.14 and 1.15 as published in the November 2, 1992 New Jersey Register at 24 N.J.R. 3983(a). At N.J.A.C. 7:9B-1.14(c)4, the spelling of "pH" is corrected, and the duplication of "units" eliminated; at (c)11ii(2), the duplication of the water classifications is deleted; and at (c)13ci, the human health criterion for FW2 waters is corrected to "0.282(hc)." The listing of Worthington State Forest at N.J.A.C. 7:9B-1.15(h) is incorrectly shown in brackets as a proposed deletion, which it is not. Pursuant to N.J.A.C. 1:30-2.7, this notice of administrative correction is published to correct these errors.

**Full text** of the corrected proposed rules follows, with portions subject to correction appearing as they should have been published:

[7:9-4.14]7:9B-1.14 Surface water quality criteria

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

(c) Surface Water Quality Criteria for FW2, SE and SC Waters:

Surface Water Quality Criteria for FW2, SE and SC Waters  
(Expressed in maximum concentrations unless otherwise noted)

| Substance   | Criteria  | Classifications                  |
|---|---|----------------------------------|
| 1.-4. (No change from proposal.)                                      |   |                                  |
| [5.]4. pH (Standard Units)  | i. 6.5-8.5<br>ii. Natural pH conditions shall prevail.  | FW2, All SE<br>SC                |
| 6.-11. (No change from proposal.)                                     |   |                                  |
| [12.]11. Temperature and Heat Dissipation Units                       | i. (No change.)<br>ii. Heat Dissipation Areas<br>(1) (No change from proposal.)<br>(2) Lakes, Ponds, Reservoirs Bays or Coastal Waters: Heat dissipation areas will be developed on a case-by-case basis.   | FW2-TM,<br>FW2-NT,<br>All SE, SC |
| 13. (No change from proposal.)  |   |                                  |
| [14.]13. Toxic Substances (ug/l):<br>NOTE: (No change from proposal.) |   |                                  |
| i.-c. (No change in text from proposal.)                              |   |                                  |
| ci. Pentachlorophenol   | (1) e(1.005(pH)-4.830)(a); e(1.005(pH)-5.290)(c); 0.282(hc)<br>(2) (No change from proposal.)   | All FW2                          |
| cii.-cxxiv. (No change from proposal.)                                |   |                                  |
| 15. (No change from proposal.)  |   |                                  |
| (d) (No change from proposal.)  |   |                                  |
| [7:9-4.15]7:9B-1.15   | Surface water classifications for the waters of the State of New Jersey   |                                  |
| (a)-(g) (No change from proposal.)                                    |   |                                  |
| (h) FW1 waters are listed in Table 6 by tract within basins:          |   |                                  |
|   | Table 6   |                                  |
| ...<br>DELAWARE RIVER BASIN<br>...<br>WORTHINGTON STATE FOREST        |   |                                  |
|   | [DUNNFIELD CREEK WATERSHED<br>Dunnfield Creek to I-80]<br><b>DELAWARE RIVER WATERSHED</b><br>Sunfish Pond[,] and its outlet stream to the Delaware River [and all] All unnamed waters located entirely within the boundaries of the Worthington State Forest<br><b>DUNNFIELD CREEK WATERSHED</b><br>Dunnfield Creek to I-80 |                                  |
| ...<br>(i) (No change from proposal.)                                 |   |                                  |

(a)

**NEW JERSEY WATER SUPPLY AUTHORITY  
Schedule of Rates, Charges and Debt Service  
Assessments for the Sale of Water from the  
Delaware and Raritan Canal-Spruce Run/Round  
Valley Reservoirs System**

**Proposed Amendments: N.J.A.C. 7:11-2.2, 2.3 and 2.9**

Authorized By: Scott A. Weiner, Chairman, New Jersey Water Supply Authority and Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 55-92-11.

Proposal Number: PRN 1992-525.

In accordance with N.J.A.C. 7:11-2.11(a)4, a **pre-public hearing meeting** concerning this proposal will be held on:

Tuesday, January 5, 1993 at 10 A.M.

New Jersey Water Supply Authority Administration Building  
Route 31, Clinton, New Jersey 08809

A **public hearing** concerning this proposal will be held on:

Wednesday, February 3, 1993 at 10 A.M. to close of comments  
New Jersey Water Supply Authority Canal Field Office  
Route 579 (Intersection with Interstate Route I-95)  
Ewing Township, Mercer County, New Jersey 08628

Submit written comments on or before March 12, 1993 to:

Richard J. McManus, Esq.  
Administrative Practice Officer  
Office of Legal Affairs  
Department of Environmental Protection and Energy  
401 East State Street, 4th Floor  
CN 402  
Trenton, New Jersey 08625; and  
Rocco D. Ricci, P.E.  
Executive Director  
New Jersey Water Supply Authority  
Post Office Box 5196  
Clinton, New Jersey 08809

The Basis and Background document, which is available from the Authority at the address given below, explains in further detail the financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.  
Executive Director  
New Jersey Water Supply Authority  
Post Office Box 5196  
Clinton, New Jersey 08809

The agency proposal follows:

**Summary**

The New Jersey Water Supply Authority (Authority) is proposing to amend its Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal-Spruce Run/Round Valley Reservoirs System (System), to cover operation and maintenance costs for the fiscal year commencing July 1, 1993. It is also proposing to adjust its existing annual debt service assessments on outstanding loans beginning July 1, 1993.

The General Rate Schedule for Operations and Maintenance in N.J.A.C. 7:11-2.2, was last adjusted effective July 1, 1992 (increased from \$109.21 to \$112.72 per million gallons (mg)) to cover the operation expenses of the System.

Projected operating costs for fiscal year 1994 now indicate that an operations and maintenance rate component of \$116.99 will be needed starting July 1, 1993. Most of the increased operations and maintenance expenses are due to the increased cost for capital equipment and contributions to the Depreciation Reserve. The operations and maintenance expense component sales base for fiscal year 1993 was 152.296 million gallons per day (mgd). The Authority anticipates that the applicable operations and maintenance sales base for Fiscal Year 1994 will be 151.053 mgd. (decreased).

The Debt Service Assessment rate for the 1969 bonds involved in the construction of the Spruce Run/Round Valley Reservoir System Outlet Pipeline and Dam Rehabilitation Projects was based on a sales base of

151.801 mgd. for fiscal year 1993. The Authority anticipates that the applicable sales base for fiscal year 1994 will be 150.558 mgd. (decreased). Application of this sales base results in an increase (.11) in the per mg rate component from \$13.90 to \$14.01 per mg for the 1969 bonds (N.J.A.C. 7:11-2.3(b)).

The debt service assessment rate for the 1981 water supply bond funds used to finance the removal of sediment from 32 miles of the Delaware and Raritan Canal was previously adjusted effective July 1, 1992 (Fiscal Year 1993) based on a sales base of 152.226 mg. The Authority anticipates that the applicable sales base for fiscal year 1994 will be 150.983 mgd. Application of this sales base to a slight reduction in the required debt service payment results in a increase (.25) in the per mg rate component from \$33.17 to \$33.42 per mg for the 1981 bonds (N.J.A.C. 7:11-2.3(c)).

The debt service assessment rate for the 1988 water system revenue bonds issued to finance the Authority's current capital improvement program was based on a sales base of 152.226 mgd. for fiscal year 1993. The Authority anticipates that the applicable sales base for fiscal year 1994 will be 150.983 mgd. resulting in increases in the required debt service component from \$55.07 to \$57.38 per mg for fiscal years 1994 and 1995 before decreasing to \$57.34 for fiscal years 1996 and 1997. However, it should be noted that this Debt Service Assessment was previously scheduled to increase to \$56.91 in fiscal years 1994 and 1995 before decreasing to \$56.87 in fiscal years 1996 and 1997 due to changes in the required repayment schedule.

Final action on the rate adjustment is scheduled for the April 5, 1993 meeting of the Authority.

**Social Impact**

The proposed amendments will have minimal social impact. The proposed amendments represent the Authority's efforts to ensure that rates for raw water withdrawn, diverted or allocated from the Delaware and Raritan Canal and the Spruce Run/Round Valley Reservoir Complex are equitably assessed and sufficient to provide the revenues required by the Authority.

The 11 billion gallon capacity Spruce Run Reservoir and the 55 billion gallon capacity Round Valley Reservoir in Hunterdon County in conjunction with the 60 mile long Delaware and Raritan Canal in Hunterdon, Mercer, Somerset, and Middlesex Counties provide both active and passive recreational opportunities to the public in addition to a basic raw water supply for approximately 1,200,000 individuals living in central New Jersey.

**Economic Impact**

The proposed adjustments to the rate schedule will result in a net increase in the total charge for the raw water supplied from the System ranging from \$6.94 in fiscal years 1994 and 1995 to \$6.90 in fiscal years 1996 and 1997 per mg. It is estimated that the annual impact of the proposed wholesale water rate increase on the typical household will amount to \$.69 in fiscal years 1994 through 1997 provided these increased costs are passed through by the wholesale water customers without further fees.

**Environmental Impact**

The adequate financing of systems upkeep and operation, which is provided by the proposed amendments, will result in a positive environmental impact. Properly maintained Authority systems and operations protect not only the water users but also the surrounding environment of the Spruce Run/Round Valley Reservoir and the Delaware and Raritan Canal.

The reservoirs and canal also provide habitat for many species of waterfowl and wildlife in an increasingly urbanized region of the State.

The Authority's Raritan Basin System is capable of supplying a dependable water supply of 225 mg per day throughout a re-occurrence of the worst drought of record while still maintaining adequate river flows through release of stored waters to support the ecological systems and wildlife which are dependent upon adequate stream flows in the River Basin.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that these amendments would not impose reporting, recordkeeping or other compliance requirements on small businesses because the amendments affect only the rate charged to users for water purchased from the Authority. The water companies which contract to purchase water from the Authority and

which are impacted by these amendments do not qualify as "small businesses" pursuant to N.J.S.A. 52:14B-16 et seq.

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

7:11-2.2 General Rate Schedule for Operations and Maintenance

(a) The General Rate Schedule for Operations and Maintenance per million gallons listed at (b) below is based on estimated annual operations and maintenance expenses consisting of all current costs, obligations and expenses of, or arising in connection with, the operation, maintenance and administration of the System, and minor additions or improvements thereof or thereto, or the performance of any water purchase contract, including but not limited to, all of the following.

1.-7. (No change.)

8. Any other current costs, expenses or obligations required to be paid by the Authority under the provision of any agreement or instrument relating to bonds, other indebtedness of the Authority or by law. The current sales base of [152.296] **151.053** million gallons per day has been used in setting the rate listed in (b) below.

(b) General Rate Schedule for Operations and Maintenance:

|                               |                          |
|-------------------------------|--------------------------|
| Allocation                    | Rate/Million Gallons     |
| Million Gallons per Day (MGD) | [112.72] <b>\$116.99</b> |

7:11-2.3 Debt Service Assessments

(a) (No change.)

(b) The debt service assessment rate for the 1969 Water Conservation Bonds shall be based on a sales base of [151.801] **150.558** million gallons per day. This debt service assessment rate does not apply to Delaware and Raritan Canal customers in the Delaware River Basin.

1. 1969 Water Conservation Bond Funds:

|                             |                               |                        |
|-----------------------------|-------------------------------|------------------------|
| Period                      | Allocation                    | Rate/Million Gallons   |
| [7/1/92]7/1/93 to 6/30/2002 | Million Gallons per Day (MGD) | [13.90] <b>\$14.01</b> |

(c) 1981 Water Supply Bond funds were borrowed from the State Treasurer to retire the tax exempt commercial paper used for temporary financing of the Delaware and Raritan Canal sediment removal program. The following Debt Service Assessment rate, based on a sales base of [152.226] **150.983** million gallons per day, in addition to that included in (b) above, will be applied to all customers:

|                              |                               |                          |
|------------------------------|-------------------------------|--------------------------|
| Period                       | Allocation                    | Rate/Million Gallons     |
| [7/1/92]7/1/93 to 10/30/2006 | Million Gallons per Day (MGD) | [\$33.17] <b>\$33.42</b> |

(d) The following Debt Service Assessment rate for the 1988 Water System Revenue Bonds, based on a sales base of [152.226] **150.983** million gallons per day, in addition to that included in (b) and (c) above, will be applied to all customers:

|                            |                               |                          |
|----------------------------|-------------------------------|--------------------------|
| Period                     | Allocation                    | Rate/Million Gallons     |
| [7/1/92 to 6/30/93         | Million Gallons per Day (MGD) | \$55.07]                 |
| 7/1/93 to 6/30/95          | Million Gallons per Day (MGD) | [\$56.91] <b>\$57.38</b> |
| 7/1/95 to [6/30/96]6/30/97 | Million Gallons per Day (MGD) | [\$56.87] <b>\$57.34</b> |

7:11-2.9 Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly Standby Charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

Note: MGD = million gallons daily; GPM = gallons per minute.

1. For Delaware and Raritan Canal Standby Contracts within the Delaware River Basin:

|  |   |
|--|---|
| Maximum withdrawal capacity                  | Charge per month  |
| Each 1 MGD (700 GPM)<br>or fraction thereof. | [\$112.72] <del>\$116.99</del> plus annual debt<br>service assessment rate for 1981 Water<br>Supply Bonds and 1988 Water System<br>Revenue Bonds. |

2. For Standby Contracts within the Raritan River Basin:

|  |   |
|--|---|
| Maximum withdrawal capacity                  | Charge per month  |
| Each 1 MGD (700 GPM)<br>or fraction thereof. | [\$112.72] <del>\$116.99</del> plus annual debt<br>service assessment rate for 1969 Water<br>Conservation Bonds, 1981 Water Sup-<br>ply Bonds and 1988 Water System Re-<br>venue Bonds. |

## (a)

**NEW JERSEY WATER SUPPLY AUTHORITY  
Schedule of Rates, Charges and Debts Service  
Assessments for the Sale of Water from the  
Manasquan Reservoir Water Supply System  
Proposed Amendments: N.J.A.C. 7:11-4.3, 4.4 and  
4.9**

Authorized By: Scott A. Weiner, Chairman, New Jersey Water  
Supply Authority and Commissioner, Department of  
Environmental Protection and Energy.

Authority: N.J.S.A. 58:1B-7.

DEPE Docket Number: 59-92-11.

Proposal Number: PRN 1992-526.

In accordance with N.J.A.C. 7:11-4.13(a)4, a **pre-public hearing meet-  
ing** concerning this proposal will be held on:

Thursday, January 14, 1993 at 10 A.M.  
New Jersey Water Supply Authority  
Manasquan Reservoir System Administration Building  
Hospital Road, Wall, New Jersey 07719

A **public hearing** concerning this proposal will be held on:  
Wednesday, February 10, 1993 at 7 P.M. to close of comments  
New Jersey Water Supply Authority  
Manasquan Reservoir System Administration Building  
Hospital Road, Wall, New Jersey 07719

Submit written comments on or before March 19, 1993 to:  
Richard J. McManus, Esq.  
Administrative Practice Officer  
Office of Legal Affairs  
Department of Environmental Protection and Energy  
401 East State Street, 4th Floor  
CN 402  
Trenton, New Jersey 08625; and  
Rocco D. Ricci, P.E.  
Executive Director  
New Jersey Water Supply Authority  
Post Office Box 5196  
Clinton, New Jersey 08809

The Basis and Background document, which is available from the  
Authority at the address given below, explains in further detail the  
financial justification for the proposed revised rate schedule.

Rocco D. Ricci, P.E.  
Executive Director  
New Jersey Water Supply Authority  
Post Office Box 5196  
Clinton, New Jersey 08809

The agency proposal follows:

**Summary**

The New Jersey Water Supply Authority (Authority) is proposing to  
amend its Schedule of Rates, Charges and Debt Service Assessments  
for the Sale of Water from the Manasquan Reservoir Water Supply  
System (System), to cover operation and maintenance costs for the fiscal  
year commencing July 1, 1993. It is also proposing to adjust its existing  
debt service assessment on system loans effective July 1, 1993.

The Operations and Maintenance Expense Component in N.J.A.C.  
7:11-4.3, was last adjusted effective July 1, 1992 (increased from \$314.75  
to \$341.47 per million gallons (mg)) to cover the operation expenses  
of the System.

Projected operating costs for fiscal year 1994 indicate that an opera-  
tions and maintenance rate component of \$326.20 (decreased) will be  
needed starting July 1, 1993. The projected operations and maintenance  
expenses for employee salary requirements; employee benefits costs;  
electrical energy costs; maintenance of equipment; service and  
maintenance contracts; insurance; and capital equipment costs have  
increased for fiscal year 1994. In addition, the General and Adminis-  
trative expenses in the operations and maintenance budget are projected  
to increase for fiscal year 1994. However, these increased costs are more  
than offset by reduced contributions to various reserve funds and projected  
increases in miscellaneous revenues/credits resulting in a decrease  
in the overall Operations and Maintenance budget for fiscal year 1994.  
The operations and maintenance expense component sales base will  
remain unchanged at 16.097 mgd for fiscal year 1994.

The debt service assessment in N.J.A.C. 7:11-4.4 will decrease from  
\$745.20 to \$740.40 per million gallons on July 1, 1993 and increase from  
\$740.40 to \$772.82 per million gallons on February 1, 1994 in accordance  
with the debt service coverage schedule specified in the project financing  
program.

The calculation of the operations and maintenance component as well  
as the debt service assessments is based upon a contractual sales base  
of 16.097 million gallons per day as of July 1, 1993.

Final action on the rate adjustment is scheduled for the April 5, 1993  
meeting of the Authority.

**Social Impact**

The proposed amendments will have a positive social impact and  
effect. The proposed amendments represent the New Jersey Water  
Supply Authority's efforts to ensure that rates for the untreated water  
purchased from the Manasquan Reservoir System are equitably assessed  
to all purchasers and sufficient to provide the revenues required by the  
Authority.

This four billion gallon capacity reservoir provides a needed water  
supply to keep pace with the continuing growth in Monmouth County  
while reducing the dependence of water purveyors on the stressed ground  
water resources of the region.

**Economic Impact**

The proposed rate adjustments will result in a total charge for the  
uninterruptible untreated water supply from the Manasquan Reservoir  
System of \$1,066.60 per million gallons (\$326.20 for operation and  
maintenance plus \$740.40 for debt service) starting July 1, 1993 and  
\$1,099.02 per million gallons effective February 1, 1994 (\$326.20 for  
operation and maintenance plus \$772.82 for debt service).

The proposed adjustments to the rate schedule will result in a net  
decrease of \$20.07 per million gallons in the total charge for the raw  
water supplied from the System effective July 1, 1993. A planned increase  
in the debt service payment of \$32.42 will occur on February 1, 1994  
to provide for 120 percent debt service coverage as required by the  
project financing agreements. It is estimated that the annual impact of  
the proposed wholesale water rate adjustment on the typical household  
will amount to a \$.66 decrease provided the decreased costs are passed  
through by the wholesale water customers without further fees.

**Environmental Impact**

The adequate financing of upkeep and operation of the Manasquan  
Reservoir System, which is provided by the proposed amendments, will  
result in a positive environmental impact. Sixty percent of the existing  
water supply in Monmouth County was derived from stressed ground  
water resources. The Manasquan Reservoir System relieves the use of  
a portion of the existing ground water supply and meets the needs of  
a developing area. This new water supply system has a very important  
and positive environmental impact since its operation reduces the stress  
on the valuable ground water resources of the region by providing an  
alternate surface water supply. By reducing the pumping of ground water,  
salt water intrusion will be limited and present ground water levels will  
not be further reduced.

The 30 million gallon per day water supply which the system can  
provide helps to ameliorate the urgent need to protect the region's  
threatened ground water resources from further depletion. In addition,  
the 740 acre Manasquan Reservoir provides for the protection of water-  
fowl and wildlife in the region through several protected wetland sites  
for the rearing of waterfowl and wildlife.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Authority has determined that these amendments will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the amendments affect only municipalities and major water purveyors all of which fail to qualify as small businesses as defined in N.J.S.A. 52:14B-16 et seq.

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

- 7:11-4.3 Operations and maintenance expense component
  - (a)-(b) (No change.)
  - (c) Operations and Maintenance Expense Component:

| Effective Date     | Rate/Million Gallons<br>(based upon a 16,097 mg<br>per day sales base) |
|--------------------|--|
| July 1, [1992]1993 | [\$341.47] <b>\$326.20</b>   |

- 7:11-4.4 Debt service cost component
  - (a) (No change.)
  - (b) The following Debt Service rates apply to all water purchasers who entered into a water purchase contract before July 1, 1990, the date upon which the Authority commenced operation of the Manasquan Reservoir System (Initial Water Purchase Contract) and began to make uninterrupted service available to the purchasers ("System Operation Date").

| Period                                    | Rate/Million Gallons       |
|---|----------------------------|
| [7/1/92 to 1/31/93 (Coverage 110 percent) | \$712.80                   |
| 2/1/93 to 6/30/93 (Coverage 115 percent)  | \$745.20]                  |
| 7/1/93 to 1/31/94 (Coverage 115 percent)  | [\$745.51] <b>\$740.40</b> |
| 2/1/94 to 6/30/94 (Coverage 120 percent)  | [\$777.92] <b>\$777.82</b> |
| [7/1/94 (Coverage 120 percent)            | \$777.67]                  |

- (c)-(d) (No change.)
- 7:11-4.9 Standby charge
 

A purchaser classified under standby service shall pay a monthly minimum charge based on the capacity of the purchaser's withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge based on charges as set forth under N.J.A.C. 7:11-4.3 and 4.4

| Maximum withdrawal capacity                    | Charge per month  |
|--|---|
| Each 1 MGD (700 GPM) or fraction debt thereof. | [\$341.47] <b>\$326.20</b> plus annual service assessment rate established in N.J.A.C. 7:11-4.4 |

**(a)**

**ENGINEERING AND CONSTRUCTION ELEMENT  
Flood Plain Redelineation of Green Brook  
Proposed Amendment: N.J.A.C. 7:13-7.1**

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.  
 Authority: N.J.S.A. 13:1B-3, 58:16A-50 et seq. and 58:10A-1 et seq.  
 DEPE Docket Number: 57-92-11.  
 Proposal Number: PRN 1992-535.

A public hearing concerning this proposal will be held on Thursday, January 7, 1993 at 11 A.M. at:  
 Department of Environmental Protection and Energy  
 Engineering and Construction Element  
 5 Station Plaza, Second Floor  
 501 East State Street  
 Trenton, New Jersey 08609

Submit written comments by February 19, 1993 to:  
 Richard McManus, Director  
 Office of Legal Affairs  
 Department of Environmental Protection and Energy  
 CN 402  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The New Jersey Department of Environmental Protection and Energy (Department) proposes to amend N.J.A.C. 7:13-7.1, Delineated Floodways, by revising the present floodway limits, flood delineations and flood profiles of Green Brook from approximately 550 feet upstream of Route 22 at stream station 1653+95, upstream 1510 feet to the upstream face of the Park Avenue Overpass near Bonnie Burn Road at stream station 1669+05 within Scotch Plains, Union County and Watchung Borough, Somerset County. This proposal to redelinate the aforementioned portion of Green Brook is based on a reanalysis of the original HEC2 computerized river hydraulic modelling with recent field surveyed cross sections performed by Thomas J. Olenik, Ph.D., P.E. of Semester Consultants, Inc. on behalf of Dominick Verdic, Jr. The HEC2 river hydraulic modelling determines water elevations and flood profiles for various flood events as well as floodway limits. The addition of field surveyed cross sections in the model better defines the stream channel and overbanks, therefore making the redelineation more accurate than the original delineation. Review of the redelineation maps indicate that the 100 year and the NJ Flood Hazard Area Design flood levels are generally one foot lower in the redelineated reach of stream than the original study. The floodway limits along the west bank or right bank looking downstream from the overpass is approximately 25 feet closer to the Blue Star shopping mall and still within the steep banks. The floodway along the east bank or left bank looking downstream from the overpass is closer to the stream than the original study. The channel bottom is also lower.

The proposed redelineation will require no change in the text of N.J.A.C. 7:13-7.1, since only a revision of the flood hazard area delineation maps is required. It should be noted that the proposed changes reflect what is constructed and the present condition of the stream. Review of the maps and profiles associated with this revision is recommended.

**Social Impact**

Regulation of delineated flood hazard areas is intended to preserve the flood carrying capacity of the waterway and their surroundings, while minimizing the threat to the public safety, health and general welfare. By delineating streams and rivers, the Department identifies the area(s) subject to the New Jersey Flood Hazard Area Control Act (FHACA), N.J.S.A. 58:16A-50 et seq., and the rules promulgated pursuant thereto at N.J.A.C. 7:13. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is also enforced through N.J.A.C. 7:13.

**Economic Impact**

The proposed redelineation is the result of a reanalysis of the existing hydraulics with additional current field surveyed cross sections. A positive economic impact will result in favor of the property owners along the east bank of the portion of Green Brook from this proposal since the floodway is shifted westerly and lower flood levels along the stream would make more favorable conditions for development. In areas where the proposed floodway limits are shown to be located closer to the stream, additional construction or development may be allowed where it was previously prohibited. Non-wetland property located outside of the revised floodway will have the potential to be developed.

**Environmental Impact**

The purpose of this proposed redelineation is to accurately define the floodway limits and flood hazard area, based on a reanalysis of the hydraulic modelling to a portion of Green Brook in the Scotch Plains Township, Union County and Watchung Borough, Somerset County. The scope of permissible development is restricted within the delineated area, thereby preventing and minimizing potential flood damage. Regulated development is permissible within the flood fringe portion of the flood hazard area, provided all necessary permits and applications are obtained. This proposed redelineation is not expected to have any adverse environmental impact, since the area on which development may be permitted is not considered environmentally sensitive or significant.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed redelineation would not impose compliance, reporting or recordkeeping requirements on small businesses. Any small business in the redelineated area may be economically impacted as previously discussed.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Hamilton Township, New Jersey; and at the Department of Environmental Protection and Energy, Flood Plain Management Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey. In addition, maps of the proposed redelineation have been sent to the clerks and engineers of the Scotch Plains Township and Watchung Borough, and to the Union and Somerset County Engineers.

The revised flood plain delineation and flood profiles are shown on the plates specifically identified.

State of New Jersey  
Department of Environmental Protection  
Division of Water Resources  
Delineation of Floodway and Flood Hazard Area  
**Green Brook**  
Plate Nos. 1 and 2

**HEALTH****(a)****DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT****Certificate of Need; Hospital Policy Manual General Policies; Equity Contributions and Financing Proposed Amendments: N.J.A.C. 8:33A-1.2 and 1.16**

Authorized By: Bruce Siegel, M.D., M.P.H., Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.  
Proposal Number: PRN 1992-544.

Submit comments by January 20, 1993 to:  
John J. Gontarski, Chief  
Health Systems Review, Room 604  
New Jersey Department of Health  
CN 360  
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

As a result of comments received on the proposed re-adoption and recodification of the Hospital Policy Manual (see 24 N.J.R. 3280(a)) and notice of adoption published elsewhere in this issue of the New Jersey Register, the Department is proposing changes to the rules regarding preference given to applicants and the reduction of equity contribution requirements.

At N.J.A.C. 8:33A-1.2(j), preference is given by the Department to applicants who document existing working relationships with other hospitals, make services available to persons who are unable to pay, and propose mergers, consolidations or other joint arrangements. The Department does not require that all of these three activities be present for the assignment of preference, but has, in practice, assigned preference based on participation in one, two, or three of these activities. Since there is a possibility that these requirements, as adopted elsewhere in this issue of the New Jersey Register, may be misinterpreted, the Department is proposing changes which will make clear the intent to allow one, two, or all three of the activities to be considered in the assignment of preference.

At N.J.A.C. 8:33A-1.16, in response to requests by commenters, the Department is proposing the addition of provisions for the reduction of equity requirements under certain circumstances. If an applicant can demonstrate that it will suffer financial hardship, that the proposed project will primarily serve a medically underserved population and that the hospital can demonstrate that it has, in the past, provided significant

levels of unreimbursed charity care, the Commissioner may reduce the amount of equity required of an applicant. Additionally, the Department is providing that the equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the Statewide average uncompensated care percentage for acute care hospitals. The Department will evaluate financial hardship, and the other standards, on an individual basis, using records/documentation provided by the applicant, as well as the Department's own records.

**Social Impact**

The Department, through the Hospital Policy Manual, seeks to implement public policy which is directed toward improving the health of all the residents of the State of New Jersey, as well as increasing the accessibility, acceptability, continuity and quality of services provided to them. The proposed amendments continue the effort to maintain a balanced approach toward the development of such services, while at the same time maintaining an appropriate standard of service.

**Economic Impact**

The proposed amendments are not expected to have a specific economic impact on the health care system in New Jersey, although specific economic impacts are expected for those applicant hospitals which do, or do not, benefit from the provisions of the exceptions and preferences provided for in these rules. The extent of such impacts would vary according to the individual economic factors affecting each project, and, beyond the provision for the reduction of equity required by one half of one percent for each full percentage point that the hospital's particular uncompensated care average exceeds the Statewide average, cannot be specified.

**Regulatory Flexibility Statement**

The proposed amendments, as part of the Hospital Policy Manual, affect only acute care general hospitals, which typically employ well over 100 employees. Therefore, these rules impose no requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and no regulatory flexibility analysis is required. The rules provide exceptions and preferences in consideration for the granting of certificates of need for services proposed by those acute care general hospitals which conform to the requirements of the rules.

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

## 8:33A-1.2 General policies

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

(j) The Department of Health shall give preference to applicants which **do any of the following**:

1. (No change.)

2. Make services available to persons who are unable to pay; [and] **or**

3. (No change.)

## 8:33A-1.16 Standards regarding equity contribution and financing

(a) Financing of hospital construction modernization/renovation, or equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all capital costs, all financing and carrying charges, net interest on borrowings during construction, and debt service reserve fund. **The Commissioner may reduce the equity requirement for applicants who can demonstrate financial hardship and that the proposed project will primarily serve a medically underserved population, and the applicant hospital has historically demonstrated that it has provided significant levels of charity care for which it has not been reimbursed. This equity requirement may be reduced by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the Statewide average uncompensated care percentage for acute care hospitals.**

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

## HUMAN SERVICES

(a)

### DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

#### Hospital Services Manual Manual for Special Hospital Services Reimbursement for Distinct Units in Hospitals; Reimbursement for Special Hospitals

#### Proposed Amendments: N.J.A.C. 10:52-1.9 and 1.13; and 10:53-1.1

Authorized By: Alan J. Gibbs, 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 413; 42 CFR 447.272.

Agency File Number: 92-P-24.

Proposal Number: PRN 1992-516.

Submit comments by January 20, 1993 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, N.J. 08625

A copy of this proposal is available for review at the 21 county welfare agencies or in the Medicaid District Offices.

The agency proposal follows:

#### Summary

These proposed amendments concern reimbursement for certain segments of acute care general hospitals and for special hospitals, class A and B.

The term "Medicare" shall refer to Title XVIII of the Social Security Act.

The term "Medicaid" shall refer to Title XIX of the Social Security Act.

The acronym SHARE refers to the Standard Hospital Accounting and Rate Evaluation reimbursement methodology.

The purpose of these proposed amendments is to change the interim reimbursement methodology for special hospitals (Classification A and B), private psychiatric hospitals and distinct (excluded) units of acute care general hospitals. The change will be from the Standard Hospital Accounting and Rate Evaluation (SHARE) methodology to Medicare principles of reimbursement for inpatient services.

The Division of Medical Assistance and Health Services has been utilizing the SHARE methodology for interim rates for the above-referenced hospitals for a number of years. Final settlement is made using Medicare principles of reimbursement. Over recent years, the rates of increase allowed under Medicare principles of reimbursement with the application of the Federal Tax Equity and Fiscal Responsibility Act (TEFRA) cost limitations have differed significantly from the increase allowed under SHARE. Recently, following a Federal review, it became apparent that the use of SHARE rates could result in interim payments above the amounts recognized under Medicare principles of reimbursement. As a result, many hospitals/distinct units could be faced with significant overpayments that must be recovered at final settlement.

The process of reconciling rates is an on-going process. Historically, the Division has recovered overpayments if the hospital's interim rate exceeds the final rate established under Medicare principles. The process of reconciliation will not be affected by these amendments.

The proposed amendments remove the SHARE system as a reimbursement methodology for interim rates. Both the interim rates and final rates will be based upon Medicare principles of reimbursement, which are based upon Federal regulations, including 42 CFR 413. The detailed procedures implementing these (Medicare) principles of reimbursement are found within the Medicare publication, HIM-15, which is the Health Insurance Manual published by the United States Department of Health and Human Services, Health Care Financing Administration (HCFA).

With respect to Special Hospitals, there are three classifications described in the New Jersey Administrative Code, N.J.A.C. 10:53-1.1, definitions. However, only Class A and B Special Hospitals are affected

by this proposed amendment. Class A Special Hospitals are those that provide acute or short term specialized care. Class B are rehabilitation hospitals. Class C Special Hospitals are not affected by these amendments because they are reimbursed according to the Cost Accounting and Rate Evaluation (CARE) Guidelines which are published in N.J.A.C. 10:63.

Distinct units in acute care general hospitals are those units that provide short term psychiatric treatment, physical rehabilitation treatment, or mentally ill chemical abuse treatment. Because these units are distinct in that they provide specialized treatment, they are not reimbursed under the Diagnosis Related Group (DRG) system of reimbursement.

#### Social Impact

These proposed amendments will impact upon distinct units of acute care hospitals and those specialized hospitals under classifications A and B. The impact is more economic than social because these amendments concern reimbursement.

Those Medicaid recipients that require treatment for the conditions indicated in the subject above should continue to receive these services when they are medically necessary.

#### Economic Impact

The total payments made by the New Jersey Medicaid program to these hospitals/distinct units was \$11,476,036.60 (Federal-State share combined) in State Fiscal Year 1992. There is not expected to be any significant increase or decrease in the annual aggregate expenditures because the final payment is still based upon Medicare principles.

The proposed amendments impact upon providers described in the Summary above. Rates are determined individually for each provider using the Medicare principles. Therefore, the Division believes there will be no economic impact on the final rate, since the provider's final reimbursement will still be based upon Medicare principles. There could be some economic impact on the provider's interim rates due to the proposed change.

There should be no economic impact upon recipients because they are not required to contribute towards the cost of their hospital care.

#### Regulatory Flexibility Statement

The proposed amendments impact upon the reimbursement for inpatient services provided to Medicaid recipients in special hospitals (Classification A and B), private psychiatric hospitals and distinct (excluded) units of acute care general hospitals, the majority of whom would not be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ more than 100 persons. In the event there is a hospital that would qualify as a small business, this analysis is undertaken. The proposed amendments apply to all hospitals in the categories of special hospitals (Classification A and B) and private psychiatric hospitals and distinct (excluded) units of acute care general hospitals reimbursed under the SHARE reimbursement methodology, regardless of size. Hospitals are required to maintain individual records to fully disclose the name of the recipient to whom the service was rendered, the date of the service, the nature and extent of the service, etc. (see N.J.S.A. 30:4D-12). The proposed amendments impose no new reporting, recordkeeping, and/or other compliance requirements. There are already existing requirements imposed upon hospitals by either the New Jersey Medicaid program and/or the New Jersey State Department of Health. There are no capital costs associated with these amendments.

From a recordkeeping or compliance standpoint, the proposed amendments minimize any adverse economic impact by not imposing any additional requirements pertaining to reporting, collecting data, staffing, equipment, etc.

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

10:52-1.9 Special provisions related to payment

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

**(i) A distinct (excluded) unit of an acute care general hospital is reimbursed (including the interim rate and final settlement) in accordance with Medicare principles of reimbursement (see 42 CFR 413) and not through the Diagnosis Related Groups (DRG) reimbursement system (N.J.A.C. 8:31B) for inpatient care in acute care general hospitals.**

10:52-1.13 Approved private psychiatric hospitals

(a) (No change.)

(b) These hospitals are reimbursed [on an interim basis under the SHARE (Standard Hospital Accounting and Rate Evaluation) System. A final settlement is based] **(including the interim rates and final settlement)** in accordance with Medicare principles of reimbursement [subject to the determination of excess costs by the Commissioner of the Department of Health].

10:53-1.1 Definitions

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

...  
 "Approved special hospital" means a hospital that meets one of the following classifications listed below. In order to qualify as a provider in the New Jersey Medicaid [Program] program, each special hospital must meet the appropriate standards pertaining to its classification. The three classifications, and standards for participation, are:

1. Classification A (Acute or short term **special hospitals**); may be reimbursed if all following criteria are met:

i.-iii. (No change.)

iv. Be reimbursed [according to the SHARE (Standard Hospital Accounting and Rate Evaluation) system established by the New Jersey Department of Health and described in N.J.A.C. 8:31A, or by the DRG (Diagnosis Related Groups) system established by the New Jersey Department of Health in N.J.A.C. 8:31B] **(including the interim rate and final settlement) in accordance with Medicare principles of reimbursement (see 42 CFR 413). (See also a distinct (excluded) unit of an acute general hospital, N.J.A.C. 10:52-1.9(i)).**

2. Classification B (Rehabilitation **Hospitals**); May be reimbursed [on the basis of reasonable costs] if all following criteria are met:

i.-iv. (No change.)

v. Be reimbursed [according to the SHARE (Standard Hospital Accounting and Rate Evaluation) system established by the New Jersey Department of Health in N.J.A.C. 8:31A.] **(including the interim rate and final settlement) in accordance with Medicare principles of reimbursement. (See also a distinct (excluded) unit of an acute general hospital, N.J.A.C. 10:52-1.9(i)).**

3. (No change.)

...

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Manual for Hospital Services**

**Adjustments to Medicaid Payer Factors**

**Proposed New Rule: N.J.A.C. 10:52-1.23**

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

Authority: N.J.S.A. 30:4D-6a(1), 30:4D-7, 7a, b and c; 30:4D-12, New Jersey Appropriations Act, P.L. 1992, c.40; 1886(b) of the Social Security Act, 42 U.S.C. 1395ww(b); 42 CFR 447.200, Subpart B and C; 42 CFR 447.253(b)2; 42 CFR 447.272; 42 U.S.C. 1396(A)(a)(13)(A).

Agency Control Number: 92-P-29.

Proposal Number: PRN 1992-537.

Submit comments by January 20, 1993 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 this proposal is available for review at the 21 county welfare agencies or in the Medicaid District Offices.

The agency proposal follows:

**Summary**

Recently, the rates utilized by Medicaid have come under scrutiny by the Federal government.

The New Jersey State Fiscal Year 1993 Appropriations Act cited above reinforces the responsibility of the Division of Medical Assistance and Health Services (the Division) to implement procedures to assure that Medicaid (Title XIX) payments in the aggregate do not exceed the amounts that would be paid under Medicare (Title XVIII) principles of reimbursement. The Federal regulation (42 CFR 447.272) is commonly referred to as the Medicare upper payment limit. This proposed new rule would limit Medicaid rates to the Medicare upper payment limit to assure compliance with Federal regulations.

In order to meet these requirements, the Department proposes to adjust the rates paid for inpatient acute care hospitals effective January 1, 1993.

Historically, Medicaid had participated in the Chapter 83 (N.J.S.A. 26:2H-1) Hospital all payer rate setting system. Under legislation enacted on November 30, 1992 (P.L. 1992, c.160), New Jersey payers will no longer operate under this rate setting system. A review of the rates paid by Medicaid in calendar year 1992 indicates that continued use of these rates could result in Medicaid payments in the aggregate exceeding the Medicare Upper Payment Limit during Calendar Year 1992 and thereafter. Therefore, on January 1, 1993, the Department proposes to use reimbursement rates that will assure compliance with the Medicare upper payment limit through adjustments to the hospital's payer factors.

This change in rate setting methodologies will allow the Department to continue to comply with all applicable Federal Title XIX statutes and regulations.

**Social Impact**

This proposed new rule does not impact upon Medicaid recipients who are categorically eligible and who require inpatient hospital use. This rule contemplates no change in the availability of hospital services.

Providers of inpatient hospital services may be directly affected. However, the impact will be economic rather than social as indicated 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.

Reimbursement to some providers will be reduced due to the change in rate setting methodologies. However, the reduction is necessary to conform with Federal statutes and regulations. The Division is proposing adjusting its payer factor to adjust for the difference between existing rates that had been established under Chapter 83 (reference is made to N.J.S.A. 26:2H-1) and the amounts that would be recognized under the Medicare principles of reimbursement. The adjustment will recognize the costs necessarily incurred by economical and efficient facilities, and will screen out costs which are not those which must be incurred by efficient facilities. The methodology to establish payer factors is included in New Jersey Department of Health regulations. Their calculations will be adjusted to assure that the costs that must be incurred by economical and efficient facilities will be recognized.

During State Fiscal Year 1993, Medicaid anticipated payments of \$1,048,000,000 for inpatient hospital services, Federal/State share combined. It is anticipated that this change will result in Medicaid hospital payments of approximately \$305,114,000 during the first half of CY 1993 and \$452,227,000 during the second half of 1993. To assure continued compliance with the Federal requirements, subsequent rate increases will be limited to the Tax Equity and Fiscal Responsibility Act (TEFRA) allowable rates of increase in future years.

**Regulatory Flexibility Statement**

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 are already required to maintain sufficient records, such as cost studies to comply with the provisions of New Jersey Department of Health's rules.

These regulatory requirements that currently exist or those being added by this proposed new rule do not create any additional reporting, recordkeeping or other compliance requirement. The adjustment to the payer factors is a State action, and will be based upon data that the hospital is already required to supply. 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 this rule.

Full text of the proposed new rule follows:

10:52-1.23 Basis of payment; hospitals, acute general and special (Classification A) reimbursed under the Diagnosis Related Groups (DRG) System; inpatient services

(a) In order to meet the requirement of Federal regulations 42 CFR 447.272 (commonly known as the Medicare Upper Payment Limit), the New Jersey Medicaid program must assure that payments, in the aggregate, do not exceed payments that would be made under Medicare principles of reimbursement.

1. Effective January 1, 1993, the reimbursement by the New Jersey Medicaid program shall reflect the use of the following methodology:

i. The DRG rates using the methodology employed by the New Jersey Department of Health and approved by the Hospital Rate Setting Commission.

ii. The hospital specific Medicaid payer factor will be calculated by the New Jersey Department of Health and adjusted using a statistical methodology developed by the New Jersey Medicaid program. Under this methodology, the Medicaid payer factor will vary according to the Medicaid program's findings as to the relative cost efficiency of the hospitals. The methodology will adjust for the differences between DRG rates that had been established under Chapter 83 and the rates that are necessary to assure that Medicaid payments in the aggregate do not exceed the level established using Medicare principles of reimbursement and that take into account necessary costs that must be incurred by economical and efficient facilities. See also N.J.S.A. 26:2H-1 and N.J.A.C. 8:31B.

iii. Also, between January 1, 1993 and June 30, 1993, the Medicaid payer factors will be adjusted to a level that accounts for differences between rates which exceeded the Medicare upper payment limit during calendar year 1992 and to a level which results in payments that are reasonable and adequate to meet the necessary cost at an economical and efficient facility.

(a)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual

#### Proposed Readoption with Amendment: N.J.A.C. 10:69A

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

Authority: N.J.S.A. 30:4D-20, 24.

Agency Control Number: 92-P-12.

Proposal Number: PRN 1992-539.

Submit comments by January 20, 1993, to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance  
and Health Services  
CN 712  
Trenton, NJ 08625-0712

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:69A, the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Eligibility Manual, expires on April 20, 1993. The Division of Medical Assistance and Health Services (Division) has reviewed the rules and has determined them to be necessary, adequate, reasonable, proper and responsive for the purpose for which they were originally promulgated.

The PAAD Eligibility Manual was promulgated to set forth the basic policies and procedures relating to assistance to persons whose level of income disqualifies them for medical assistance under the Medical Assistance Health Services Act but who have significant needs for prescribed drugs and/or insulin, needles, insulin syringes, and/or certain diabetic materials and are unable to fully meet the cost of such items. The PAAD program is fully State funded under the administration of the Division of Medical Assistance and Health Services of the New Jersey Department of Human Services.

Subchapter 1 presents the rationale for the PAAD program and lists the laws on which the program is based.

Subchapter 2 defines words and terms used with a specific focus in the manual for setting forth the procedures and policies of the PAAD program.

Subchapter 3 sets forth the administrative structure which provides for the administration and operation of the pharmaceutical assistance program.

Subchapter 4 discusses the program's statutory limitations, reimbursement principles, and policies concerning generic drugs, and defines the copayment which beneficiaries are expected to pay for each prescription dispensed through the PAAD program.

Subchapter 5 describes the PAAD application process. The process includes all activity relating to the application, from receipt by the Division until the eligibility has been officially determined. Provision is made for an authorized agent, in those instances where the applicant cannot file an application on his or her own behalf. Eligibility becomes effective when the application processing is completed by the PAAD Bureau, and will ordinarily be renewed every two years, with automatic mailing of the eligibility card for the second year. Beneficiaries whose income is close to the eligibility limit will be required to complete a renewal form annually.

Further provisions of subchapter 5 set forth the conditions under which an eligibility application will be continued as pending beyond the 30-day application period, and procedures to be followed by the applicant in order to be reimbursed directly for prescriptions dispensed during the period of the delay. The subchapter also describes the Division's measures for determining the degree of compliance with program standards, in connection with recipient eligibility, pharmacy performance regarding both dispensing medications and submission of claims, recipient fraud and/or abuse, and efforts to recover incorrectly paid benefits. The subchapter concludes with a definition of the responsibilities of the PAAD Bureau and the applicant within the application process and of the beneficiary after eligibility has been determined.

Subchapter 6 describes eligibility requirements. The section on age specifies the acceptable documentation of the applicant's age. Income levels for eligibility determination are defined for single persons or married couples, for applicants who are either aged or disabled. Although United States citizenship is not required for PAAD eligibility, residence in the State of New Jersey is required, hence residency is defined at some length in the subchapter.

The subchapter discusses the PAAD application and renewal forms, requirements regarding the applicant's Social Security number, the applicant's certification of the veracity of the application information and authorization of the Division to verify information through the Social Security Administration, the Internal Revenue Service, and others as necessary. The subchapter also describes the eligibility period and the renewal process. Policies concerning the confidentiality of personal information regarding applicants include the conditions under which information may be disclosed.

Subchapter 7 covers recoveries and liens. When benefits have been correctly paid, no recovery shall be sought from the estate of a qualified applicant for benefits received under the PAAD program. The Division has procedures to recover the cost of benefits incorrectly paid on behalf of a beneficiary, whether because another entity is responsible for the drug costs, the beneficiary is no longer eligible, fraud is indicated, or where a third party is liable to pay all or part of the beneficiary's drugs. In addition, as provided by statute, liens may be applied or penalties imposed.

There is a proposed amendment associated with this re-adoption. A technical change is being made for correction of a typographical error in N.J.A.C. 10:69A-5.2. The word "applicant" replaces the word "application" because the section discusses a provision for the person who is applying for prescription benefits through the PAAD program.

Certain regulatory changes were made as the result of legislative amendments. Regulations were amended in 1989 consequent upon

legislative amendments to exclude the one-time capital gain up to \$125,000 from the sale of the principal residence for individuals age 55 or older, in consideration of income determinations for individuals eligible for, or applying for, pharmaceutical assistance (see 22 N.J.R. 953(a)). In 1991, the rules were amended as the result of legislation increasing the income limits for PAAD eligibility from \$13,650 to \$15,700 for single persons, and from \$16,750 to \$19,250 for married couples, retroactive to January 1, 1991 (see 23 N.J.R. 3514(a)).

The remaining changes to N.J.A.C. 10:69A result from initiatives within the Department of Human Services. In 1990, the level at which eligibility for PAAD must be renewed annually was raised from \$10,000 to \$11,000 for single persons and from \$13,000 to \$14,000 for married couples (see 22 N.J.R. 3956(a)). In 1990, the manual was amended to specify that persons under the age of 65 who receive disability benefits on behalf of someone other than themselves are ineligible (see 22 N.J.R. 3956(a)). Stipends from the Volunteers in Service to America and the Foster Grandparents programs, and Agent Orange payments, were excluded from consideration in determining eligibility in 1990 (see 22 N.J.R. 3956(a)). In 1991, the rules were amended to define renewal of PAAD eligibility as biennial unless the beneficiary's income approaches the eligibility limits either for a single person or a married couple, in which case the person will be required to complete a renewal form annually (see 23 N.J.R. 3514(a)).

The Department of Human Services amended the PAAD Eligibility manual in 1991 in conformance with the Fair Automobile Insurance Act of 1990, which exempts PAAD beneficiaries from paying an increase in the automobile registration fee for passenger vehicles. The amendment permits the PAAD program to provide information to the New Jersey Division of Motor Vehicles with information verifying that the beneficiary is eligible for PAAD, specifying that the release of this information to the Division of Motor Vehicles is a permissible disclosure (see 23 N.J.R. 2637(b)).

There are two proposed amendments to the PAAD manual which are being processed as proposals separate from this proposal and appear in the December 7, 1992 issue of the New Jersey Register. One proposed amendment codifies the right of applicants who are denied PAAD coverage the right to request a fair hearing which would be conducted by the Office of Administrative Law. This same proposal also describes conditions for coverage or non-coverage of prescriptions purchased out-of-state. There are also requirements explaining the provisions whereby a PAAD beneficiary is liable for repayment of incorrectly paid PAAD benefits. The second proposal amends the PAAD copayment requirement from \$2.00 to \$5.00 as required by the New Jersey Appropriations Act for State Fiscal Year 1993 (L. 1992, c.40).

The proposed readoption will enable a PAAD beneficiary to continue to obtain necessary medications and insulin/supplies for diabetes as ordered by the individual's physician. Pharmacy providers will continue to be reimbursed for prescriptions dispensed to PAAD eligible persons.

#### Social Impact

The proposed readoption impacts potentially on all PAAD recipients or applicants for the PAAD program because the application procedures and eligibility considerations affect their ability to obtain medications through the program.

The proposed readoption is concerned with eligibility, so that it will not impact on provider pharmacies. The Pharmaceutical Services Manual, N.J.A.C. 10:51, provides rules and procedures for participation, as well as the conditions for reimbursement, of pharmacy providers in both the New Jersey Medicaid program and the PAAD program.

The rules should be continued because the social situation is unchanged: people with enough income to disqualify them from Medicaid coverage may not be able to pay for prescription drugs or diabetic testing materials.

#### Economic Impact

The proposed readoption imposes no new economic effect on a PAAD recipient as a result of the proposed readoption of the proposed amendments because there is no change in the provisions governing the pharmaceutical assistance program.

The rules that are being readopted provide for coverage of legend drugs, diabetic testing materials, insulin, etc., for persons who meet the income eligibility levels established by the PAAD program. Once eligibility for PAAD has been established, PAAD beneficiaries are required to make a co-payment for each prescription.

The proposed readoption will impose no new economic impact on pharmacy providers, because this manual regulates eligibility of PAAD

beneficiaries. The State monies appropriated for paying claims under the PAAD program was \$171,086,000 for State Fiscal Year 1992.

#### Regulatory Flexibility Statement

The proposed readoption does not impact on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because the proposed rule regulates beneficiaries of the PAAD program, and the government agency which administers the PAAD program, neither of which is a small business.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:69A.

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

10:69A-5.2 Authorized agent

(a) In those instances where the [application] applicant is incompetent or incapable of filing an eligibility application on his or her own behalf, the Division shall accept any one of the following listed in the order of priority, as an authorized agent for the purpose of initiating such application:

1-4. (No change.)

(a)

### DIVISION OF FAMILY DEVELOPMENT Notice of Agency Action on Public Hearing Concerning N.J.A.C. 10:84 Program Administration Programs Administered/Supervised by the Department of Human Services

Take notice that the Department of Human Services held a public hearing on proposed new rules at N.J.A.C. 10:84 concerning P.L. 1990, c.66. The proposed new rules, published in the June 3, 1991 issue of the New Jersey Register at 23 N.J.R. 1740(a), set forth certain expanded obligations and authorities of the Commissioner concerning the administration of public assistance programs by county welfare agencies. The public hearing was held on August 21, 1991 at the Department's Division of Family Development (DFD), Quakerbridge Plaza, Building No. 10, Quakerbridge Road, Trenton, New Jersey.

The Hearing Officer at the hearing was Robert F. Hodes, Field Service Supervisor 1 from DFD. Comments on the proposed new rules took issue with the fact that while the text reflected general authority statements of the statute, they failed to provide procedural guidelines. Based on the comments received, the Hearing Officer's recommendation was that the proposed new rules should not be adopted and that the need for further review of such rules was indicated.

Based upon the Hearing Officer's recommendation, the Department opted to permit the proposed new rules to expire in order to further analyze the law and develop new rules which do provide the procedural guidelines as requested.

The Department now has developed such new rules which are proposed in this issue of the New Jersey Register, immediately following this notice.

(b)

### DIVISION OF FAMILY DEVELOPMENT Program Administration Programs Administered/Supervised by the Department of Human Services Proposed New Rules: N.J.A.C. 10:84

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

Authority: N.J.S.A. 30:4B-2 and P.L. 1990, c. 66, effective July 1, 1991.

Proposal Number: PRN 1992-540.

Submit comments by January 20, 1993 to:

Marion E. Reitz, Director  
Division of Family Development  
CN 716  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

P.L. 1990, c.66, in part, amends and supplements the statutory law concerning public assistance programs. The law authorizes the Commissioner of Human Services to establish rules and regulations to ensure that public assistance programs are administered appropriately and efficiently. The Commissioner is also authorized to take certain definitive actions when it is determined that those programs are not being administered in accordance with applicable State and Federal laws and regulations.

As a result of the legislation, the proposed new rule at N.J.A.C. 10:84-1.1 sets forth in the New Jersey Administrative Code the obligation and authorities of the Commissioner in accordance with Public Law 1990, c. 66. Those authorities include the establishment of rules, regulations and directives, including incentives and sanctions, pertaining to the administration of public assistance programs. In addition, the Commissioner has the power to assume direct administration of county welfare operations in situations in which a county agency has failed to follow applicable State and Federal laws and regulations. The proposed new rule at N.J.A.C. 10:84-1.1 sets forth the Commissioner's obligation and authorities in this area.

The proposed new rule at N.J.A.C. 10:84-1.2 sets forth those factors which may be viewed as particularly significant program irregularities and management deficiencies and result in the ultimate administrative takeover of program operations by the Department of Human Services. Elements which may be the basis for assumption include unlawful activity, pervasive fiscal and/or program deficiencies.

Where the Department has identified CWA deficiencies, the new rule at N.J.A.C. 10:84-1.3 sets forth a multi-step resolution procedure. The CWA will be afforded reasonable opportunity to correct identified deficiencies. Failure to effect corrective action will result in the State's assumption of program administration. That procedure includes, but is not limited to, notifying the county of deficiencies, convening conferences to identify possible causes of deficiencies, negotiating, developing, and implementing appropriate corrective actions, and monitoring/reassessing CWA operations. CWAs which have failed to effect, or make a good faith effort toward, corrective action, shall be so notified in writing and given an opportunity to discuss any unresolved deficiencies. When barriers for improvement remain and cannot be resolved, the Department shall advise the CWA in writing of its intent to assume direct administration, as well as the county's responsibilities and appeal rights.

The proposed new rule at N.J.A.C. 10:84-1.4 sets forth fiscal liability of the county and the authorities of the Commissioner when the Department of Human Services assumes direct administration of county operations.

The proposed new rule at N.J.A.C. 10:84-1.5 sets forth those administrative procedures applicable when a county wishes to appeal a decision by the Department concerning State assumption of the CWA's operations. Such hearing shall be scheduled and conducted by the Office of Administrative Law, which shall render an initial decision. A final administrative hearing decision shall be rendered by the Commissioner of the Department of Human Services or his or her designee. The county may appeal the final decision through the Appellate Division of the Superior Court; however, such appeal shall not delay implementation of the final decision.

#### Social Impact

Provided that county welfare agencies (CWAs) continue to administer public assistance programs in an accessible, efficient and cost-effective manner, neither families in receipt of public assistance benefits nor the general public will be impacted by the proposed new rules. In situations where public assistance families may be adversely affected because programs are not being administered in an efficient and effective manner, the Commissioner has the authority to assume operation of the programs to correct any such deficiencies and provide continued services. In the event the Commissioner assumes operation of the program to correct deficiencies, State personnel and resources may have to be utilized to effect such assumption of county agency operations.

#### Economic Impact

Provided that the CWAs continue to operate public assistance programs in accordance with State and Federal regulations, CWAs and the general public will not be impacted by these rules. In the event the Commissioner assumes direct administration of a CWA because of failure to properly administer a program, the county may be billed for expenses incurred by the Department for corrective measures taken, but a specific dollar amount cannot be projected.

#### Regulatory Flexibility Statement

The proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rules impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The proposed new rules govern administration of public assistance programs designed to assist a low-income population by a governmental agency rather than a private business establishment.

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

10:84 [(RESERVED)] PROGRAM ADMINISTRATION

#### SUBCHAPTER 1. EFFICIENCY AND EFFECTIVENESS OF PROGRAM OPERATIONS

10:84-1.1 Authority of the Commissioner under P.L. 1990, c. 66

(a) **The Commissioner of the Department of Human Services (DHS) is obligated to ensure that programs that serve eligible low-income persons administered by counties throughout the State are provided to eligible persons in an accessible, efficient, and cost-effective manner.**

(b) **The Commissioner has the authority to establish rules, regulations, and directives, including incentives and sanctions, to ensure that county agencies provide benefits to eligible recipients in a manner consistent with State and Federal law.**

(c) **The Commissioner shall have the authority to review and approve CWA budgets.**

(d) **The Commissioner shall have the power to assume direct administration of all county welfare agency operations in situations in which the Commissioner determines that a county agency is failing to effectively administer or to substantially follow State and Federal law in its administration of those programs for which the Department of Human Services has responsibility.**

10:84-1.2 Factors prompting the assumption of county operations

(a) **The following are factors viewed as particularly significant program irregularities and management deficiencies. Elements such as unlawful activity, pervasive fiscal and/or program deficiencies are the primary basis for consideration of assumption action. Failure on the part of the county to correct any such deficiency so identified by the Department will result in the ultimate administrative takeover of program administration by the Department.**

1. **Unlawful activity refers to arrest, indictment or conviction by a court of law of any senior official of a county welfare agency, county welfare board or other appropriate county welfare agency governing body for abuse(s) related to public assistance program administration. Unlawful activity includes, but is not limited to, fraud, theft, perjury, removal, alteration or destruction of public records, other similar wrongdoing, or willful misuse of public assistance funds. Failure of the agency to remove such individual from the situation which enabled the unlawful activity shall be considered as evidence of noncompliance.**

2. **Fiscal operations irregularities or management deficiencies refer to absence of adherence to State and Federal fiscal procedures and regulations relating to public assistance administration. Inaudible fiscal records shall be interpreted as evidence of non-compliance if the agency fails to effect corrective action within specified timeframes.**

3. **Program operations irregularities or management deficiencies refer to persistent and pervasive failure on the part of the county welfare administrative agency to safeguard the confidentiality of its clients; or to regard an individual's civil rights in the administration of public assistance benefits and services; or to correctly determine**

program eligibility and/or timely and accurate benefit issuance in accordance with State and Federal program regulations and procedures. Failure on the part of the agency to take corrective action on deficiencies, identified based on a program audit, within specified timeframes shall be considered evidence of noncompliance.

**10:84-1.3 Corrective action plans**

(a) The Department shall afford a county welfare administrative agency reasonable opportunity to correct identified deficiencies before assuming administration for violations as set forth in N.J.A.C. 10:84-1.2.

(b) The corrective action or resolution procedure will be comprised of a multi-step process to include, but which is not limited to:

1. Identification of Departmental findings of deficiencies and notification to the county agency of the need to take corrective action;
2. Convening of one or more conferences of Departmental and county agency personnel to identify possible causes of the deficiencies in CWA operations and negotiation of appropriate corrective actions;
3. Development, submittal and implementation of an approved corrective action plan by the CWA to improve CWA operations, within the time periods specified by the Department, to correct the identified deficiencies;
4. Upon implementation of the corrective action plan, monitoring of CWA operations by the Department to verify that planned corrective actions are taking place as stipulated; and
5. Reassessment by Department staff of the CWA's operations at the end of the designated period.
  - i. CWAs that have effected the corrective actions required for the identified deficiency shall be so notified and shall no longer be subject to the corrective action requirement for that deficiency which has been satisfactorily resolved.
  - ii. CWAs which have failed to effect required corrective action within the specified time frame or failed to show a good faith effort toward corrective action shall be subject to the following:
    - (1) The Department shall provide written notification of its findings and convene a meeting with representatives of the CWA, county welfare board or other appropriate CWA governing body, and the county governing authority to discuss any unresolved deficiencies.
    - (2) When it is determined that, after meeting with representatives of the CWA, county welfare board or other appropriate CWA governing body, and the county governing authority, barriers for improvement remain and cannot be resolved, the Department shall advise, in writing, all parties involved of its intent to assume direct administration of county operations in accordance with N.J.A.C. 10:84-1.4. That written notification shall include:
      - (A) The basis for the assumption action;
      - (B) The date the assumption will commence;
      - (C) A statement advising the county that it shall be responsible for the payment of reasonable expenses incurred by the Department to make administrative and/or programmatic changes necessary to ensure that the CWA's operations are provided in an effective and efficient manner and comply with State and Federal law and regulations; and
      - (D) A statement concerning county appeal rights advising the CWA of its right to request a State fair hearing in writing, which must be postmarked within 10 days of the mailing date of the notice of assumption (see N.J.A.C. 10:84-1.5 concerning State fair hearings).

(1) The Department shall provide written notification of its findings and convene a meeting with representatives of the CWA, county welfare board or other appropriate CWA governing body, and the county governing authority to discuss any unresolved deficiencies.

(2) When it is determined that, after meeting with representatives of the CWA, county welfare board or other appropriate CWA governing body, and the county governing authority, barriers for improvement remain and cannot be resolved, the Department shall advise, in writing, all parties involved of its intent to assume direct administration of county operations in accordance with N.J.A.C. 10:84-1.4. That written notification shall include:

- (A) The basis for the assumption action;
- (B) The date the assumption will commence;
- (C) A statement advising the county that it shall be responsible for the payment of reasonable expenses incurred by the Department to make administrative and/or programmatic changes necessary to ensure that the CWA's operations are provided in an effective and efficient manner and comply with State and Federal law and regulations; and

(D) A statement concerning county appeal rights advising the CWA of its right to request a State fair hearing in writing, which must be postmarked within 10 days of the mailing date of the notice of assumption (see N.J.A.C. 10:84-1.5 concerning State fair hearings).

**10:84-1.4 State assumption of direct administration of county operations**

(a) For each fiscal year, or portion thereof, in which a service or function associated with the provisions of P.L. 1990, c. 66, is assumed by the Department, the county shall deduct from its final appropriations upon which its permissible county tax levy is calculated the amount which the county expended for that service or function during the last full budget year, or portion thereof. If the Commissioner determines that any county welfare agency has failed to effectively administer or to substantially follow State and Federal

law in its administration of those programs for which the Department of Human Services has responsibility, the Commissioner shall have the authority to take the following actions:

1. Make the administrative and programmatic changes necessary to ensure compliance with State and Federal law and regulation;
2. Bill the county for the reasonable expenses incurred by the Department in ensuring compliance;
3. Hire any consultant or undertake any studies of the agency's operations deemed appropriate;
4. Direct expenditures of the CWA in a reasonable and prudent manner to effectuate the purposes of any public assistance program, including reallocating funds within the CWA budget and determine additional amounts of revenue needed to ensure the efficient and effective administration of such programs within the agency's budget;
5. Operate the CWA; and
6. Do all acts necessary or appropriate to ensure that the needs of eligible public assistance recipients are met pursuant to State and Federal law.

**10:84-1.5 State fair hearings for State assumption of CWA operations**

(a) Any county that wishes to appeal a decision by the Department concerning State assumption of the CWA's operations is entitled to request a State fair hearing within 10 days of the date postmarked on the envelope containing the notice of State assumption of operations. The request shall be made, in writing, to DFD's Bureau of Administrative Review and Appeals (BARA) by the CWA director, president of the county welfare board or by a representative of the county governing authority.

1. When a request is received by BARA, it shall immediately be registered as of that date.

2. All assumption hearing requests shall be transmitted to the Office of Administrative Law (OAL) for a hearing before an Administrative Law Judge (ALJ).

3. The OAL shall schedule the State assumption hearing and send any necessary notices to all appropriate parties concerned. The hearing shall be in accordance with the provisions of N.J.A.C. 1:1.

(b) A final administrative hearing decision shall be rendered by the Commissioner of the Department of Human Services or his or her designee. All parties to the matter shall be notified by mail of any decision or order. The final decision shall be effective on the date of issuance.

1. The county may appeal the final decision rendered by the Commissioner or designee through the Appellate Division of the Superior Court; however, such appeal shall not delay implementation of the final decision.

(a)

**DIVISION OF YOUTH AND FAMILY SERVICES  
Manual of Standards for Children's Shelter Facilities  
and Homes  
Local Government Physical Facility Requirements for  
Shelter Facilities**

**Proposed Amendment: N.J.A.C. 10:124-5.1**

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

Authority: N.J.S.A. 30:1-14 and 15, 30:4C-4, 2A:4A-37 and 2A:4A-20 et seq.

Proposal Number: PRN 1992-543.

Submit comments by January 20, 1993 to:  
Richard Crane, Acting Chief  
Bureau of Licensing  
Division of Youth and Family Services  
CN 717  
Trenton, N.J. 08625

The agency proposal follows:

**Summary**

The Division has recently revised the text of N.J.A.C. 10:124-5.1 to conform to the requirements of the Uniform Construction Act and the Fire Safety Act, as requested by the Department of Community Affairs (see 24 N.J.R. 4387(a)). During subsequent discussions with the Department of Community Affairs, the Division concluded that, while it may, at times, be appropriate to accept a municipality's written variation from the Uniform Construction Code, there may be other times when this would not be in the best interest of the residents of a particular shelter facility. While the Division acknowledges that the Department of Community Affairs has certain responsibilities for the safety of the general public, as outlined in N.J.A.C. 5:23 and 5:18, which includes children in such shelter facilities, it maintains that the responsibility to protect this population extends to not accepting variations to the NJUCC that may be allowed a shelter facility by a municipality.

Therefore, the Division is proposing an amendment to N.J.A.C. 10:124-5.1, Local government physical facility requirements for shelter facilities, which will allow the Division to accept a written variation supplied by the municipality, if it deems such a variation appropriate, or to not accept the variation, and require compliance with the applicable construction or fire codes. In most cases, variations sought by a shelter facility, and approved by a municipality, would also be approved by the Division.

Should the shelter facility disagree with this action of the Division, it would have the right, as with any other action, to appeal the decision in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

**Social Impact**

The Division has the responsibility for the oversight of children's shelter facilities and homes within the State of New Jersey. This responsibility extends to 31 shelter facilities and homes, and includes children up to the age of 18. Any variations accepted by the Bureau would have an impact on the population served, and on the staff/administrators of the shelter facility or home. The extent of the impact upon those affected would vary, depending upon the nature of the municipality's variance accepted by the Bureau. The Bureau's variance acceptance process is intended to protect the health and welfare of the residents of the shelter facilities or homes.

**Economic Impact**

The economic impact of the Division's accepting, or not accepting, a written variation provided to a shelter facility by a municipality can not be estimated at this time, since the individual economic factors would vary with each situation. In some cases, the shelter facility would experience economies, in some others, would experience costs, and in some, may experience no change in economic effect.

**Regulatory Flexibility Analysis**

The approximately 31 shelter facilities and homes regulated by the proposed amendment can be considered small businesses, as the term is used in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The added provision for variation will allow the shelter facilities to adjust the requirements to suit their needs, so long as the needs of the group served do not suffer, in the opinion of the Division. As discussed in the Economic Impact, the capital costs of permitting, or not permitting, a variance will vary with each situation, and cannot be generally estimated. The variance process may entail the employment of an architect, contractor, professional engineer or planner, and/or an attorney. Since the Division is providing for variation with this amendment, and since all the facilities are small businesses, within the meaning of the term used in the Regulatory Flexibility Act, there is no differentiation specifically based on business size provided in the rules.

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

10:124-5.1 Local government physical facility requirements for shelter facilities

(a) An applicant seeking initial approval, as specified in N.J.A.C. 10:124-1.5, to operate a shelter facility or home shall comply with all applicable provisions of the New Jersey Uniform Construction Code, as specified in N.J.A.C. 5:23 and hereinafter referred to as the NJUCC.

1.-5. (No change.)

**6. Whenever a municipality grants a shelter facility or home a written variation from any of the requirements of the NJUCC, the Bureau of Licensing of the Division of Youth and Family Services may accept such variations as meeting the requirements of this chapter.**

**i. When the Bureau does not accept the variation, the non-acceptance shall be based on the best interests of the residents of the shelter, and shall include consideration for their health and safety.**

**ii. Should the facility or home disagree with the Bureau, the facility or home may seek a hearing in accordance with N.J.A.C. 10:124-1.6 and the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1, as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

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

**CORRECTIONS**

(a)

**STATE PAROLE BOARD**

**Parole Board Rules**

**Victim Input**

**Proposed Amendment: N.J.A.C. 10A:71-3.47**

Authorized By: New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Authority: N.J.S.A. 30:4-123.48(d) and 123.55 (P.L. 1992, c.59).

Proposal Number: PRN 1992-530.

Submit comments by January 20, 1993 to:

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

The agency proposal follows:

**Summary**

Effective July 23, 1992, pursuant to legislation (P.L. 1992, c.59) signed by the Honorable James Florio, Governor, State of New Jersey, a victim of a first or second degree crime, or a murder victim's nearest relative, has the right to testify in person before the State Parole Board panel that will conduct the inmate's parole hearing. The proposed amendments to the State Parole Board's present victim input rule are intended to implement the legislation; to revise existing procedures; to expand the victim input process to permit a manslaughter victim's nearest relative to present in person testimony to the Board panel; and to expand the victim input process to permit a murder victim's nearest relative to present in person testimony to the full Board. The major points of the proposed amendments provide for the following:

1. Permit the victim of a first or second degree crime or a murder victim's nearest relative to present in person testimony to a senior hearing officer and/or the Board panel;
2. Permit a manslaughter victim's nearest relative to present in person testimony to a senior hearing officer and/or the Board panel;
3. Permit a murder victim's nearest relative to present in person testimony to the full Board if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19;
4. Define the term victim and the term nearest relative if the crime is murder or manslaughter;
5. Authorize a senior hearing officer to permit certain other persons in the hearing room to provide assistance to a victim or nearest relative of a murder/manlaughter victim;
6. Establish procedures, that is, notice, location, etc., for the in person presentation of testimony by a victim or nearest relative of a murder/manlaughter victim to the Board panel;
7. Establish procedures, that is, notice, location, etc., for the in person presentation of testimony by the nearest relative of a murder victim to the full Board when a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19; and
8. Clarify that a victim of a third or fourth degree crime may present in person testimony only before a designated senior hearing officer.

**Social Impact**

The proposed amendments to N.J.A.C. 10A:71-3.47 establish procedures for the in person testimony by victims or the nearest relative of a murder/manslaughter victim to a board panel and, if a full Board hearing is conducted, the in person testimony by the nearest relative of a murder victim to the full Board. By permitting in person testimony before a Board panel or Board, it is anticipated that a greater number of victims or relatives of certain victims will participate in the parole process and, thereby, provide the Board panel or Board the opportunity to receive relevant information regarding the impact of the crime and the offender's case. It is anticipated that the active participation in the parole process by victims/relatives of certain victims of crime will also serve as a means to impart information regarding parole procedures and provide a better understanding by victims and relatives of the laws pertaining to the parole process.

The proposed amendments will impact on the Board since the scheduling of Board panel and full Board hearings in the cases of certain inmates must be coordinated with victim input. Further, certain staff members of the Board will be required to assist the victim/nearest relative in entering and exiting a correctional institution and to escort the victim/nearest relative to and from the designated hearing room.

The proposed amendments will impact on the Department of Corrections. It is anticipated that certain victim input hearings will be conducted within a correctional institution and, therefore, the Department of Corrections will be required to provide a designated hearing room, provide appropriate security and permit the entering and exiting of a victim/nearest relative to the appropriate correctional institution.

Victim input has been a component of the parole process since 1984. The proposed amendments merely modify the method by which victim input is received by the Board. It is not anticipated that the proposed amendment will significantly impact on the general prison population. However, it is anticipated that the Board will now receive victim input in the case of certain inmates which the Board may not have previously received.

**Economic Impact**

It is anticipated that the proposed amendments will have no economic impact on the State Parole Board or the inmate population. However, victims or the nearest relatives of certain victims will incur the cost of travel to the designated hearing location. Further, contingent on the number of cases in which direct victim input is received and contingent on the nature of the information received, parole release may be denied in the case of certain inmates and, therefore, the Department of Corrections will be required to house a number of inmates for a longer period of time.

**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 concern victim input at parole hearings. 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:71-3.47 Victim input**

(a) Any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/**manslaughter** victim shall be entitled to present a statement for the parole report, filed pursuant to N.J.A.C. 10A:71-3.7, to be considered during the parole hearing process, **to present testimony to a senior hearing officer designated by the Board panel [or], to [testify] present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19,** concerning the victim's harm.

(b) The term "victim" shall mean a person who suffers a personal, physical or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime of the first or second degree committed against that person, or in the case of murder/manslaughter, the nearest relative of the victim. In the case of a minor, victim shall also mean the minor's parent(s) or guardian.

(c) The term "nearest relative of a murder/manslaughter victim" shall mean a spouse, parent, grandparent, stepfather, stepmother,

child, grandchild, brother, sister, half-brother, half-sister and guardian of a minor.

[(b)](d) At the time of sentencing, the prosecutor shall notify any victim injured as a result of a crime of the first or second degree or the nearest relative of a murder/manslaughter victim of the opportunity to present a statement for the parole report to be considered during the parole hearing process, **to present testimony to a senior hearing officer designated by the Board panel [or], to [give] present testimony to the Board panel, or to present testimony to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19,** concerning the victim's harm.

[(c)](e) Each victim or nearest relative of a murder/manslaughter victim shall be responsible for notifying the Board of his or her intent to submit a statement, or to testify, and to provide and keep current an appropriate mailing address.

[(d)](f) The statement or testimony of the victim or nearest relative of a murder/**manslaughter** victim may include the following:  
1.-3. (No change.)

[(e)](g) At the time public notice is given pursuant to N.J.A.C. 10A:71-3.8, the Board shall notify any victim or nearest relative of a murder/**manslaughter** victim who has previously contacted the Board of the opportunity to provide a statement for inclusion in the parole report or to present testimony [at a parole hearing] **to a senior hearing officer designated by the Board panel, to the Board panel or to the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19.** The Board shall notify such person at the address of record.

[(f)](h) The victim or nearest relative of a murder/**manslaughter** victim shall notify the Board within 30 days from the date of the notice provided pursuant to [(e)](g) above of his or her intent to submit a statement or to testify [at a parole hearing] **before a senior hearing officer designated by the Board panel, before the Board panel or before the Board, if a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19.** This time period may be waived by the Board for good cause.

[(g)](i) Upon the victim or nearest relative of a murder/**manslaughter** victim submitting a written statement to the Board subsequent to notice being provided pursuant to [(e)](g) above, the statement shall be made a part of the Board's file on the inmate and the inmate's case shall be referred to a hearing officer designated to conduct parole release hearings pursuant to N.J.A.C. 10A:71-3.14.

[(h)](j) Upon the victim or nearest relative of a murder/**manslaughter** victim informing the Board subsequent to notice being provided pursuant to [(e)](g) above that such person intends to testify **before a senior hearing officer designated by the Board panel,** the Chairperson shall assign the inmate's case to a senior hearing officer for the purpose of receiving such person's testimony. **The case shall be processed as follows:**

[(i)]1. Except as provided in N.J.A.C. 10A:71-3.50, the assigned senior hearing officer shall conduct a hearing within 30 days from the date the Board received notification [pursuant to (h) above] of the intent to offer testimony.

[(j)]2. The hearing shall be conducted at a time and place and on a date determined by the Chairperson or designee. Notice of the time, place and date of the hearing shall be provided to the victim or nearest relative of a murder/**manslaughter** victim in writing and shall be mailed at least [10] 14 days prior to the hearing date. Recodify existing (k)-(m) as 3. to 5. (No change in text.)

[(n)]6. The hearing scheduled pursuant to this [section] subsection shall be conducted, when possible, prior to a parole release hearing and prior to the appropriate Board member(s), Board panel or the Board rendering a decision pursuant to N.J.A.C. 10A:71-3.16 and 3.18. However, nothing herein shall be construed to preclude the Board from conducting a timely parole release hearing.

7. **During the hearing conducted pursuant to this subsection, only the senior hearing officer, appropriate Board personnel and the victim or nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the senior hearing officer, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor,**

elderly or infirm victim or nearest relative of a murder/manslaughter victim in the hearing. The senior hearing officer may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the victim or nearest relative of a murder/manslaughter victim.

(k) Upon the victim or nearest relative of a murder/manslaughter victim informing the Board subsequent to notice being provided pursuant to (g) above that such person intends to testify before the Board panel, the case shall be processed as follows:

1. Victim input shall be received by the Board panel on the date of the inmate's scheduled hearing before the Board panel and at the designated institution. However, if deemed appropriate by the Board panel, the victim input may be received by the Board panel at a place and on a date other than at the institution in which the inmate is confined and on the date of the inmate's scheduled hearing before the Board panel. If the two Board panel members cannot reach agreement on an alternate place and date, the matter shall be referred to the Chairperson for a final decision.

2. The victim input segment of the Board panel hearing shall be conducted, with the consent of the Department, in the administrative area of the institution.

3. Notice of the time, place and date of the Board panel hearing shall be provided to the nearest relative of a murder/manslaughter victim in writing and shall be mailed at least 14 days prior to the hearing date.

4. The nearest relative of a murder/manslaughter victim shall be required to confirm with the Board their appearance before the Board panel seven days prior to the hearing date.

5. Upon confirmation by the nearest relative of a murder/manslaughter victim of their appearance before the Board panel, the Board shall notify the Department of the identities of the person(s) who will appear before Board panel on the scheduled hearing date.

6. The Board shall notify the nearest relative of a murder/manslaughter victim that appropriate personal identification is required by the Department in order to enter the institution.

7. During the victim input segment of the Board panel hearing, the Board panel shall permit the nearest relative of a murder/manslaughter victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board panel's consideration of the inmate's case. The Board panel shall, in recognition of the number of hearings to be conducted on the hearing date, be permitted to establish a reasonable time period(s) for the presentation of information.

8. The victim input segment of the Board panel hearing shall be recorded by an electronic recording device and said recording shall be maintained as part of the Board's file on the inmate's case.

9. If a Board panel hearing is cancelled, the Board panel shall provide immediate notification of the cancellation to the nearest relative of a murder/manslaughter victim. The Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

10. In the victim input segment of the Board panel hearing, only the Board members, appropriate Board personnel and nearest relative of a murder/manslaughter victim shall be present in the hearing room. If deemed necessary by the Board panel, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm nearest relative of a murder/manslaughter victim in the hearing. The Board panel may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the nearest relative of a murder/manslaughter victim.

11. If a nearest relative murder/manslaughter victim provides notice of their inability to attend the Board panel hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board panel shall provide reasonable notice of the time, place and date of the Board panel hearing upon the hearing being rescheduled.

12. Upon the conclusion of the victim input segment of the Board panel hearing, the Board panel shall reconvene the hearing with

the inmate present in the hearing room designated by the Department. In the inmate segment of the Board panel hearing, the nearest relative of a murder/manslaughter victim shall not be present in the hearing room.

(l) If a hearing is conducted pursuant to N.J.A.C. 10A:71-3.19, the Board shall notify the nearest relative of a murder victim, who has previously contacted the Board, of the hearing and shall afford the nearest relative of a murder victim the opportunity to testify in person before the Board or to submit a written statement. If the nearest relative of a murder victim intends to testify before the Board, the case shall be processed as follows:

1. Victim input shall be received by the Board on the date of the inmate's scheduled hearing before the Board and at the designated institution.

2. The victim input segment of the Board hearing shall be conducted, with the consent of the Department, in the administrative area of the institution.

3. Notice of the time, place and date of the Board hearing shall be provided to the nearest relative of a murder victim in writing and shall be mailed at least 14 days prior to the hearing date.

4. The nearest relative of a murder victim shall be required to confirm with the Board their appearance before the Board seven days prior to the hearing date.

5. Upon confirmation by the nearest relative of a murder victim of their appearance before the Board, the Board shall notify the Department of the identities of the person(s) who will appear before Board on the scheduled hearing date.

6. The Board shall notify the nearest relative of a murder victim that appropriate personal identification is required by the Department in order to enter the institution.

7. During the victim input segment of the Board hearing, the Board shall permit the nearest relative of a murder victim a reasonable opportunity to present information relative to the factors outlined in (f) above or any other information relevant to the Board's consideration of the inmate's case. The Board shall, in recognition of the number of hearings to be conducted on the hearing date, establish a reasonable time period(s) for the presentation of information.

8. The victim input segment of the Board hearing shall be recorded by an electronic recording device and said recording shall be maintained as part of the Board's file on the inmate's case.

9. If a Board hearing is cancelled, the Board shall provide immediate notification of the cancellation to the nearest relative of a murder victim. The Board shall provide reasonable notice of the time, place and date of the Board hearing upon the hearing being rescheduled.

10. In the victim input segment of the Board hearing, only the Board members, appropriate Board personnel and the nearest relative of a murder victim shall be present in the hearing room. If deemed necessary by the Board, a translator may be permitted to assist in the hearing or a family member may be permitted to assist a minor, elderly or infirm nearest relative of a murder victim in the hearing. The Board may also permit an individual to be present in the hearing room for the limited purpose of providing emotional support to the nearest relative of a murder victim.

11. If a nearest relative of a murder victim provides notice of their inability to attend the Board hearing on the scheduled date, the hearing shall be conducted as scheduled. However, if the hearing on the scheduled date is cancelled, the Board shall provide reasonable notice of the time, place and date of the Board hearing upon the hearing being rescheduled.

12. Upon the conclusion of the victim input segment of the Board hearing, the Board shall reconvene the hearing with the inmate present in the hearing room designated by the Department. In the inmate segment of the Board hearing, the nearest relative of a murder victim shall not be present in the hearing room.

[(o)](m) If notice pursuant to [(f)](h) above is received subsequent to the conducting of an initial parole hearing but prior to a decision being rendered in the inmate's case, the appropriate Board member(s), Board panel or the Board shall not render a

decision in the inmate's case until a written statement is received and made a part of the Board's file on the inmate, [the] a hearing has been conducted pursuant to (j) above and the written report prepared and made a part of the Board's file or a hearing has been conducted pursuant to (k) above.

[(p)](n) If notice pursuant to [(f)](h) above is received subsequent to the rendering of a decision certifying parole release, the appropriate Board member(s), Board panel or the Board shall suspend the parole release date pursuant to N.J.A.C. 10A:71-5.1 pending the receipt of a written statement or the completion of [the] a hearing pursuant to (j) and the submission of a report or a hearing has been conducted pursuant to (k) above.

1. Within 14 days of submission of a written statement, the report of the designated senior hearing officer or the completion of the hearing pursuant to (k) above, the Board member(s), Board panel or Board shall:

i-iv. (No change.)

[(q)](o) Any and all statements or testimony of the victim or nearest relative of a murder/manslaughter victim submitted to the Board pertaining to the continuing nature and extent of any physical harm or psychological or emotional harm or trauma suffered by the victim, the extent of any loss of earnings or ability to work suffered by the victim and the continuing effect of the crime upon the victim's family shall not be deemed confidential and shall be released to the inmate unless the withholding of the statements or testimony is requested by the victim and the hearing officer, Board panel or Board determines that the release of the statements or testimony would endanger the safety of the person providing the statements or testifying. The Board on its own motion may for good cause identify all or part of the statements or testimony as confidential.

[(r)](p) The provisions of this section except for public notice required pursuant to N.J.A.C. 10A:71-3.8 and except for testifying before the Board panel and Board shall be applicable to the cases of juvenile and county inmates.

[(s)](q) Nothing in this section shall preclude the Board from receiving statements or testimony from any victim injured as a result of a crime of the third or fourth degree or the nearest relative of a victim. However, statements shall be submitted in writing to the Board and testimony shall be received by a designated senior hearing officer pursuant to (j) above.

[(t)](r) (No change in text.)

## INSURANCE

### (a)

#### DIVISION OF PROPERTY AND CASUALTY

#### Automobile Insurance: Rate Filing Requirements Filings Reflecting Paid, Apportioned MTF Expenses and Losses

#### Proposed New Rule: N.J.A.C. 11:3-16.12

Authorized By: Samuel F. Fortunato, Commissioner,  
Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e); 17:29-1 et seq.; 17:29A-36.2;  
17:29A-36.3; and 17:33B-1 et seq.

Proposal Number: PRN 1992-542.

Submit comments by January 20, 1993 to:  
Verice M. Mason  
Assistant Commissioner  
New Jersey Department of Insurance  
CN 325  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

This proposed new rule establishes procedures by which New Jersey personal private passenger automobile insurers may seek to establish the need to recover amounts paid by the insurer as its apportioned share of the Market Transition Facility ("MTF") operational expenses and losses. The rule establishes special personal private passenger automobile

rate filing requirements and the method for calculating the amount, if any, that may be charged to policyholders.

The Fair Automobile Insurance Reform Act ("FAIR Act") at N.J.S.A. 17:33B-11d provides that the Commissioner of Insurance ("Commissioner") shall apportion any profits or losses of the MTF among its member companies based on each company's apportionment share for depopulation. Insurers were notified early this year of their apportioned share of the MTF operating loss for the first year. This information was to be used for limited purposes only, such as for tax filings and certain filings with the Department of Insurance ("Department"). In accordance with the MTF Plan of Operation (the "Plan"), insurers have been prohibited from including these unpaid amounts in a prior approval rate filing until such time as insurers actually make payments to the MTF for this liability. (Plan, Articles of Association, Art. V, paragraph 1 and Art. XIV, paragraphs 1 and 2.) The Commissioner's decision to defer rate relief in this manner was upheld by the New Jersey Superior Court, Appellate Division, in *Matter of Private Passenger Automobile Rate Revision on Behalf of the Aetna Casualty and Surety Company*, 256 N.J. Super 46 (App. Div. 1992).

The Department recently proposed amendments to the MTF Plan directing insurers to record a liability for their apportioned shares of the MTF deficit for the first reporting year (October 1, 1990 to September 30, 1991). At the same time, the Plan is proposed to be amended to provide a procedure by which an insurer may currently pay up to 80 percent of its apportioned share of the MTF deficit for this first reporting year. For Federal income tax planning, some insurers may find it advantageous to make payment at this time. Since such payments by insurers to the MTF may occur in the near future, it is appropriate that the Department amend N.J.A.C. 11:3-16 to set forth the procedures by which the Commissioner will review insurer filings which seek to increase charges to policyholders based upon these payments.

This proposed new rule provides for a special filing for insurers which have paid their apportioned share. The special characteristics of these payments are numerous. First, once payment is made by the insurer, its obligation for that portion of the MTF deficit will have been discharged. Second, although any recovery from policyholders which might be authorized will occur after the filing is made and approved as provided in these rules, payment of the liability by the insurer will have already been made. Third, while the insurer's present liability is fixed and determinable to date, the future liabilities remain uncertain as a result of the volatile nature of the MTF's book of business and its temporary existence. Thus, these additional liabilities cannot be determined with finality until the business is run off. Finally, the requirement for payment by insurers may vary over time based upon the cash needs of the MTF. While insurers remain subject to the authority of the Commissioner to order specific payments by dates certain (the "cash call"), some insurers may pay their obligation at various times after the liability is recorded. Because of these circumstances, the MTF policyholder surcharge is handled outside of the traditional ratemaking process provided by N.J.A.C. 11:3-16.6 through 16.10.

Moreover, although N.J.S.A. 17:33B-11d provides no guidance concerning the method by which insurers may recover MTF payments from policyholders, other laws direct the Commissioner regarding personal private passenger automobile rates. N.J.S.A. 17:29A-7 and 17:29A-14 generally provide that personal private passenger automobile insurance rate changes are subject to the prior approval of the Commissioner. The Commissioner must determine that the amount paid by policyholders is not excessive, inadequate or unfairly discriminatory. In fact, N.J.S.A. 17:29A-7 authorizes the Commissioner to order a rate reduction if he finds rates to be excessive. N.J.S.A. 17:29A-36.2 directs the Department to establish standard data filing requirements and a standard ratemaking methodology for automobile insurance, which is presently set forth in N.J.A.C. 11:3-16.6 through 16.10. The standard ratemaking methodology set forth at N.J.A.C. 11:3-16.10 employs the "Clifford Formula," in use by the Department since 1972 and approved by the courts. See *Application of Ins. Rating Bd.*, 63 N.J. 413 (1973).

While the circumstances surrounding insurers' payment of their apportioned shares of the MTF deficit require special treatment, the above authorities nevertheless circumscribe and direct the form that such treatment must take. The Department interprets these statutes to support certain principles that should be applied. First, to determine the appropriate amounts, if any, to be charged and collected from policyholders the insurer's filing must be reviewed by the Commissioner. Secondly, the Commissioner should not approve any filing that results in excessive charges to policyholders. Finally, the "Clifford Formula," traditionally

employed in the Department's ratemaking, should serve as a benchmark in determining the proper level of automobile insurance rates, and whether there will be any charge to policyholders and, if so, its amount.

Other public policy considerations also bear upon the proper manner by which MTF apportioned losses may be recovered from policyholders. Most importantly, any charge ultimately borne by policyholders should be treated not as premium, but as a special surcharge. Such treatment will avoid multiplying the costs by producer commissions, taxes and other expenses tied to premiums, and will thus minimize the cost to those who must pay it. Nevertheless, if a charge is approved, the insurer must be able to enforce collection by cancellation for non-payment, as with other amounts due from policyholders.

Secondly, since different insurers will pay different apportioned shares at different times and will have different current rate change indications, the amount of policyholder surcharge will vary by insurer. It may be zero for some, and even if charged could change over time. Cost-conscious policyholders could choose to exercise fully their rights under N.J.S.A. 17:33B-15 and seek coverage from a particular insurer that, at the time, has no surcharge or a lower surcharge. While this relief may only be temporary for the policyholder, there is a likelihood that such an exercise would lead to significant market dislocations as policyholders seek lower cost coverage, and at the same time have potential adverse effects upon those insurers' finances which are burdened with a significant number of new applications. Therefore, the incremental impact of policyholder surcharges should be minimized.

Thirdly, the recovery from policyholders should not vary based on classification differentials, but be applied as a flat charge per vehicle paid equally by all of the insurer's policyholders. This equitable approach to spreading the expense is consistent with the treatment required for other taxes, fees and similar levies. See N.J.S.A. 17:29A-37a.

Finally, the filing and approval process must recognize the practical limitations in the Department's ability both to scrutinize the substantial number of such filings that may be expected and to resolve them promptly in accordance with law.

The Department proposes this new rule to provide, when appropriate based on an insurer's established need, for a special, non-recurring policyholder surcharge to reconcile all of the considerations set forth above. The proposed procedure is intended to be applicable to payments which are made to the MTF on account pursuant to the Plan, as well as to payments which are made in response to cash calls.

Specific items to be submitted with the filing include the information required in a prior approval rate filing, since the threshold evaluation in determining any amount of additional charges to be paid by policyholders is the propriety of the insurer's current rate level. The filing requirements mandate a calculation of the insurer's current percent rate change indication, without consideration of the insurers' apportioned MTF liability. If the insurer's current rate change indication is negative (that is, its rates may be expected to produce revenues in excess of the "Clifford Formula" target), the insurer will be permitted to charge and collect from policyholders only that portion, if any, of its payments to the MTF that is needed to result in adequate but not excessive rates. For example, if the insurer's current percent rate change indication is a negative 4.1 percent and the payment to the MTF represents 4.0 percent, then no policyholder surcharge will be permitted. As another example, if the insurer's current percent rate change indication is a negative 2.1 percent and the payment to the MTF represents 3.5 percent, then the insurer will be permitted to charge policyholders only the difference of 1.4 percent. Only if the insurer's current rate change indication is zero, or positive (that is, the insurer's rates are currently at or below the "Clifford Formula" target level), will the Commissioner approve a policyholder surcharge by which the insurer recovers the full amount of its payment to the MTF. For example, if the insurer's current percent rate change indication is 0.0 percent or is a positive 2.3 percent, the insurer may be permitted to charge a policyholder surcharge that represents its entire payment to the MTF.

The amount recoverable as a policyholder surcharge may include interest calculated from the due date of the cash call and, if it exceeds \$50.00, may in the Commissioner's discretion be collected over a period of up to three years. In their filings, insurers are directed to provide proposed effective and termination dates, which will both aid in the calculation of interest and confirm that the policyholder surcharge is a limited, non-recurring obligation.

Subsequent payments to the MTF may likewise be recovered by policyholder surcharges after approval of a similar filing. The proposed rule provides that no more than one policyholder surcharge shall be

approved with an effective date in any single 12-month period beginning April 16 and ending April 15. Filings pending approval may be amended to reflect additional payments to the MTF by the insurer prior to the resolution of the filing, but insurers must make their filings within 12 months of payment. The Department intends that this procedure will provide a fair process by which payments may be recovered when the need is demonstrated.

Filings pursuant to this proposed new rule will be subject to the process for approving prior approval filings, set forth at N.J.A.C. 11:3-18.6 and, as applicable, N.J.A.C. 11:3-16.13 (as recodified). The filer may request that a prior approval rate change pursuant to N.J.A.C. 11:3-16.6 be considered in a filing made pursuant to this proposed new rule when the overall percent rate change indication is positive.

#### Social Impact

This proposed new rule provides the process by which automobile insurers may seek to recover, if needed, monies paid to the MTF as the insurer's apportioned share of MTF operating experience and losses. The rule, however, does not permit an automatic pass through to policyholders. Rather, through a prior approval rate filing, an insurer's overall rate level will be examined to establish whether the insurer's current rates are adequate and not excessive in accordance with N.J.A.C. 17:29A-7 and, thereby, to determine the amount of policyholder surcharge, if any, which may be necessary to maintain adequate but not excessive rates.

The Department's review of the insurer's overall rate level assures both insurers and policyholders that their rates are adequate and not excessive.

#### Economic Impact

This proposed new rule will impact personal private passenger automobile insurers and policyholders. In order to apply for approval of a policyholder surcharge, insurers will be required to expend the costs of preparing and obtaining approval of a rate filing as provided in this proposed new rule.

The special filing provided by this proposed new rule includes all of the data required to be filed for any rate change request that requires the prior approval of the Commissioner. The costs to any particular insurer cannot be determined with certainty because they will vary depending upon the internal resources of the insurer (both staff and data) and the course of proceedings required to resolve the filing. These costs may be significant, however, if the insurer is required to obtain the assistance of outside actuarial consultants because the needed expertise is not available in-house, or if counsel is required to pursue the matter through a contested case hearing before the Office of Administrative Law. Nevertheless, it must be noted that the great bulk of these costs represent those associated with any rate filing that requires the prior approval of the Commissioner. Prior approval of rate changes is required by N.J.S.A. 17:29A-7 and 17:29A-14, and N.J.A.C. 11:3-16.6 through 16.10 currently set forth the filing requirements for rate requests requiring prior approval. Thus the marginal costs of making the special filing required by this proposed new rule—the costs associated with preparing and submitting the exhibits and statements required by N.J.A.C. 11:3-16.12(b)2 and 3 in addition to those required for a prior approval filing—are minimal. For the reasons stated in the Summary, these additional items are necessary in order to effectuate the special considerations of public policy applicable to these filings.

Additionally, to the extent that the insurer's current rates may be expected to produce revenues in excess of the "Clifford Formula" target, insurers will be unable to recover these amounts from policyholders. As indicated in the Summary, the Department interprets the applicable statutes to constrain approval of a policyholder surcharge to an amount sufficient only to provide adequate, but not excessive, rates.

With regard to the economic impact upon policyholders, the Department notes that insurers are entitled to revenues in the amount necessary to pay losses, expenses and a reasonable profit. Because payments to the MTF represent an additional cost to insurers, it is likely that some insurers will be granted approval to surcharge policyholders as provided in this proposed new rule, but others may not. The amount of such surcharges cannot be determined at this time and will vary by insurer. Nevertheless, this proposed new rule provides that any policyholder surcharge which is approved will be minimized by limiting it to that necessary to provide the insurer with revenue that is adequate, but not excessive, and will not include additional amounts representing taxes, commissions and other expenses tied to the amount of premium.

**Regulatory Flexibility Analysis**

A few automobile insurers are "small businesses" as defined in the Regulatory Flexibility Act at N.J.S.A. 52:14B-17. This proposed new rule establishes procedures by which an insurer may seek to establish the need to recover amounts paid to the MTF for its operating expenses and losses.

As noted above, this proposed new rule requires that the insurer submit a filing in order to obtain the Commissioner's approval. The bulk of the filing will consist of a prior approval filing as currently set forth in N.J.A.C. 11:3-16.6 through 16.10. These rules already provide some relaxed requirements for insurers with a small market share; for reasons stated when those rules were adopted, further relaxation or minimization of the prior approval filing requirements is inappropriate. See 22 N.J.R. 399(a). With respect to the marginal additional requirements set forth in this proposed new rule (see N.J.A.C. 11:3-16.12(b)2 and 3), these additional requirements are so minimal as to be negligible, and are necessary to calculate the proper amount of policyholder surcharge, if any.

Insurers may be required to obtain the services of independent actuarial consultants to prepare the filing required by this proposed rule if sufficient expertise is not available in-house. Also, an insurer may be required to obtain the services of attorneys to prosecute the request if a contested case hearing is required in order to resolve the filing. Costs of such proceedings to resolve the filing are, to some degree, within the control of the insurer to the extent that the insurer has a choice whether to request a contested case hearing.

The burden on all insurers, regardless of business size, has been minimized by: (1) limiting insurers to no more than one filing effective date in a single period of 12 consecutive months; (2) permitting amendment of a pending filing to reflect further payments to the MTF while the filing is unresolved; and (3) providing for consideration when appropriate of a prior approval rate change request pursuant to N.J.A.C. 11:3-16.6 in a single proceeding. Finally, it may be noted that this proposed rule does not require that such filing be made; rather, it provides the form and process to be followed should an insurer choose to do so. Regardless of business size, an insurer may be expected to evaluate the costs of the proceedings provided in this proposed new rule in determining whether to elect to make such a filing.

For these reasons, and because the prior approval filing requirements at N.J.A.C. 11:3-16.6 through 16.10 have already been minimized to the extent consistent with the Commissioner's obligation to approve adequate but not excessive rates, no differentiation based on business size has been provided in this proposed new rule.

**Full text** of the proposed new rule follows.

**11:3-16.12 Filings reflecting paid, apportioned MTF expenses and losses**

(a) Upon approval of the Commissioner pursuant to this section, an insurer may charge and collect a special surcharge to recover from policyholders amounts actually paid by the insurer to the MTF as its apportioned share of MTF operational expenses and losses. Any amount so charged and collected shall not be considered premium except for the limited purpose of allowing cancellation of the policy for non-payment of the surcharge pursuant to N.J.S.A. 17:29C-7 and N.J.A.C. 11:3-7.6.

(b) An insurer desiring to provide for a policyholder surcharge pursuant to this section shall provide the following information:

1. All of the data required for prior approval filings submitted pursuant to N.J.A.C. 11:3-16.6, which shall include an exhibit of the insurer's overall percent rate change indication, calculated in accordance with the Department's standard ratemaking methodology as set forth in N.J.A.C. 11:3-16.10, but without any consideration of its apportioned share of MTF operational expenses and losses;

2. A certified statement signed by an officer of the insurer that sets forth the amount paid to the MTF and the date of payment;

3. An exhibit that sets forth the calculation of the proposed policyholder surcharge, in accordance with the methodology set forth at (d) below; and

4. The proposed effective date and termination date of the policyholder surcharge.

(c) Upon receipt of a filing made pursuant to this section, the Department shall review it for completeness pursuant to N.J.A.C.

11:3-18.6(b), which review shall specifically include a determination that (b)2 above is complete and accurate.

(d) The filer shall use the following methodology to determine the proposed amount of the policyholder surcharge:

1. Its current overall percent rate change indication shall be calculated in accordance with the standard ratemaking methodology at N.J.A.C. 11:3-16.10, excluding all apportioned MTF operational expenses and losses.

2. If the current overall percent rate change indication is negative, the amount of policyholder surcharge shall be calculated as follows. The filer shall:

i. Convert the amount paid to the MTF to a percentage of premium by dividing it by earned premium;

ii. Add the result of (d)2i above to the current overall rate change indication;

iii. If the result of (d)2ii above is positive, multiply it by earned premium to obtain the amount of gross policyholder surcharge; and

iv. Divide the result of (d)2iii above by earned exposures to obtain the per automobile policyholder surcharge in dollars.

3. If the current overall percent rate change indication is zero or positive, the amount of policyholder surcharge shall be calculated by dividing the amount paid to the MTF by earned exposures to obtain the per automobile policyholder surcharge in dollars.

4. The calculation of the policyholder surcharge shall include a provision that permits the filer to recover interest at the rate set forth in N.J.A.C. 11:3-16.10(a)8 from the due date of the cash call made pursuant to the MTF Plan of Operation.

5. If the per automobile policyholder surcharge, including any interest as provided in (c)4 above, exceeds \$50.00, then the Commissioner in his or her discretion may provide that the policyholder surcharge be collected over a period of up to three years; otherwise, it shall be collected over one year.

6. The Commissioner's approval of a policyholder surcharge shall include a termination date, after which the policyholder surcharge shall be deleted from future billing statements.

(e) Subsequent amounts paid to the MTF by the insurer may be charged and collected from policyholders only after a further filing is approved by the Commissioner as provided in this section. Nothing in the proceedings concerning any subsequent filing shall affect the approval of a prior filing.

(f) No more than one policyholder surcharge shall be approved pursuant to this section with an effective date between April 16 of any year and April 15 of the subsequent year.

1. A filing when made may include more than one payment by the insurer to the MTF.

2. A pending filing may be amended pursuant to N.J.A.C. 1:1-6.2 to reflect additional payments by the insurer to the MTF, subject however to the limitations of (e) above.

3. Insurers shall make filings that request approval of a policyholder surcharge no more than 12 months after payment of the assessment for which the insurer seeks relief.

(g) Should a policyholder surcharge be approved, the Commissioner shall direct whether it shall be set forth as a separate item on the premium bill, and if so, how it shall be identified.

(h) The procedures for review and approval of filings made pursuant to this section shall be in accordance with N.J.A.C. 11:3-18.6. Insurer filings for rates requiring prior approval, and, as applicable to filings requiring prior approval, N.J.A.C. 11:3-16.3.

(i) If so requested by the filer, when the overall percent rate change indication as calculated in (d)1 above is positive, proceedings to approve the policyholder surcharge in accordance with this rule may include consideration of a prior approval rate change pursuant to N.J.A.C. 11:3-16.6.

Recodify existing 11:3-16.12 and 16.13 as **11:3-16.13 and 16.14** (No change in text.)

## LAW AND PUBLIC SAFETY

(a)

### STATE ATHLETIC CONTROL BOARD

#### Gifts, Outside Activities, Lodging, Work Space

#### Proposed Repeal: N.J.A.C. 13:46-23.5

#### Proposed New Rules: N.J.A.C. 13:46-23A

Authorized By: State Athletic Control Board, Gerard Gormley, Chairman; Gary Shaw, Member; Richard Harrison, Member.  
 Authority: N.J.S.A. 5:2A-6(a); 5:2A-6.1; and 5:2A-7(c).  
 Proposal Number: PRN 1992-531.

Submit comments by January 20, 1993 to:

Larry Hazzard, Commissioner  
 State Athletic Control Board  
 CN 180  
 Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The purpose of the proposed new rules is to clarify the standards of ethical conduct imposed by N.J.S.A. 5:2A-6(a), the Department of Law and Public Safety Code of Ethics and N.J.S.A. 5:2A-6.1 on Board employees and appointees and to establish, as permitted by N.J.S.A. 5:2A-6(a), those circumstances under which regulatory personnel may accept meals, lodging and other expenses in connection with their assignment to a particular regulated event.

N.J.S.A. 5:2A-6(a) states as follows:

No board member or employee shall be permitted to accept complimentary or gratuities in any form from any licensee or applicant for licensure under this act or from any person or entity which is either licensed pursuant to the "Casino Control Act," P.L. 1977, c.110 (C. 5:12-1 et seq.) or is an applicant for licensure, pursuant to the "Casino Control Act," P.L. 1977, c. 110 (C. 5-12-1 et seq.), except as provided by regulations promulgated by the board. Those regulations may authorize the furnishing of lodging, meals and parking for board employees assigned to a particular exhibition, event or contest.

N.J.S.A. 5:2A-6.1 states as follows:

No board member, employee or agent, including the commissioner, shall hold an office or position in any body, organization, association or federation which is established for the purpose of sanctioning boxing, wrestling, kick boxing and combative sports exhibits, events and performances and contests in this State or other states.

The new rules, therefore, will clarify and continue prohibitions on the acceptance of gifts, favors and other things of value by employees and appointees of the Board and authorize that the necessary lodging and meals for designated board employees, referees and judges assigned to a particular regulated event may be provided by the promoter. The rules will also establish a process by which Board members and employees must seek approval from the Department of Law and Public Safety Ethics Officer prior to engaging in any compensated or uncompensated activity on behalf of a sanctioning body that is not clearly prohibited by N.J.S.A. 5:2A-6.1 or any such activity on behalf of a licensee of the Board or the Casino Control Commission, or a non-New Jersey state athletic regulatory agency. Finally, in order to bring all related regulations under one subchapter, the current rule in regard to the acceptance of gifts, favors, and other things of value found at N.J.A.C. 13:46-23.5 will be repealed and its subject matter covered by new rules.

Proposed N.J.A.C. 13:46-23A.1 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 13:46-23A.2 requires Board personnel to comply with the Department of Law and Public Safety Code of Ethics.

Proposed N.J.A.C. 13:46-23A.3 will prohibit Board members and employees from accepting gifts, favors, or other things of value from licensees of, or applicants for licensure by, the Board, or the Casino Control Commission, or the owner of any premises where a regulated event is held and require reporting of offers of gifts, favors, or other things of value to the Department of Law and Public Safety Ethics Officer.

Proposed N.J.A.C. 13:46-23A.4 sets out similar prohibitions and reporting requirements imposed on appointees of the Board.

Proposed N.J.A.C. 13:46-23A.5 prohibits certain outside activities by Board members and employees on behalf of sanctioning bodies and other

entities and requires that other outside activities be approved by the Department of Law and Public Safety Ethics Officer.

Proposed N.J.A.C. 13:46-23A.6 permits the Board, pursuant to N.J.S.A. 5:2A-6(a), to require promoters to provide appropriate on-site workspace and lodging for Board personnel assigned to an event and to allow promoters to provide meals, lodging and, in some cases, travel expenses for judges and referees.

#### Social Impact

The social impact of the proposed new rules will be positive. To avoid the appearance of impropriety and to ensure the public trust and confidence in those activities regulated by the Board, the rules impose limitations on the acceptance of gifts, favors and other things of value by employees and appointees of the Board.

#### Economic Impact

With the exception of proposed new rule N.J.A.C. 13:46-23A.6, the proposed new rules will not have any economic impact on the State, the public or those individuals regulated by the Board. Proposed new rule N.J.A.C. 13:46-23A.6 permits the Board to require the promoter to absorb the costs related to the lodging and work space that may be required by Board employees assigned to a particular event. The shifting of these costs, which is a common practice in other states, is expressly contemplated in N.J.S.A. 5:2A-6(a) and should result in significant savings to the State. The additional financial burden imposed on promoters is anticipated to be minimal. Additionally, the new rule will allow the Board to permit, where the Board deems it necessary, promoters to pay for the costs of travel, lodging and meals of certain judges and referees appointed by the Board to officiate a particular event, also a practice common in other states.

#### Regulatory Flexibility Statement

The proposed new rules may impose some compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Since the payment of lodging and other expenses by promoters is subject to the discretion of the Board, it cannot be accurately projected when and upon whom such a requirement may be imposed. Therefore, a differentiation in the requirements imposed by the proposed rules predicated upon size of business cannot be provided.

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

13:46-23.5 [Acceptance of Gift, Favor, Service or Other Thing of Value Prohibited] (**Reserved**)

[No officer, employee or appointee of the Office of the State Athletic Commissioner, including referees, judges, inspectors, timekeepers, physicians, doormen and box office employees shall accept any gift favor, service or any other thing of value whatsoever, including but not limited to complimentary meals, the use of hotel rooms, travel expenses or other gratuities, from any applicant for license or from any licensee of the Office of the State Athletic Commissioner, including promoter, athletes, managers, seconds and matchmakers or from the owner of any premises at which a boxing bout, wrestling exhibition or sparring exhibition is held. Any offer of a gift favor or service, or other thing of value shall be disclosed in writing to the State Athletic Commissioner and to the Attorney General.]

### SUBCHAPTER 23A. GIFTS, OUTSIDE ACTIVITIES, LODGING, WORKSPACE

#### 13:46-23A.1 Definitions

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

"Agent" means any person appointed by the State Athletic Control Board pursuant to N.J.S.A. 5:2A-5(b).

"Board" means the State Athletic Control Board.

"Employee" means the Commissioner, Deputy Commissioners, Chief Inspector, inspectors, and any other person holding full or part-time office or employment with the Board who is compensated for his or her services by the State of New Jersey.

"Appointee" means a referee, judge, timekeeper, or physician or any other individual who is compensated for services performed on

behalf of the Board by means of disbursements by the Board from funds provided to it by a check issued by the promoter to the State of New Jersey and who receives no other compensation from the State of New Jersey.

"Licensee" means a promoter, matchmaker, manager, second, boxer, wrestler, kick boxer or other athletic sports combatant, an announcer, doorman, box office employee, and any club, corporation, organization or association licensed by the Board.

"Non-New Jersey state athletic regulatory agency" means a state agency having the authority to regulate an "out-of-State athletic event" as defined in this section.

"Out-of-State athletic event" means any event which, if held in New Jersey, would be a "regulated event" as defined herein.

"Regulated event" means any public boxing, wrestling, kick boxing and combative sports exhibition or any other event subject to regulation by the Boxing, Wrestling and Combative Sports Act, N.J.S.A. 5:2A-1 et seq.

#### 13:46-23A.2 Department Code of Ethics

All Board members, employees, and appointees are subject to Department of Law and Public Safety Code of Ethics.

#### 13:46-23A.3 Acceptance of gift, favor, service or other thing of value by Board member or employee

(a) No Board member or employee shall solicit, receive or agree to receive, whether directly or indirectly, any gift, favor, service or other thing of value whatsoever, including, but not limited to, tickets, travel expenses, meals, the use of hotel rooms or other gratuities, from:

1. Any licensee of, or applicant for licensure by, the Board;
2. Any licensee of, or applicant for licensure by, the Casino Control Commission, pursuant to N.J.S.A. 5:12-1 et seq.; or
3. The owner of any premises at which a regulated event is held.

(b) Any offer of a gift, favor, service or any other thing of value as defined in (a) above must be reported, in writing, within 48 hours of the offer, to the Department of Law and Public Safety Ethics Officer and the Board Ethics Officer. The Department of Law and Public Safety Ethics Officer, after consulting with the Board Ethics Officer, shall determine whether the gift, favor, service or other thing of value may be accepted.

(c) No Board member or employee shall accept, receive or use a casino meal ticket under any circumstances associated with a regulated event.

#### 13:46-23A.4 Acceptance of gift, favor, service or other thing of value by appointee

(a) No appointee shall solicit, receive or agree to receive, whether directly or indirectly, any gift, favor, service or other thing of value whatsoever, including, but not limited to, tickets, travel expenses, meals, the use of hotel rooms, or other gratuities, from any licensee of, or applicant for licensure by, the Board, any licensee of, or applicant for licensure by, the Casino Control Commission, pursuant to N.J.S.A. 5:12-1 et seq., or the owner of any premises at which a regulated event is held:

1. In connection with a regulated event to which the appointee has been assigned; or

2. Under circumstances from which it might be reasonably inferred that the gift, favor, service or other thing of value was given or offered or solicited for the purposes of influencing or rewarding the appointee's performance of his or her duties or was given, offered or solicited because of the appointee's status as an official of the Board.

(b) Any offer of a gift, favor, service or other thing of value as defined in (a) above must be reported, in writing, within 48 hours to the Department of Law and Public Safety Ethics Officer and the Board Ethics Officer. The Department of Law and Public Safety Ethics Officer, after consulting with the Board Ethics Officer, shall determine whether the gift, favor, service or other thing of value may be accepted.

#### 13:46-23A.5 Outside activity related to sanctioning bodies, licensees, non-New Jersey state regulatory agencies

(a) No Board member, employee or agent, including the Com-

missioner, shall hold an office or position in any body, organization, association or federation which is established for the purpose of sanctioning boxing, wrestling, kick boxing, and combative sports exhibitions, events, performances and contests in this State or other states. See N.J.S.A. 5:2A-6.1.

(b) Any employee who is requested to serve in any compensated or uncompensated role on behalf of a sanctioning body that is not otherwise prohibited by (a) above, such as a supervisor in connection with an out-of-State athletic event or as a speaker at an event sponsored by a sanctioning body, or is requested to serve in any compensated or uncompensated role whatsoever on behalf of a licensee of, or applicant for licensure by, the Board or on behalf of a non-New Jersey state athletic regulatory agency, or on behalf of a licensee of, or applicant for licensure by, the Casino Control Commission, pursuant to N.J.S.A. 5:12-1 et seq., or on behalf of the owner of any premises at which a regulated event is held, shall obtain the approval of the Board prior to performing any such role. Requests for approval of such activity shall be submitted in writing to the Department of Law and Public Safety Ethics Officer and the Board Ethics Officer. The Department of Law and Public Safety Ethics Officer, after consulting with the Board Ethics Officer, shall determine whether the activity may be permitted and shall advise the Board accordingly.

(c) Any Board member who is requested to serve in any role as described by (b) above shall advise the other members of the Board and obtain any advisory opinion from the Department of Law and Public Safety Ethics Officer as to the propriety of such service.

(d) Nothing in this section is intended to require appointees to obtain the Board's approval to officiate or to provide medical services on behalf of a sanctioning body or non-New Jersey state athletic regulatory agency in connection with an athletic event outside the State of New Jersey.

#### 13:46-23A.6 Work space, lodging for employees, judges and referees

(a) Notwithstanding any prohibition imposed by N.J.A.C. 13:46-23A.3 or 23A.4, where the Board determines it is necessary for the efficient performance of duties by the Board or any of its employees assigned to a particular regulated event, the Board may require the promoter:

1. To ensure that an appropriate work space, acceptable to the Commissioner, is provided on the premises where the regulated event is held; and/or

2. To provide sleeping quarters, on the premises, or at a reasonable distance therefrom, for Board members attending in their official capacity and employees who have been assigned to the regulated event and whose names are identified by the Board on a list provided to the promoter prior to the event. The Board shall maintain a record of the names of the employees and Board members provided with sleeping quarters, the location of the rooms to which they have been assigned, and the dates the rooms were used.

(b) Notwithstanding any prohibition imposed by N.J.A.C. 13:46-23A.3 or 23A.4, where the Board determines it is necessary for the efficient performance of duties by judges and referees assigned to a particular regulated event, it may permit the promoter:

1. To pay the reasonable travel costs of judges and referees recommended by the sanctioning body and assigned by the Commissioner to officiate the regulated event and who must travel from outside the State of New Jersey to officiate the regulated event; and/or

2. To provide all judges and referees assigned to the regulated event by the Commissioner with meals and sleeping quarters on the premises or at a reasonable distance therefrom.

(c) Prior to the regulated event, the Board shall provide a list to the promoter of the judges and referees for whom expenses, rooms, or meals are permitted under (b) above. The Board shall maintain a record of the names of the judges and referees, the meals provided, and the location of the rooms to which the judges and referees have been assigned, and the dates on which the rooms were used.

**(a)**

**VIOLENT CRIMES COMPENSATION BOARD  
Compensable Damages; Reimbursement for Loss of  
Earnings**

**Proposed Amendment: N.J.A.C. 13:75-1.7**

Authorized By: Violent Crimes Compensation Board,  
Jacob C. Toporek, Chairman.  
Authority: N.J.S.A. 52:4B-9.  
Proposal Number: PRN 1992-518.

Submit comments by January 20, 1993 to:  
Amedeo A. Gaglioti, Esq.  
Violent Crimes Compensation Board  
60 Park Place  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 13:75-1.7(a) will delete certain language which was added in order to alleviate the projected depletion of funds available to compensate innocent victims of crimes. As a direct result of the enactment of P.L. 1991, c.329, §6, and P.L. 1991, c.329, §3, the Violent Crimes Compensation Board claims continue to experience an increase in revenue.

The purpose of the proposed change is to improve benefit potential to innocent victims of crime. The award limit for claims on or after July 1, 1990 of 75 percent of out-of-pocket unreimbursed or unreimbursable medical expenses, loss of earnings or support or related pecuniary loss, is deleted.

**Social Impact**

By permitting compensation for a greater number of victims and compensation in increased amounts, the Board hopes to more fully ameliorate the problems incurred by innocent victims of crime. No social impact on the Board or society in general is anticipated.

**Economic Impact**

The proposed amendment will compensate innocent victims in accordance with statutory provisions of N.J.S.A. 52:4B-12 and 52:4B-18(d).

The proposed deletion/amendment will allow both increased amounts of compensation and compensation to a greater number of innocent victims.

**Regulatory Flexibility Statement**

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys, may make claims for compensation.

The proposed amendment imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore a regulatory flexibility analysis is not required.

**Full text** of the proposed amendment follows (deletion indicated in brackets [thus]):

13:75-1.7 Compensable damages

(a) The Board may enter an Order of Payment where the claimant has suffered a minimum out-of-pocket loss of \$100.00 as defined by N.J.S.A. 52:4B-18(d), or has lost at least two continuous weeks' earnings or support. [For all claims closed on or after July 1, 1990 the Board shall make no award in an amount greater than 75 percent of the out-of-pocket unreimbursed or unreimbursable medical expenses, loss of earnings or support or related pecuniary loss, incurred by the victim, claimant or secondary victim as defined by N.J.A.C. 13:75-1.28 and as verified by the Board's investigative staff, approved by the Commissioners and subject to limitations provided by these rules.]

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

**(b)**

**VIOLENT CRIMES COMPENSATION BOARD  
Eligibility of Claimants for Personal Injury Resulting  
from the Crime of Burglary**

**Proposed New Rule: N.J.A.C. 13:75-1.31**

Authorized By: Violent Crimes Compensation Board,  
Jacob C. Toporek, Chairman.  
Authority: N.J.S.A. 52:4B-9.  
Proposal Number: PRN 1992-519.

Submit comments by January 20, 1993 to:  
Amedeo A. Gaglioti, Esq.  
Violent Crimes Compensation Board  
60 Park Place  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

In compliance with N.J.S.A. 52:4B-11(b)11, the Violent Crime Compensation Board has compensated innocent victims of the crime of burglary for personal injury resulting therefrom. Proposed new rule N.J.A.C. 13:75-1.31 codifies the eligibility standards for such compensation.

**Social Impact**

In providing personal injury compensation for innocent victims of the crime of burglary, the Board has sought to ameliorate the problems incurred by such victims. The proposed new rule will provide notice to all burglary victims and claimants of the eligibility standards for compensation. No social impact on the Board or society at large is anticipated.

**Economic Impact**

As a codification of existing standards, the proposed new rule will not have an actual economic impact on victims, claimants, the Board or society. By being able to evaluate their circumstances against the codified standards, some burglary victims may be saved the effort of filing a claim which would ultimately not be accepted. In compensating innocent victims for personal injuries resulting from the crime of burglary, the Board seeks to lessen some of the economic consequences of the crime.

**Regulatory Flexibility Statement**

The Violent Crimes Compensation Board's rules govern the process by which victims of violent crimes and their attorneys, may make claims for compensation.

The proposed new rule imposes no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:4B-16 et seq., since they establish compensation eligibility criteria for individual victims. Therefore, a regulatory flexibility analysis is not required.

13:75-1.31 Eligibility of claimants for personal injury resulting from the crime of burglary

(a) Pursuant to the provisions of N.J.S.A. 52:4B-11(b)11, the Board shall make an award to eligible victims of the crime of burglary when an actor, without license or privilege, enters a structure not open to the public with the purpose of committing another offense, other than trespass or entry, or remains in a structure knowing that there is no license or privilege to do so.

(b) "Structure" shall mean any residence, building, room or any place adapted for overnight accommodation of a person. For purpose of this provision, a motor vehicle is not to be considered as a "structure."

(c) In order to be eligible to receive compensation as a victim of the crime of burglary, the victim must have:

- 1. Been a resident, owner, or invited guest of the structure burglarized;
- 2. Been present in the structure at the time of the burglary and either witnessed the burglary itself or subsequently observed the results thereof; and
- 3. Suffered physical and/or emotional distress directly related to the burglary.

(d) A secondary victim, as defined by N.J.A.C. 13:75-1.28, may be eligible for compensation under this section as a secondary victim solely where the criteria in (c)2 and 3 above have been satisfied.

(e) No award shall be made for loss or theft of personal property secondary to a burglary.

### (a)

## DIVISION OF CRIMINAL JUSTICE

### Distribution of Forfeited Property

#### Proposed Readoption with Amendments: N.J.A.C. 13:77

Authorized By: Robert J. Del Tufo, Attorney General of New Jersey.

Authority: N.J.S.A. 2C:64-6.

Proposal Number: PRN 1992-532.

Submit comments by January 20, 1993 to:

Robert J. Del Tufo  
Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street  
CN 085  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Pursuant to a 1986 legislative modification of the State's forfeiture laws (P.L. 1986, c.135), forfeited property and proceeds were required to be used solely for law enforcement purposes and to be designated exclusively for the use of any law enforcement agency which contributed to the surveillance, investigation, arrest or prosecution resulting in the forfeiture. Accordingly, the former Attorney General promulgated standards to implement and enforce the new law consistently and fairly. The standards, N.J.A.C. 13:77, were adopted on December 18, 1987, and became effective on February 1, 1988.

Under those standards, the prosecuting authority shall determine the appropriate share of each participating law enforcement agency, including that of the prosecuting agency itself. The share will be distributed to the funding entity of the participating law enforcement agency, except that the funding entity of the prosecuting authority may first deduct the reasonable expense of administering its Law Enforcement Trust Fund. The law enforcement agency shall use forfeiture proceeds only for approved law enforcement purposes. Any law enforcement agency distributing, receiving or expending forfeited property, proceeds or money shall retain full records documenting these distributions, receipts and expenditures and shall submit a quarterly report to the Attorney General and the appropriate county prosecutor. The Attorney General is responsible for conducting audits of the forfeiture records of any law enforcement agency.

Any law enforcement agency requesting distribution of forfeited property and any such agency that has distributed, received, or expended forfeited property, proceeds, or money shall satisfy the reporting requirement by use of forms approved by and available from the Attorney General.

These rules became effective on February 1, 1988, and have worked well. Applying to the disposition of forfeited property once forfeiture judgments have been obtained, the rules have provided (1) for an orderly, rational sharing process, (2) a reliable reporting system for county and local law enforcement agencies (which allows an annual audit of their forfeiture accounts by the Attorney General's Office), and (3) a workable definition of the purposes for which forfeited funds and property may be used. The rules are necessary to assure accountability for disposition of forfeited property. Under Executive Order No. 66(1978), they are scheduled to expire on February 1, 1993. The Attorney General proposes that they be readopted with four amendments that refine these proven rules.

N.J.A.C. 13:77-2.4 prohibits the expenditure of forfeiture funds for certain purposes and establishes procedures for the expenditure of forfeiture funds. The proposed amendment would prohibit the use of forfeiture funds to pay dues or fees in an organization that represents any interest other than a law enforcement interest, such as a bar association, or to pay expenses imposed as a condition of maintaining

professional standing, such as the FAIR Act Attorney Fee. The amendment would also subject the expenditure of forfeiture funds to the funding entity's bidding requirements.

Proposed new rule N.J.A.C. 13:77-3.3 would establish ethical prohibitions against the acquisition of forfeited property by office-holders, employees and agents of the prosecuting agency, and their spouses and dependent children.

N.J.A.C. 13:77-4.2 establishes criteria for apportioning forfeited property. The proposed amendment would add a new, seventh criterion to the existing six criteria for apportioning forfeited property. Currently, the prosecuting agency must consider: (1) the amount of money directly expended in pursuing the case; (2) the agency which initiated the case; (3) the agency which identified the asset; (4) the manpower expended in pursuing the case; (5) the relative needs of the law enforcement agencies involved; and (6) alternative availability of the asset to the agency in the near future. The proposed amendment would require the prosecuting agency to consider also whether the law enforcement agency actively participates in and contributes personnel or other resources to a multi-jurisdictional task force.

N.J.A.C. 13:77-6.1 establishes monitoring, reporting and auditing procedures. The proposed new subsection (d) would authorize the county prosecutor to audit municipal forfeiture records in that county. The authority conferred by this new subsection would mirror the Attorney General's authority, under present regulations, to audit a county prosecutor's forfeiture records.

#### Social Impact

The rules proposed for readoption with amendments provide for effective monitoring of the distribution of forfeited property pursuant to the authority granted to the Attorney General in N.J.S.A. 2C:64-6. The purpose of the rules is to implement the provisions of N.J.S.A. 2C:64-1 et seq. by supplying distribution standards which will assure a fair result in the determination of the appropriate share of property for each participating law enforcement agency. Additionally, by supplying monitoring authority, the rules will assure that forfeiture funds are expended according to proper procedures and for proper purposes. Refined uniform standards will continue to assure that the extraordinary efforts of law enforcement agencies are appropriately rewarded and will better effectuate the legislature's intent. Prosecutors offices and the Attorney General's Office continue to pursue forfeitures and to obtain forfeiture judgments against property. Therefore, the need continues for rules governing the distribution of forfeited property and for rules to implement and enforce the provisions of the general civil forfeiture statute, N.J.S.A. 2C:64-1 et seq.

#### Economic Impact

Readoption of the rules with the proposed amendments will have no adverse economic impact on the general public. Indeed, such readoption may even confer an indirect economic benefit on the general public. Under N.J.S.A. 2C:64-6 and 2C:64-7, proceeds from forfeiture proceedings are channeled back into law enforcement, thus enhancing law enforcement efforts on a statewide basis. Since December 1, 1986, when the statute authorizing the promulgation of these rules became effective, the State has recovered over \$19,000,000 from forfeiture actions and the counties have recovered over \$40,000,000. Although forfeiture funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency, a portion of the costs of law enforcement is provided by the law enforcement agencies themselves through successful forfeiture actions. The costs of administering the Trust Fund of a prosecuting agency shall be paid to the funding entity of the prosecuting agency from the proceeds of forfeited property. The county prosecutors shall bear the pro rata costs of conducting audits of their forfeiture accounts, to be paid from the proceeds of forfeited property. Likewise, the cost of a county prosecutor's audit of a municipal law enforcement agency's forfeiture records shall be assessed against the audited agency's law enforcement trust fund.

#### Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not require a regulatory flexibility analysis because they do not impose any requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Requirements are imposed on prosecuting agencies, county prosecutors, law enforcement agencies and the Attorney General.

Full text of the proposed reoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:77.

Full text of the proposed amendments follows (additions indicated in boldface thus):

13:77-2.4 Forfeiture fund for participating law enforcement agency
(a) The contributive share of a county or municipal participating law enforcement agency shall be placed in a Special Law Enforcement Fund established by the entity funding the law enforcement agency which receives the forfeited property. All interest or income earned on or with this forfeiture fund shall remain in the fund for the sole use of the law enforcement agency. Monies in a Special Law Enforcement Fund shall be used for law enforcement purposes only and may not be used for payment of regular salaries or to create new personnel positions, to pay dues or fees in an organization that represents any interest other than a law enforcement interest, such as a bar association, or to pay any expense imposed as a condition of maintaining professional standing, such as the FAIR Act Attorney Fee. If approved by the Attorney General, forfeiture funds may be used to pay the salaries of temporary employees hired for a specific function, such as persons with a special expertise which is needed for a particular investigation. Funds may be expended from the forfeiture fund only upon the request of the participating law enforcement agency, accompanied by a written certification that the request complies with the provisions of this chapter, and only upon appropriation to the participating law enforcement agency in accordance with the accepted budgetary provisions of its funding entity. Any expenditure of forfeiture funds, like the expenditure of other public funds, shall be subject to the bidding requirements of the funding entity.

(b) (No change.)

13:77-3.3 Certain prohibitions on acquisition

No office-holder, employee or other agent of any prosecuting agency causing the sale of forfeited property, their spouses or dependent children shall purchase or otherwise acquire, through such sale, title to forfeited property.

13:77-4.2 Criteria for apportioning forfeited property

(a) In determining the contributing share of any participating law enforcement agency, the prosecuting agency shall consider the following enumerated factors:

1.-4. (No change.)

5. The law enforcement agency actively participates in and contributes personnel or other resources to a multi-jurisdictional task force.

Recodify existing 5. and 6. as 6. and 7. (No change in text.)

13:77-6.1 Monitoring, reporting and auditing procedures

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

(d) The prosecutor of each county may audit the forfeiture records of any municipal law enforcement agency or any coalition of municipal law enforcement agencies within that county. The cost of the audit may be assessed against the audited agency's law enforcement trust fund.

(a)

OFFICE OF EMERGENCY TELECOMMUNICATIONS SERVICES

9-1-1 Emergency Telecommunication System

Proposed Amendments: N.J.A.C. 13:81-1.2 and 2.1

Authorized By: Robert J. Del Tufo, Attorney General, Department of Law and Public Safety.

Authority: N.J.S.A. 52:17C-3(b) and 52:17C-15(b) (P.L. 1989, c.3, secs. 3 and 15).

Proposal Number: PRN 1992-533.

Submit written comments by January 20, 1993 to: Captain Joseph C. Saiia, Director Office of Emergency Telecommunications Services New Jersey State Police Headquarters P.O. Box 7068 West Trenton, New Jersey 08628-0068

The agency proposal follows:

Summary

P.L. 1989, c.3 (N.J.S.A. 52:17C-1 et seq.) was enacted on January 18, 1989. The law provides for implementation of a Statewide, 9-1-1 enhanced emergency telecommunications system, which will allow persons facing an emergency to dial 9-1-1 anywhere in the State and be connected to a public safety answering point (PSAP). The PSAP will automatically receive the name and address registered to the telephone placing the call and the identity of the police, fire and emergency medical services agencies which are responsible for providing service to that location. The call-taker at the PSAP will then transfer the call to the appropriate emergency service agency at the press of a button or dispatch the emergency service directly, depending on the option chosen by the localities it serves.

The Office of Emergency Telecommunications Services (OETS) in the Department of Law and Public Safety, Division of State Police and the New Jersey 9-1-1 Commission (the "Commission") are charged with the implementation of the 9-1-1 legislation. The State of New Jersey 9-1-1 Emergency Number Plan was adopted in January of 1990. Rules promulgated by the Attorney General, after consultation with OETS and with the approval of the Commission, became effective on August 6, 1990. The following is a summary of the amendments to the 9-1-1 rules proposed here.

N.J.A.C. 13:81-2.1(a)3 requires that all PSAPs, both integrated and conventional, have an ANI display to show the telephone number of the caller and an ALI screen to display both the telephone number and address location information of the caller. Although an ALI screen displays both address location information and telephone number information, under existing regulations an ANI display (which displays telephone number only) was required on all PSAPs in the event of a malfunction in the ALI screen network. The ANI display will serve as a backup because even if a malfunction occurs in the ALI screen network, the telephone number of the caller will still remain on the ANI display. Additional testing of the 9-1-1 system has indicated that any malfunction in an integrated PSAP would render both the ANI display and ALI screen inoperable. As a result, an ANI display does not act as a backup on an integrated PSAP. In contrast, a malfunction in a conventional PSAP may only render the ALI screen inoperable and the ANI display would still serve as a backup and display the telephone number of the caller.

Since an ANI display is no longer essential to the proper functioning of an integrated PSAP, this amendment revises N.J.A.C. 13:81-2.1(a)3 to specify that ANI displays are no longer required equipment on integrated PSAPs. An ANI display will still be required equipment on conventional PSAPs.

The elimination of the requirement of an ANI display on integrated PSAPs requires that a formal definition of a conventional PSAP and integrated PSAP be promulgated. A definition for both "conventional PSAP" and "integrated PSAP" are proposed as amendments to N.J.A.C. 13:81-1.2.

OETS is also proposing amendments to N.J.A.C. 13:81-2.1(e) in order to comply with the provisions of the American Disabilities Act of 1990, Pub. L.101-336 ("ADA"). The ADA mandates that public entities which provide telephone emergency services must ensure that such services, including 9-1-1 services, be accessible to persons with impaired hearing and speech through "direct access" telecommunication technology. The existing regulation allows public entities to provide emergency telephone services to persons with disabilities through direct access or by access that is "functionally equivalent" through single button transfer. Under the final regulations to the ADA, functionally equivalent access is no longer permissible. The proposed amendments carry out the mandate of the ADA by amending N.J.A.C. 13:81-2.1(e) to require that each PSAP be equipped with TTY/TDD devices in accordance with the ADA. As a result, N.J.A.C. 13:81-2.1(e)1 and (e)2, which define a TDD and a single button transfer, are no longer necessary and are to be deleted.

N.J.A.C. 13:81-2.1(h)2 recommends that PSAP equipment have an uninterruptible power supply ("UPS"). Because the 9-1-1 system is an important element in promoting the general safety and welfare of

citizens, it is critical that the system be protected from power surges, spikes, brownouts, blackouts and that it remain operational during power shortages. To ensure that the 9-1-1 system remains operational during a power shortage, OETS proposes that a UPS be required on all PSAP equipment. OETS therefore proposes that N.J.A.C. 13:81-2.1(h)2 be moved from N.J.A.C. 13:81-2.1(h) as recommended equipment to N.J.A.C. 13:81-2.1(a)6 as required equipment. This amendment would also require that N.J.A.C. 13:81-2.1(h)3 and (h)4 be recodified as (h)2 and (h)3.

#### Social Impact

The proposed amendments will have a positive impact on the public by providing reliable emergency telecommunications services to the public, and on the 9-1-1 system in general, by requiring that PSAP equipment have a UPS to help ensure that telephone emergency services remain operational even during a power shortage. In addition, the proposed amendment to N.J.A.C. 13:81-2.1(e) will ensure that the 9-1-1 rules are consistent with Federal law.

#### Economic Impact

The proposed amendments to the regulations relating to ANI displays will not impose any additional costs for public entities which provide emergency telecommunications services. In fact, the proposed amendment to N.J.A.C. 13:81-2.1(a)3 reduces the costs to a public entity which utilizes an integrated PSAP by eliminating the requirement that it be equipped with an ANI display.

The Commission believes that the proposed amendment to N.J.A.C. 13:81-2.1(e) is necessary to comply with Federal law as set forth in the ADA. This amendment may increase costs to public entities which provide emergency telecommunications services by requiring at least one TTD at each PSAP. The estimated increase in cost will be \$250.00 to \$400.00 per TDD.

The proposed amendment to require a UPS on all PSAP equipment will increase costs to all providers of emergency telecommunication services. UPS's are available as "on-line" and "off-line" devices and come in various sizes. The cost to equip an integrated PSAP with a UPS would be approximately \$300.00 per call taker position. A UPS for a conventional PSAP 9-1-1 switch would range from a low of \$1,000 to a high of \$2,000 per KVA load of the selected switch.

The additional cost for a UPS power protection system will be offset by eliminating the need to replace the 9-1-1 electronic equipment not protected by such devices. The cost of repairing or replacing damaged equipment can well be in excess of the cost of providing such a system. In addition, the Commission believes that the supplemental start-up costs for the installment of a UPS power protection system are far outweighed by the benefits to the public in having an emergency telecommunications system which will remain operational during power disruptions and equipment failures not protected by such a system.

#### Regulatory Flexibility Statement

The proposed amendments have been reviewed in accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and the Commission has determined that the proposed amendments will not impose reporting, record keeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. Requirements are imposed on public entities providing emergency telecommunications services.

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

#### 13:81-1.2 Definitions

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

...  
**"Conventional PSAP" means a PSAP that has on-site ANI controllers which are directly connected to one of the 9-1-1 OETS Statewide Network Tandem Switches via central office type trunks and requires on-site ALI multiplexers and other dedicated equipment and data circuits in order to receive, process or transfer 9-1-1 calls.**

...  
**"Integrated PSAP" means a PSAP that is directly interconnected to one of the 9-1-1 OETS Statewide Network Tandem Switches, intercommunicates via Dual Tone Multi-Frequency (DTMF), and**

**does not necessarily require on-site control cabinets or switches in order to receive, process or transfer 9-1-1 calls.**

...

13:81-2.1 PSAP: required and recommended equipment

(a) Each PSAP call-taker position shall have the following equipment:

1.-2. (No change.)

3. **Except for integrated PSAPs, an ANI display:** A device which displays the telephone number from which the call was made. Typically, this display is also used for error indication and other messages generated by 9-1-1 telephone equipment;

4. **ALI screen:** A computer-like screen which displays the address location information (ALI) and telephone number of the telephone from which the 9-1-1 call was made, and which lists the primary police, fire, and EMS agency having jurisdiction in the area in which the address located; [and]

5. **Instant playback recorders:** Either an:

i. Instant playback voice recorder that will record and is capable of instantly replaying a 9-1-1 call; or

ii. Instant playback voice/ALI screen recorder that will record and is capable of instantly replaying a 9-1-1 call and ALI data[.]; **and**

6. **An uninterruptible power supply (UPS) that offers a high degree of protection from power surges and spikes and has a capacity sufficient to keep all 9-1-1 telephone equipment fully operative for a minimum of 15 minutes.**

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

(e) Each PSAP shall [provide for the hearing or speech impaired through either:] **be equipped with TTY/TDD devices in accordance with the American Disabilities Act of 1990 (Pub. L. 101-336) and amendments thereof.**

[1. A TDD: A telecommunications device for the deaf or speech impaired which is available for immediate connection to the 9-1-1 network at all PSAPs and which provides a hard copy of the conversation between the deaf or speech impaired person and the call-taker; or

2. Equipment that permits the PSAP operator to single button transfer the caller to a location approved by OETS as prepared to take and handle such calls.]

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

(h) The following PSAP equipment is recommended but not required:

1. Emergency generators for all critical electric circuits[.];

2. An uninterruptible power supply (UPS) that offers a high degree of protection from power surges and spikes and has a capacity sufficient to keep all 9-1-1 telephone equipment fully operative for a minimum of 15 minutes;]

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

## PUBLIC UTILITIES

### (a)

#### BOARD OF REGULATORY COMMISSIONERS Inspection and Operation of Master Meter Systems Proposed New Rules: N.J.A.C. 14:6-5

Authorized By: Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: Part 192 of Title 49 of the Code of Federal Regulations (49 CFR 192); N.J.S.A. 48:2-13 and 48:2-23.

BRC Docket Number: GX92040458.

Proposal Number: PRN 1992-521.

Submit comments by January 20, 1993 to:

Nusha Wyner, Director

Division of Gas

Board of Regulatory Commissioners

44 South Clinton Avenue

CN 350

Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Pursuant to the safety standards for the distribution of natural gas by pipeline systems established by the United States Department of Transportation (USDOT), as set forth in Part 192 of Title 49 of the Code of Federal Regulations (49 CFR 192), the New Jersey Board of Regulatory Commissioners (Board) is proposing the adoption of rules that would govern the inspection and operation of master meter systems within this State. This proposal is consistent with the Board's statutory authority to require that New Jersey utilities provide service in a safe, adequate and proper manner. N.J.S.A. 48:2-23. Building codes administered by local subcode officials, such as the BOCA Code (Building Officials and Code Administrators, Inc.), address only the initial installation of piping downstream of the gas meter. Federal regulations, however, mandate that these facilities be inspected, operated and maintained in compliance with all applicable Federal requirements. The adoption of State rules governing the inspection, operation and maintenance of master meter systems would, therefore, enable the Board's Bureau of Pipeline Safety to assure compliance with the Federal requirements.

For the purpose of this proposal, the term "master meter system" shall refer to any underground gas pipeline system owned or operated by a residential or commercial customer of a New Jersey gas utility, which is utilized for the distribution of gas to ultimate consumers within, but not limited to, a definable area, such as a mobile home park, a housing project or an apartment complex, where the owner or operator purchases metered gas from a public utility for resale through the owner or operator's own underground gas distribution pipeline system, where such system is beyond the control of the utility. The ultimate consumers served by such a distribution pipeline system will purchase the gas directly through a meter or by other means, such as through rents.

Pursuant to the Board's proposed new rules, no regulated gas utility would accept an application for service from any customer to serve any master meter system, as defined above, that had not been in operation prior to January 1, 1994. The elimination of future master meter systems will help to assure the safety of the public in that the underground piping would be owned by the servicing utility and would be installed, operated and maintained in accordance with strict utility standards.

The potential problems associated with deteriorating master meter systems has led USDOT to identify owners or operators of these systems as "operators" subject to, as are the gas utilities, the Federal pipeline safety standards that are enforced by the Board's Bureau of Pipeline Safety. Adoption of the proposed rules will allow the Bureau to assure that there is compliance with Federal requirements governing the inspection, operation and maintenance of master meter systems.

This matter was initiated by a rule pre-proposal which was published in the New Jersey Register on May 18, 1992, at 24 N.J.R. 1862(b). Direct notice of the pre-proposal was also furnished to master meter system operators who were identified from lists submitted by the affected gas utilities. Written comments were received from the Housing Authority of the City of Trenton (Trenton), the Value Group of Clifton, New Jersey (Value Group) and Public Service Electric and Gas Company (PSE&G) on behalf of itself and Elizabethtown Gas Company, New Jersey Natural Gas Company and South Jersey Gas Company.

Trenton expressed its concern over potential increased liability associated with its involvement in the inspection and certification process and suggested that these processes be carried out by the servicing utility. This concern was also addressed by the Value Group along with the worry that there may not be a sufficient number of professional engineers available to perform the necessary certifications. The Value Group, which represents over 2,200 garden apartment units throughout the State, stated that the proposed ban on future installations of master meter system installations would increase not only construction and operating costs, but also the potential risk of accidents caused by the presence of additional quantities of gas piping and associated equipment.

As a result of the comments received, the Board has included in the rules an alternative which would allow a master meter system owner or operator to make arrangements for the servicing utility to provide the required certification and inspections.

The elimination of future master meter system installations will serve to increase public safety and welfare since the underground piping would be installed by the gas utilities and would be operated and maintained in accordance with strict utility standards. With regard to liability, the Board would note that the piping associated with existing master meter systems is owned by and, therefore, is the responsibility of the master

meter system owner or operator. Federal regulations currently require master meter system operators to comply with Federal operating and maintenance standards. Adoption of the proposed rules would serve as a mechanism for the Board to assure compliance with the Federal requirements. Such enforcement efforts should assist in minimizing a master meter system operator's potential exposure to liability. As for the availability of professional engineers, the Board notes that its staff has identified four consulting firms which have the ability as well as the willingness to perform inspections and certifications of master meter systems.

PSE&G suggested the elimination of the provision which requires the involvement of a utility to attempt to take over a master meter system in order to correct deficiencies within the system when the owner or operator fails to comply with the inspection and certification procedures. The Board is of the opinion that the welfare of the public requires the inclusion of this provision and notes that all corrections to the system will be at the expense of the system owner.

#### Social Impact

There is a concern that existing master meter systems, which are the responsibility of the property owners, are not being properly maintained. Federal safety regulations direct owners or operators of these systems to comply with Federal pipeline safety codes in the same manner and to the same degree as are local gas distribution utilities. The Board is of the opinion that the adoption of the proposed rules would be in the interest of public safety in that they would enable the Board to enforce the safety standards set forth in the Code of Federal Regulations, Part 192 of Title 49.

#### Economic Impact

The owners or operators of existing master meter systems will incur expenses associated with the inspections, certifications and maintenance of the systems as may be required to bring them into conformance with the Federal safety code as contained in the Code of Federal Regulations, Part 192 of Title 49. Any work performed on behalf of a master meter system by a gas utility will be paid for by the owner or operator of the system. There may be some related administrative costs to a utility in the event the utility must petition the Board for discontinuance of service.

#### Regulatory Flexibility Analysis

Owners or operators of master meter systems are all probably small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ less than 100 employees. However, the Code of Federal Regulations, Part 192 of Title 49 set forth those minimal compliance and reporting requirements that all owners or operators of master meter systems, regardless of size, must adhere to in regard to the operation, inspection and maintenance of such systems. The purpose of the rules proposed by the Board is to insure that required information is supplied and necessary maintenance is performed in accordance with the provisions of the Federal Code but in a manner that provides, to the greatest degree possible, flexibility to the owner or operator of the master meter system.

Pursuant to the Federal compliance and reporting requirements, no master meter system shall continue to be provided with gas service unless the owner or operator of such system provides the servicing utility with an annual certification from a licensed engineer that the system has been inspected within the last six months and that it complies with all applicable safety and code requirements. Under the proposed rules, the owner or operator would have the alternative to make arrangements with the utility to provide the required inspection and certificate. This will allow the owner or operator to choose the lower costing option by which to supply the required information.

Should the results of the inspection reveal that the system does not satisfy the Federal Code but meets all other safety standards, the owner or operator is required to submit a plan that would bring the system into compliance with the Federal Code within a 12 month period as well as timely proof of compliance. In the event that the owner or operator does not comply with the foregoing and in an effort to maximize flexibility, the Board has proposed through this rulemaking that the utility attempt to enter into an arrangement whereby the utility would undertake to bring the system into compliance at the expense of the owner or operator. Once again, this would afford the owner or operator with the option of dealing directly with the utility and an opportunity to minimize costs.

Should such an arrangement not be in place within a period of one year, the utility shall petition the Board for permission to discontinue service to the system. Such a procedure will insure that the owner or

operator will have an opportunity to be heard prior to any service interruption to the master meter system.

While the proposed rules do not place any recordkeeping requirements on the owner or operator of a master meter system, the ultimate adoption of the rules will result in fees for professional services. This will mainly deal with the expense of retaining a licensed engineer to prepare the required annual certification. In the event that the owner or operator chooses to deal directly with the servicing utility, at least a part of the costs incurred by the owner or operator will be to cover the expense of the utility's qualified personnel. In addition, should the utility have to petition the Board to discontinue service to the master meter system, the owner or operator may elect to be represented by an attorney. Such representation, however, is not mandated.

As indicated above, no differentiation in requirements based on business size is provided because the standards set forth in the Federal regulations and the rules proposed by the Board to implement them, are necessary in order to maintain the health, safety and general welfare of the citizens of this State.

Full text of the proposed new rules follows:

#### SUBCHAPTER 5. MASTER METER SYSTEMS

##### 14:6-5.1 Scope

Unless otherwise ordered or permitted by the Board of Regulatory Commissioners of the State of New Jersey, the following rules shall apply to the inspection and operation of all master meter systems.

##### 14:6-5.2 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 Board of Regulatory Commissioners.

"BOCA" means the Building Officials and Code Administrators, Inc.

"Federal Code" means the Federal Pipeline Safety Code, 49 CFR 192.

"Master meter system" means any underground gas pipeline system operated by a residential or commercial customer of a New Jersey gas utility which is utilized for the distribution of gas to ultimate consumers within, but not limited to, a definable area, such as a mobile home park, a housing project or an apartment complex, where the operator purchases metered gas from a public utility for resale through the operator's distribution system which is beyond the control of the utility. The ultimate consumers served by the operator's distribution system will subsequently purchase the gas directly through a meter or by other means, such as through rents.

##### 14:6-5.3 Service to master meter systems

After January 1, 1994, no gas utility in this State shall provide gas service to any newly developed master meter system as defined in N.J.A.C. 14:6-5.2.

##### 14:6-5.4 Inspection and compliance

(a) Except as provided in (b) and (c) below, after January 1, 1994, no gas utility in this State shall continue to provide gas service to any residential or commercial master meter system unless the utility is provided by the owner or operator of the master meter system with an annual certification from a licensed professional engineer, that the system has been inspected within the last six months and that it complies with all applicable safety requirements, including the requirements of both BOCA and the Federal Code. A copy of such certification shall be submitted to the Board. Alternatively, the owner or operator of the master meter system may make arrangements with the servicing utility to provide the required inspection and certification.

(b) If the results of the inspection reveal that the master meter system does not satisfy the requirements of the Federal Code, but meets all other applicable safety standards, the owner or operator of the system shall furnish the utility and the Board with a copy of the inspection report and shall submit a detailed plan of action to bring the system into compliance with the requirements of the Federal Code within 12 months. The owner or operator shall submit to the utility proof of compliance with the requirements of the

Federal Code within the 12 month period. A copy of such compliance shall be forwarded to the Board.

(c) If the owner or operator of the master meter system does not comply with (a) and (b) above, the utility shall attempt to arrange with the owner or operator to take over the master meter system and make corrections to bring the system into compliance with all applicable safety standards, including BOCA and the Federal Code, at the expense of the owner or operator. If such an arrangement cannot be effected within one year, the utility shall promptly petition the Board for permission, upon notice and hearing, to discontinue service to the master meter system.

(a)

#### BOARD OF REGULATORY COMMISSIONERS OFFICE OF CABLE TELEVISION

##### Notice of Pre-Proposal of New Rule N.J.A.C. 14:18-2.11 On-Premises Wiring

Authorized By: Celeste M. Fasone, Director, with the Approval of the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:5A-10.

Pre-Proposal Number: PPR 1992-9.

**Take notice** that the New Jersey Board of Regulatory Commissioners, pursuant to its authority to promulgate rules in accordance with N.J.S.A. 48:5A-10, will receive preliminary comments with respect to a pre-proposal rulemaking proceeding concerning the disposition of cable television wiring on and within the premises of the cable subscriber.

The Board is the franchise authority responsible for the regulation of cable television operators in the State of New Jersey. One of the Board's many functions is to investigate and resolve disputes between cable operators and their subscribers including the disposition and ownership of the internal cable television wiring ("internal cable wiring") used for the delivery of cable television service, for example, subscriber installation.

The disposition of internal cable wiring used for the delivery of cable television services has been a point of contention between cable operators, subscribers and competing service providers such as second cable franchisees and Satellite Master Antenna systems. In addition, cable subscribers have engaged in the pre-wiring of their dwellings which has led to disputes concerning the ownership and control of on-premises wiring.

The Board believes that the disposition and ownership of wiring will become an even more critical issue as more telecommunications services become available and as consumers require different or unique wiring configurations. Internal cable wiring represents the sole broadband wiring path in the home today. The Board believes this installed base of broadband capable wiring will increasingly become the object of disputes between consumers, cable television operators and other parties with vested interests in the internal cable wiring.

The Board recognizes that there are other technical issues related to internal cable wiring. The FCC's signal leakage rules and the Board's focused enforcement of National Electrical Code installation requirements are two such issues and the Board seeks comment on how these requirements may affect the disposition of home wiring.

In order to determine the disposition of the internal cable wiring and settle disputes of the aforementioned nature, the Board is initiating this rulemaking proceeding.

The Board recognizes that many factors influence the determination of the disposition of the subscriber's internal cable wiring. Given the many variables involved, the Board believes that prior to the promulgation of a rule, it is desirable that additional information be gathered. It is not immediately clear what form a proposed rule should take or what respective benefits and burdens that a rulemaking would have on cable television operators and their subscribers.

In order to establish a rule that will clearly define the disposition of any internal cable wiring after termination of service, the Board requests comments on the following questions:

1. What standard should the Board use to determine the disposition and ownership of existing internal cable wiring?
2. What standard should the Board use to determine disposition and ownership issues for future internal cable wiring?
3. Who should be deemed owner of the wiring, on and within the subscriber's premises, and why?
4. Should cable operators be required to remove the wiring on and within the subscriber's premises after termination of cable service?
5. May a cable operator remove the wiring on and within the subscriber's premises after termination of cable service?
6. Should there be a procedure for the conveyance of ownership/control of the wiring?

The Board further requests that comments also be submitted on the following issues:

- A. The relevance of the cable operator's service agreement as a factor in determining the disposition of the internal cable wiring.
- B. Issues regarding single family wiring versus multiple dwelling unit (MDU) wiring.
- C. Wiring as taxable assets of the cable operator versus taxable property fixtures of the homeowner.
- D. Economic value of wiring.
- E. Homeowner property rights.

Interested persons may submit written comments on the issues raised by the pre-proposal.

Submit written comments by January 21, 1993 to:

Celeste M. Fasone, Director  
Office of Cable Television  
Two Gateway Center  
Newark, NJ 07102

Take further notice that a public hearing concerning the proposal will be held on Thursday, January 21, 1993, at 10 A.M. at:

Board of Regulatory Commissioners  
10th Floor Hearing Room  
Two Gateway Center  
Newark, New Jersey

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented in the Rules for Agency Rulemaking, N.J.A.C. 1:30.

(a)

## BOARD OF REGULATORY COMMISSIONERS & PUBLIC UTILITIES

### OFFICE OF CABLE TELEVISION

#### Regulations of Cable Television

#### Testing of Service and Technical Standards for System Operation

#### Proposed Amendments: N.J.A.C. 14:18-9.2, 10.1, 10.2 and 10.5

#### Proposed Repeal: N.J.A.C. 14:18-10.4

#### Proposed Repeal and New Rule: N.J.A.C. 14:18-10.3

Authorized By: Celeste M. Fasone, Director, with the approval of the Board of Regulatory Commissioners, Dr. Edward H. Salmon, Chairman, Jeremiah F. O'Connor and Carmen J. Armenti, Commissioners.

Authority: N.J.S.A. 48:5A-10.

BRC Docket Number: CX92090907.

Proposal Number: PRN 1992-520.

A public hearing concerning the proposal will be held Tuesday, January 5, 1993, at 10:00 A.M. at:

The Board of Regulatory Commissioners  
10th Floor Hearing Room  
Two Gateway Center  
Newark, New Jersey

Submit written comments by February 5, 1993 to:

Celeste M. Fasone, Director  
Office of Cable Television  
Two Gateway Center  
Newark, NJ 07102

The agency proposal follows:

#### Summary

The purpose of this rulemaking is to make amendments to N.J.A.C. 14:18-9.2 and 14:18-10 which set forth rules governing cable television operators. The proposed amendments to Subchapter 9, Testing of Service, and amendments, new rule and repeals at Subchapter 10, Technical Standards for System Operation, are designed to bring the Board of Regulatory Commissioners' (Board) cable television technical standards into conformance with the new technical and operational requirements for cable television systems promulgated by the Federal Communications Commission (FCC).

The amendments, new rule and repeals in these subchapters fall into the categories of (1) technical changes to conform with the revised FCC cable television technical standards of Part 76, Subpart K of Title 47 Code of Federal Regulations (CFR), for example, new signal quality standards for all cable channels, revised semiannual as opposed to annual proof of performance tests and new standards for the color portion of the television signal; (2) deletion of technical rules which are no longer applicable or consistent with the new FCC standards, for example, the deletion of technical standards for specific classes of channels and deletion of requirements for initial performance tests; and (3) relaxation of the Board requirements for the frequency of performance of monitoring data collection from every 30 days to every 60 days in order to free operators to comply with other new Federal and State regulations.

The FCC has adopted new technical standards (MM Docket No. 91-169 and 85-38), focusing primarily on the quality of signal delivered to the cable subscriber. These standards can be adopted and enforced by State and local franchising authorities. However, as State and local authorities are not permitted to establish more stringent technical standards, the Board is revising its existing rules to conform with the new FCC standards.

#### Social Impact

The subchapters on Testing of Service and Technical Standards for System Operation concern the technical aspects of cable television regulation. The proposed amendments, new rule and repeals ensure that cable companies supply an acceptable quality and consistent level of television service to cable subscribers on all relevant cable channels. The proposed amendments and new rule will set forth the Board's enforcement authority to ensure that cable operators conform with current FCC standards.

#### Economic Impact

The subchapters governing technical aspects require an on-going effort by cable operators to comply with applicable standards. This requires that personnel and overhead expenses be borne by the cable operator. However, since the majority of the proposed changes are designed to conform with the FCC requirements, no additional expenses beyond what is already incurred for operators to comply with the new FCC standards are anticipated. Any proposed amendments in addition to the FCC requirements, for example, semiannual proof-of-performance filing, requirements for special signals and performance monitoring, are not anticipated to require additional personnel or expenses.

#### Regulatory Flexibility Analysis

It is anticipated that the proposed amendments, new rule and repeals will affect two small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, these rule changes will not impose any additional compliance requirements more stringent or more burdensome than those already placed on operators as a result of the new FCC requirements.

The overwhelming majority of cable companies can meet, without outside assistance, all of the new FCC requirements and proposed amendments. It is conceivable that small cable companies with fewer than 1,000 subscribers may require outside professional services to comply with certain aspects of the new FCC technical requirements. The FCC rules exempt all such small systems from testing and reporting, and allow larger rural systems to apply for exemption as well (see 47 C.F.R. Sec. 76.605, notes 1, 2).

The only additional compliance and reporting provisions which would be required by the Board, beyond the FCC reporting and compliance,

is to file a copy of the semiannual proof of performance tests report prepared for the FCC with the Office of Cable Television, which involves only the duplication and mailing expense. For small systems, these reports average less than 10 pages.

The additional amendments on proof of performance filing, requirements for special signals, and performance monitoring can also be met by the majority of companies without outside assistance.

The Board compliance requirements for special signal and performance monitoring are independent of any FCC requirement. The special signal rule, N.J.A.C. 14:18-10.3, simply requires correction of observed picture quality problems related to special signals transmissions. No reporting or recordkeeping is required.

The amendment of the Board's existing performance monitoring rule (distinct from FCC proof of performance tests) particularly benefits small systems by requiring less frequent reporting, reduction from 30 days to every 60 days.

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

#### 14:18-9.2 Proof of performance

(a) Each cable television company shall be required to [conduct annual tests to show compliance with FCC technical standards of 47 C.F.R. Section 76.605(a)(1) through (a)(10)] **file with the Office copies of semiannual proof-of-performance tests conducted in accordance with Part 76 Subpart K of Title 47 CFR Section 76.601(c) to determine the extent of system compliance with technical standards 76.605(a).**

(b) [These tests shall be conducted and filed with the Office prior to the closing of each calendar year.] **Copies of the semiannual proof-of-performance test results shall be filed with the Office during the months of March and September of each calendar year.**

(c) [The test shall be submitted in a form suitable for analysis by the Office and shall reflect the actual operating condition of the system at not fewer than three locations at the extremities of the system.] **Test results shall be accompanied by a statement indicating the extent to which the system complies with the applicable standards.**

#### 14:18-10.1 Scope

The following requirements shall apply to [CATV] **cable television system performance as measured at any subscriber terminal with a matched [termination] terminating impedance, and to each [of the cable television channels defined by the FCC rules and regulations Part 76, Subpart A. Section 76.5, and all amendments thereto] National Television Systems Committee (NTSC) or similar video downstream cable television channel in the cable system.**

#### 14:18-10.2 [FCC standards] Technical performance requirements

(a) Every cable television system providing cable television service shall be required to do so in accordance with the [technical standards specified in the FCC rules and regulations, Part 76, Subpart K] **rules and regulations specified in Part 76, Subpart K of Title 47 CFR.**

(b) **Each system operator shall be prepared to show, on request by an authorized representative of the Office, that the system does, in fact, comply with the rules and regulations of Part 76, Subpart K of Title 47 CFR.**

#### 14:18-10.3 [Requirements for Class II, Class III and Class IV channels] Requirements for specialized NTSC video and non-video signals

[Class II, Class III and Class IV cable television channels shall be transmitted without material degradation and without objectionable interference to reception of Class I channels.]

(a) **Every cable television operator providing locally originated television programming received from any origination source, shall make reasonable efforts to use good engineering practices in the processing of each programming signal to guard against any unnecessary degradation in the signal received and delivered to the subscriber.**

(b) **Every cable television operator providing non-video signals or data transmission for testing, encoding, decoding or addressing purposes, shall use good engineering practices in transmitting the**

**signal without material degradation or objectionable interference to any channel delivered to the subscriber.**

#### 14:18-10.4 [Initial performance tests for new builds extensions, and substantial reconstructions] (Reserved)

(a) Within 60 days of the commencement of service to new segments of subscribers on any portion of a new cable television system or on any extension of such system or on any substantial reconstruction or extension of a cable television system on which operations commenced on or after April 15, 1973, technical performance tests shall be conducted by the system operator directed at determining the extent to which the system complies with the technical standards set forth in N.J.A.C. 14:18-10.1, 10.2 and 10.3.

(b) The engineer or technicians responsible for conducting the tests shall determine the methods to be used and the specific characteristics to be measured at each location with respect to the relevant technical standards set forth or referenced herein and shall develop the forms to be used for reporting purposes.

(c) The report on initial performance measurements shall be kept on file with the cable company for a period of two years in a manner suitable for inspection by the Office.]

#### 14:18-10.5 [Monitor point tests] Performance monitoring

(a) [Monitor check points] **Monitor point locations** shall be designated by each system operator [in accordance with the following] **for the purpose of monitoring cable system performance.**

1. [The minimum number of monitor points shall be three for each distribution hub, plus one additional point for each 100 strand or route miles (or fraction thereof) of cable plant in each hub, in regular operation.] **The number of monitor points for each system and their location shall be established in accordance with the procedure used to determine measurement locations described in Part 76, Subpart K of Title 47 CFR Section 76.601(c)(1), and any amendments thereto.**

2. Monitor points shall be at or near the output of the last amplifier in the longest feeder line connected to trunk amplifiers selected by the operator to be representative of performance in all parts of the system. At least three such monitor points shall be at or near the extremities of the longest trunk lines.

3. It is recommended, but not required, that test point terminals be installed at each monitor point to facilitate taking readings at convenient locations. Furthermore, all monitor points should be in public rights-of-way, accessible to authorized persons at any time without requiring special permission, and should be so located as not to present a safety hazard to personnel engaged in performing the necessary tests.]

(b) The following data shall be collected at each monitor point [at least once each calendar month, at intervals not to exceed 40 days:] **once every other month at intervals not to exceed 60 days.**

1. [Signal levels of each visual and aural carrier and all pilot carriers, if any.] **The visual and aural signal levels of each channel on the system.**

2. [Signal carrier to noise ratio at not fewer than three frequencies within the pass-band of the system. This measurement should be performed without interrupting service to subscribers.] **The ratio of radio frequency (RF) visual signal level to system noise, carrier to noise (C/N) on a minimum of two channels within the passband of the system; and**

3. [The results of subjective observation of picture quality by the technician with respect to visible beats, visible hum, electrical impulse noise, sharpness, color defects, "ghosts", cross-modulation, and so forth.] **The Television Allocations Study Organization (TASO) rating of each channel subjectively observed by the technician conducting the monitor point testing.**

(c) A log of the [monthly measurements at] monitor [points] **point results** shall be kept on file for a period of five years at the local office of the system and shall be available for inspection [on] **upon** request by authorized representatives of the Office.

[(d) The record for continuing monitor check point observations is the complete data obtained in the initial performance tests. Any

subsequent changes in monitor points or monthly test procedures shall be accompanied by such additional data as may be required for proper evaluation.]

**TRANSPORTATION**

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**Speed Limits**

**Route U.S. 206, including U.S. 206 and U.S. 130 in Mercer County**

**Proposed Amendment: N.J.A.C. 16:28-1.72**

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1992-522.

Submit comments by January 20, 1993 to:

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

The agency proposal follows:

**Summary**

The proposed amendment will establish 25 miles per hour "School speed limit" zones along Route U.S. 206 in Lawrence Township, Mercer County, at the Eldridge Park School and Saint Ann's Catholic School, to enhance safety of children going to and from school and during the period of recess.

The Eldridge Park School is being converted from 4th grade entirely to kindergarten through 3rd grade, as of September, 1993. Based upon the ages and numbers of children who will constitute walkers, a reduced speed limit was requested by the Lawrence Township Police Department. A speed limit reduction at Saint Ann's Catholic School was also included because it was within the general location under investigation.

The engineering review of traffic conditions in this area conducted by the Department's Bureau of Traffic Engineering and Safety Programs proved that the establishment of the "school speed limit" zones along Route U.S. 206 in Lawrence Township, Mercer County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.72.

**Social Impact**

The proposed amendment will establish 25 miles per hour "School Speed Limit" zones along Route U.S. 206 in Lawrence Township, Mercer County, to enhance safety of children going to and from school and during the period of recess at Eldridge Park School and Saint Ann's Catholic School. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs of installing the "school speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

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

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

16:28-1.72 Route U.S. 206 including U.S. 206 and U.S. 130

(a) (No change.)

(b) The rate of speed designated for the certain parts of State highway Route U.S. 206 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Mercer County:

(1) City of Trenton and Lawrence Township:

(A)-(B) (No change.)

(C) Zone 3: 40 miles per hour between Princeton Pike and Titus Avenue, except for 30 miles per hour when passing through the Notre Dame High School zone and for 25 miles per hour when passing through the Eldridge Park School zone and Saint Ann's Catholic School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 45:36 to 48:71); thence

(D)-(F) (No change.)

(2)-(4) (No change.)

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

**(b)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**Restricted Parking and Stopping**

**Routes N.J. 28 in Union County; N.J. 94 in Sussex County; and U.S. 206 in Mercer County**

**Proposed Amendments: N.J.A.C. 16:28A-1.19, 1.45 and 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 1992-523.

Submit comments by January 20, 1993 to:

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

The agency proposal follows:

**Summary**

The proposed amendments will establish revised "restricted parking and stopping" zones along the following Routes in the respective municipalities:

N.J. 28 in the Borough of Roselle Park, Union County;

N.J. 94 in the Township of Hardyston, Sussex County; and

U.S. 206 in the Township of Lawrence, Mercer County.

These amendments are being implemented to improve the safe and efficient flow of traffic and to enhance safety along the highway system.

N.J.A.C. 16:28A-1.19, Route 28, adds the restriction of no stopping or standing along the north and south sides of Westfield Avenue, Borough of Roselle Park, Union County.

N.J.A.C. 16:28A-1.45, Route 94, revises the no stopping or standing restriction in Hardyston Township, to include all ramps and connections under the jurisdiction of the Commissioner except in areas covered by other parking restrictions.

N.J.A.C. 16:28A-1.57, Route U.S. 206, revises the far side bus stop by deleting the Irwin Place stop and placing the stop along Fairfield Avenue, Township of Lawrence, Mercer County, because of complaints received by the local municipality (from the residents on Irwin Place). Additionally, the bus stop along Skillman Avenue has been changed from a far side bus stop to a near side bus stop.

Based upon requests from local governments, to improve safety, and as part of a review of current conditions, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations.

The investigations proved that the revision of "restricted parking and stopping" zones along Routes N.J. 28, N.J. 94, and U.S. 206 was warranted.

The amendments add an exception for other approved parking restrictions; require signs notifying the motorists of the restrictions; and recodify the rules in compliance with the Department's format for clarity by placing the restrictions by municipality within respective counties.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.19, 1.45 and 16:28A-1.57, based upon the requests from the local governing bodies and the traffic investigations.

**Social Impact**

The proposed amendments will establish revised "restricted parking and stopping" zones along Routes N.J. 28 in Union County and N.J. 94 in Sussex County, and a "no parking bus stop" zone along U.S. 206 in Mercer County to improve traffic flow, to enhance safety, and to facilitate the safe on and off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "restricted parking and stopping" signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

The proposed amendments do 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 amendments primarily affect the motoring public and the governmental entities responsible for the enforcement of the rules.

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

16:28A-1.19 Route 28

(a) The certain parts of State highway Route 28 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times **except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.**

1. (No change.)
2. No stopping or standing in the Borough of Roselle Park, Union County:
  - i.-iii. (No change.)
  - [iv. Along the north side, from 9:00 AM to 11:00 AM, Wednesday within the entire corporate limits.
  - v. Along the south side, from 9:00 AM to 11:00 AM, Tuesday within the entire corporate limits.]
  - iv. **Along the north side:**
    - (1) **From 9:00 A.M. to 11:00 A.M., Wednesdays within the entire corporate limits.**
    - (2) **Westfield Avenue—Beginning from the prolongation of the westerly sideline of Bender Avenue to a point 400 feet westerly therefrom.**
    - (3) **Westfield Avenue—Beginning from the prolongation of the easterly side line of Bender Avenue to a point 300 feet easterly therefrom.**
    - v. **Along the south side:**
      - (1) **From 9:00 A.M. to 11:00 A.M., Tuesdays within the corporate limits.**
      - (2) **Westfield Avenue—Beginning from the prolongation of the center line of Galloping Hill Road to a point 425 feet westerly therefrom.**
      - vi.-viii. (No change.)
      - 3.-13. (No change.)

(b) The certain parts of State highway Route 28 described in this [section] subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In

accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following **established bus stops:**

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

16:28A-1.45 Route 94

(a) The certain parts of State highway Route 94 described in this subsection shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. **In accordance with N.J.S.A. 39:4-198, proper signs shall be erected.**

1. (No change.)
2. No stopping or standing in the Townships of Hardyston, Sussex County: [along both sides for the entire corporate line in the Township of Hardyston.]
  - i. **Along both sides:**
    - (1) **For the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in areas covered by parking restrictions adopted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and N.J.A.C. 1:30.**

- 3.-6. (No change.)
- (b) (No change.)

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

(a) (No change.)

(b) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as "no parking[?]" bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the easterly (northbound) side in Lawrence Township, Mercer County:
  - i. Far side bus stops:
    - (1) (No change.)
    - (2) [Irwin Place] **Fairfield Avenue**—Beginning at a point 35 feet north of the northerly curb line of [Irwin Place] **Fairfield Avenue** and extending 75 feet northerly therefrom.
    - (3)-(9) (No change.)
    - [(10) Skillman Avenue—Beginning at a point 35 feet north of the prolongation of the northerly curb line of Skillman Avenue and extending 75 feet northerly therefrom.]
  - Recodify existing (11)-(14) as (10)-(13). (No change in text.)
  - ii. (No change.)
  - iii. Near side bus stops:
    - (1)-(4) (No change.)
    - (5) **Skillman Avenue—Beginning at a point 35 feet south of the prolongation of the southerly curb line of Skillman Avenue and extending 75 feet southerly therefrom.**
- 2.-12. (No change.)
- (c) (No change.)

(a)

**DIVISION OF TRANSPORTATION ASSISTANCE  
OFFICE OF REGULATORY AFFAIRS  
Specifications for Special Autobus Type Recreational  
Vehicles  
Window Openings, Platforms and Curtains  
Proposed New Rules: N.J.A.C. 16:53-7.25, 7.26 and  
7.27**

Authorized By: Kathy Stanwick, Deputy Commissioner,  
Department of Transportation.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14D-1 et seq.  
Proposal Number: PRN 1992-528.

Submit comments by January 20, 1993 to:  
 Charles L. Meyers  
 Administrative Practice Officer  
 Department of Transportation  
 Bureau of Policy and Legislative Analysis  
 1035 Parkway Avenue  
 CN 600  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed addition of new rules to N.J.A.C. 16:53, Buses, will establish additional specifications for the operation of trolleys in New Jersey, to ensure the safe transportation of passengers. Several safety concerns were identified by the Department's Office of Regulatory Affairs during safety inspections, as follows:

1. The roll-down curtains of an open-air trolley may obstruct egress in case of accident or emergency, and, furthermore, use of these curtains is in violation of the Federal Motor Vehicle Safety Standards (FMVSS) 217. The proposed new rules disallow their use while a vehicle is in operation.

2. The closeness of the seat bottoms to the openings in the open-air trolley creates a hazard that would allow a passenger to fall out of the vehicle. As a result, the proposed new rules restrict window openings, provide for a minimum distance between the seat bottom and any opening, or require protective bars where the minimum distance is not met.

3. Passengers riding on the platform of a trolley could easily suffer injury in an accident. The proposed new rules prohibit a person from standing or riding on a platform, require an "emergency exit only" sign above any door leading to a platform, and require that the door not be locked while the trolley is in operation.

The Department, therefore, proposes to amend N.J.A.C. 16:53-7, Specifications for Special Autobus Type Recreational Vehicles, to add these new rules, which address safety concerns.

**Social Impact**

The proposed new rules will benefit the public by enhancing the safety standards of "trolleys," or special autobus type recreational vehicles. Appropriate signs containing safety notices will also be posted to advise passengers.

**Economic Impact**

The proposed new rules will not impact the public economically. The operators of "trolleys" may incur initial costs for the addition of safety bars and the installation of "emergency exit only" signs. There should be no additional costs associated with the roll-down curtains, since the vehicles are already so equipped. The costs involved are variable, based upon the size and material used, in the procurement of safety bars and "emergency exit only signs". The Department is satisfied that the safety benefits far outweigh any costs incurred. The Department will incur costs directly involved in the rule promulgation.

**Regulatory Flexibility Analysis**

The proposed amendments will not impose any additional recordkeeping or reporting requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The operators of the special autobus recreational vehicles (trolleys), all of whom can be considered small businesses, are required to comply with the safety requirements in the rules, which are design standards. There are less than one half dozen known open air trolley operators in the State of New Jersey. The initial costs of compliance to these operators will vary, based upon the size of window openings, the cost of material, and the number of vehicles involved. Once the vehicles have been retrofitted or brought into compliance with the standards, there will be no additional costs beyond ordinary maintenance. The additional materials/fittings are readily available from the trolley manufacturers, and will require no professional design or other services for their installation. The cost to make the changes is considered insignificant, when compared to the overall cost of the trolley. For this reason, and because passenger safety is significantly enhanced by the changes, the Department has provided no differentiation based upon business size in the proposed rules.

Full text of the proposed new rules follows:

CHAPTER 53  
 AUTOBUSES

16:53-7.25 Window openings

(a) Window opening shall be restricted to a maximum of six inches.

(b) Open-air special autobus type recreational vehicles shall meet the following requirements:

1. The vertical distance between a seat-bottom and any opening shall be a minimum of 16 inches. Vehicles not meeting this requirement shall have protective bars extending from the front to the rear of the opening. Bars shall be spaced no more than six inches apart, and the distance from the seat-bottom to the top of the highest bar shall be a minimum of 16 inches.

16:53-7.26 Platforms

(a) Special autobus type recreational vehicles designed and/or constructed with platforms attached to the rear of the vehicle shall meet the following requirements:

1. No person shall be permitted to stand or ride on the platform.

2. Any door leading to the platform from the interior of the vehicle shall display a sign, with a minimum of three inch letters, stating "Emergency Exit Only" and shall conform to Federal Motor Vehicle Safety Standard (FMVSS) 217, as applicable.

3. The door shall not be locked while the vehicle is in operation.

16:53-7.27 Curtains

Curtains are not permitted to be used while a vehicle is in operation, with or without passengers.

**TREASURY-GENERAL**

(a)

**DIVISION OF PENSIONS AND BENEFITS**

**Administration; Minimum Adjustments**

**Proposed Amendments: N.J.A.C. 17:1-1.10**

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

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

Proposal Number: PRN 1992-534.

Submit comments by January 20, 1993 to:  
 Peter J. Gorman, Esq.  
 Executive Assistant  
 Division of Pensions and Benefits  
 CN 295  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Division of Pensions and Benefits administers the Public Employees Retirement System (PERS) and Teachers Pension and Annuity Fund (TPAF) pension systems under its rules at N.J.A.C. 17:1. When a member of either retirement system retires, a "Certification of Service and Final Salary" is submitted to the Division by the employer of that person, enabling the retirement benefit calculations and processing. When the final accounting of the retiree's service is completed by the Division, in some instances a member may have minimally underpaid or overpaid contributory group life insurance premiums.

Since contributory life insurance premiums cease at the time of retirement, being replaced by paid-up life insurance in the amount of 3/16 (for PERS) and 7/16 (for TPAF) of the last year's salary, such over/underpayments must be resolved. The Division has found that the resolution of such discrepancies through the normal means, that is, the billing of the retiree or the issuance of a check to the retiree, costs more than \$50.00. In the case of an adjustment to the amount of the pension received, such an expense is warranted for any change over \$5.00, because the pension continues over the lifetime of the retiree; therefore, the Division is not proposing a change to that particular requirement of the rule. However, the over- or underpayment to resolve the con-

tributory life insurance premium discrepancy only occurs once, and the Division does not believe that the administrative expense justifies its resolution by the means currently used. Therefore, the Division proposes to amend N.J.A.C. 17:1-1.10 to establish a new range of plus or minus \$50.00 for "write-offs" of unresolved discrepancies related to over- or underpayment for contributory life insurance premiums. The range for adjustments to pension amounts will remain at plus or minus \$5.00, the current level.

For the most part, the Division has found that the retiree owes money, and will benefit from the proposed change. There may be some retirees who have overpaid who will not receive the amounts due them; however, the few affected will generally lose no more than \$10.00 to \$15.00. The overall benefit which will accrue to the State-administered pension programs as a result of the proposed amendment is expected to outweigh the small negative impact.

#### Social Impact

The proposed amendment will affect retired members of the pension systems administered by the Division; specifically, those members who have been determined by the Division to have over- or underpayments for contributory life insurance premiums. The affected retirees will either have the debt written off or will not receive the proceeds of any overpayment for amounts of less than \$50.00. This does not in any way affect the value of the member's life insurance benefit.

#### Economic Impact

The proposed amendment would have a positive economic effect overall, in that the Division would not incur certain administrative costs in the case of "write-offs", and those retirees who owe amounts of less than \$50.00 for contributory life insurance premiums will not have to pay the premiums owed. However, those retirees, expected to be few, who would be entitled to a refund, will not receive a refund if the amount is less than \$50.00.

#### Regulatory Flexibility Statement

The proposed amendment does not impose any requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment changes the Division's handling of unresolved balances of plus or minus \$50.00 for contributory life insurance premiums for individual retirees who are members of Division-administered pension systems.

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

17:1-1.10 Minimum adjustments

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

(d) Rules concerning the bad balances in retirement accounts are as follows:

1. No rebates or additional contributions shall be made for retired members if the adjustments involve amounts that range from a positive to a negative \$5.00 **for pensions and \$50.00 for contributory life insurance premiums**. All balances within [this range] **these ranges** will be written off.

2. In the event the positive or negative balance is greater than \$5.00 **for pensions** but produces a monthly retirement adjustment of less than \$1.00, no recalculation or monthly benefits will be computed. Positive balances will be rebated and negative balances will be written off.

(e)-(f) (No change.)

## TREASURY-TAXATION

(a)

### DIVISION OF TAXATION

#### Litter Control Tax

#### Proposed Readoption: N.J.A.C. 18:38

Authorized By: Leslie A. Thompson, Director, Division of Taxation.

Authority: N.J.S.A. 13:1E-99.1.

Proposal Number: PRN 1992-517.

Submit comments by January 20, 1993 to:

Nicholas Catalano  
Chief, Tax Services  
Division of Taxation  
50 Barrack Street, CN 269  
Trenton, NJ 08646

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), the litter control tax rules (N.J.A.C. 18:38) will expire on February 16, 1993. The Division of Taxation 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 all subchapters is necessary because they clarify the application of the litter control tax imposed pursuant to P.L. 1985, c.533, also cited as the Clean Communities and Recycling Act (N.J.S.A. 13:1E-99.1).

It must be noted that, although the Clean Communities and Recycling Act remains in effect, the provision levying the litter control tax expired effective December 31, 1991. The final litter control tax filing was due March 15, 1992 for the 1991 tax year. However, these rules are being readopted for audit and enforcement purposes. As indicated in N.J.A.C. 18:38-7.4, all records and other supporting documentation used in completing the LT-5 litter control tax return must be retained and made available for examination on request by the Division of Taxation or its authorized representatives for at least three years following the filing of a return.

The litter control tax is a tax on the privilege of engaging in business in New Jersey as a manufacturer, wholesaler, distributor or retailer of litter-generating products measured by the gross receipts from sales of such products within New Jersey. The tax, and these readopted rules, should therefore affect many businesses located within and outside New Jersey that engage in sales of litter-generating products as defined in the Act. Subchapter 1 contains general provisions indicating the effective date of the tax, April 21, 1986, and the nature of the tax, and providing definitions for the purpose of clarification. Subchapter 2 indicates those persons upon whom the tax is imposed, the tax rates levied, and the date of expiration of the tax, December 31, 1991. This subchapter also indicates a condition causing suspension of the tax. Subchapter 3 provides definitions of the 15 litter-generating product categories subject to the tax. Subchapter 4 provides three alternative tax computation methods and examples of their use to aid the taxpayer in completing his tax return. Subchapter 5 clarifies the \$250,000 retailer exclusion and specifies allowable deductions for certain wholesaler, distributor, and wholly-owned company sales. Subchapter 6 indicates the registration requirements for taxpayers subject to the tax. Subchapter 7 contains rules for filing tax returns and making tax payments. A rule requiring at least three years of record retention is also included. Subchapter 8 clarifies the disposition of litter control tax revenues. Such revenues are deposited in the Clean Communities Account fund in the Department of Treasury and administered by the Department of Environmental Protection and Energy.

#### Social Impact

Tax revenues derived from the litter control tax are deposited in the Clean Communities Account fund. The fund was established to support a Statewide program of litter prevention and elimination. Tax revenues, therefore, are used to promote and encourage a clean and safe environment in New Jersey.

#### Economic Impact

Tax revenues to support the fund are raised from that portion of the business community both within and outside New Jersey, that engages in sales within and into New Jersey of products that the Legislature has determined to be litter-generating. Such products are the primary source of the litter proliferation problem in this State. The tax imposed on this portion of the business community is not unduly burdensome due to the low tax rates provided in the law. A taxpayer engaged in retail sales of litter-generating products with annual gross receipts of \$1 million from such sales would pay \$225.00 in tax for the year. If he engaged in wholesale sales, his tax burden would be \$300.00 for the year. Litter Control tax collections have been as follows:

| Fiscal year | Tax revenues |
|-------------|--------------|
| 1987        | \$5,169,247  |
| 1988        | 8,068,864    |
| 1989        | 8,671,560    |
| 1990        | 9,108,911    |
| 1991        | 9,260,884    |

**Regulatory Flexibility Statement**

The rules proposed for readoption clarify a provision in the law that is intended to minimize the effect of the litter control tax on small retail businesses. All retailers with less than \$250,000 in annual gross receipts from sales of litter-generating products are excluded from payment of the tax. This exclusion applies to a large number of retailers, both in-State and out-of-State, as the \$250,000 "tax payment level" is reached by sales of the 15 categories of litter-generating products only and does not apply to sales of all non-litter-generating products. Retailers excluded from the tax by this provision are further benefitted by the rules in that they are not required to register or file returns for this tax. Small businesses that are not retailers would not be excluded from the tax or the proposed adopted rules. Small businesses not excluded from the tax and all other taxpayers would be required to file annual tax returns, due March 15 of each year, and retain records for such filing for three years from the return filing due date. However, the proposed readopted rules attempt to simplify the tax computation for all taxpayers by providing three alternative methods of computing the tax to ease the recordkeeping and accounting burden of all taxpayers.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:38.

**OTHER AGENCIES**

(a)

**HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION**

**District Regulations**

**Proposed Readoption: N.J.A.C. 19:3, 19:3B, 19:4 and 19:4A**

Authorized By: Hackensack Meadowlands Development Commission, Anthony Scardino, Jr., Executive Director.  
 Authority: N.J.S.A. 13:17-1 et seq., specifically 13:17-6(i) and N.J.A.C. 19:4-6.27.

Proposal Number: PRN 1992-513.

A public hearing concerning the proposed readoptions will be held on January 6, 1993 at 7:30 P.M. at:

Hackensack Meadowlands Development Commission  
 One DeKorte Park Plaza  
 Lyndhurst, New Jersey 07071

Submit written comments by January 20, 1993 to:  
 Thomas R. Marturano, Director of Solid Waste and Engineering  
 Hackensack Meadowlands Development Commission  
 One DeKorte Park Plaza  
 Lyndhurst, New Jersey 07071

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978) N.J.A.C. 19:3 and 19:4 will expire on May 26, 1993, and N.J.A.C. 19:4A will expire on June 20, 1993. Upon review, the Hackensack Meadowlands Development Commission (HMDC) has determined that N.J.A.C. 19:3B should also be subject to the requirements of that Executive Order. The Office of the Chief Engineer 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 these chapters is necessary to continue the permitting process handled by the Office of the Chief Engineer.

N.J.A.C. 19:3 is entitled "First Stage of the Master Plan for the Comprehensive Development of the Hackensack Meadowlands District," N.J.A.C. 19:3B is "Environmental/Socio-Economic Guidelines," N.J.A.C. 19:4 contains the "District Zoning Regulations" and N.J.A.C. 19:4A

consists of the "Flood Plain Management Regulations." As part of the readoption process, the HMDC reviewed these four chapters in terms of the original reasons why these rules were promulgated, to determine their effectiveness and to review what they have accomplished.

Chapter 3, which deals with the Master Plan for the Hackensack Meadowlands District (District), is the basis for what has taken place within the District for the past 20 years, since the creation and establishment of the Commission. Chapter 3 is also the basis for the regulations which the Commission's Staff enforces.

When the HMDC was first established, the 19,730 acre District contained 24 operating landfills. Between the landfills and the land set aside for their growth, 2,500 acres were slated for solid waste. The HMDC was able to protect and preserve most of this area and currently has one operating landfill covering approximately 17 acres.

The HMDC began to control the landfilling in the District right from the inception of the District's Master Plan. This resulted in more than \$1.4 billion in private sector investment which has produced millions of square feet of development for office, commercial, residential and distribution center facilities. This investment in the District accounts for approximately 1,600 firms doing business in the District and employing around 80,000 people.

This growth has not been at the expense of the environment. More than \$650 million in private sector investment has taken place in the District since 1984, and much of this development included environmental improvements. Careful control of the physical development of the District has allowed the enhancement of wildlife in the area. Currently more than 256 different species of birds either nest or rest in the Meadowlands. More than 30 species of fin fish and various species of mammals and reptiles, including snakes, turtles, muskrat and others, have found suitable habitat in the District. This description differs greatly from reports issued by the Commission in 1973, one year after the establishment of the District's Regulations. At that time the Hackensack River, which bisects the District, was depicted as little more than an open sewer and the ecosystem was severely damaged with minimal species of wildlife.

The Commission is readopting its current Master Plan because it will expire in May, 1993. However, the current Master Plan and corresponding zoning regulations continue to be responsive to the needs of the District, 20 years have lapsed since its inception. Therefore, one of the tasks currently being undertaken by the Commission is the analysis necessary to determine what revisions are to be made to the Master Plan to guide development for the next 20 year period.

The existing Master Plan and zoning regulations permitted a wide variety of land uses throughout the District. In addition to the 16 individual zones for residential, commercial and industrial uses, the Master Plan includes large expanses of vacant land for large mixed use developments referred to as Specially Planned Areas in the regulations. Many of these tracts of land include wetlands areas and even though the regulations require 50 percent open space, significant changes in the Federal wetland laws reduced the potential to fulfill the build out of the District in the Specially Planned Areas.

Therefore, in 1988, a Memorandum of Understanding was signed by the Federal regulatory agencies, the NJDEP and the HMDC to study the wetland areas in the District to determine which areas could be developed and which areas should be preserved. This study is being conducted as a Special Area Management Plan (SAMP) under the coastal zone management legislation. In other words, the SAMP will identify the locations of wetland areas in the District and how they will be utilized. It will also result in Districtwide regulations relating to wetland preservation and mitigation.

Eventually, a new Master Plan will be adopted which will reflect the findings of the SAMP, as well as any applicable Federal and State laws pertaining to land use and the environment. Land use designations will be assigned to the wetland areas, for either development or preservation in order to meet the Commission's mandates for orderly development and environmental preservation. At the conclusion of this process, the existing zoning and land use regulations must be amended in order to reflect the new Master Plan. These amendments to the zoning and land use regulations will deal with the location of land uses, housing, transportation improvements, environmental protection, etc. The District's regulations will reflect the SAMP's record of decision and will incorporate any requirements which result from the SAMP, into the land use regulations of the Commission. Therefore, the portion of Chapter 3 containing the "First Stage of the Master Plan for the Comprehensive

Development of the Hackensack Meadowlands District" must be re-adopted since it is the basis through which the Commission can accomplish its mandates.

The remainder of Chapter 3, specifically N.J.A.C. 19:3-1, consists of the Commission's Fee Schedule. This subchapter was last revised in 1990 and is proposed for re-adoption without amendments.

The Commission's District is comprised of Zones and Specially Planned Areas. Different procedures are followed for development and permitting depending on the site's designation. Chapter 3B contains regulations which are only applicable to Specially Planned Areas. The Environmental/Socio-Economic Impact Guidelines were developed in order to provide a set of formal guidelines for the preparation of an environmental impact assessment as required in accordance with the rules of the Commission under N.J.A.C. 19:4-5.8, 5.9 and 5.10 for a Specially Planned Area.

Chapter 3B requires information on existing conditions as well as impacts due to the proposed project. It also requires details on the carrying capacity, minimization or elimination of adverse impacts, alternatives and required approvals. These guidelines detail the degree of field testing which needs to be submitted with the project application. These guidelines must be re-adopted since they detail the requirements which are necessary for a substantive review of the environmental and socio-economic impacts of a major project in the District.

Chapter 4 contains the District's Zoning Regulations and all revisions (rezoning) made to the Official Zoning Map of the Hackensack Meadowlands District. The purpose of this chapter is as follows:

To provide for the orderly and comprehensive development of the Hackensack Meadowlands District;

To provide space for industrial, commercial, residential, recreational and other uses;

To provide that such uses are suitably sited and placed in order to secure safety from fire, provide adequate light and air, prevent the overcrowding of land and undue concentration of population, prevent traffic congestion, and, in general, relate buildings and uses to each other so that aesthetics and use values are maximized;

To provide for community appearance;

To provide for improvements of the land adequate to serve the uses to be developed on that land;

To protect the Hackensack Meadowlands District from air and water pollution;

To preserve an ecological balance between natural, open areas and development; and

To provide for a comprehensive treatment of the ecological factors constituting the delicate environmental balance of the Meadowlands.

The intent and purpose of the chapter, listed above, is carried out by the rules which are contained in the remainder of the chapter. The subchapters which make up Chapter 4 consist of definitions applicable to the rules, a breakdown of all of the Zones and Specially Planned Area classifications and designation, the individual requirements for each of the Zones and Specially Planned Areas, permitting procedures, procedure to apply for relief from the regulations, procedure for enforcement of the regulations and how to handle violations of the regulations and general provisions which include the design standards for development within the District. This chapter must be re-adopted because it contains all of the requirements for all zoning and land use permits issued by the Office of the Chief Engineer.

Chapter 4A consists of the Flood Plain Management Regulations. This chapter sets forth procedures, engineering and planning standards, rules and regulations in accordance with which the Commission reviews and approves or disapproves applications for the development or use of land within the District. The intent and purpose of these rules is to promote the public health, safety and general welfare and to minimize public and private losses due to flooding. In accordance with N.J.A.C. 19:4A, these rules are designed to accomplish the following: protect human life and health; minimize expenditure of public money for costly flood control projects; minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; minimize prolonged business interruptions; minimize damage to new and existing construction; minimize damage to public and private facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard; help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas; insure that potential buyers are notified that property is in an area of special flood hazard; ensure that those who own or occupy

the areas of special flood hazard assume responsibility for their actions; and generally to provide for the exercise of the powers regarding the review and regulation of land use and development conferred upon the Commission by Chapter 404 of the Laws of 1968.

In order to accomplish its purpose, this chapter included methods and provisions for: restricting or prohibiting uses which are dangerous to health, safety and property due to water hazards, or which result in damaging increases in flood heights; requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction; controlling the alteration of natural flood plains, stream channels and natural protective barriers which help accommodate or channel flood waters; controlling filling, grading, dredging and other development which may increase flood damage; and preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. This chapter must be re-adopted because it allows the Commission's Staff to develop and implement policies and District wide programs that fulfill the purpose of the chapter.

Based on the above, these four chapters, N.J.A.C. 19:3, 19:3B, 19:4 and 19:4A, are being re-adopted without amendments. The Office of the Chief Engineer believes that the current text is sufficient at this time to carry out the responsibilities of the Commission.

#### **Social Impact**

The rules that are being re-adopted have had a positive effect on the area under the Commission's jurisdiction. The negative conditions which existed when these rules were first established have, for the most part, been eliminated. This has been accomplished by the existence and enforcement of the rules being re-adopted. As detailed as part of the Summary above, these rules have had a significant social impact.

#### **Economic Impact**

The rules being re-adopted have an economic impact, as a minimum, on all property owners in the District. The economic repercussions can be viewed as two separate impacts. The first, and the simplest to quantify, deals with the fees the Commission charges for permit reviews. The Commission's Fee Schedule which is contained in N.J.A.C. 19:3-1, was last revised in 1990. These rules are being re-adopted without change and the fees will continue to be charged by the Office of the Chief Engineer for permit reviews. The range of fees varies from \$5.00 per 100 square feet for subdivision, to \$100,000 for an initial general plan for a specially planned area. Total fees would depend upon the planned use and individual site characteristics.

The second economic impact to property owners are property values. These values are affected by land use designations and the zoning which governs development within the District. The Commission is re-adopting its current Master Plan, and other zoning rules which may affect property values, without change.

#### **Regulatory Flexibility Analysis**

A portion of the owners and developers of property located within the Hackensack Meadowlands District (District) may be considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act, because some employ less than 100 full time employees. The rules which are being re-adopted apply equally to the entire regulated public. No differentiation in recordkeeping, reporting, or other compliance requirements is made based on business size.

The rules being re-adopted may apply to several types of small businesses. Because of the nature of the powers and jurisdiction of the Commission and many types of reviews and permits issued by its Staff, it is difficult to describe every type of small business which may be affected. In general terms, small businesses in the District are classified as either one or a combination of the following categories: retail; office; warehousing; distribution; manufacturing; and service uses.

The rules being re-adopted control most of the development which takes place in the District. They have an impact on property owners, developers, contractors and consultants. Property owners and developers of land in the District vary from a home owner to very large corporations. The same size range applies to contractors and consultants who perform work within the District.

According to Department of Labor statistics, there are 1,251 firms operating within the District. These firms employ a total of 72,162 people. There are 127 firms that employ 100 people or more which account for 10.15 percent of the firms conducting business in the District. However, these firms employ 49,217 of the people who work in the District or

68.20 percent of the total. According to these figures 31.8 percent of the firms operating in the District are small businesses and they employ approximately 22,945 people.

Although the District consists of large industrial and commercial developments, it also contains some residential components which impact and help shape the character of the District. Of the close to 5,200 properties within the District, there are approximately 3,000 residential dwellings. Over 65 percent of this number consists of a large, high-rise, condominium development. According to the 1990 Census, the 14 municipalities which make up the District have a combined population of 414,070. None of the municipalities are entirely within the District. Only 10,431 people or 2.52 percent of the total number reside within the District boundaries.

The rules require that permits be sought for a wide range of projects, from installing a sign to building residential units, retail malls, theaters, convention centers and office complexes. They contain all of the procedures that are to be followed by the public and by the Commission Staff in preparing and submitting a proposal and in evaluating said proposal. All of the information which is required of applicants is contained in the rules. The fees range from a fee for signs of \$100.00 plus \$2.00 per square foot of sign area, to a fee of \$100,000 for the initial submission of a General Plan application within a Specially Planned Area. Fees for every type of review and permit handled by the Commission are listed in the rules. Included in the fee schedule are fees for all subdivisions, all zoning permits and for construction permits and plan review. Under the General Provisions of the Fee Schedule, the HMDC has authorized the Executive Director to waive a portion or the whole fee based on the recommendation of the Chief Engineer.

Time frames which must be adhered to by the Commission's Staff are also outlined for the general public. Since these requirements apply to all projects under the jurisdiction of the Commission and since it is likely that some percentage of those applicants are considered small businesses, then it can be stated that these are the reporting, recordkeeping and compliance requirements applicable to small businesses in the District.

Almost all permit applications require some form of professional services in order to comply with the rules. With the exception of some work performed by home owners, all permit applications require the submittal of plans and reports signed and sealed by licensed professionals. These licensed professionals include engineers, architects, planners, landscape architects, surveyors, etc. When applying for a variance from the rules, applicants who are incorporated must be represented by legal counsel. In addition, real estate brokers and appraisers are also involved, to some extent, in the approval process.

It is impossible for the HMDC to produce a reliable estimate of the capital costs for compliance with all permits necessary to develop in the District. All costs associated with development, other than HMDC fees, are outside of HMDC control and it has no knowledge of them. We have no involvement with fees charged by consultants for professional services or by other regulatory bodies having jurisdiction on a project. Costs associated with any development will vary according to the planned use and the individual characteristics of the site. HMDC fees may be waived in whole or in part, by the Executive Director, based upon the recommendation of the Chief Engineer, if the applicant requests same and is able to justify the request. For the most part, these requests are based upon the size of the project being undertaken and not the size of the company.

There are no set annual costs associated with owning property or doing business in the District which are imposed by the HMDC.

The rules being proposed for re-adoption do not establish different compliance or reporting requirements for small businesses. The rules in question use design standards rather than performance standards. In addition, the rules do not exempt small businesses from any of its compliance requirements. In analyzing the previous statements, it must be noted that the subject rules consist of a Master Plan for a 20,000 acre District and a substantial portion of the rules which effectuate the Master Plan. The rules which were originally established in 1972 did not incorporate any provisions that would allow different compliance requirements for small businesses as per N.J.S.A. 52:14B-16 et seq. After a thorough review of the chapters proposed for re-adoption, and in light of HMDC experience since 1972, we can state that special provisions are not necessary in order to promote the growth and development of small businesses in the District.

The statistical information provided above indicates that a substantial number of small businesses operate in the District. The rules have not deterred their growth.

Full text of the proposed readoptions appears in the New Jersey Administrative Code at N.J.A.C. 19:3, N.J.A.C. 19:3B, N.J.A.C. 19:4 and N.J.A.C. 19:4A.

(a)

**CASINO CONTROL COMMISSION  
ACCOUNTING AND INTERNAL CONTROLS**

**Complimentary Services or Items; Procedures for  
Complimentary Cash and Noncash Gifts;  
Alternative Reporting Procedures—Accessible  
Complimentaries Database**

**Proposed Amendments: N.J.A.C. 19:45-1.9, 1.9B and  
1.46**

**Reproposed New Rule: N.J.A.C. 19:45-1.9C**

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

Authority: N.J.S.A. 5:12-63c, 69a, 70j, 70l, 99 and 102.

Proposal Number: PRN 1992-541.

Submit comments by January 20, 1993 to:

David C. Missimer  
Senior Assistant Counsel  
Casino Control Commission  
Tennessee Avenue at the Boardwalk  
Atlantic City, New Jersey 08401

The agency proposal follows:

**Summary**

The proposed amendments and reproposed new rule are being published as a result of public comments received in response to an earlier Commission proposal concerning the regulation of complimentary services or items issued by casino licensees (see 24 N.J.R. 2692(b)). The notice of adoption for this prior proposal may be found in the Adoptions section of this issue of the New Jersey Register.

More specifically, the proposed amendment to N.J.A.C. 19:45-1.9(e)1 would raise the threshold for complimentary services or items which are exempted from inclusion on the daily reports required by that rule from \$50.00 to \$100.00. The \$50.00 threshold was recently adopted by the Commission to replace the laundry list of de minimis complimentaries previously exempted by the provisions of N.J.A.C. 19:45-1.2(c)3. Several casino licensees commented that this \$50.00 threshold was still too low to avoid the needless and burdensome reporting of numerous insignificant and routine complimentaries. It should be noted that the Commission is not necessarily endorsing this higher threshold as a result of its decision to publish this proposal. The Commission is simply seeking additional comment on this issue to determine what, if any, further action should be taken.

New subsection (f) of N.J.A.C. 19:45-1.9 is being proposed in response to a comment on the prior proposal which expressed concern with the fact that the amendments contained in that proposal would shift the regulation of complimentaries issued as part of slot club programs from N.J.A.C. 19:45-1.46 to N.J.A.C. 19:45-1.9. The amendment now being proposed, while recognizing that such complimentaries are in fact complimentaries which would normally be subject to regulation under N.J.A.C. 19:45-1.9, would create a new exemption from daily reporting for certain complimentaries issued as part of a slot machine complimentary incentive program. The Commission agrees that requiring individual daily reporting of high volume, low value complimentaries granted pursuant to preestablished slot machine complimentary incentive programs would constitute an expensive and time consuming burden on casino licensees without any offsetting benefit in terms of information available to the regulatory agencies.

Accordingly, as noted, the proposed amendment would create an exemption for the daily reporting of such complimentaries when the casino licensee's slot machine complimentary incentive program rules meet four preconditions. First, the slot machine complimentary incentive program must be submitted to the Commission according to the rules for complimentary distribution programs as provided in N.J.A.C. 19:45-1.46. Next, the slot machine complimentary incentive program must be open to participation or "membership" by all members of the public. Third, all complimentaries issued pursuant to such programs must be

awarded in accordance with the terms of a predetermined schedule related to the amount of patron slot play. Fourth, the complimentary must have a value of less than \$500.00; otherwise, the complimentary would have to be reported on the daily report required by N.J.A.C. 19:45-1.9(e). Moreover, all complimentary issued pursuant to such programs would have to be recorded and reported on the summary reports required pursuant to the provisions of N.J.A.C. 19:45-1.46. For purposes of consistency, N.J.A.C. 19:45-1.9B(b) would be amended to reflect the reporting exemption provided by the proposed amendment to N.J.A.C. 19:45-1.9.

The proposal would also amend N.J.A.C. 19:45-1.46(l) to raise the threshold for reporting the names of individual recipients of complimentaries issued as part of actual complimentary distribution programs from \$100.00 to \$500.00. Since this individual reporting obligation is intended to identify complimentaries considered to be of significant value, it would seem appropriate to raise this figure to correspond to the increases in complimentary reporting thresholds proposed in the amendments to N.J.A.C. 19:45-1.9(e) and (f).

N.J.A.C. 19:45-1.9B(g), as recently adopted, provides that the maximum amount of cash complimentary gifts which may be granted by a casino licensee to a patron during any 12 month period cannot exceed that patron's theoretical win during the same 12 month period. Several casino licensees commented during the adoption of this rule that the figure derived from the use of the commonly applied "theoretical win" formula is only one benchmark which is useful in the evaluation of patron gaming activity. The casino licensees noted that situations arise in which the "theoretical win" is grossly inaccurate in determining the actual amount of patron play. In order to provide more practical limits, the Commission now proposes to amend N.J.A.C. 19:45-1.9B(g) to add two additional benchmarks.

First, it is proposed to add "actual gaming losses" as an alternative benchmark figure. Use of "actual gaming losses" would permit the casino licensee to provide an appropriate cash complimentary in a situation, for example, in which a new player without a "theoretical win" rating loses a large amount over a very short period of time. The second proposed new measurement of maximum complimentary cash gifts is a specific monetary limit of \$25,000. This benchmark would be useful to the gaming industry for complimentary cash gifts which are unrelated to gaming activity or which are made to an unrated player. For example, an apparent slot machine malfunction or table game anomaly might create a circumstance in which the casino licensee agrees, for good will purposes, that an unrated patron has a reasonable expectation of a cash adjustment of the gaming situation. Or a patron may pay for a tournament or other event where part of the payment is considered gaming related and part is not gaming related, but where the casino licensee desires to compensate the patron when unforeseen difficulties arise for the activity as a whole or for the particular patron. In both examples, the proposed \$25,000 maximum would permit the casino licensee to provide prompt and fair cash complimentary gifts.

Under the proposed amendment to N.J.A.C. 19:45-1.9B(g), the maximum amount of cash complimentaries which could be provided to a person during a 12 month period would be the highest amount derived from the application of the three standards. The Commission believes that the addition of the two proposed new benchmarks for determination of maximum cash complimentaries would provide the gaming industry with sufficient flexibility to make effective use of cash complimentary gifts while at the same time preserving the informational and control requirements necessary to maintain public confidence in casino operations and regulation.

The Commission is also repropounding a new rule, N.J.A.C. 19:45-1.9C, which would provide an exemption from the complimentary reporting requirements of N.J.A.C. 19:45-1.9(e), 1.9B(b), and 1.9B(f) for any casino licensee which maintains a complimentaries database which complies with the requirements of the new section. The new rule provides an alternative to the voluminous paper reports which are otherwise required. The database will be limited to, but must contain, all of the data which is otherwise required to be submitted in written reports pursuant to provisions of N.J.A.C. 19:45-1.9 and 1.9B.

This proposed new rule replaces a similar proposal published at 24 N.J.R. 2692(b). Various comments submitted in response to the original proposal prompted the Commission to repropound the new rule to clarify numerous concerns which had been raised. For example, both the Division of Gaming Enforcement and the casino industry expressed the concern that the rule would interfere with existing on-site computer access agreements between the Division and casino licensees. The

reproposed new rule hopefully makes clear that this voluntary database is completely independent of any computer access agreements which currently exist. Its sole purpose is to provide casino licensees with an alternative and less burdensome means of making information concerning the issuance of complimentaries available to the regulatory agencies.

The Division also objected to language in the original proposed new rule which the Division believed implied that casino licensees could limit availability of the information in the database and that Division access would be a "privilege." Although both of these concerns were misplaced, the Commission has amended the rule to clarify that each casino licensee will, as part of Commission approval of the database, be required to identify those time periods, if any, when access to the data will be unavailable for maintenance or technical reasons. In addition, the reproposed new rule makes clear that the Division and, if requested, the Commission will have an unlimited right to copy raw data from the database.

Several casino licensees also objected to the original proposed new rule on the basis that the rule required revelation of proprietary information and required individual negotiation of agreements between each casino licensee and the regulatory agencies, a process which they felt was likely to be tedious and lengthy. As to the former comment, as noted above, the data which would be provided pursuant to the proposed new rule is the same data which would otherwise have to be reported to the Commission and Division in writing. Therefore, assuming for purposes of argument, that the licensees are correct that they possess information which the Commission or Division cannot review because of its proprietary nature, such information would not be involved in the implementation of this rule.

The Commission does agree with the industry comment that a special agreement with each casino licensee is not needed in order to make this alternative reporting system work. As with all other internal control requirements, it should be up to each casino licensee which wishes to avail itself of this alternative reporting mechanism to describe its system in an internal control submission which the Commission should review against preestablished regulatory standards. Accordingly, the Commission has published this revised proposal and eliminated the requirement for separate agreements between each casino licensee and the regulatory agencies. Any casino licensee wishing to avail itself of this revised reporting system would simply have submit its proposed database system for review and approval by the Commission in accordance with section 99 of the Act and the Commission's regulations.

#### Social Impact

The proposed amendments and new rule are not anticipated to have any social impact. These rules govern the manner in which casino licensees are required to record and report the issuance of complimentary services or items. Any social values reflected in the determination to allow casino licensees to engage in such activities are reflective of the legislative judgement to authorize such activities as opposed to the rules themselves. The Commission believes the amendments and new rule will allow it to effectively exercise its responsibility to regulate the conduct of casino licensees in such a manner so as to instill and maintain public confidence in the regulation of casino gaming in this State.

#### Economic Impact

Although casino licensees may incur some initial costs in establishing and implementing the procedures necessary to comply with the proposed amendments and new rule, it is anticipated that these costs will be more than offset by the ability of casino licensees to more effectively make use of complimentary services and items as a marketing tool. In particular, some licensees may incur some costs in establishing or modifying their complimentary reporting systems to take advantage of the database alternative authorized by N.J.A.C. 19:45-1.9C. The amount of this cost will vary by casino licensee and will depend on the degree to which each licensee's complimentary reporting system is currently computerized and compatible with the database approach anticipated by the proposed rule. The Commission believes, however, that it would prove beneficial to every casino licensee in the long run to convert its complimentary recording system to be compatible with the database alternative proposed in the new rule. This system would not only obviate the need for the casino licensee to make further written reports, but would also enable it, and the Division, to analyze the data contained in the system in a meaningful and focused manner.

It is not anticipated that the amendments and new rule will have any significant economic impact on the Commission or the Division of Gaming Enforcement. It is possible, however, that the Division could

save time and labor currently spent reviewing the numerous written complimentary reports submitted by casino licensees if a substantial number of casino licensees opt to use the alternative database system of reporting.

#### Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposed amendments and new rule will only affect the operation of New Jersey casino licensees, none of which qualifies as a small business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

#### 19:45-1.9 Complimentary services or items

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

(e) Each casino licensee shall record, on a daily basis, the name of each person provided with complimentary services or items, the category of service or item provided, the value (as calculated in accordance with (c) above) of the services or items provided to such person, and the person authorizing the issuance of such services or items. A copy of this record shall be submitted to the Division's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary services or other items which:

1. Have a value (as calculated in accordance with (c) above) of [\$50.00] **\$100.00** or less; or

2. (No change.)

(f) **Notwithstanding any other provision of this section or N.J.A.C. 19:45-1.9B to the contrary, any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a slot machine complimentary incentive program shall be recorded in accordance with the requirements of N.J.A.C. 19:45-1.46 and shall not be included on the daily complimentary report required by (e) above if:**

1. The program is submitted to and approved by the Commission in accordance with the requirements of N.J.A.C. 19:45-1.46 as if the program were a complimentary distribution program;

2. The program is open to participation by all members of the public;

3. Each participant in the program is issued complementaries in accordance with a predetermined schedule as a result of his or her slot play; and

4. The complimentary service or item has a value (as calculated in accordance with (c) above) of less than **\$500.00**.

#### 19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) (No change.)

(b) **Except as otherwise provided in N.J.A.C. 19:45-1.9(f), [All] all complimentary cash and noncash gifts provided by a casino licensee shall be recorded in accordance with the provisions of N.J.A.C. 19:45-1.9(e). If a complimentary cash and noncash gift has a value of \$500.00 or more, the casino licensee shall also:**

1.-3. (No change.)

(c)-(f) (No change.)

(g) Notwithstanding any other provision of this section, no casino licensee shall provide to any patron, during any 12-month period, complimentary cash gifts which exceed the **greater of:**

1. The casino licensee's theoretical win from that patron during that same 12-month period, as reasonably determined from data contained in the player rating system of the casino licensee[. Each]; **provided, however, that each casino licensee shall include in its procedures developed in accordance with N.J.A.C. 19:45-1.9(b), the mathematical formula by which it calculates its theoretical win from the information contained in its player rating system[.]; or**

2. The actual gaming losses of the patron to that casino licensee during that same 12-month period as reasonably determined from data contained in the player rating system of the casino licensee; or

3. **\$25,000.**

#### 19:45-1.9C Alternative reporting procedures; accessible complementaries database

(a) A casino licensee which records all information concerning complimentary services or items which is required by N.J.A.C. 19:45-1.9 or 1.9B in a computer database which is accessible by the Commission and Division from remote locations and conforms to standards established and approved by the Commission pursuant to this section shall be exempt from filing all reports required pursuant to N.J.A.C. 19:45-1.9(e), 1.9B(b), and 1.9B(f).

(b) The structure and accessibility of the complementaries database shall be subject to review and approval by the Commission and such submission shall include, without limitation, the following:

1. A complete description of the computer hardware, file formats and software products to be used;

2. The hours of the day and the days of the week, if any, that the database will be inaccessible on a routine basis due to system maintenance or other technical reasons;

3. The procedures by which the Division and, if requested, the Commission will be able to read and copy data files, both current and stored; and

4. Security procedures for database access and secondary data dissemination.

#### 19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(l) Each licensee shall:

1. (No change.)

2. Prepare a monthly report for all programs regulated by (b) above, which shall list, by program offered during the month, a description of the complimentary items and services provided, the total number of persons receiving complimentary items or services, the total dollar amount of complimentary items or services provided, and the names of all persons receiving a complimentary item or service in a dollar amount equal to or greater than [\$100.00] **\$500.00**. Such report shall be available upon request by the Commission or Division.

(m)-(n) (No change.) \_\_\_\_\_

# RULE ADOPTIONS

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Thorough and Efficient System of Free Public Schools

**Adopted Repeal and New Rules: N.J.A.C. 6:8-1, 2, 3 and 4**

**Adopted Recodification: N.J.A.C. 6:8-5 as 6:8-5A.3**

**Adopted Amendments: N.J.A.C. 6:8-8.1 and 8.4**

**Adopted New Rules: N.J.A.C. 6:8-5 and 6:8-5A.1 and 5A.2**

Proposed: September 8, 1992 at 24 N.J.R. 3039(a).

Adopted: November 4, 1992 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: November 25, 1992 as R.1992 d.510, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, as supplemented and amended by N.J.S.A. 18A:7A-1 et seq.

Effective Date: December 21, 1992.

Expiration Date: December 11, 1996.

#### Summary of Public Comments and Agency Responses:

Four individuals spoke at the public testimony held by the State Board of Education on October 21, 1992. Those commenting included Bernice Brooks, Educational Media Association of Middlesex County; Susan Jacobson, Educational Media Association; Theodore R. Murnick and Patricia Tumulty, Executive Director of the New Jersey Library Association. Those submitting written comments included James R. Anzide, Superintendent, Mount Laurel Public Schools Jean Paashaus, Summit, New Jersey; and Edwina M. Lee, Assistant Executive Director/Advocacy, New Jersey School Boards Association.

COMMENT: A commenter recommended that the State Board consider the adoption of regulations governing membership of local boards in the special needs districts. Specifically, the commenter recommended that the State Board appoint school board members in special needs districts.

RESPONSE: N.J.A.C. 6:8 contains rules regarding the evaluation and assessment of local school districts, not rules regarding school board membership. Therefore, it is not appropriate to address the comments regarding membership of local boards of education at this time.

COMMENT: Three commenters recommended several changes in reference to libraries: that library skills be separate and not part of information processing skills; that the term "information processing" as referred to in N.J.A.C. 6:8-4.6(a)4i(1) be changed to "information processing skills"; and that information processing skills be assessed in high school, not just at the sixth grade level.

RESPONSE: The Department does not agree with the recommendation that library skills be separate since library skills can more appropriately be grouped with study, computer and technology skills, under the heading of "information processing skills." The terms "information processing skills" and "information processing" are used interchangeably. The Department agrees that information processing skills should be assessed through the grade levels. However, at the high school level, these skills are integrated with the content areas and are assessed as part of the content areas.

COMMENT: A commenter recommends that the requirements for data collection and reporting not be done in a rigid format, rather that districts be allowed flexibility in arranging and reporting data.

RESPONSE: The Department agrees with the comment and will provide, through the monitoring manual, sample formats for collection and reporting of data. Districts will be able to develop their own reporting forms.

COMMENT: One commenter opposes the first two State educational goals on the basis that the requirement for "All children . . . would extend

beyond the schools to parents, community and business. Another commenter recommends that "information processing skills" be included in several of the State educational goals.

RESPONSE: The Department disagrees with the comments and declines to make the requested changes. The amendments state only that "All public school districts shall make every effort to attain the . . . State goals." The proposed rules apply only to local public school districts. With regard to information processing skills, it is included in Goal 4, as part of experiences provided to students. Since "information processing skills" is not a subject area, it would be inappropriate to place it in other goal statements.

COMMENT: A commenter raised a number of issues specifically related to implementation of the amendments. These issues include State goals, statement of assurances, split sessions, district budgets and State aid defeats and certification with conditions.

RESPONSE: The Department will address these and other issues through multiple training sessions for local district staff. Department staff will also provide on-site technical assistance and pre-monitoring activities in selected areas to assist districts in preparing for the monitoring visit. A manual will be developed to use during the training and will be provided to all districts.

#### Summary of Agency-Initiated Changes:

A technical change has been made to correct a printing error in proposed N.J.A.C. 6:8-2.1(a)2i where "AI" was corrected to "All."

The Department has determined to extend the due date for district submission of school-level objectives to the county superintendent which is proposed in N.J.A.C. 6:8-4.4(a)3iii. This change will provide districts with additional time to develop their objectives. The change was made from "June 30" to "August 1."

The Department has determined to delete the requirement for assessment in science and social studies proposed in N.J.A.C. 6:8-4.6(a)1i. At the time when the amendments were first proposed, it was anticipated that assessments in science and social studies would be readily available to districts. However, based on a review of the science and social studies assessments currently available, the Department has determined that existing assessments will not adequately measure the higher-level standards that will be developed by the statewide curriculum content standards panels.

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

#### SUBCHAPTER 1. DEFINITIONS

##### 6:8-1.1 Words and terms defined

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

"Articulation" means continuity, consistency and interdependence in the curricular offerings of the successive divisions of the school system and among constituent, regional and sending-receiving districts.

"Assessment" means a written analysis of the current status of an educational system in terms of achieving its goals and objectives.

"Average daily attendance" means the total number of days present divided by the total possible number of days of attendance.

"Behavior standard" means a school-level standard related to attendance, dropout rate, expulsions, out-of-school suspensions, acts of violence and substance abuse.

"Benchmark" means interim performance level which is set to measure a school's progress toward the achievement of minimum State standards.

"Certification" means an acceptable rating in all indicators in the eight elements of the monitoring process.

"Certification with conditions" means certification that is contingent upon the district correcting identified deficiencies without additional diagnostic monitoring or technical assistance, within a specific period of time.

"Challenge objective" means a school-level objective which is developed when student performance or behavior is at or above minimum State standards.

"Community" means the community at large, including, but not limited to, the parents of pupils.

"Curriculum" means planned learning opportunities in order for pupils to achieve the intended outcomes of instruction.

"Curriculum content standards" means standards adopted by the State Board of Education in K-12 curriculum areas which define the knowledge and skills that a school should impart to all pupils to demonstrate competency in challenging subject matter.

"Element" means one of the eight components of the educational process which is reviewed during monitoring for the purpose of certifying school districts.

"Evaluation" means procedures used to determine the success of programs, projects, techniques and materials in relation to the achievement of goals, objectives and standards; that is, the act of making judgments based upon the data gathered.

"Goals" means a written statement of educational aspirations for learner achievement and the educational process stated in general terms.

"Indicator" means one of the subsections of the eight elements that contain specific criteria reviewed during the monitoring process.

"Information processing skills" means library, study, computer and technology skills.

"Minimum level of proficiency" means passing scores on the State tests established pursuant to N.J.S.A. 18A:7A-6 and the State-approved minimum levels of proficiency in grades where State testing does not take place.

"Monitoring" means the process by which the Commissioner of Education or his or her designee evaluates the status of each school district every seven years for the purpose of determining certification status.

"Municipal alliance" means the coordinated efforts of a community and school district with regard to substance abuse prevention programs.

"Objective" means a written statement of the intended outcome of a specific educational process.

"Performance assessment" means a variety of techniques for assessing pupil's achievement in areas that are not well measured by typical multiple choice tests, including such things as open-ended or constructed response questions, essays, portfolios of pupil's work, performance of what pupils know and can do, projects, demonstrations, and laboratory problems.

"Pupil at risk" means a pupil who is in danger of failure or dropping out of school because of specific cognitive, affective, economic, social and/or health needs. Pupils at risk shall be defined as pupils affected by one or more of the following conditions:

1. Failure to acquire the essential skills needed to stay on grade level, or performance below minimum levels of proficiency;
2. History of adjustment or behavioral problems;
3. Having been placed on long-term suspension for violation of school policies;
4. Being pregnant or a parent;
5. Being in jeopardy of not graduating;
6. Living in conditions of poverty as defined by eligibility for free meals or free milk;
7. History of poor school attendance;
8. Being limited in English language proficiency;
9. Being disaffected as defined in this subchapter;
10. Being disruptive as defined in this subchapter; and
11. Other characteristics identified by the district board of education which may place pupils at risk.

"Quality assurance annual report" means a report provided by the chief school administrator to the public which includes: implementation of school-level plans, achievement of performance objectives, school profiles, professional development activities, condition of school facilities, status of mandated program reviews and community support data.

"School-level plan" means a two-year plan which is developed by each school, is based on school profile data and includes student

performance objectives, progress review by teaching, and administrative staff and parent involvement.

"School profile" means a profile of each school which is compiled annually by the district and which contains statistical information specified by the State Department of Education.

"Statement of assurance" means a document submitted by the chief school administrator to the county superintendent which verifies the development and implementation of the school-level plan, conduct of school-level meetings, written curricula, curriculum articulation and the development and implementation of a substance abuse prevention program.

## SUBCHAPTER 2. STATE EDUCATIONAL GOALS AND STANDARDS

### 6:8-2.1 State educational goals

(a) The following State goals are applicable to all public school districts. It is the Department's intention that:

1. All children in New Jersey start school ready to learn.
  - i. Quality preschool opportunities be provided for all children, through collaboration between public schools and community agencies.
  - ii. Parent education programs be designed and implemented by all districts to assist parents in providing readiness experiences for their preschool children.
2. The high school graduation rate be at least 90 percent Statewide.
  - i. \*[AI]\* \*All\* districts provide least restrictive, alternative programs for pupils who cannot succeed in the regular high school environment, including those students with disabilities.
  - ii. All districts provide dropout prevention programs for pupils at risk.
3. New Jersey pupils leave grades four, eight, and 11 having demonstrated competency in challenging subject matter including reading, writing, mathematics, science, and social studies (civics, history, and geography), health, physical education, and fine, practical and performing arts.
  - i. All districts implement State-approved curriculum content standards and appropriate assessments to enable pupils to succeed and to evaluate their performance.
  - ii. All districts provide staff development opportunities to ensure that teachers are adequately equipped to teach challenging and up-to-date subject matter and to implement effective teaching techniques.
4. All pupils learn to use their minds well, so that they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.
  - i. All districts provide students with experiences in higher level thinking, information processing, the responsibilities of citizenship, and employability skills.
  - ii. All pupils demonstrate competency in the subject areas of health, physical education, fine, practical and performing arts, and career education.
  - iii. All pupils demonstrate respect for racial, cultural, ethnic and religious diversity.
5. All pupils increase their achievement levels in science and mathematics to contribute to our country's ability to compete academically with all other countries of the world.
  - i. All districts revise their curriculum offerings in science and mathematics according to State standards as they are developed.
  - ii. All districts provide staff training in the teaching of mathematics and science at grades K-12 to increase teachers' understanding of and ability to teach these subjects.
6. Every adult be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.
  - i. Adult education programs be increased, in conjunction with local districts, community colleges and other educational agencies, to provide greater opportunities for adults to continue learning for work skills, leisure pursuits, intellectual and cultural growth and to assist their children in learning.

ii. Business and industry be encouraged to collaborate with educational agencies to design and increase access to educational programs for adults, such as flex time, distance learning, and interactive technology.

7. Every school in New Jersey be free of drugs and violence and offer a safe, disciplined environment conducive to learning.

i. All school districts develop partnerships with parents to establish the responsibilities of each to create and maintain safe and healthy educational environments for all pupils.

ii. All districts provide programs and staffing to deal with pupils at risk.

iii. All schools and communities expand their cooperative efforts to create drug and violence-free environments.

iv. All students develop a positive view of self and learn to use effective interpersonal skills.

#### 6:8-2.2 State educational standards

The State educational standards shall be those set forth in N.J.A.C. 6:8-4.3 through 4.10 which shall be used for the implementation of a thorough and efficient system of free public schools in accordance with N.J.S.A. 18A:7A-1 et seq. and the New Jersey Constitution.

#### 6:8-2.3 Review of State educational goals and standards

(a) The State Board of Education, after consultation with the Commissioner and review by the Joint Committee on the Public Schools, shall, from time to time, but at least once every five years, review and update the State goals and standards.

(b) In reviewing and updating these goals and standards, the State Board shall consult with the Commissioner of Labor, the Chancellor of Higher Education, the Commissioner of Health, the Commissioner of Human Services and other State employees and officers as deemed necessary.

### SUBCHAPTER 3. REPORTING AND STAFFING OF SCHOOL DISTRICTS

#### 6:8-3.1 Reports

(a) Each district board of education shall, on forms approved by the Commissioner and at specified times, submit:

1. Demographic data relative to each school;

2. Number and reasons for school dropouts;

3. Results of district and school assessment programs of pupil achievement; and

4. All required annual fiscal reports pursuant to law and rule.

#### 6:8-3.2 Staffing

(a) Teaching staff members shall be employed by the district board of education based upon the specific instructional needs of pupils of the district and each school within the district. Pursuant to N.J.A.C. 6:11, the district board of education shall provide certified personnel needed to implement a thorough and efficient system of free public schools.

(b) Each school shall be assigned the services of a full-time non-teaching principal to be responsible for administration and supervision of the school.

1. When a full-time non-teaching principal is not assigned to a school, the district board of education, upon advice of the chief school administrator, shall submit to the Commissioner for approval a plan that ensures adequate supervision of pupils and staff.

### SUBCHAPTER 4. PROCEDURES FOR THE EVALUATION OF THE PERFORMANCE OF EACH PUBLIC SCHOOL DISTRICT

#### 6:8-4.1 General requirements

(a) The Commissioner of Education shall evaluate each school district's implementation of the standards required by this chapter.

(b) Based upon the evaluation, the Commissioner shall recommend to the State Board of Education the certification of each district meeting the criteria established in this chapter.

(c) The State Board of Education shall determine the certification of each district.

(d) A district certified pursuant to this chapter shall not be required to be formally evaluated for seven years.

(e) The Commissioner reserves the right to recommend that the State Board of Education rescind the certification of any district which may fall into non-compliance with the standards set forth in this chapter.

#### 6:8-4.2 Evaluation procedures

(a) Each school district within a county shall be monitored beginning July 1, 1993, and if certified, every seven years thereafter by the monitoring team under the supervision of the county superintendent of schools.

1. The county superintendent of schools shall establish a monitoring schedule with the approval of the Assistant Commissioner, Division of County and Regional Services.

2. Each district scheduled for monitoring shall be notified in advance by the county superintendent of schools. The dates for such monitoring visits to the district shall be established in consultation with the chief school administrator of the district and, for special needs district, the director of the regional urban assistance center.

3. A representative of the county superintendent of schools shall conduct a pre-monitoring conference with a representative of the district to establish the monitoring format.

4. Prior to the monitoring visit, the county office representative shall request that the district representative provide such documentation materials that are unavailable at the county office. The district representative shall be directed to either forward the documentation materials or make them available at the time of the monitoring visit.

(b) During the monitoring visit, the team shall evaluate the school district pursuant to the elements and standards set forth in N.J.A.C. 6:8-4.3 through 4.10.

#### 6:8-4.3 Quality assurance

(a) The quality assurance element shall be rated acceptable upon demonstration of performance in the following two indicators:

1. A quality assurance annual report:

i. By September 30 of each year, the chief school administrator shall provide a report to the public at a regular board of education meeting, which includes:

(1) Implementation of school-level plans (N.J.A.C. 6:8-4.4);

(2) Achievement of performance objectives (N.J.A.C. 6:8-4.4);

(3) Each school profile, including pupil performance results and student behavior data (N.J.A.C. 6:8-4.4);

(4) Professional development activities (N.J.A.C. 6:8-4.8);

(5) Condition of school facilities (N.J.A.C. 6:8-4.9);

(6) Status of mandated program reviews (N.J.A.C. 6:8-4.10); and

(7) Community support data contained in (a)2 below.

ii. By October 30 of each year, the chief school administrator shall submit a copy of the annual report to the county superintendent.

iii. The documentation/activities shall be:

(1) The quality assurance annual report; and

(2) Board minutes; and

2. Community support:

i. Over a seven-year period, the district shall document community support through the following components:

(1) A review of demographic data;

(2) A community survey;

(3) Identification of available resources and linkages to social service agencies;

(4) Strategies to overcome any community and environmental conditions that hinder learning;

(5) Methods to eliminate any barriers to community participation;

(6) Planned level of community involvement; and

(7) Strategies for parental involvement and parent-teacher interaction.

ii. The documentation/activities shall be the quality assurance annual report.

#### 6:8-4.4 School-level planning

(a) The school-level planning element shall be rated acceptable upon demonstration of performance in the following three indicators:

1. School profile:

i. By September 30 of each year, the district shall compile a profile of each school, which shall contain statistical information specified

by the State Department of Education. This profile shall be disseminated to all staff and parents, and made available to the media.

ii. The documentation/activities shall be the school profile included in the annual report;

2. School-level plan:

i. By September 30, each school in the district shall develop and implement a two-year plan based on school profile data. This plan shall include pupil performance objectives, a review of progress by teaching and administrative staff, and the involvement of parents.

ii. At least once per semester, each school shall conduct meetings by grade level, department, team or similarly appropriate group to review the school level plan. Such review shall include:

- (1) School profile data;
- (2) Progress toward achieving pupil performance objectives; and
- (3) Progress toward achieving content standards and core course proficiencies.

iii. The documentation/activities shall be a statement of assurance, signed by each principal and submitted on the form prescribed by the Commissioner; and

3. Pupil performance objectives:

i. Each school in the district shall develop two or more objectives based on pupil performance or behavior standards as defined in N.J.A.C. 6:8-4.6 and 4.7. The objectives shall cover a period of no more than two years and be linked to State goals.

ii. The objectives shall be developed according to the following criteria:

(1) If pupil performance is below minimum State standards as defined in N.J.A.C. 6:8-4.6 and 4.7, objectives to meet such standards shall be established. Benchmarks (interim performance levels) shall be set to measure the school's progress toward the achievement of minimum State standards.

(2) If pupil performance is at or above minimum State standards, challenge objectives shall be established.

iii. By \*[June 30]\* **\*August 1\*** of each year, the chief school administrator shall submit each school's objectives to the county superintendent for review and approval. The report on the achievement of objectives or progress toward benchmarks for the previous year shall be contained in the September 30 annual report.

iv. Each school shall achieve its pupil performance objectives by:

- (1) Meeting established benchmarks for minimum State standards; and/or
- (2) Achieving challenge objectives or demonstrating progress toward meeting such objectives.

v. Each school that does not meet established benchmarks for pupil performance objectives or demonstrate progress toward meeting challenge objectives for two successive years shall be assigned a technical assistance team by the county superintendent to facilitate accomplishment of these objectives.

vi. The documentation/activities shall be:

- (1) The quality assurance annual report; and
- (2) Performance objectives.

#### 6:8-4.5 Curriculum and instruction

(a) The curriculum and instruction element shall be rated acceptable upon demonstration of performance in the following four indicators:

1. Written curriculum:

i. By September 30 of each year, the chief school administrator shall verify that there are board-approved, written curricula for all pupils including the following programs and services:

- (1) High school graduation requirements (N.J.A.C. 6:8-7.1(c)i);
- (2) Instruction in the United States Constitution (N.J.S.A. 18A:6-3);
- (3) New Jersey civics, history and geography (N.J.S.A. 18A:35-3);
- (4) Drug and alcohol education (N.J.S.A. 18A:40A-1 and N.J.A.C. 6:29-6);
- (5) Health, safety and physical education (N.J.S.A. 18A:35-5, 7, 8);
- (6) Accident and fire prevention (N.J.S.A. 18A:6-2; and
- (7) Family life education (N.J.A.C. 6:29-7.1).

ii. The district board of education shall provide a curriculum evaluation schedule for all content areas at all grade levels.

iii. The documentation/activities shall be a statement of assurance submitted on the form prescribed by the Commissioner;

2. Implementation of curriculum and content standards:

i. The district shall implement all approved curricula and include, for each curriculum area in grades K through 12, curriculum content standards when they are adopted by the State Board of Education.

ii. The documentation/activities shall be:

- (1) Written curriculum including content standards;
- (2) Lesson plans;
- (3) The master schedule;
- (4) Classroom observations; and
- (5) Staff interviews;

3. Curriculum articulation:

i. The district shall ensure that the curriculum is articulated among grades and schools in the district, and that teaching staff are involved in the process. Constituent, regional and sending-receiving districts shall also demonstrate curriculum articulation between/among districts.

ii. The documentation/activities shall be a statement of assurance submitted on the form prescribed by the Commissioner; and

4. Gifted and talented programs and services:

i. The district shall make provisions for identifying pupils with gifted and talented abilities and for providing them with an educational program and services.

ii. The documentation/activities shall be:

- (1) The written identification process;
- (2) Lesson plans;
- (3) Classroom observations; and
- (4) Staff interviews.

#### 6:8-4.6 Pupil performance: skills and competencies

(a) The pupil performance: skills and competencies element shall be rated acceptable upon demonstration of performance in the following five indicators:

1. Fourth-grade assessment:

i. Beginning in July 1993, 75 percent of fourth-grade pupils in the district shall score at or above the minimum level of proficiency established by the State Board of Education for norm- or criterion-referenced tests in mathematics, reading, **\*and\*** writing<sup>\*</sup>, science and social studies (geography and history)<sup>\*</sup>.

ii. Beginning in July 1995, 75 percent of fourth-grade pupils in the district shall score at or above the proficiency level established by the State Board of Education on a State-developed assessment of pupil performance in mathematics, reading, writing, science and social studies (geography and history).

iii. The documentation/activities shall be:

- (1) Fourth-grade assessment results; and
- (2) Pupil performance objectives, if required.

2. Eighth-grade assessment:

i. Beginning in July 1993, 75 percent of eighth-grade pupils in the district shall score at or above the minimum level of proficiency established by the State Board of Education on the Eighth-Grade Early Warning Test (EWT) in mathematics, reading and writing. Matrix sampling of each school using the National Assessment of Educational Progress (NAEP) test exercises shall demonstrate that a percentage, as determined by the State Board of Education, of eighth-grade pupils tested shall achieve the minimum level of proficiency in science and social studies (civics, geography and history).

ii. Beginning in July 1996, eighth-grade district pupil performance in mathematics, reading, writing, science and social studies (civics, geography and history) shall be assessed using State-developed assessments that measure content standards adopted by the State Board of Education. Proficiency levels and performance standards shall be established by the State Board of Education.

iii. The documentation/activities shall be:

- (1) Results of the EWT;
- (2) Results of the NAEP matrix sampling; and
- (3) Pupil performance objectives, if required.

3. Eleventh-grade assessment:

i. Beginning in July 1994, 85 percent of eleventh-grade pupils in the district shall score at or above the minimum level of proficiency

established by the State Board of Education on the Grade 11 High School Proficiency Test (HSPT) in mathematics, reading and writing.

ii. Beginning in July 1996, eleventh-grade district pupil performance in mathematics, reading, writing, science and social studies (civics, geography and history) shall be assessed using State-developed assessments that measure content standards. Proficiency levels and performance standards shall be established by the State Board of Education.

iii. The documentation/activities shall be:

- (1) Results of the HSPT; and
- (2) Student performance objectives, if required.

4. Sixth-grade assessment:

i. The district shall develop performance assessments and establish minimum levels of proficiency. These assessments shall measure sixth-grade students' understanding of curriculum content standards according to the following schedule:

- (1) Information processing (1994-95);
- (2) Art and music (1995-96); and
- (3) Health/physical education (1996-97).

ii. The documentation/activities shall be district-developed assessments.

5. High school core course proficiencies assessments:

i. The district shall develop performance assessments and establish minimum levels of proficiency. These assessments shall contain measures of core course proficiencies according to the following schedule:

- (1) Science (1993-94);
- (2) Social studies (1994-95);
- (3) Fine, practical and performing arts (1995-96);
- (4) Health/physical education (1996-97); and
- (5) Career education (1996-97).

ii. The documentation/activities shall be district-developed assessments.

#### 6:8-4.7 Pupil behavior

(a) The pupil behavior element shall be rated acceptable upon demonstration of performance in the following four indicators:

1. Pupil attendance:

i. The average daily attendance rate for each district shall average 90 percent or higher as calculated for the three years prior to the school year in which the district is monitored.

ii. Each school with a three-year average below 90 percent shall develop performance objectives to improve pupil attendance, pursuant to N.J.A.C. 6:8-4.4.

iii. The documentation/activities shall be:

(1) The "New Jersey School Register" provided by the Department;

(2) The "School Register Summary Report", prepared by the Department of Education; and

(3) Pupil performance objectives, if below State standard;

2. Dropouts:

i. The dropout rate for pupils in grades seven through 12 shall not exceed 10 percent, as calculated on a cohort basis for three years prior to the school year in which the district is monitored.

ii. Each school with a three-year average dropout rate exceeding 10 percent, as calculated for the three years prior to monitoring, shall develop performance objectives to reduce the dropout rate, pursuant to N.J.A.C. 6:8-4.4.

iii. The document/activities shall be:

(1) The fall report (consolidated enrollment; dropout information);

(2) The application for State school aid; and

(3) Pupil performance objectives, if required;

3. Guidance and counseling:

i. The district shall provide all pupils with a board-approved program of guidance and counseling services.

ii. The documentation/activities shall be:

- (1) A written description of guidance and counseling services;
- (2) Board minutes;
- (3) Staff interviews; and
- (4) School visits; and

4. Substance abuse prevention:

i. The district shall develop and implement a board-approved substance abuse prevention program for all grades which includes:

(1) Policies and procedures in accordance with N.J.A.C. 6:29-6, the substance abuse code;

(2) Provisions for evaluation, intervention and treatment/referral services by appropriately certified staff;

(3) Reporting, notification and examination procedures;

(4) Curriculum and instruction consistent with N.J.A.C. 6:29-6.6 and N.J.S.A. 18A:40A-16;

(5) Cooperation with local law enforcement in accordance with Enforcement of the Drug-Free School Zone Code, N.J.A.C. 6:3-6; and

(6) Cooperation with local municipal alliance committees and other appropriate organizations and agencies.

ii. The documentation/activities shall be:

(1) A statement of assurance submitted on the form prescribed by the Commissioner.

#### 6:8-4.8 Teaching staff and professional development

(a) The teaching staff and professional development element shall be rated acceptable upon demonstration of performance in the following five indicators:

1. Certified teaching staff:

i. The district shall employ teaching staff members who hold appropriate certificates for each area of assignment pursuant to N.J.A.C. 6:11.

ii. The documentation/activities shall be:

- (1) The fall certificated staff report;
- (2) Classroom visits;
- (3) Teacher schedules; and
- (4) Staff lists;

2. Evaluation of teaching staff:

i. The district shall observe and evaluate tenured and nontenured teaching and administrative staff pursuant to N.J.A.C. 6:3-1.19, 1.21 and 1.22.

ii. The documentation/activities shall be:

- (1) The observation/evaluation schedule; and
- (2) Observation/evaluation reports;

3. Professional improvement plans:

i. The district shall develop and cause to be implemented annual professional improvement plans for each teaching staff member pursuant to N.J.A.C. 6:3-1.19, 1.21 and 1.22.

ii. The documentation/activities shall be:

- (1) A review of professional improvement plans and
- (2) Interviews with teaching staff members;

4. Professional development plan:

i. The district shall develop and implement a multi-year plan for professional development containing the following components:

- (1) Teaching staff needs;
- (2) Link to pupil performance;
- (3) Relationship to professional improvement plans;
- (4) Integration with curriculum development; and
- (5) Follow-up evaluation.

ii. The documentation/activities shall be:

- (1) Interviews with teaching staff; and
- (2) A review of the quality assurance annual report; and

5. Teaching staff appointments:

i. The chief school administrator shall recommend formal appointment of all teaching staff members to the district board of education.

ii. The documentation/activities shall be:

- (1) The review of board minutes; and
- (2) An interview with the chief school administrator.

#### 6:8-4.9 School resources: finance and facilities

(a) The school resources: finance and facilities element shall be rated acceptable upon demonstration of performance in the following eight indicators:

1. State aid:

i. The district shall accurately report enrollment and other data necessary for State aid calculations by October 15.

ii. The most recent adjusted aid data shall demonstrate that aid is at least 95 percent accurate. Adjustments due to district errors

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shall be less than five percent of the total aid. The district shall meet this performance standard for at least five of seven years, including the year monitored.

iii. The documentation/activities shall be the application for State school aid;

2. Generally Accepted Accounting Principles (GAAP):

i. The district shall implement a uniform system of double entry bookkeeping and GAAP accounting in accordance with N.J.A.C. 6:20-2A.

ii. The documentation/activities pursuant to N.J.A.C. 6:20-2A shall be:

(1) The general ledger (double entry bookkeeping);

(2) Required subsidiary journals and ledgers; and

(3) Monthly and annual reports in compliance with the uniform system prescribed by the State Board of Education; and

(4) The annual audit;

3. Overexpenditure of funds:

i. The district board of education shall implement adequate controls to prevent the overexpenditure of any funds or yearly deficit in major accounts in accordance with N.J.A.C. 6:20-2A.10.

ii. The documentation/activities shall be:

(1) The annual audit;

(2) The board secretary's monthly financial reports to the district board of education and the district board of education's Comprehensive Annual Financial Report;

(3) Official notification of deficit from the district board of education; and

(4) Board minutes;

4. Annual audit and recommendations:

i. By November 5, the district shall file an annual audit of accounts and financial transactions with the Division of Finance in accordance with N.J.S.A. 18A:23-1 et seq.

ii. The district board of education shall implement a plan resulting in the correction of all audit recommendations. Recommendations shall not be repeated for the two years immediately preceding monitoring.

iii. The documentation/activities shall be:

(1) The district's annual audit and audit synopsis;

(2) The corrective action plan for audit recommendations; and

(3) Board minutes;

5. Transportation contracts:

i. The district shall administer school transportation contracts.

ii. All transportation contracts shall be submitted to the county superintendent for approval in accordance with N.J.S.A. 18A:39-2 and 3 and N.J.A.C. 6:21-16.1.

iii. The documentation/activities shall be pupil transportation contracts and addenda;

6. Health and safety:

i. The district shall comply annually with health and safety requirements pursuant to regulation, including, but not limited to, N.J.A.C. 6:22 and 6:53.

ii. The documentation/activities shall be:

(1) The New Jersey Department of Education checklist for the evaluation of school buildings and

(2) School visits;

7. Comprehensive maintenance plan:

i. The district board of education shall develop and implement a multi-year (three to five years) comprehensive maintenance plan. The comprehensive maintenance plan shall be both corrective and preventative, including the interior and exterior conditions of each school building and grounds. The plan shall address each of the major systems and areas of: heating/ventilating/air conditioning, mechanical, plumbing, electrical, structural and grounds.

ii. The documentation/activities shall be:

(1) The district's comprehensive maintenance plan;

(2) Implementation records;

(3) The current and prior years' budget;

(4) The annual audit;

(5) Board minutes;

(6) School visits; and

(7) Staff interviews; and

8. Facilities master plan—substandard classrooms:

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i. The district board of education shall review and revise the long-range facilities master plan at least once every five years, pursuant to N.J.A.C. 6:22-7.1.

ii. The long-range facilities master plan shall be approved by the county superintendent pursuant to N.J.A.C. 6:22-7.1(b).

iii. The district board of education shall approve and implement a plan to upgrade or eliminate all substandard classrooms pursuant to N.J.A.C. 6:22-6.1.

iv. The temporary use of trailers shall be approved by the Bureau of Facility Planning Services.

v. A district with a school or schools on split sessions shall fail to meet the standards of this indicator.

vi. The documentation/activities shall be:

(1) The district's long-range facilities master plan;

(2) The application for initial approval/renewal of substandard instructional areas; and

(3) School visits.

6:8-4.10 State and Federally mandated programs and services

(a) The State and Federally mandated programs and services element shall be rated acceptable upon demonstration of performance in the following two indicators:

1. Review of mandated programs and services:

i. Regularly-scheduled reviews will be conducted in each district by the appropriate division of the State Department of Education to determine compliance according to State or Federal law or regulation. The mandated reviews shall cover the following areas:

(1) Affirmative action;

(2) Programs and services for pupils at risk;

(3) Bilingual education;

(4) English as a second language;

(5) Desegregation;

(6) Special education;

(7) Vocational education;

(8) Child nutrition; and

(9) Educational improvement plans for special needs districts.

ii. If the district is rated compliant as a result of the review, it shall not be required to undergo additional monitoring as part of the seven-year monitoring cycle.

iii. If the district is rated noncompliant as a result of the review, it shall develop and implement a corrective action plan. The status of the corrective action plan shall be reviewed prior to monitoring.

iv. The documentation/activities shall be State Department of Education program and service review reports and corrective action plans, if required; and

2. Grants management:

i. Each district shall expend funds allocated through grants for State and Federally mandated programs and services in accordance with the contract.

ii. The documentation/activities shall be State Department of Education program and service review reports.

6:8-4.11 Findings

(a) The monitoring team shall record its findings on each element required by this chapter, using worksheets prescribed by the Commissioner of Education.

1. The monitoring team shall meet with the chief school administrator and board secretary at an exit conference to review its findings and outline future directions for the districts.

2. The county superintendent of schools shall send a formal notification of the findings to the chief school administrator and board secretary within 20 workdays of the completion of the monitoring visit.

3. The formal notification of findings shall include:

i. Completed worksheets;

ii. A recommendation to the Commissioner of the certification status of the district; and

iii. A statement of future actions to be taken by the district, if necessary.

4. The district shall, within 60 days of the receipt of the formal notification, discuss the findings of the monitoring team at a regular or special meeting of the district board of education.

## 6:8-4.12 Certifying a district with or without conditions

(a) The following pertains to certification without conditions:

1. For each district that receives an acceptable rating on all indicators in the eight elements required by this chapter, the county superintendent of schools shall submit a summary report of findings and a recommendation for certification to the Commissioner of Education. The Commissioner, with approval of the State Board of Education, shall notify the district of State certification for a period of seven years.

(b) The following pertain to certification with conditions:

1. When a district does not meet the required standards of the evaluation of school districts pursuant to N.J.A.C. 6:8-4, the county superintendent of schools shall meet with the chief school administrator and board secretary to review the identified deficiency(ies) and determine if the district:

i. Can correct the identified deficiency(ies) without additional diagnostic monitoring or technical assistance within a period of time not to exceed 12 months; or

ii. Should be directed by the Commissioner to enter Level II.

2. Following the meeting with the school district representatives, the county superintendent of schools, in consultation with the Assistant Commissioner, Division of County and Regional Services, shall recommend to the Commissioner that the district be granted certification with conditions or be directed to Level II pursuant to N.J.A.C. 6:8-5.1.

i. Any district rated as unacceptable may, with approval of the district board of education, petition the county superintendent of schools to rescind the rating by presenting written documentation of its performance on indicators rated as unacceptable. The Assistant Commissioner, Division of County and Regional Services, shall rule on petitions where there is a lack of agreement on acceptable performance.

3. Within 30 days of the county superintendent's recommendation, the district shall be formally notified by the Commissioner of Education that the district is certified with conditions and that the deficiency(ies) must be corrected within the specified period of time.

4. The district shall proceed with the correction of monitoring deficiencies according to established timelines.

5. At the conclusion of the established timeline for correction of deficiencies, the county superintendent of schools, in consultation with the Assistant Commissioner, Division of County and Regional Services shall determine the validation necessary to document the district's current status with regard to previously approved indicators.

6. The county superintendent of schools shall verify the district's correction of deficiencies and its current status with regard to previously approved indicators; and shall, in consultation with the Assistant Commissioner, Division of County and Regional Services, recommend to the Commissioner that the district be:

i. Recommended to the State Board of Education for certification;

ii. Granted an extended amount of time to correct deficiencies; or

iii. Directed by the Commissioner to enter Level II monitoring pursuant to law.

(1) The district board of education of a school district which is directed to enter Level II monitoring may appeal that decision to the State Board of Education pursuant to N.J.S.A. 18A:7A-14A(2).

## SUBCHAPTER 5. RULES FOR LEVEL II AND III DISTRICTS

## 6:8-5.1 Level II Districts

(a) A district which is directed by the Commissioner to enter Level II monitoring shall be examined by an external review team appointed by the county superintendent of schools. The review team shall consist of members qualified by training and experience to examine specific conditions within the district. The entire cost of the activities associated with the external review team shall be paid by the Department of Education.

(b) The Commissioner shall direct the county superintendent to establish an open public meeting within the district that is duly advertised and posted whereby parents, school employees and community residents may meet with the county superintendent and external review team to discuss their concerns regarding the district.

(c) In conjunction with the Department of Education, and at the direction of the Commissioner, the external review team shall determine which aspects of the district's operation to examine. The examination may be limited to identified deficiencies within the district or may include all aspects of the district's operations such as education, management, governance and finance.

(d) The external review team shall, in addition, examine conditions in the community which may adversely affect the ability of pupils to learn.

(e) Within 30 calendar days after its review, the external team shall submit a report to the Commissioner of Education. The report shall include:

1. Findings, conclusions and directives to be used by the district in the development and implementation of a corrective action plan to achieve certification; and

2. Recommendations as to the technical assistance the district will require to effectively implement the corrective action plan.

(f) In addition, the external team may recommend measures to be taken to mitigate adverse community conditions which affect the ability of pupils to learn.

(g) The Commissioner shall transmit, within 15 calendar days from receipt, the findings of the external review team and shall direct the district to develop a corrective action plan to implement the recommendations.

(h) The district, within 30 days of formal notification, shall discuss the findings of the external team at a regular or special meeting of the district board of education.

(i) Within 60 calendar days of formal notifications, the chief school administrator shall submit a corrective action plan approved by the district board of education to the Commissioner for approval.

(j) In reviewing the district's corrective action plan, the Commissioner shall determine the cost of implementing the plan and shall identify those aspects of the plan which are already contained in the district's current expense budget.

(k) The Commissioner, where appropriate, shall reallocate funds within the district's budget to support the corrective action plan. Any line item transfers of reallocated funds shall have prior approval of the Commissioner.

(l) The district shall implement the corrective action plan activities within one year of the Commissioner's formal notification that the plan has been approved. The Commissioner shall ensure that technical assistance is provided to the district to implement the corrective action plan.

1. Until the district is certified, the county superintendent of schools shall assess the progress of the district in implementing the corrective action plan and shall submit quarterly reports to the Assistant Commissioner, Division of County and Regional Services.

2. The county superintendent of schools, upon completion of the district's corrective action plan activities shall determine whether the standards for certification have been achieved and shall submit a formal report to the Assistant Commissioner, Division of County and Regional Services.

3. The Assistant Commissioner, Division of County and Regional Services, shall submit to the Commissioner of Education a formal report which recommends that the district be:

i. Recommended to the State Board of Education for certification;

ii. Granted an extended amount of time to correct deficiencies; or

iii. Directed by the Commissioner to enter Level III Monitoring pursuant to law.

(1) The board of education of a school district which is directed to enter Level III monitoring may appeal that decision to the State Board of Education pursuant to N.J.S.A. 18A:7A-14c(3).

## 6:8-5.2 Level III districts

(a) A district which fails to correct the deficiencies noted in the Level II evaluation process shall be directed by the Commissioner to enter Level III monitoring.

(b) When a district which has undergone an external review is directed to enter Level III monitoring, the Commissioner shall prepare an administrative order directing the corrective actions which shall be taken by the district.

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1. The corrective actions shall be based on the findings and conclusions of the external review team and the monitoring of the Level II plan by the county superintendent.

2. The Commissioner shall ensure that technical assistance is provided to the district to implement the corrective actions.

3. If the Commissioner determines, based on the findings of the Level II or Level III review team, that conditions within the district may preclude the successful implementation of a corrective action plan, he shall direct that a comprehensive compliance investigation be conducted by the State Department of Education pursuant to N.J.A.C. 6:8-5.3. In the case of a Level III review the Commissioner may order any necessary action to insure the security of the books, papers, vouchers and records of the district in accordance with N.J.S.A. 18A:7A-14c.

4. In reviewing the district's corrective action plan, the Commissioner shall determine the cost of implementing the plan and shall identify those aspects of the plan which are already contained in the district's current expense budget.

5. The Commissioner, where appropriate, shall reallocate funds within the district, or take whatever other measures deemed necessary and appropriate to insure implementation of the corrective action. Any line item transfers of reallocated funds shall have prior approval by the Commissioner.

6. The district shall implement the corrective action plan within one year of the Commissioner's formal issuance of the administrative order.

i. Monthly, until the district is certified, the county superintendent shall monitor and assess the progress of the district in implementing the corrective action plan and shall submit quarterly reports to the Assistant Commissioner, Division of County and Regional Services.

ii. The county superintendent, upon completion of the district's corrective action plan, shall determine whether the standards for certification have been met and shall submit a formal report to the Assistant Commissioner, Division of County and Regional Services.

iii. The Assistant Commissioner, Division of County and Regional Services, shall submit to the Commissioner a formal report which recommends that the district be:

(1) Recommended to the State Board of Education for certification; or

(2) Directed by the Commissioner to undergo a comprehensive compliance investigation pursuant to N.J.A.C. 6:8-5.3.

(c) When a district which has not had a comprehensive examination of all aspects of the district's operations by an external review team is directed to enter Level III, the Commissioner shall designate the county superintendent to appoint an external review team, whose members shall be qualified by training and experience to examine the conditions in the district.

1. Within three months, in conjunction with the Department of Education, the team shall examine all aspects of the district's operation, including, but not limited to education, governance, management and finance.

2. Within 30 calendar days after its review, the external team shall report its findings and conclusions, including directives to be used in the preparation of a corrective action plan to achieve certification, to the Commissioner.

3. If the Commissioner finds, based on the findings of the Level II or Level III review team, that conditions within the district may preclude the successful implementation of a corrective action plan, he or she shall direct that a comprehensive compliance investigation be conducted by the State Department of Education pursuant to N.J.A.C. 6:8-5.3 and may order any necessary action to insure the security of the books, papers, vouchers and records of the district in accordance with N.J.S.A. 18A:7A-14c.

4. Within 30 calendar days of the receipt of the report, the Commissioner shall prepare an administrative order directing the corrective actions which shall be taken by the district based upon the findings and conclusions of the Level III external review team and the county superintendent's monitoring of the Level II plan.

5. The Commissioner shall insure that technical assistance is provided to the district in order to implement the corrective actions.

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6. In reviewing the district's corrective action plan, the Commissioner shall determine the cost of implementing the plan and shall identify those aspects of the plan which are already contained in the district current expense budget.

7. The Commissioner, where appropriate, shall reallocate funds within the district's budget or take whatever other measures deemed necessary and appropriate to support the district's corrective action plan. Any line item transfers of reallocated funds shall have prior approval by the Commissioner.

8. The district shall implement the corrective action plan within one year of the Commissioner's formal issuance of the administrative order.

i. Monthly, until the district is certified, the county superintendent shall monitor and assess the progress of the district in implementing the corrective action plan and shall submit quarterly reports to the Assistant Commissioner, Division of County and Regional Services.

ii. The county superintendent, upon completion of the district's corrective action plan shall determine whether the standards for certification have been achieved and shall submit a formal report to the assistant commissioner, Division of County and Regional services.

iii. The Assistant Commissioner, Division of County and Regional Services, shall submit to the Commissioner a formal report which recommends that the district be:

(1) Recommended to the State Board of Education for certification; or

(2) Directed by the Commissioner to undergo a comprehensive compliance investigation pursuant to N.J.A.C. 6:8-5.3.

### 6:8-5.3 Comprehensive compliance investigation

(a) A comprehensive compliance investigation shall be conducted under the direction of the Assistant Commissioner, Division of County and Regional Services, under one of the following circumstances:

1. The review team's report indicates that conditions exist within the district that may preclude the successful implementation of a corrective action plan; or

2. After completion of the corrective action plan activities, a district fails to achieve certification and does not demonstrate reasonable progress toward meeting certification standards, pursuant to N.J.A.C. 6:8-4.3 through 4.10.

(b) The director of the Department of Education's compliance unit shall organize and supervise an investigatory team to assess conditions in the district.

1. A comprehensive audit of the district's governance, management and fiscal operations shall be conducted by a private auditing agency under contract to the Department of Education.

2. The compliance unit shall conduct a thorough investigation of the district's programmatic, fiscal and management activities.

(c) The director of the Department of Education's compliance unit shall submit a report of investigatory findings to the Assistant Commissioner, Division of County and Regional Services.

(d) Based on the report of investigatory findings, the Assistant Commissioner shall submit to the Commissioner a recommended administrative order outlining such corrective action as is deemed necessary.

(e) The Commissioner, after a plenary hearing before an administrative law judge pursuant to N.J.S.A. 52:14B-1 et seq., may order the implementation of an administrative order requiring the district to implement the corrective action.

### 6:8-5.4 Corrective action by Commissioner of Education

Any noncertified district which does not demonstrate reasonable progress toward compliance with the provisions of N.J.S.A. 18A:7A-1 et seq. (Public School Education Act of 1975) and New Jersey Administrative Code Title 6, Education, and toward the resolution of major problems shall be subject to further intervention by the Commissioner of Education, as provided by law.

**SUBCHAPTER 5A. INTERIM RULES FOR DISTRICTS PLACED IN LEVEL II AND III MONITORING PRIOR TO JULY 1, 1993**

**6:8-5A.1 Applicable districts**

(a) This subchapter applies to those districts placed in Level II or Level III prior to July 1, 1993. Those districts were unable to meet the evaluation standards of the evaluation of school districts pursuant to N.J.A.C. 6:8-5A.2.

(b) This subchapter is only in effect for two years, July 1, 1993 through June 30, 1995.

(c) Level II and III districts that are not certified by June 30, 1995 shall be required to meet the evaluation standards as cited in N.J.A.C. 6:8-4.3 through 4.10.

**6:8-5A.2 Evaluation of elements and standards**

(a) The following 10 essential elements and the prescribed indicators of standards of acceptable performance shall be evaluated by the monitoring team under the supervision of the county superintendent of schools as specified in this section.

1. The annual educational planning element of the district shall be rated acceptable upon demonstration of performance in three indicators as follows:

i. Written educational goals, based on district educational needs and consistent with the intent of State educational goals, shall be developed and shall serve as the basis for the educational program (curriculum) of the district. Goals shall be developed in consultation with teaching staff members, pupils, parents or guardians of pupils and other district residents, under the direction of the chief school administrator.

(1) The district board of education shall give public notice of the proposed goals or revisions thereof and shall provide opportunity for comment at a public meeting.

(2) District educational goals shall be reviewed, updated and adopted by the district board of education at least once every five years.

ii. Three or more written educational objectives, which shall include standards of pupil achievement and action plans based upon district needs, shall be developed annually in consultation with teaching staff members and the community under the direction of the chief school administrator in accordance with requirements established by the Commissioner.

(1) The district board of education shall review, discuss and adopt the annually developed objectives and action plans at a public meeting prior to September 30.

(2) The objectives and action plans of the district shall be submitted by September 30 to the county superintendent of schools who shall review and approve them no later than October 31.

(3) The district shall submit a report on the attainment of objectives to the county superintendent of schools by July 1. The county superintendent of schools shall by August 15 submit a written analysis on the district's attainment of objectives to the chief school administrator and board secretary.

iii. A long-range plan containing a five-year written schedule and procedure for evaluation and improvement of all curriculum and educational services shall be developed and implemented.

2. The school and community relations element of the district shall be rated acceptable upon documentation of performance in five indicators as follows:

i. The district board of education shall share information with the community.

ii. The district board of education shall provide parents or guardians as well as other district residents and teaching staff members opportunities for discussion regarding State rules and local district procedures for implementation of district goals, objectives and standards through one or more public meetings of the district board of education. The initial meeting shall be held prior to September 30 of each year. The district board shall publish a special notice 10 days in advance of each meeting describing the purpose, listing the items to be discussed and indicating the availability of material relative to such items. The discussion at such meeting(s) shall include, but not be limited to:

(1) The annual reports of the district submitted to the Commissioner of Education, pursuant to N.J.S.A. 18A:7A-11 and N.J.A.C. 6:8-3.1;

(2) The result of:

(A) The annual evaluation of the district's objectives and action plans;

(B) The Statewide and district testing programs including analysis and interpretation of schools and district performance; and

(C) The objectives and action plans to be implemented to remediate needs identified through district needs assessment; and

(3) The documents listed in (a)2ii(1) and (2) above shall be accessible to the public for inspection at such meetings and shall be available upon request at the earliest possible time in accordance with the provisions of the public records laws, N.J.S.A. 47:1A-1 et seq.;

iii. The district board of education shall provide opportunity for comment by the public at its regularly scheduled meetings.

iv. The district shall involve business, industry and other community resources in the schools.

v. The district shall involve the community as advisors in the decision-making process.

3. The comprehensive curriculum and instruction element of the district shall be rated acceptable upon documentation of performance in seven indicators as follows:

i. The district board of education shall approve annually a curriculum for all grades from pre-kindergarten through grade 12 for all subjects including all State-mandated programs and services.

(1) The district shall implement the curriculum which was adopted by the district board of education.

(2) The district shall provide for articulation of the curriculum.

(3) In accordance with N.J.A.C. 6:8-7.1(c)2iii and N.J.A.C. 6:39-1.3(b), district boards of education shall provide for:

(A) Development of course proficiencies, which shall include, but not be limited to, those identified and established by the Department of Education as core course proficiencies;

(B) Establishment of a standard of student mastery; and

(C) Annual assessment of all students in those proficiencies necessary to meet all State and local high school graduation requirements;

ii. The district shall make provisions for identifying pupils with exceptional abilities and for providing them with an educational program and services;

iii. The instructional program shall provide all pupils with guidance and counseling;

iv. The instructional program of the district shall provide all pupils with a library skills program;

v. The district shall introduce instruction in effective study and work skills early in the curriculum and reinforce such instruction throughout the curriculum;

vi. The district shall make provisions for identifying disruptive pupils and for providing them with an appropriate educational program and services; and

vii. The district shall make provisions for identifying disaffected pupils and for providing them with an appropriate educational program and services.

4. The pupil attendance element of the district shall be rated acceptable upon documentation of performance in three indicators as follows:

i. The average daily attendance rate for each district shall be 90 percent or higher as calculated for the school year immediately prior to the school year in which the district is monitored.

(1) The district shall develop and implement an attendance improvement plan when the average daily attendance rate is between 85 and 89.9 percent.

(2) If the attendance rate for the district is less than 85 percent, performance for this element shall be rated unacceptable;

ii. The average daily attendance rate for each school within the district shall be 85 percent or higher.

(1) The district shall develop and implement an attendance improvement plan for each school within the district that has an average daily attendance rate between 80 and 84.9 percent.

(2) If the attendance rate for any school is less than 80 percent, performance for this element shall be rated unacceptable; and

iii. The district shall develop and implement an improvement plan to reduce the rate of pupils who drop out after completion of eighth grade.

5. The facilities element of the district shall be rated acceptable by documentation of performance in four indicators as follows:

i. The district board of education shall develop and implement a five-year comprehensive maintenance plan;

ii. The district shall perform an annual inspection of buildings to insure adherence to health and safety laws;

iii. The district board of education shall approve and implement a plan to upgrade or eliminate all substandard classrooms pursuant to law and rule; and

iv. The district board of education shall review and revise, as necessary, the long-range facilities plan of the district at least every five years.

6. The staff element of the district shall be rated acceptable by documentation of performance in seven indicators as follows:

i. All professional staff members shall be certified in their area(s) of assignment pursuant to law and rule;

ii. All substitute teachers and aides shall be employed pursuant to law and rule;

iii. The annual rate of occasional professional staff absenteeism, including teachers and administrators, shall not exceed five percent;

iv. The district shall develop and implement an attendance improvement plan approved by the board of education when the annual rate of occasional professional staff absenteeism exceeds 3.5 percent;

v. The district shall observe and evaluate tenured and nontenured teaching and administrative staff pursuant to law and rule;

vi. The district shall adopt and implement a staff development program based on the assessed needs of the district; and

vii. The chief school administrator shall recommend to the district board of education formal appointment of all teaching staff members.

7. The mandated programs element of the district shall be rated acceptable upon documentation of performance in three indicators as follows:

i. The district shall implement a basic skills improvement plan pursuant to N.J.A.C. 6:8-6.2.

(1) The basic skills improvement plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the basic skills improvement plan to the public;

ii. The district shall implement the bilingual and English-as-a-second language (ESL) education plan pursuant to N.J.A.C. 6:31.

(1) The bilingual and ESL education plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the bilingual and ESL plan to the public; and

iii. The district shall implement the special education plan pursuant to N.J.A.C. 6:28.

(1) The special education plan shall be approved by the county superintendent of schools.

(2) The district shall communicate a description of the special education plan to the public.

8. The mandated basic skills test element of the district shall be rated acceptable upon documentation of achievement in two indicators as follows:

i. Seventy-five percent of the pupils in grade nine of each school shall have passed the State-mandated High School Proficiency Test pursuant to N.J.A.C. 6:39-1.2(a) and (b); and

ii. Seventy-five percent of the pupils in grade three and 75 percent of the pupils in grade six in each school of the district shall score at or above the minimum level of proficiency established by the State Board of Education for commercially published tests or district criterion-referenced tests.

9. The equal educational opportunity and affirmative action element of the district shall be rated acceptable by documentation of performance in three indicators as follows:

i. Where applicable, the district shall implement a desegregation plan approved by the Commissioner of Education;

ii. Annually, the district shall review progress toward the objectives of the State-approved affirmative action plans for classroom and employment practices of the district; and

iii. Annually, the district shall implement the affirmative action plans, including inservice training.

10. The financial element of the district shall be rated acceptable upon documentation of performance in six indicators as follows:

i. The chief school administrator shall present to the district board of education accurate and timely fiscal and statistical reports of the district pursuant to law and rule;

ii. The fiscal and statistical reports of the district shall be accurate and timely in transmittal to county, State and Federal offices pursuant to law and rule;

iii. The annual budget for the district shall be developed, approved and presented to the public pursuant to law and rule.

(1) The district board of education shall submit a proposed budget to the county superintendent of schools on or before January 15 in an authorized budget format.

(2) The proposed budget shall be reviewed and approved by the county superintendent of schools prior to its advertisement;

iv. The district shall have an annual audit of accounts and financial transactions pursuant to law and rule and State audits as determined by the Commissioner of Education.

(1) Within 30 days of receipt, the district board of education shall accept and discuss the annual or State audit at a regularly scheduled board meeting.

(2) The district board of education shall implement the recommendations cited in the annual or State audit and shall report such implementation to the Commissioner of Education;

v. The district shall not incur a deficit pursuant to N.J.A.C. 6:20-2.13; and

vi. All pupil transportation costs shall be reviewed and recommended for approval of State aid by the county superintendent of schools.

Recodify existing N.J.A.C. 6:8-5.1 and 5.2 as 5A.3 and 5A.4 (No change in text.)

6:8-5A.5 Compliance investigation

(a) A comprehensive compliance investigation will be conducted under the supervision of the assistant commissioner, Division of County and Regional Services, under one of the following circumstances:

1. (No change.)

2. After completion of the corrective action plan activities, a district fails to achieve certification and does not demonstrate reasonable progress toward meeting certification standards, pursuant to N.J.A.C. 6:8-5A.4(b)9.

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

6:8-8.1 Operation

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

(c) For pupils domiciled within the district, the district board of education shall not charge tuition for any remedial or advanced course. Reasonable tuition may be charged for enrichment courses which carry no credit and are determined by the county superintendent of schools to have no direct relationship to the curriculum.

(d) (No change.)

6:8-8.4 Credit and grade placement

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

(c) Full-year subjects which are given for review, remediation or for other purposes not including advanced credit must be conducted for 3,600 minutes of instruction under standards equal to those during the regular term or through an established number of curricular activities as determined by the district board of education and approved by the county superintendent of schools.

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

## ENVIRONMENTAL PROTECTION AND ENERGY

(a)

### NEW JERSEY WATER SUPPLY AUTHORITY Notice of Administrative Correction Schedule of Rates, Charges and Debt Service Assessments for the Sale of Water from the Delaware and Raritan Canal and the Spruce Run/ Round Valley Reservoir System Standby Charge N.J.A.C. 7:11-2.9

Take notice that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 7:11-2.9(a)2, as adopted effective June 1, 1992 at 24 N.J.R. 2053(a). In the "Charge per month" column, reference to "1969 Water Conservation Bonds" is missing, having been inadvertently omitted from the rule upon incorporation of the 1992 amendments into the Administrative Code. 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]):

#### 7:11-2.9 Standby charge

(a) A user classified under standby service, as provided in N.J.A.C. 7:11-2.8 above, shall pay a monthly minimum charge based on the capacity of his withdrawal system as specified below. Said purchaser shall also pay for all water withdrawn during the month in excess of such monthly standby charge, based on charges as set forth under N.J.A.C. 7:11-2.2 and 2.3.

Note: MGD = million gallons daily; GPM = gallons per minute.

- (No change.)
- For Standby Contracts within the Raritan River Basin:

| Maximum withdrawal capacity               | Charge per month   |
|---|--|
| Each 1 MGD (700 GPM) or fraction thereof. | \$112.72 plus annual debt service assessments rate for <b>1969 Water Conservation Bonds</b> , 1981 Water Supply Bonds and 1988 Water System Revenue Bonds. |

(b)

### WATER MONITORING MANAGEMENT BUREAU OF MARINE WATER CLASSIFICATION AND ANALYSIS

#### Shellfish Growing Water Classifications

#### Readoption with Amendments: N.J.A.C. 7:12

Proposed: October 19, 1992 at 24 N.J.R. 3657(a).

Adopted: November 20, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: November 24, 1992 as R.1992 d.508, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEPE Docket Number: 45-92-09.

Effective Date: Readoption, November 24, 1992;  
Amendments, December 21, 1992.

Operative Date: January 1, 1993, Amendments.

Expiration Date: November 24, 1997.

#### Summary of Public Comments and Agency Response:

No comments received.

This readoption with amendments includes technical changes from the proposal which do not necessitate additional notice. These technical changes are necessary because the National Oceanic and Atmospheric Administration charts used by the Department to delineate shellfish

growing waters by classification are being revised to reflect the remuneration, elimination, and/or relocation of certain buoys, lights, and/or markers referenced in the proposal. Ninety-four buoys, markers, and/or lights were used to delineate closure lines, and 43 of the buoys, markers and/or lights have been renumbered or eliminated. This readoption reflects those modifications.

These technical changes will not result in any substantial change in the classification or location of shellfish growing waters, and will be reflected in revised charts which will be available from the Department by the effective date of the readoption with amendments. As a result of the technical changes, 41 acres of waters in the Ship Channel, Ocean City-Somers Point area will be upgraded from Seasonally Approved to Approved, and 28 acres will be downgraded from Approved to Seasonally Approved.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:12.

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

#### 7:12-1.1 General provisions

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

(i) Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Classification and Analysis Offices, Marine Police Stations and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 84th Edition, December 7, 1991; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, **\*[25th Edition, June 1990]\* \*26th Edition, May 15, 1992\***; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, 24th Edition, January 1991; and Number 12304 Delaware Bay, 33rd Edition, August 10, 1991. The Department of Environmental Protection and Energy hereby condemns all shellfish growing waters as described in this chapter and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year, except when otherwise noted in N.J.A.C. 7:12-4 and 5.

(j) (No change.)

#### 7:12-1.2 Definitions

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

...

"Shellfish" means all species of oysters, clams or mussels, either shucked or in the shell that are fresh or fresh frozen and whole or in part.

...

#### 7:12-2.1 Shellfish growing water classification—Prohibited

(a) The following shellfish growing waters are classified Prohibited:

1.-2. (No change.)

3. Monmouth Middlesex County area (Note that a portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3).

i.-iv. (No change.)

v. All those waters of Raritan Bay and Lower Bay enclosed by the New Jersey/New York boundary and a straight line beginning on the southwesternmost point of land on Rockaway Point, Long Island, New York and bearing approximately 222 degrees T to the northernmost point of land on Sandy Hook, New Jersey and then following the shoreline of Sandy Hook west and south to a point on the shoreline where this line intersects a line beginning at the navigation aid at Sandy Hook Point designated as Equal Interval 6 second and Vertical Beam light 38ft 15M Bell (E. Int 6 sec and VB 38ft 15M Bell) and then following this line bearing approximately 278 degrees T to the channel marker designated as GR "TC" Interrupted Quick **\*[Red] \*Green\*** Light (GR "TC" **\*[IQ R]\* \*FI (2 + 1)G6s\***) located at the intersection of Raritan Bay East Reach, Sandy Hook Channel, and Terminal Channel, and then following

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the southwesternmost boundary of the Raritan Bay East Reach Channel in a northwesterly direction until it intersects the New Jersey/New York boundary where this line terminates. (Note: This closure adjoins those Prohibited waters defined in (a)20i below); and vi. (No change.)

4.-11. (No change.)  
 12. Strathmere and Sea Isle City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i.-ii. (No change.)  
 iii. All of Ludlam Thorofare from a line bearing approximately 229 degrees T through Flashing Red light \*[120]\*\*350\*(Fl R 8ft\*["120"]\*\*350\*\*) to a line bearing approximately 122 degrees T through Flashing Red light 8ft \*[134]\*\*362\*(Fl R 8ft \*["134"]\*\*362\*\*).

iv. (No change.)  
 13.-15. (No change.)  
 16. The Wildwoods Area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. All of Grassy Sound Channel and tributaries thereof south of a line defined by Department maintained markers on either shoreline approximately 100 yds. south of Fl R 8ft \*["26"]\*\*459\*\*;

ii.-xiv. (No change.)  
 17. Cape May (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3):

i.-vi. (No change.)  
 vii. That area of Cape May Harbor described in N.J.A.C. 7:12-3(a)32i which lies adjacent to the U.S.C.G. harbor area inshore from a line connecting Flashing Green light Number 5 (Fl G\*[2.5]\*4\* sec "5") with \*[can buoy number 11(C "11")]\*\*G\*9\*PA\*.

18.-19. (No change.)  
 20. Atlantic Ocean

i.-ii. (No change.)  
 iii. All of the ocean waters inshore of a line beginning at the three story wood frame building on the beach between Tuna Way and Kittiwake Avenue in the Ocean Beach section of Dover Township with coordinates of latitude 39 degrees 59.3 minutes N., longitude 74 degrees 3.8 minutes W., and bearing approximately 100 degrees T for approximately one nautical mile from the shoreline to a point with coordinates of 39 degrees 59.1 minutes N., longitude 74 degrees 2.5 nautical minutes W., then continuing in a southerly direction one nautical mile offshore for approximately 4.5 nautical miles until it intersects a line bearing approximately 096 degrees T from the water tank located on the corner of Barnegat Avenue and 12th Avenue, Borough of Seaside Park, with coordinates of latitude 39 degrees 54.9 minutes N., longitude 74 degrees 05.0 minutes West. This point of intersecting lines is approximately one nautical mile from the shoreline and has coordinates of latitude 39 degrees 54.8 minutes N., longitude 74 degrees 03.3 minutes West. Then proceeding in an easterly direction along that line beginning at the water tank for approximately 0.5 nautical miles to a point approximately 1.5 nautical miles from the shoreline with coordinates of latitude 39 degrees 54.7 minutes N., longitude 74 degrees 02.7 minutes West. The line continues from this point parallel to the shoreline in a southerly direction 1.5 nautical miles offshore for approximately 1.1 nautical miles to a point with coordinates of latitude 39 degrees 53.6 minutes N., longitude 74 degrees 02.9 minutes W., then bearing approximately 276 degrees T (reciprocal 096 degrees T) for approximately 1.6 nautical miles to the cupola located on top of Island Beach State Park's Maintenance Center (the old Coast Guard Station 110), with coordinates of latitude 39 degrees 53.7 minutes N., longitude 74 degrees 04.9 minutes W., and terminating.

iv.-viii. (No change.)  
 ix. All of the ocean waters inshore of a line beginning at the base of the groin located on the beach near the intersection of Ocean Avenue and 2nd Avenue, City of North Wildwood, and continuing along that groin in a northeasterly direction to its outermost tip, then bearing approximately 147 degrees T towards a point with coordinates of latitude 38 degrees 0.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as

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\*[R "8" Fl R 4sec BELL]\* \*RW "H"MO (A) whistle\*) for approximately 0.5 nautical miles until it intersects a line bearing 044 degrees T from the light at the end of the eastern jetty of Cape May Inlet charted as Fl 4s 30ft 7M and passing tangent to the southeasternmost point of land of the City of North Wildwood. This point of intersecting lines has coordinates of latitude 38 degrees 59.9 minutes N., longitude 74 degrees 47.0 minutes West. The line then continues from the point of intersection bearing approximately 224 degrees T (reciprocal 44 degrees T) along that line towards the above noted light at the end of the eastern jetty of Cape May Inlet for approximately 2.8 nautical miles until it intersects a line bearing approximately 130 degrees T from the standpipe located on the corner of Park Boulevard and Myrtle Road, Borough of Wildwood Crest, with coordinates of latitude 38 degrees 58.4 minutes N., longitude 74 degrees 50.4 minutes W. This point of intersecting lines is approximately 0.4 nautical miles from the shoreline and has coordinates of latitude 38 degrees 57.9 minutes N., longitude 74 degrees 49.6 minutes W. Then proceeding in a southeasterly direction along that line to a point approximately 1.5 nautical miles from the shoreline with coordinates of latitude 38 degrees 57.2 minutes N., longitude 74 degrees 48.5 minutes W., then proceeding parallel to the shoreline in a southwesterly direction 2.5 nautical miles offshore for approximately 2.4 nautical miles to a point with coordinates of latitude 38 degrees 55.4 minutes N., longitude 74 degrees 50.5 minutes W., then bearing approximately 310 degrees T (reciprocal 130 degrees T) for approximately 1.2 nautical miles to the light noted above at the end of the eastern jetty of Cape May Inlet then along that jetty to the shore and terminating;

x. All of the ocean waters inshore of a line beginning at the base of the western jetty of Cape May Inlet and continuing along that jetty in a southeasterly direction to the light at the end of the jetty charted as Fl G 4 sec 37ft 7M\*[HORN]\*\*5\* then bearing approximately 295 degrees T (reciprocal 115 degrees T) to the water tank located on the United States Coast Guard Training Center, City of Cape May, with coordinates of latitude 38 degrees 56.8 minutes N., and longitude 74 degrees 53.6 minutes W., and terminating;

xi.-xii. (No change.)

7:12-2.2 Use of shellfish grown in waters classified as Prohibited for human consumption

Shellfish grown in waters classified as Prohibited may not be utilized for human consumption.

7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted.

1.-5. (No change.)  
 6. Bay Head and Mantoloking area: All those waters of Northern Barnegat Bay and tributaries north of a straight line beginning on the easternmost point of land on Swan Point and bearing approximately 141 degrees T to Flashing Green light \*["25"] (Fl G 8ft "25")\*\*15\*(QG8ft\*15)\* and then following the east side of the inland waterway channel bearing approximately 227 degrees T to \*[can buoy "27" (C "27")]\*\*Flashing Green light "17" (FG G 6s "17")\* then bearing approximately 210 degrees T to the most westerly point of land on Curtis Point where this line terminates.

7. (No change.)  
 8. Barnegat Bay-Brick Township and Dover Township from Swan Point to Toms River (Note: A portion is also designated Seasonal. See N.J.A.C. 7:12-4):

i.-iv. (No change.)  
 v. All those waters of Shelter Cove west from a straight line connecting the points of land at its mouth, then all those waters west and north of a line from the southernmost point of land at the mouth Shelter Cove and bearing approximately 154 degrees T to \*[Flashing Red light "40" (Fl R "40")]\*\*Quick Green light "29"\* then bearing approximately 181 degrees T toward Good Luck Point and terminating at its point of intersection with the Mathis Bridge, connecting the mainland with Pelican Island; the southern boundary of this condemned area shall follow said bridge in a westward

direction and terminate at its connection with the mainland shore. The bridge is a common boundary line with (a)9 below.

9. (No change.)

10. Barnegat Bay-Berkeley Township area, Toms River to Potter Creek: All waters of Barnegat Bay and its tributaries (including all of Potter Creek) west of a line beginning on the north bank of the entrance to Good Luck Point Marina (at Good Luck Point) then proceeding along the offshore ends of the piers in a southerly direction to the eastern end of Barnegat Pier, then bearing approximately 215 degrees T to \*[Flashing Red light 4s "60" (Fl R 4s "60")]\***Quick Green "38"** north of Berkeley Shores, then bearing approximately 221 degrees T to and terminating at the most easterly point of land on the south bank of Potter Creek.

11.-22. (No change.)

23. Atlantic City-Absecon area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. All of Absecon Inlet and Absecon Channel contained within a line from the base of the Vincent Haneman Bridge (Rte. 87) (at Harrah's Casino) and continuing along that shoreline crossing the mouth of Clam Creek and continuing to the seaward end of the jetty on the western shore, at the mouth of Absecon Inlet, then channel ward to a line from \*[R "62"(FlR2.5s)]\***RN"4"(FlR2.5s)**\* and bearing approximately 328 degrees T to the midspan of the Vincent Haneman Bridge (Rte. 87), then running northwest along that line to the Rte. 87 bridge, then westward along the bridge to the point of origin at the base of the bridge.

ii.-viii. (No change.)

24. (No change.)

25. Ocean City-Somers Point area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i.-ii. (No change.)

iii. All of Beach Thorofare, Peck Bay and adjacent thorofares contained within a line beginning at the western end of West 16th Street, Ocean City and bearing approximately 342 degrees T to Flashing Red light \*[16(Fl R "16")]\***2 (Fl Q R "2")**\*, then along the south side of the unnamed island (on which Flashing Red light \*[16 (Fl R "16")]\***2 (Fl Q R "2")**\* is located) to its westernmost point, then across the small thorofare to the nearest point of land on Shooting Island and following the southeastern shoreline of Shooting Island, then in a northerly direction to a Department maintained marker, then bearing approximately 240 degrees T across the thorofare to the northernmost point of land on the unnamed island (located southwest of Shooting Island), then along the shoreline in a westerly direction to another Department maintained marker, then bearing approximately 203 degrees T through Flashing Green light \*[37]\***275\*** (Fl G \*[37]\***275**\*) to a Department maintained marker on the Ocean City shoreline, then along the Ocean City shoreline in a northeasterly direction to its point of origin at West 16th Street and terminating;

iv.-viii. (No change.)

26.-28. (No change.)

29. Avalon area: That portion of Ingram Thorofare lying south from a line across Ingram Thorofare beginning at the easternmost tip of an unnamed island on the northwest side of Ingram Thorofare and bearing approximately 072 degrees T to the opposite shore of Ingram Thorofare, then to another line across Ingram Thorofare beginning on the south bank of a small unnamed creek bearing approximately 119 degrees T through Flashing Green light \*[(Fl G 8 ft. "11")]\***377**\*(Fl G 4s 3M "377")\* and terminating on the opposite shore.

30. The Wildwoods area:

i. Those waters of Grassy Sound Channel from the Ocean Drive Bridge (route 619) southwest to a line bearing approximately 062 degrees T through \*[Fl R 8ft "8"]\***Fl R 4s "442"**\*,

ii.-iii. (No change.)

31. Cape May area: All of Cape May Inlet and Cape May Harbor inside a line beginning at Flashing Light 7M (Fl 4 sec. 30 ft. 7M)\*[7M(Fl 4sec 30ft 7M)]\***Fl R 4s 30ft 6M "4"**\* at the outermost end of east jetty at Cape May Inlet, along the jetty and shoreline until it intersects a line connecting the 641 ft. Loran Tower on the north side of the inlet and range light \*[QK 36 2sec.]\***Q 22ft\***

marking the entrance channel through Cape May Inlet, then along the shoreline in a westerly direction and across Skunk Sound to a line connecting flashing red light (Fl R 4sec.) marking the entrance to Cape May Canal and the radio tower at the U.S.C.G. Receiving Station, along that line to the shoreline along the shoreline to a line beginning at the tank on the U.S.C.G. Training Center and bearing approximately 331 degrees T to buoy \*[C "11"]\***G "9" PA\*** then along a line connecting buoy \*[C"]\***G "9" PA\*** with flashing green light 5 (Fl G \*[2 1/2]\***4**\*sec. "5") then to the shore bearing approximately 157 degrees T, then along the shoreline to the light (Fl G4sec 37 ft. 7M) at the end of the jetty then across the inlet to the Flashing light \*[7M (Fl 4sec. 30 ft. 7M)]\***4** (Fl R 4 sec. 30 ft. 6M "4")\* and terminating.

32.-33. (No change.)

7:12-4.1 Seasonally Approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

(a) The following shellfish growing waters designated on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1. Southern Barnegat Bay area:

i. Potter Creek to Laurel Harbor: Seasonal—Special Restricted May 1 through October 31 yearly. Approved November 1 through April 30 yearly:

(1) All those waters east of the line described in N.J.A.C. 7:12-3.2(a)11i and 11ii and west of a line beginning at the easternmost point of land on the southern bank of Potter Creek \*[land bearing approximately 161 degrees T to intracoastal Waterway channel marker Red Nun 62 (N "62") and then bearing approximately 181 degrees T]\* **then\*** to Flashing Red light 15 ft. \*[64"] PA (Fl R 15ft. "64" PA)]\***40** (Fl R 15ft "40")\* and then bearing approximately 252 degrees T to the Department maintained marker located on the northeasternmost point of land on the mainland, (located just northeast of the northeasternmost extent of Laurel Boulevard in Lacy Township) where it terminates. (This designation of Seasonally Approved waters directly adjoins those defined as Special Restricted in N.J.A.C. 7:12-3.2(a)11i and 11ii.)

ii. (No change.)

2. Barnegat Bay to Little Egg Harbor Bay-Long Beach Island area:

i. (No change.)

ii. Southern Long Beach Island: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters lying east of a line beginning at the point where Route 72 (Manahawkin Causeway) intersects with Long Beach Island (in Ship Bottom) and proceeding in a westerly direction as it follows the southern edge of Route 72 (this line coincides with that described in (a)2i(1) above to where the highway intersects with the westernmost shoreline of Cedar Bonnet Island, and then following that shoreline in a generally southerly direction, but following all changes in direction of the shoreline until reaching the southernmost point of Cedar Bonnet Island, and then bearing approximately 190 degrees T to the unnamed island immediately south (this island is generally considered part of the Cedar Bonnet group) and then following that shoreline in a southerly direction to that island's southernmost point where it intersects a line beginning at the range markers (Department maintained) located on the above unnamed island and following that line bearing 203 degrees T to Flashing Red Light 8ft. \*[28"] (Fl R 8 ft. "28")]\***74** (Fl R 4s "74")\* marking the intracoastal waterway, then bearing approximately 177 degrees T to the most northerly point of land on High Island and then following this island's eastern shoreline to its southernmost point, then bearing approximately \*[107]\***197**\* degrees T to \*[channel marker Red Nun "36" (RN "36")]\***Red "80" R "80"**\*, then bearing approximately \*[118]\***206**\* degrees T to Flashing Red light \*[38"] (Fl R "38")]\***81** (Fl G 2.5s "81")\*, then following the west side of the intracoastal waterway bearing approximately \*[097]\***187**\* degrees T to \*[channel marker R "42" (R "42")]\***Red "84" (R**

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"84")\*, then bearing approximately \*[220]\*\*218\* degrees T to \*[channel marker Nun "44A" (N "44A)]\*\*Flashing Red light "86" (FI R 4s "86")\*, then bearing approximately \*[208]\*\*221\* degrees T to \*[Flashing Green light 8ft. "47" (FI G 8ft "47")]\*\*Flashing Red light "88" (FI R 2.5 s "88")\*, then bearing approximately \*[254]\*\*240\* degrees T to \*[can buoy "49" (C "49")]\*\*Flashing Red light "92" (FI R 4s "92")\*, then bearing approximately \*[212]\*\*209\* degrees T to \*[Flashing Green light "53" (FI G "53")]\*\*Quick Green light "95" (QG "95")\*, then bearing approximately \*[175]\*\*172\* degrees T to the northernmost point of the easternmost Marshelder Island and the following the eastern shoreline of this island in a southerly direction to this island's southernmost point, and then bearing approximately \*[200]\*\*201\* degrees T to Flashing Red light \*[8ft. "64" (FI R 8ft. "64")]\*\*104 (FI R 2.5s "104")\*, then bearing approximately \*[223]\*\*229\* degrees T to the northernmost point on Mordecai Island, then following the western shore of that island to its westernmost point, then bearing approximately 244 degrees T to Flashing Green light \*[75" (FI F "75")]\*\*109 (FI G 4s "109")\* then bearing approximately \*[210] degrees T to channel marker Can "77" (C "77")\*, then bearing approximately 193 degrees T to a point on the westernmost end of the southernmost pier at Woehr's Marine Dock, 5410 West Ave., Holgate, then on a bearing of 123 degrees T]\*\*199 degrees T\* to a point on shore and terminating.

3.-5. (No change.)

6. Lakes Bay-Shelter Bay-Risley Channel Area: Seasonal—Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All that portion of Lakes Bay, Shelter Bay and adjoining thorofares contained within a line from the Pleasantville Yacht Club and following the channel markers FI G "15", FI G "13", FI G "11", FI R "8" to FI G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island, then along the shoreline of Great Island in a southerly direction to a Department maintained marker (at the southwesternmost point), then bearing approximately 216 degrees T to the northwestern tip of Shelter Island, then bearing approximately 206 degrees T to a Department maintained marker on an unnamed island, then along the northern and western shoreline of the island to another Department maintained marker, then bearing approximately 245 degrees T to Jonas Island, then along the eastern shoreline, then along northern shoreline, then along western shoreline to a Department maintained marker, then bearing approximately 204 degrees T to Pork Island, then along the shoreline in a westerly direction to the base of the Ventnor-Margate Ridge, then bearing approximately 233 degrees T to the most northern point of land on Lone Cedar Island, then along the western and southern shoreline of Lone Cedar Island to a Department maintained marker, then bearing approximately 214 degrees T to the northwesternmost point of land on Dune Island, then along the western shore of Dune Island to its westernmost point, then bearing approximately 223 degrees T across Risley Channel to a Department maintained marker, then following the shoreline in a northerly direction to an unnamed thorofare, then following the southeast shoreline of that thorofare to a point of land adjacent to G \*[3"]\*\*235\* (at the junction with Broad Thorofare) then bearing approximately 350 degrees T across the thorofare to the point of land on the opposite bank, then along the shoreline in a northeasterly direction to its mouth at Risley Channel, then following the shoreline in a northerly direction and across the mouth of the next unnamed thorofare connecting Risley Channel and Scull Bay and continuing in a northerly direction along the shoreline of Dock Thorofare, including all of Mulberry Thorofare, then from the point of land on the north side of Mulberry Thorofare (at its mouth) bearing approximately 077 degrees T to the southernmost point of land on Kiahs Island, then along that shoreline in a northeasterly direction (approximately 2500 yards) to a Department maintained marker, then bearing approximately 340 degrees T to the opposite shoreline at the point of land on the east side of the mouth of the unnamed creek just east of Stillman Creek, then continuing in an easterly direction along

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the northern shoreline of Dock Thorofare, Lakes Channel and Lakes Bay to its point of origin at the Pleasantville Yacht Club and terminating.

7. Ocean City-Somers Point Area-Great Egg Harbor Bay: Seasonal—Special Restricted May 1 through October 31, yearly, Approved November 1 through April 30 yearly:

i. All the waters contained within a line from the base of the Ocean City-Longport Bridge in Ocean City, extending to the southern end of the bascule, then bearing approximately \*[250] degrees T to "RB" N buoy, then bearing approximately 227]\*\*285 degrees T to GC "251", then bearing approximately 223\* degrees T to the northern end of the bascule on the Ocean City-Somers Point Bridge, then bearing approximately 261 degrees T to Cowpens Island and along the southern shoreline in a westerly direction to a Department maintained marker, then bearing approximately 286 degrees T to the easternmost tip of the unnamed island adjacent to Shooting Island, then bearing approximately 149 degrees T to the end of West 16th Street, Ocean City, then along the Ocean City shoreline in a northeasterly direction, across the mouth of the Lagoon to the point of origin at the base of the Ocean City-Longport Bridge and terminating.

ii. (No change.)

iii. All the waters of Peck Bay contained within a line from the base of the 34th Street Bridge (Ocean City) and continuing along the Ocean City shoreline in a northeasterly direction to a Department maintained marker, then bearing approximately \*[325]\*\*310\* degrees T (through \*[N "50"\*\*\* buoy]\*\*R"282")\* to another Department maintained marker on the mainland, then along the shoreline in a southerly direction to the base of the 34th Street Bridge and across the bridge to the point of origin and terminating.

iv. (No change.)

v. All of the waters of Ship Channel within a line bearing approximately 246 degrees T through a Department maintained marker located on the northern shore of Ship Channel approximately 1,000 feet from the mouth of the Anchorage Point Lagoon to another Department maintained marker located on the southern shore of Ship Channel, then bearing approximately 135 degrees T to another Department maintained marker on the southern shore of Ship Channel, then bearing approximately \*[140]\*\*083\* degrees T to buoy \*[N"2"]\*\*GC"251"\* then bearing approximately \*[008]\*\*313 degrees T\* to another Department maintained marker at the eastern end of Anchorage Point, then proceeding along the shoreline of Ship Channel to the point of origin approximately 1,000 feet from the mouth of the Anchorage Point Lagoon.

8. Strathmere Area: Seasonal—Special Restricted May 1 through October 31 yearly. Approved November 1 through April 30 yearly; All that portion of Main Channel and Whale Creek within the area enclosed by a straight line from the north end of the Ocean Drive Bridge, along the western side of the bridge to the portion that opens, then bearing approximately 212 degrees T to the boat ramp located at the end of Bayview Avenue, Strathmere, then along that shoreline to the mouth of Whale Creek, then along the eastern bank of Whale Creek (excluding unnamed tributary) and along the eastern shore of Ludlam Bay, across the mouth of Swimming Creek to a Department maintained marker on the western side of the mouth of Swimming Creek and bearing approximately 027 degrees T to a Department maintained marker located on the western side of the mouth of Whale Creek, then across the mouth of Burroughs Hole and along the western shore of Whale Creek to its junction with Flat Creek, then along the southern shore of Flat Creek in a southwesterly direction to a Department maintained marker on the southwest side of the mouth of Burroughs Hole then bearing approximately 309 degrees T to another Department maintained marker on the northern shore of Flat Creek, then along that shoreline in a northeasterly direction to the junction of Flat Creek and Main Channel then in a northwesterly direction to a Department maintained marker on the south side of Main Channel, then bearing approximately 344 degrees T to another Department maintained marker on the eastern side of the mouth of Ben Hands Thorofare, then along the shoreline of Main Channel to its point of origin at the Ocean Drive Bridge and terminating.

## 9. Great Sound area:

## i. (No change.)

ii. All of Cresse Thorofare, Gull Island Thorofare, Great Channel and Scotch Bonnet contained within a line starting at the base of the Stone Harbor Blvd. Bridge and proceeding in a northeast direction along the Stone Harbor shoreline, across the mouths of Snug Harbor, South Basin, North Basin, Stone Harbor Creek and Oldmans Creek, continuing along the shoreline including Shark Creek, then along that shoreline in a northerly direction to a Department maintained marker along Sturgeon Hole, then bearing approximately 232 degrees T to the mouth of Southeast Creek on (Gull Island), then along the shoreline in a southeasterly direction (excluding Southeast Creek), then in a northwesterly direction to a Department maintained marker, then bearing approximately 271 degrees T across Cresse Thorofare to another Department maintained marker, then in a southerly direction along the shoreline and across the mouth of Scotch Bonnet and continuing along the shoreline including Goths Creek, continuing along the shoreline and across the mouth of Muddy Hole, continuing along the shoreline and across the second mouth of Muddy Hole, then along the shoreline to the mouth of Scotch Bonnet then along the Scotch Bonnet shoreline to a Department maintained marker, then bearing approximately 215 degrees T [through R 2sec 6ft "2"]\* to another Department maintained marker, then along the shoreline in a southeasterly direction to the junction of Great Channel and along that shoreline in a southwesterly direction across an unnamed creek and continuing along the shoreline and across the mouth of Dung Thorofare and the shoreline of Nummy Island to a Department maintained marker and bearing approximately 296 degrees T to another Department maintained marker, then along the Stone Harbor shoreline in a northeasterly direction to the base of the Ocean Drive Bridge (Rt. 619), then bearing approximately 018 degrees T to the point of land at the junction of Great Channel and Pleasure Bay and continuing along the shoreline of Great Channel across the mouth of Stone Harbor and Shelter Haven to the point of origin at the base of the Stone Harbor Blvd. Bridge.

## 10.-11. (No change.)

## 7:12-4.2 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31 yearly)

(a) The following shellfish growing waters, designated on the charts referred to in N.J.A.C. 7:12-1.1, shall be Special Restricted for harvest of shellfish from May 1 through December 31 yearly and approved January 1 through April 30 yearly:

1. Island Beach areas: Mantoloking to Island Beach State Park: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All of those areas lying between the lines described in N.J.A.C. 7:12-3.2(a)7, 9, and 10 and a straight line beginning at the most westerly point of land on Dutchman's Point, just south of Mantoloking Shores, and bearing approximately 227 degrees T to the most northwesterly point of land on NW Point Island, off Chadwick Beach, then following that island's northeasterly shore to its most easterly point of land, then bearing approximately 191 degrees T to the northwesternmost tip of the most northern of the two islands off Ocean Beach, then bearing approximately 246 degrees T to Flashing light "1" (Fl "1"), then bearing approximately 186 degrees T to Flashing Red light "2" (Fl R "2") off Ortlely Beach, then all of those waters lying between the eastern shoreline and the Thomas A. Mathis Bridge and a straight line bearing approximately 230 degrees T to \*[Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA)]\*\*Quick Green "29" (QG "29" PA)\* which forms a common point of termination with the Seasonal area line described in (a)2ii below.

ii. All of those areas lying between the lines described in N.J.A.C. 7:12-3.2(a)7, 8, 9, and 10 including all those waters north of a straight line extending from the northernmost cupola on Island Beach State Park (currently the Island Beach State Park Maintenance Center, formerly the old USCG Station number 110) and bearing approximately 303 degrees T through \*[Flashing Red light 4s "60" (Fl R

4s "60")]\*\*Quick Red "38" (QR "38")\* just north of Berkeley Shores. The northern boundary of this Seasonally approved area shall be the Thomas A. Mathis Bridge.

2. Barnegat Bay-Brick Township and Dover Township area: Seasonal—Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All of those areas of Barnegat Bay lying between the Special Restricted waters at the mouth of Kettle Creek as described in N.J.A.C. 7:12-3.2(a)8 and a straight line beginning at Seaweed Point and bearing approximately 135 degrees T to Flashing Red light \*[15ft "30" PA (Fl R 15ft "30" PA)]\*\*"20" (Fl 2.5s "20")\* off Seaweed Point, and then bearing approximately 251 degrees T to Andrew Point on Green Island.

ii. All of those areas of Barnegat Bay lying between the Special Restricted waters as described in N.J.A.C. 7:12-3.2(a)8 and a straight line extending from the point of land forming the northern back mouth of Shelter Cove and bearing approximately 160 degrees T to Flashing Red light \*[40" (Fl R "40")]\*\*"28" (Fl R 4s "28")\* then all those waters lying between the western shoreline (mainland) and the Thomas A. Mathis Bridge and a straight line bearing approximately 152 degrees T to \*[Flashing Green light 15ft "43" PA (Fl G 15ft "43" PA)]\*\*Quick Green light (QG "29")\* which forms a common point of termination with the Seasonal area line described in (a)1i above.

## 3.-8. (No change.)

## 7:12-5.1 Seasonal Special Restricted growing waters (Special Restricted Area: May 1 through September 30 yearly, Prohibited Area: October 1 through April 30 yearly)

The Seasonal Special Restricted waters described below shall be Prohibited for the harvest of shellfish from October 1 through April 30 yearly, and Special Restricted Areas for the harvest of shellfish only in conjunction with the approved resource recovery programs described in N.J.A.C. 7:12-9 during the period of May 1 through September 30 yearly. These waters will not be utilized, that is, will not be available for the harvest of any shellfish, within any resource recovery program until the levels of contamination in shellfish tissue from certain heavy metal are found to be within those recommended by the U.S. Food and Drug Administration (FDA) as determined by the Department from analyses of ongoing studies.

(a)

**ENVIRONMENTAL REGULATION**  
**Notice of Administrative Correction**  
**Statewide Stormwater Permitting Program**  
**Establishing DSW Permit Conditions**  
**N.J.A.C. 7:14A-3.13**

Take notice that the Department of Environmental Protection has discovered a printing error in the adopted text of N.J.A.C. 7:14A-3.14(a)9iii(3) as published in the November 2, 1992 New Jersey Register at 24 N.J.R. 4088(a). As indicated in the Response to Comment 51 in the notice of adoption at 24 N.J.R. 4097, and as set forth in the original adoption document, R.1992 d.434, "and, if the permit so requires, by a New Jersey Licensed Professional Engineer" should have been deleted upon adoption. This error is corrected through this notice of administrative correction, published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

## 7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

## 1.-8. (No change.)

9. Monitoring requirements: In addition to N.J.A.C. 7:14A-2.9 the following monitoring requirements:

## i.-ii. (No change.)

iii. Requirements to report monitoring results for stormwater discharges associated with industrial activity that are not subject to an

effluent limitation guideline shall be established on a case-by-case basis depending upon the nature and effect of the discharge. A permit for such a discharge must require either sampling in accordance with (a)9i and ii above, or;

(1)-(2) (No change.)

(3) Such report and certification to be signed by a person described in N.J.A.C. 7:14A-2.4(a)2i[, and, if the permit so requires, by a New Jersey Licensed Professional Engineer]; and

(4) (No change.)

iv. (No change.)

10.-17. (No change.)

## (a)

### DIVISION OF RESPONSIBLE PARTY SITE REMEDIAION

#### Underground Storage Tank Rules

#### Readoption: N.J.A.C. 7:14B

Proposed: September 8, 1992 at 24 N.J.R. 2975(a) (see also 24 N.J.R. 3286(b)).

Adopted: November 17, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: November 18, 1992 as R.1992 d.498, **without change**.

Authority: N.J.S.A. 13:1D-1 et seq. and 58:10A-21 et seq.

DEPE Docket Number: 36-92-08.

Effective Date: November 18, 1992.

Expiration Date: November 18, 1997.

#### Summary of Public Comments and Agency Responses:

On September 8, 1992, the Department of Environmental Protection and Energy (Department) proposed to readopt without change the rules implementing the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. The Department published notice of the proposal in the Trenton Times, Atlantic City Press and Newark Star-Ledger. The Department held a public hearing on the proposed readoption on September 30, 1992, at which no persons testified; thus, no hearing officer's recommendations were made.

**No comments were received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:14B.

## (b)

### HAZARDOUS WASTE REGULATION

#### Exclusions from Hazardous Waste; Household Waste

#### Adopted Amendment: N.J.A.C. 7:26-8.2

Proposed: November 18, 1991 at 23 N.J.R. 3410(a).

Adopted: November 13, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: November 17, 1992 as R.1992 d.496, **without change**.

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

DEPE Docket Number: 042-91-10.

Effective Date: December 21, 1992.

Expiration Date: October 25, 1995.

#### Summary of Public Comments and Agency Responses:

In 1985, the United States Environmental Protection Agency (USEPA) promulgated additional amendments regarding the applicability of the household waste exclusion to resource recovery facilities. See 40 C.F.R. 261.4(b), 40 Fed. Reg. 28,702 (July 15, 1985). These particular amendments have been the source of litigation regarding the applicability of the household waste exclusion to residue generated by the thermal processing of household waste at resource recovery facilities. It is this litigation which has delayed the Department's adoption of the Federal amendment which expanded the definition of household hazardous waste. The Department's amendment does not include the Federal language which has been the source of that litigation. This amendment

deals only with the term "household waste" and the category of originating facilities which may claim this exclusion. The amendment was proposed November 18, 1991. The public comment period closed January 17, 1992. The following comments were received from Browning-Ferris Industries (BFI):

COMMENT 1: BFI supported the Department's efforts to clarify the scope of the household waste exclusion. BFI concurred with the Department's view that an amendment of N.J.A.C. 7:26-8.2(a)(6) in accordance with the Subtitle C rules of the Federal Resource Conservation and Recovery Act, 42 USC § 6901 et seq. (RCRA), would be beneficial, although salutary in effect.

RESPONSE 1: The Department appreciates the commenter's support.

COMMENT 2: BFI recommended the terms "bunkhouses," "day-use recreation area" and "day-use" should be defined by regulation to include the descriptive references used by the USEPA in articulating these terms. See 48 Fed. Reg. 6,880, 6,881 (1983); 49 Fed. Reg. 44,978, 44,978 (1984).

RESPONSE 2: The Department believes these terms are clear, obvious, and self-explanatory. The terms "bunkhouses," "day-use recreation area," and "day-use" are not defined as part of the text of the Federal regulation and will not be adopted. Rather, these terms are discussed in the Federal Register in the Preamble section of the regulation. In general, the Department agrees with the descriptive language of the Federal Register concerning the terms bunkhouses, day-use and day-use recreation areas. The illustrations provided by the USEPA in this regard are numerous. The Department encourages reference to the cited Federal Register for guidance. Furthermore, the Department provides assistance to the public in determining whether a waste qualifies for this exclusion. Assistance can be obtained by contacting the Department's Bureau of Advisement and Manifest at (609) 292-8341.

COMMENT 3: Exemption from the definition of hazardous waste of any material derived from households does not mean that such wastes are excluded from regulation as solid waste. A clarification of the household waste exclusion, as proposed by the Department and through these comments, is nonetheless essential for two reasons. First, as the Department has noted, a clarification of the definition of household waste will assist in avoiding the needless management of such wastes under RCRA Subtitle C regulation. A confirmation by the Department of the scope of the exception will aid in conforming New Jersey's rules to the Federal RCRA Subtitle C requirements and will ensure consistency with the intent of Congress. See 43 Fed. Reg. 58,946, 58,969 (1978); S. Rep. No. 988, 94th cong., 2d. Sess. 16 (1976). Finally, the proposed rule would rightly continue to acknowledge that the exclusion extends to all materials derived from households, regardless of their nature or quantity. See 40 CFR Section 261.4(b)(1); 45 Fed. Reg. 33,065, 33,099 (1980); 50 Fed. Reg. 49,212, 49,265-67 (1984).

RESPONSE 3: The Department appreciates BFI's statement that the proposed regulation avoids the needless management of household wastes under Federal hazardous waste requirements and also ensures consistency between Federal and State waste management requirements. However, the Department notes that contrary to the commenter's assertion, the household waste exclusion does not extend the exclusion to all materials derived from households, regardless of their nature or quantity. The Federal exclusions are more narrowly drawn.

As USEPA has emphasized, the waste must initially be generated by individuals on the premises of a temporary or permanent residence for individuals; that is, a household. Moreover, the waste stream must be composed primarily of materials found in the waste generated by consumers in their homes. In USEPA's view, a waste stream satisfying both criteria is a household waste for regulatory purposes. Finally, USEPA noted that there is no basis for extending the household waste exclusion to wastes such as debris produced during building construction, renovation, or demolition in houses, or other residences, as USEPA does not consider wastes from these sources to be similar to those generated by a consumer in the home in the course of daily living. See 49 FR 44978 (November 13, 1984).

COMMENT 4: BFI contended that New Jersey should adopt USEPA's extension of the household exclusion to resource recovery facilities at 40 CFR 261.4(b). Federal court decisions are in conflict concerning the application of the Federal household hazardous waste exclusion to resource recovery facility residue. See *Environmental Defense Fund v. Wheelabrator Technologies*, 931 F.2d 211 (2d Cir. 1990); *Environmental Defense Fund v. City of Chicago*, 948 F.2d 345 (7th Cir. 1991). BFI supports an interpretation applying the household exclusion to residual ash generated by resource recovery facilities.

New Jersey should adopt the USEPA amendments set forth at 40 CFR 261.4(b) and described at 50 Fed. Reg. 28,702 (July 15, 1985). The Department can significantly assist New Jersey communities—which frequently utilize or desire to use waste-to-energy facilities for the management of solid waste—by the promulgation of regulations consistent with 40 CFR 261.4(b).

RESPONSE 4: The Department is familiar with the current circumstances and the background concerning the application of the household hazardous waste exclusion to resource recovery facility residue as a result of regulatory amendments made by USEPA at 40 CFR 261.4(b). However, this comment is beyond the scope of the proposed amendment. The Department was aware of this controversy and clearly stated in the proposal that the current management requirement for resource recovery facility residue in New Jersey would not be affected by the proposed amendment. The Department notes that the Legislature has been considering the issue of residual ash management. This amendment deals only with the term "household waste" and the category of originating facilities which may claim this exclusion.

This amendment is not intended to address the issues of residual ash management and the applicability of the household exclusion to resource recovery facilities. The current requirements for management of residual ash set forth at N.J.A.C. 7:26-2B, including classification of the residual ash as a solid or hazardous waste are unaffected by this amendment.

Full text of the adoption follows.

#### 7:26-8.2 Exclusions

(a) The following materials are not hazardous for the purpose of this subchapter:

1.-5. (No change.)

6. Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

7.-26. (No change.)

(b) (No change.)

(a)

### DIVISION OF RESPONSIBLE PARTY SITE REMEDiation

#### Environmental Cleanup Responsibility Act Rules Readoption: N.J.A.C. 7:26B

Proposed: August 17, 1992 at 24 N.J.R. 2773(b).

Adopted: November 17, 1992 by Scott A. Weiner, Commissioner,  
Department of Environmental Protection and Energy.

Filed: November 18, 1992 as R.1992 d.497, **without change**.

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

13:1K-10, and 58:10-23.11 et seq.

DEPE Docket Number: 26-92-07.

Effective Date: November 18, 1992.

Expiration Date: November 18, 1997.

#### Summary of Public Comments and Agency Responses:

On August 17, 1992, the Department of Environmental Protection and Energy (Department) proposed to readopt without change the rules implementing the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 et seq. The Department published secondary notice of the proposal in the Trenton Times, The Star Ledger, and the Atlantic City Press. The Department held a public hearing on the proposed readoption on September 11, 1992, at which no individual testified, and accepted written comments through September 16, 1992. The following person submitted written comments:

| Name                  | Affiliation                             |
|-----------------------|---|
| Kenneth H. Mack, Esq. | Chemical Industry Council of New Jersey |

The written comment is summarized and responded to below:

1. COMMENT: To the extent that portions of the ECRA regulations proposed to be readopted were the subject of litigation, the Chemical

Industry Council of New Jersey (CIC) submitted comments which purported to incorporate by reference the text and substance of all the briefs submitted on behalf of CIC in that litigation as well as the Appellate Division's opinion in *In Re Adoption of N.J.A.C. 7:26B*, 250 N.J. Super. 189 (App. Div. 1991) *aff'd in part, rev'd in part*, 128 N.J. 442 (1992). CIC also submitted comments incorporating all of its comments to the ECRA rule amendments proposed on March 2, 1992 at 24 N.J.R. 720(a). In addition, CIC commented that since portions of the ECRA regulations proposed to be readopted were the subject of litigation, and in some instances struck down by the Appellate Division in its decision *In Re Adoption of N.J.A.C. 7:26B*, these rules cannot be revived through the proposed readoption.

RESPONSE: On March 2, 1992, the Department of Environmental Protection and Energy (Department) proposed amendments to its rules implementing the applicability provisions of the Environmental Cleanup Responsibility Act, N.J.S.A. 13:1K-6 to 13 (ECRA or Act). This proposal was brought about by the Appellate Division's decision, *In Re Adoption of N.J.A.C. 7:26B*, *supra*, which remanded certain rules to the Department for further rulemaking consistent with the Court's opinion.

On July 23, 1992, a bill (S-1070) was introduced in the Senate which would amend certain portions of ECRA. The Legislature is currently considering amendments to S-1070 which may affect the Department's March 2, 1992 rule proposal. On November 5, 1992, CIC, which is an appellant in the above-referenced litigation, filed a motion in the Appellate Division to extend to February 15, 1993 the Court's deadline for completion of rulemaking on remand. The motion was brought based on the introduction and anticipated passage of S-1070. The motion was granted on November 25, 1992.

With the exception of the rule amendments proposed on March 2, 1992, the arguments raised by CIC in its briefs filed in the litigation have been resolved by the Appellate Division and the Supreme Court. The Department, therefore, does not believe there is a need to respond to the arguments CIC raised in its briefs in this document. Instead, the Department refers interested persons to the Appellate Division's decision and the Supreme Court's decision in the matter. The Department will fully respond to all of CIC's comments on the March 2, 1992 rule proposal in the context of that rulemaking. In the meantime, the Department will continue to implement the ECRA program in a manner consistent with the Appellate Division's decision, *In Re Adoption of N.J.A.C. 7:26B*.

COMMENT: CIC commented that it objects to any attempt on the part of the Department to imbue the rule amendments proposed on March 2, 1992 into the ongoing ECRA process prior to their adoption. CIC noted that the ECRA process is presently governed by the current regulations and the opinion of the Appellate Division.

RESPONSE: The Department agrees with CIC; the ECRA program is governed by the current rules as modified by the Appellate Division in its decision, *In Re Adoption of N.J.A.C. 7:26B*.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:26B.

(b)

### OFFICE OF ENERGY

#### Notice of Administrative Correction

#### Control and Prohibition of Air Pollution by Vehicular Fuels

#### N.J.A.C. 7:27-25.1 and 25.3; and 7:27A-3.10

Take notice that the Department of Environmental Protection has discovered errors in the current text of N.J.A.C. 7:27-25.1, definition of "southern oxygen program control area," 7:27-25.3(a) and 7:27A-3.10(e)25. In the definition of "southern oxygen program control area," the word "or" was retained in error following a change upon adoption at 24 N.J.R. 3539(a). At N.J.A.C. 7:27-25.3(a), the phrase "exchange in trade for in New Jersey" should read "exchange in trade for use in New Jersey." The word "use" was in the rule prior to its most recent amendment, but was inadvertently not published in the proposal or adoption text (see 24 N.J.R. 2386(a) and 3539(a)). At N.J.A.C. 7:27A-3.10(e)25, in the "From 50,000 up to 500,000 gallon tank capacity" Class under the Table references to N.J.A.C. 7:27-25.3(a),

**ADOPTIONS**

25.3(b), 25.3(c) and 25.9(o), there appears a duplicate "to." These errors are corrected through this notice of administrative correction, 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]):

7:27-25.1 Definitions

Words and terms, when used in this subchapter, have meanings as defined at N.J.A.C. 7:27-1.4 or as follows, unless the context clearly indicates otherwise:

"Southern oxygen program control area" [or] means the control area which includes the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer and Salem.

7:27-25.3 General provisions

(a) Except as provided for use in (b) below, no refiner, importer, blender, distributor, wholesale purchaser-consumer, or retailer shall provide, store, offer for sale, sell, transport, import or exchange in trade for use in New Jersey during the RVP control period each year, starting in 1989, gasoline having a RVP greater than 9.0 pounds per square inch.

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

**ENVIRONMENTAL PROTECTION**

7:27A-3.10 Civil Administrative Penalties for Violations of Rules Adopted Pursuant to the Act

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

(e) The Department shall determine the amount of civil administrative penalty for offenses described in this section on the basis of the provision violated and the frequency of the violation. Footnotes 3, 4, and 8 set forth in this subsection and (f) below are intended solely to put violators on notice that in addition to any civil administrative penalty assessed the Department may also revoke the violator's operating certificate or variance. These footnotes are not intended to limit the Department's discretion in determining whether or not to revoke an operating certificate or variance, but merely indicate the situations in which the Department is most likely to seek revocation. The number of the following subsections corresponds to the number of the corresponding subchapter in N.J.A.C. 7:27.

1.-24. (No change.)

25. The violations of N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

| CITATION              | CLASS  | 1ST OFFENSE | 2ND OFFENSE | 3RD OFFENSE | 4TH AND EACH SUBSEQUENT OFFENSE |
|-----------------------|--|-------------|-------------|-------------|---------------------------------|
| N.J.A.C. 7:27-25.3(a) | Less than 15,000 gallon tank capacity.               | \$ 2,000    | \$ 4,000    | \$10,000    | \$30,000                        |
|                       | From 15,000 up to 50,000 gallon tank capacity.       | \$ 4,000    | \$ 8,000    | \$20,000    | \$50,000                        |
|                       | From 50,000 up [to] to 500,000 gallon tank capacity. | \$ 8,000    | \$16,000    | \$40,000    | \$50,000                        |
|                       | Greater than 500,000 gallon tank capacity.           | \$10,000    | \$20,000    | \$50,000    | \$50,000                        |
| N.J.A.C. 7:27-25.3(b) | Less than 15,000 gallon tank capacity.               | \$ 2,000    | \$ 4,000    | \$10,000    | \$30,000                        |
|                       | From 15,000 up to 50,000 gallon tank capacity.       | \$ 4,000    | \$ 8,000    | \$20,000    | \$50,000                        |
|                       | From 50,000 up [to] to 500,000 gallon tank capacity. | \$ 8,000    | \$16,000    | \$40,000    | \$50,000                        |
|                       | Greater than 500,000 gallon tank capacity.           | \$10,000    | \$20,000    | \$50,000    | \$50,000                        |
| N.J.A.C. 7:27-25.3(c) | Less than 15,000 gallon tank capacity.               | \$ 2,000    | \$ 4,000    | \$10,000    | \$30,000                        |
|                       | From 15,000 up to 50,000 gallon tank capacity.       | \$ 4,000    | \$ 8,000    | \$20,000    | \$50,000                        |
|                       | From 50,000 up [to] to 500,000 gallon tank capacity. | \$ 8,000    | \$16,000    | \$40,000    | \$50,000                        |
|                       | Greater than 500,000 gallon tank capacity.           | \$10,000    | \$20,000    | \$50,000    | \$50,000                        |

...

**ENVIRONMENTAL PROTECTION**

**ADOPTIONS**

|                       |  |          |          |          |          |
|-----------------------|--|----------|----------|----------|----------|
| N.J.A.C. 7:27-25.9(o) | Less than 15,000 gallon tank capacity.               | \$ 2,000 | \$ 4,000 | \$10,000 | \$30,000 |
|                       | From 15,000 up to 50,000 gallon tank capacity.       | \$ 4,000 | \$ 8,000 | \$20,000 | \$50,000 |
|                       | From 50,000 up [to] to 500,000 gallon tank capacity. | \$ 8,000 | \$16,000 | \$40,000 | \$50,000 |
|                       | Greater than 500,000 gallon tank capacity.           | \$10,000 | \$20,000 | \$50,000 | \$50,000 |

**(a)**

**(b)**

**NEW JERSEY COMMISSION ON RADIATION PROTECTION**

**DIVISION OF ENVIRONMENTAL SAFETY, HEALTH, AND ANALYTICAL PROGRAMS**

**Notice of Administrative Corrections  
Radio Frequency Radiation  
Radio Frequency Protection Guides  
N.J.A.C. 7:28-42.3**

**Pesticide Control Code  
Readoption with Amendments: N.J.A.C. 7:30**

Take notice that the New Jersey Commission on Radiation Protection has requested, and the Office of Administrative Law has agreed to permit, administrative corrections to N.J.A.C. 7:28-42.3(a)1 and (b)1 and 2, necessary in order to correctly reflect the scope of the subchapter rules. As originally promulgated (see 16 N.J.R. 2120(a)), N.J.A.C. 7:28-42 was intended to apply only to non-occupational (that is, public) exposure to radio frequency radiation. Effective May 4, 1987, N.J.A.C. 7:28-42.1 was amended to expand the scope of the rules to include workplace exposure. This was done through revision of the phrase "governs non-occupational exposure" in N.J.A.C. 7:28-42.1(a) to "governs exposure." However, references in N.J.A.C. 7:28-42.3 limiting the effect of the rules to protection of the public were inadvertently not deleted at that time. In order to conform the text of the N.J.A.C. 7:28-42.3 to the expressed intent of the Commission, the rule is revised, pursuant to N.J.A.C. 1:30-2.7, through this notice of administrative correction.

Proposed: August 17, 1992 at 24 N.J.R. 2776(a).  
Adopted: November 20, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.  
Filed: November 24, 1992 as R.1992 d.509, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Authority: N.J.S.A. 13:1D-1 et seq. and 13:1F-1 et seq., particularly 13:1F-4.

7:28-42.3 Radio Frequency Protection Guides (RFPG)

DEPE Docket Number: 31-92-07.  
Effective Date: November 24, 1992, Readoption;  
December 21, 1992, Amendments.  
Expiration Date: November 24, 1997.

(a) Radio frequency devices, excluding microwave ovens, shall be maintained as follows:

**Summary of Public Comments and Agency Responses:**

1. No person shall cause, suffer, allow or permit the use of a radio frequency device which exposes or may expose any worker or member of the public [in any location normally accessible to the public] to radio frequency radiation which is in excess of the applicable Radio Frequency Protection Guide in N.J.A.C. 7:28-42.4.

The proposed readoption with amendments of the New Jersey Pesticide Control Code, N.J.A.C. 7:30 (Code), appeared on August 17, 1992 at 24 N.J.R. 2776(a). A public hearing was held on September 17, 1992. Assistant Director Ray Ferrarin served as hearing officer, and made no recommendations. The record of the public hearing may be reviewed by contacting Richard J. McManus, Director, Office of Legal Affairs, NJDEPE, CN 402, Trenton, NJ 08625-0402.

2. (No change.)

Eight people attended the public hearing. Five people submitted comments at the hearing. Eight commenters submitted written comments during the comment period, which closed on October 1, 1992.

(b) Microwave ovens shall be maintained as follows:

Many of the commenters had suggestions for future refinement of the Pesticide Control Code. While these comments were not relevant to the proposal for readoption, they are welcome to the Department for future reference. Although some commenters suggested minor changes to the proposed amendment, none opposed adoption.

1. No person shall cause, suffer, allow or permit the use of a microwave oven manufactured after October 6, 1971 [in any location normally accessible to the public] that radiates in excess of 5mW/cm<sup>2</sup> at any point 5 cm or greater from any external surface of the oven.

**Commenters**

2. No person shall cause, suffer, allow or permit the use of a microwave oven manufactured before October 6, 1971 [in any location normally accessible to the public] that radiates in excess of 10mW/cm<sup>2</sup> at any point 5 cm or greater from any external surface of the oven.

- Rick Fletcher, TruGreen/Chemlawn
- George Beyer, New Jersey Farm Bureau
- Mark Lyons, El Comite de Apoyo a los Trabajadores Agricolas (CATA)  
(The Agricultural Workers Support Committee)
- Dolores Phillips, New Jersey Environmental Federation
- Rick Engler, New Jersey Right to Know and Act Coalition
- Wynne Falkowski, Coalition Against Toxics
- Jane Nogacki, Pesticide Safety and Right to Know Coalition
- Ilona Gray, Alliance for Environmental Concern
- Arthur Hart, National Agricultural Chemicals Association (NACA)
- Robert Balaam, New Jersey Department of Agriculture
- Earl F. Ervey, New Jersey Board of Agriculture
- Vincent T. Dee, Institute of Hazardous Materials Management
- Peter J. Furey, New Jersey Farm Bureau

3. (No change.)

1. COMMENT: We generally supported the proposed readoption with amendments. (Rick Fletcher, George Beyer, Ilona Gray, Mark Lyons, Dolores Phillips, Arthur Hart, Peter J. Furey, Wynne Falkowski, Rick Engler, Jane Nogacki)

RESPONSE: The Department acknowledges the support of these commenters.

2. COMMENT: Posting at the time of application will be burdensome. No time is provided for preparing the information to be posted. It would be impossible to post the records prior to the application due to variables in weather, crop, and application equipment. The application would take place over several hours or even days, depending on the size of the field and the weather, and therefore the term "at the time of application" is vague. The proposal would cause problems for the pesticide applicator or his operators who would actually be in the field to apply the pesticides because they could be considered "farm workers" whose presence in the field would trigger the posting requirements prior to the completed pesticide applications. (Earl Ervey)

RESPONSE: The Department is in general agreement with this commenter and has changed the language of the proposal at N.J.A.C. 7:30-9.13(i)5 to address these valid concerns.

3. COMMENT: The required duration of posting is not addressed. (Earl Ervey)

RESPONSE: Consistent with Federal farmworker protection regulations, the adoption provides that this information must remain posted for a minimum of 30 days after the restricted entry interval expires.

4. COMMENT: N.J.A.C. 7:30-9.13(i) could be interpreted to mean that a farmer would have to centrally post his pesticide records even after a treatment to the farm household, lawn, garden or swimming pool. (Arthur Hart)

RESPONSE: The Department agrees. The first sentence in N.J.A.C. 7:30-9.13(i) has been changed to make it clear that the subsection applies only to pesticide applications in connection with the growing of an agricultural crop or commodity.

5. COMMENT: An exemption should be made for farms which do not hire farm workers. (Arthur Hart)

RESPONSE: The Department agrees that a farm which does not hire farm workers should not have to comply with the requirements of N.J.A.C. 7:30-9.13(i). The U.S. Environmental Protection Agency exempts all owners "themselves and members of their immediate family while they are performing tasks related to the production of agricultural plants on their own agricultural establishment," from the posting provisions of the Federal farm worker protection regulations. Although the Pesticide Control Code does not so exempt the family in the definition of "farm worker" at N.J.A.C. 7:30-9.1, the Department by way of clarification has adopted language at N.J.A.C. 7:30-9.13(i)6 to exempt the owners or lessees themselves and members of their immediate family from the provisions at N.J.A.C. 7:30-9.13(i).

6. COMMENT: May farmers have two sets of records posted, one set of records for re-entry times which have not expired and one set for re-entry times which have expired? (Robert Balaam)

RESPONSE: Yes, if farmers find it more convenient to keep the records separated in that manner, they may do so under the Code. The Department favors flexibility in compliance with this rule, as long as the farm workers receive the required information in a timely manner.

7. COMMENT: The DEPE should limit the authority of local governmental authorities, who are adopting local ordinances for pesticide control. (Rick Fletcher)

RESPONSE: The Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 et seq., (Act) curtails any right of the Department to limit local enactments that are more stringent than the Act or Code.

8. COMMENT: Growers should provide farm workers written information and training. The Department should also implement requirements for posting, written information, and training suggested in the provisions of Assembly No. 865. There is a need for future refinement of the Code in the area of pollution prevention, through improved notification to the public, education about alternatives to pesticides, improved training for applicators and workers, and possible restrictions on known groundwater leaching pesticides, mercury-based fungicides, and other frequent surface water contaminants. Indoor air quality and the effects of pesticides on it are also an area of concern. One commenter stated that she continues to hear complaints from individuals and citizens groups about overuse of pesticides on golf courses, in schools and work places, on lawns and playing fields and in the aerial and ground spraying for gypsy moth control. (Mark Lyons, Dolores Phillips, Wynne Falkowski, Jane Nogacki)

RESPONSE: The Department supports the concept of implementing training, written information to farm workers, and posting requirements. The Department has called together a group of volunteers in a farm worker task force. This task force has advised and will continue to advise

the Department of practical ways to implement those concepts proposed by the commenters. The Department has funded research into Integrated Pest Management, indoor air quality, and the use of pesticides on golf courses. The Department also plans to solicit input through a notification task force and an aerial pest control task force to advise the Department in those areas. In addition, the Department has received grants from EPA to participate in both farm worker and groundwater protection programs. The Pesticide Control Program (Program) is currently the lead agency in the development of the State management plan for pesticides and groundwater. The program is also represented on the NJ Nonpoint Source Interagency Coordination Group and the State's Soil Conservation Committee. The Department agrees that future refinement of the Code is needed and upon assessment of the information gathered from these varied sources, has plans for making appropriate changes as part of a major revision of the Code to be proposed in 1993.

9. COMMENT: How should the map be marked or labelled to clearly designate the fields treated with pesticides and what specific information, if any, must be posted on the map in order to satisfy the posting requirements? (Earl Ervey)

RESPONSE: The posting shall include that information which allows the farm workers to relate the application information posted to the actual field treated. The proper use of field names, codes, or colored stickers is adequate.

10. COMMENT: The Code should include an exception to the commercial applicator registration requirement for company employees who use small quantities of household, that is, general use, pesticides at the company where they are employed. (Vincent T. Dee)

RESPONSE: The Department will give careful consideration to this comment for the anticipated revisions to the Code in 1993.

11. COMMENT: Compliance with the provisions of N.J.A.C. 7:30-9.13(i) will be difficult for container nursery and multi-crop vegetable farms. (Peter J. Furey)

RESPONSE: The Department's pilot program, although short term, has shown no difficulties in complying with their posting requirements. The pilot project contains one multi-crop vegetable farm and a multi-crop nursery.

12. COMMENT: The provisions of N.J.A.C. 7:30-9.13(i) will increase the potential for nuisance harassment for insignificant violations. (Peter J. Furey)

RESPONSE: Experience has shown that this is not a problem. Those complaints received are investigated by the Department in an even handed manner and any enforcement decisions are based solely on the facts, rather than harassment.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 7:30.

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

#### 7:30-9.13 Farm worker safety

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

(i) No person shall apply pesticides on a farm\*, in connection with the growing of an agricultural crop or commodity,\* without complying with the following provisions:

1. The following application information shall be posted at a central location, or at various assembly points throughout the farm, or at any other location to ensure that the information is visible and accessible to all farmworkers employed by the farm:

i. The crop;

ii. The brand or trade name, and common chemical name for the pesticide(s) applied to that crop;

iii. The date and time for safe reentry by farmworkers;

iv. The date of application; and

v. The location of application, to be shown on the map required in (i)3 below.

2. The posted information shall have the following column headings printed in English and in the native language(s) understood by farmworkers employed by the farm:

i. Crop;

ii. Name of Pesticide;

iii. Safe Reentry Time;

iv. Application Date;

v. Application Location.

3. A map of the farm shall be posted at the same location as the written information designated in (i)1 and 2 above and shall be used to clearly designate the fields treated with pesticides.

4. The Department will develop and make available an example format for proper posting of written information. This example will be made available through agriculture-related organizations including the New Jersey Department of Agriculture, Rutgers Cooperative Extension, and the New Jersey Farm Bureau, and from the Department by mail at the following address:

Pesticide Control Program  
Farmworker Information  
CN 411  
Trenton, N.J. 08625

In lieu of the example format developed by the Department, a farm owner or lessee may use a different format if it conforms to the requirements of this subsection.

5. The posted information and map required in this subsection shall be updated *\*[at the time of application.]\** **\*by the end of the day of treatment, or before farm workers are permitted to enter the treated area, whichever comes first. This information shall remain posted for a minimum of 30 days after the restricted entry interval expires, as specified by the label of the pesticide product(s) used, or by New Jersey Law, whichever is more stringent.**

i. As used in this paragraph (i)5, the term farm worker shall not include the owner, lessee, registered pesticide applicator, or registered pesticide operator, who applied or is in the process of applying a pesticide to the area, if protected by the proper personal protective equipment, as specified by the label of the pesticide product(s) used or by New Jersey Law, whichever is more stringent.

6. The provisions of this subsection shall not apply when there are no farm workers employed during the period specified in (i)5 above.

i. As used in (i)6 above, the term farm worker shall not include the owners or lessees themselves or members of their immediate family while they are performing tasks related to the production of agricultural crops or commodities, either on their own or their leased agricultural establishment.\*

(j)-(l) (No change.)

## HEALTH

### (a)

#### DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

#### Certificate of Need: Hospital Policy Manual

#### Readoption and Recodification with Amendments:

#### N.J.A.C. 8:43I recodified as N.J.A.C. 8:33A

Proposed: September 21, 1992 at 24 N.J.R. 3280(a).

Adopted: November 23, 1992 by Bruce Siegel, M.D., M.P.H., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: November 25, 1992 as R.1992 d.512, **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. 26:2H-1 et seq., specifically 26:2H-5 and 26:2H-8.

Effective Date: November 25, 1992, Readoption; December 21, 1992, Recodification and Amendments

Expiration Date: November 25, 1997.

#### Summary of Public Comments and Agency Responses:

Comments were received from the following: Maurice P. Coffee, Jr., Assistant to the President and Vice President for Planning, West Jersey Health System; Dr. Anita Curran, Chair, Acute Care Subcommittee, Mid-State Health Advisory Corporation, Inc. (LAB IV); Arthur T. Dunn, President, The Hospital Center at Orange; Tim Ford, Director of Planning, Cathedral Healthcare System; Victor J. Fresolone, President, Union Hospital; Joan P. Furman, St. Joseph's Hospital and Medical Center;

Warren E. Gager, Chief Executive Officer, William B. Kessler Memorial Hospital; Eleanor Jaeger, Executive Director, Jersey Coast Health Planning Council, Inc. (LAB VI); Jane L. Leikind, Vice President-Strategic Services, Monmouth Medical Center; Debra A. Levinson, Director of Planning, Community Medical Center; Jonathan M. Metsch, Dr.P.H., President and CEO, Jersey City Medical Center; Thomas J. Pavlak, Ph.D., Executive Director, Fairleigh Dickinson University/Local Health Advisory Board (LAB II); J. Lawrence Prendergast, Vice President, Planning and Marketing, The Valley Hospital; Carol Stapleton Rhodes, Chief Planning Officer, University of Medicine and Dentistry of New Jersey, University Hospital; Robert Schermer, Executive Director, Region One Health Planning Advisory Board, Inc. (LAB I); Louis P. Scibetta, FACHE, President, New Jersey Hospital Association; John Steen, Executive Director, Essex and Union Advisory Board for Health Planning, Inc. (LAB III); Robin Wilcox, Executive Director, Health Visions, Inc. (LAB V). The summary of comments and agency responses are as follows:

COMMENT: Representatives from all six of the Local Advisory Boards (LABs) asked that N.J.A.C. 8:33A be amended to allow hospitals in their areas to submit Certificate of Need applications in response to the December 1992 call for capital hospital projects. The LABs note that they have not had sufficient time to fulfill the requirements of N.J.A.C. 8:100-14.8 and 14.13, which, in some instances, obligate the LAB to submit a bed need study and have it approved by the State Health Planning Board, before any hospital in that LAB can submit a Certificate of Need application.

RESPONSE: The Department agrees to delete language at N.J.A.C. 8:33A-1.2(c) and (g), and to add a new subparagraph at N.J.A.C. 8:33A-1.10(c) for the December 1992 call only, which would relieve the LABs from developing bed need plans prior to the submission of certificate of need applications for acute care general hospital services.

COMMENT: Mr. Ford of Cathedral Healthcare System comments that the capital policy goal in N.J.A.C. 8:33A-1.2(d)2 of accessibility to all inpatient and outpatient services by the medically indigent should be expanded to "medically underserved."

RESPONSE: The Department assumes that Mr. Ford means medically underserved, rather than "medically undeserved." If so, it agrees that the term "medically underserved," as defined in N.J.A.C. 8:33A-1.3, should be substituted for "medically indigent" in N.J.A.C. 8:33A-1.2(d)2, in order to encompass a larger population of people in need of medical care, since the medically indigent are but one category of those who are medically underserved.

COMMENT: Warren E. Gager of William B. Kessler Memorial Hospital suggests that language in N.J.A.C. 8:33A-1.2(e)1 be modified to read: "In order to assure access to patient care services, under no circumstances may any patient be denied admission for an emergency condition to the applicant institution [or, once admitted,]. Under no circumstances may a New Jersey resident admitted to the applicant institution be transferred to another institution due to inability to pay for services. This condition shall remain in effect for the life of the approved project". Jane L. Leikind of Monmouth Medical Center comments that, in N.J.A.C. 8:33A-1.2(e)1, there is no reference to medically emergent and/or medically necessary conditions versus purely elective or cosmetic cases. She also questioned whether or not out-of-State patients were eligible for reimbursement in indigency or bad debt situations.

RESPONSE: The Department opposes the specific changes in language as recommended by Mr. Gager because it is not always evident at the time of presentation that the patient's condition is an emergency and because the language being proposed leaves too much latitude for interpretation. In reference to Ms. Leikind's comment, the reimbursement of out-of-State residents by the New Jersey Health Care Trust Fund remains an issue separate and apart from medical necessity and the Department will continue to evaluate this issue in the context of legislative changes to Chapter 83 and Federal anti-dumping requirements under COBRA.

COMMENT: Ms. Leikind comments that, in N.J.A.C. 8:33A-1.2(m), it is inappropriate for the Department to require hospitals, within the context of a Certificate of Need related rule, to report any transfer of funds from the general hospital to affiliated or subsidiary corporations on an annual basis. If this rule is applied as a condition to the receipt of a Certificate of Need, then some hospitals would be subject to this means of reporting and others would not.

RESPONSE: The rule in N.J.A.C. 8:33A-1.2(m) is a general policy applying to all hospitals, regardless of whether or not a Certificate of

## ADOPTIONS

Need is submitted. The requirement to report transfers of funds is not a new one and the Department continues to be concerned about the appropriate use of Chapter 83 revenues.

COMMENT: Ms. Leikind asks for clarification in N.J.A.C. 8:33A-1.2(n) on the types of licensure penalties to which facilities would be subject and the process by which they would be imposed.

RESPONSE: N.J.A.C. 8:33A-1.2(n), which was presented to the Health Care Administration Board as a proposal, was removed prior to publication of the proposal in the New Jersey Register, after consultation with the Office of Administrative Law.

COMMENT: Mr. Ford comments that the definition of "equity" in N.J.A.C. 8:33A-1.3 was amended from the previous language in the rule by adding the modifier "liquid" to further define assets. He asks if this amended language means that equity contributions can no longer come from land or other forms of property.

RESPONSE: The Certificate of Need rules, in N.J.A.C. 8:33-4.10(b)6vi(2), allow for land to be considered as equity, if the land is included in the project cost, and the owner of the land has clear title to the land, not subject to liens or encumbrances.

COMMENT: More than one individual objected to the definition of "service areas" by municipal boundaries in N.J.A.C. 8:33A-1.3. Doing so, it is argued, may be unfair to some hospitals which may only serve one portion of a larger municipality. Hospitals should be given the opportunity to define their unique service areas through other means when municipalities do not accurately describe the geographic region or the population served. The definition should not apply to certain specialized tertiary level services.

RESPONSE: It is the Department's view that the municipality is an appropriate unit upon which to base hospital service areas. It is understood that a hospital may serve only a portion of any given municipality, as well as parts of more than one municipality. It is for this reason that three different criteria, only one of which must be met, are established for the purposes of defining a hospital service area. For example, if a hospital derives only five percent of its admissions from a municipality, then that municipality is considered to be in that hospital's service area. Usually specialized tertiary level services are given a different, larger service area than the usual service area. The Department agrees that the definition should not apply to certain specialized tertiary level services, where the service area should be based upon the type of service and the service need, on an individual basis.

COMMENT: Ms. Leikind asks if in defining a same day medical "inpatient" in N.J.A.C. 8:33A-1.3, the Department's database is able to decipher the overlap between the patients using same day surgery facilities and subsequently admitted to the hospital. In light of changing Medicare reimbursement regulations, there is a high degree of inconsistency in reporting these figures for planners' use.

RESPONSE: The Department's data bases do distinguish between inpatient, same day surgery and same day medical admissions. If hospitals are unsure of how to report certain categories of admissions to the Department, they should contact the Department for clarification.

COMMENT: Mr. Ford objects to the use of 200 beds as the minimum size for an acute general hospital. He feels that the standard in N.J.A.C. 8:33A-1.5 is arbitrarily set. Rather, hospitals should be evaluated against measurable standards for their service to the community in terms of access, appropriateness, and efficiency. Additionally, the definition of a hospital should be modified to account for multi-hospital systems where care is provided in close proximity on a multi-site basis.

RESPONSE: The 200-bed minimum size for an acute general hospital is an appropriate and necessary standard by which to measure a hospital's overall cost efficiency. It is a time-tested standard by which it generally has been shown that hospitals with less than 200 beds do not have the critical mass necessary to sustain an efficiently operated facility. A recent study appearing in the *Journal of the American Medical Association* (Keeler, EB, Rubenstein, LV, et al. Hospital Characteristics and Quality of Care. *JAMA*. 1992; 268:1709-1714.) found that "quality improved steadily with the size of hospital and the population of the community in which it was located." Certainly, it is not the only standard against which a hospital is evaluated: it is only one of many. Nor is it overly burdensome, as there are four exception criteria, including those for multi-hospital systems, provided which adequately accommodate the situations to which Mr. Ford refers.

COMMENT: Mr. Ford recommends that the 20 bed minimum size for pediatric units in N.J.A.C. 8:33A-1.7 be abandoned. The declining demand for inpatient pediatric care has made 20 bed units an unreasonably high standard. Standards that license the level of pediatric care to

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be provided at a specific institution are more effective in assuring quality and appropriateness, while still providing easier access to pediatric services.

RESPONSE: The 20-bed minimum size is an appropriate standard for pediatric units. The intent is to ensure that discrete pediatric units are operated in a cost-efficient manner. Furthermore, a certain level of volume is necessary in order to maintain staff proficiency and protect the quality of care provided. It should be noted that in N.J.A.C. 8:33A-1.7(a)2 provisions are made for hospitals to operate pediatric units below the 20-bed minimum size, providing they meet minimum occupancy standards and demonstrate that an appropriate level of care will be provided in a cost-effective manner.

COMMENT: Carol Stapleton Rhodes of the University of Medicine and Dentistry of New Jersey/University Hospital suggests that there be exceptions to the minimum and optimal occupancy rates in N.J.A.C. 8:33A-1.11(a). Services such as obstetrics and neonatal intensive care are known to experience significant fluctuations in occupancy which cannot be predicted. Ms. Rhodes also suggests that the requirement, in N.J.A.C. 8:33A-1.11(c), for hospitals which experience occupancy rates below minimum standards for two consecutive calendar years to file a plan identifying bed reductions or service closure be amended. The amendment should allow a plan to identify such factors as exceptional circumstances inhibiting occupancy and to propose action other than reduction or closure. Mr. Coffee comments that the optimal occupancy rate of 90 percent for medical/surgical beds is too high and should be lowered to 85 percent to allow for unanticipated admissions through emergency rooms.

RESPONSE: The Department does not agree that exceptions are necessary to the minimum and optimal occupancy rates in N.J.A.C. 8:33A-1.11(a). The occupancy standards that are set for each service allow for the types of fluctuation in utilization that are particular to that service. The occupancy rate standards for obstetric beds are a good example of this: minimum and optimal rates were established according to unit size (above and below 20 beds) and type of obstetric unit (traditional postpartum or labor/delivery/recovery/postpartum (LDRP) beds) to accommodate the very fluctuations of which Ms. Rhodes speaks. It should also be noted that N.J.A.C. 8:33A does not specify minimum or optimal occupancy rates for neonatal units. The requirement in N.J.A.C. 8:33A-1.11(c) for hospitals to submit plans identifying bed reductions or closures (where occupancy falls below minimum standards for two consecutive years) applies only to those hospitals submitting Certificate of Need applications for modernization/renovation, new construction or changes in bed capacity. Where hospitals are requesting approval to expend scarce capital resources, the Department feels it is entirely appropriate to require hospitals to identify specific actions, such as bed reductions or closures, which may yield future cost savings. Also, the rule need not specify which factors should or should not be identified in the plan; it goes without saying that each hospital should be given the opportunity to describe its particular circumstance within such a plan.

COMMENT: Maurice P. Coffee, Jr. of West Jersey Health System comments that requiring compliance with the State Health Plan in N.J.A.C. 8:33A-1.12(a) and 1.14(c) is inappropriate, since the plan is advisory. The intent of the rule would be better served by having the State Health Plan as one of the reasons for approval of an application.

RESPONSE: The Department agrees that compliance with an advisory document should be encouraged but should not be mandated. Therefore, N.J.A.C. 8:33A-1.1, 1.2, 1.5, 1.10, 1.12(a) and 1.14(c) have been amended on adoption.

COMMENT: Ms. Rhodes comments that the minimum occupancy requirements for approval of capital renovation projects in N.J.A.C. 8:33A-1.13(a) should be limited to overall occupancy and occupancy for the services to be impacted by the proposed renovations. Occupancy rates for individual services not impacted by the proposed renovations should not be a factor in determining the need for capital renovations affecting other services.

RESPONSE: The Department does not agree that review of a hospital's occupancy rates should be restricted to only those areas of services affected by a particular project. Rather, it is the Department's view that the overall efficiency of a hospital as well as the efficiency of each of its services should be taken into account before that hospital is approved for capital renovation projects. This policy has been instrumental in reducing excess capacity, thus allowing system needs to be more fully met.

COMMENT: Mr. Fresolone, President of Union Hospital, comments that the requirement in N.J.A.C. 8:33A-1.13(a)4, which states that no

approval for necessary capital renovation projects may be granted when the number of excess beds in a county exceeds 75 percent of the licensed bed capacity of an applicant hospital, is unfair to institutions with a smaller bed base. The smaller institutions may be operating at a higher level of efficiency than institutions with a higher bed base. Mr. Fresolone also notes that it is Union Hospital's understanding of the Acute Care Chapter of the State Health Plan that the number of excess beds to be addressed by the hospital is 191 beds.

RESPONSE: The Department does not agree that N.J.A.C. 8:33A-1.13(a)4 is unfair to smaller hospitals. A 200-bed hospital operating at minimum occupancy rates, as defined in N.J.A.C. 8:33A-1.11, would be allowed to apply for a Certificate of Need for necessary capital renovation projects, as long as the number of excess beds in the county does not exceed 75 percent of the applicant's licensed bed count. A situation such as this represents a substantial bed excess and deserves serious review of the entire acute care system in the county. While individual hospitals may feel unfairly singled out, the Department stands behind its policy of viewing bed need within a regional context as being a rational approach to controlling health care costs. Also, it should be noted, that exceptions to N.J.A.C. 8:33A-1.13(a)4 are provided; specifically, a hospital having occupancy rates above 80 percent for the last four quarters would be excepted from this criterion. The Department also notes that the Acute Care Chapter of the State Health Plan does not recommend the reduction of any specific number of beds in Union County, nor does it make any recommendations for downsizing Union Hospital.

COMMENT: Mr. Ford comments that the change from "area" to "county" in N.J.A.C. 8:33A-1.13(a)4 ignores the fact that a county often does not represent geographic integrity for a hospital service area. Service area should be defined specifically for each project and not exclusively by county. Mr. Gager asks if N.J.A.C. 8:33A-1.13(a)4 should read: "Excess bed areas: The total number of excess beds as determined under N.J.A.C. 8:33A-1.11(b) in a county does not exceed 75 percent of the licensed bed capacity of an applicant at the time of application [no approval may be granted] unless the applicant qualifies under one or more of the exception conditions outlined in (b) below."

RESPONSE: The Department maintains that a county is an appropriate unit for assessing areawide hospital utilization and for making decisions regarding bed need and bed excess. Experience has shown that county-defined service areas, for the most part, have been consistent with actual use patterns. Where it has been deemed inappropriate, such as in the case of regionalized special services, the Department has recognized multi-county or cross-county service areas for specific projects. The wording of the paragraph to which Mr. Gager refers is correct as it presently exists; the section is defining excess bed areas.

COMMENT: Joan Furman of St. Joseph's Hospital and Medical Center and Robert Schermer of the Region One Health Planning Advisory Board, Inc., seek clarification of the term "procedures" used in N.J.A.C. 8:33A-1.15, and ask whether or not the Department wishes to count procedures or patients/cases.

RESPONSE: The Department wishes to count cases, not procedures, and has substituted the term "cases" for the term "procedures" in N.J.A.C. 8:33A-1.15.

COMMENT: Ms. Leikind notes that Monmouth Medical Center is grateful for the opportunity afforded in N.J.A.C. 8:33A-1.15(c) and (d) to suggest alternate methodologies for projected volume in light of each facility's uniqueness. They suggest that there be a formal interchange between the industry and regulators in developing need methodologies.

RESPONSE: The Department wishes to note that it is in the process of developing bed need methodologies in cooperation with the six Local Advisory Boards (LAB's). It suggests that hospitals can and should provide input into this process through their LAB.

COMMENT: Several commenters object to the proposed deletion of language in N.J.A.C. 8:33A-1.16(a) which had allowed for reduction in the required equity contribution by one half of one percent for each full percentage point the hospital uncompensated care percentage exceeded the Statewide average. The removal of this language places an additional hardship on hospitals serving indigent patients. Ms. Furman and Mr. Schermer ask whether the 15 percent equity requirement applies only to inpatient beds. Dr. Jonathan M. Metsch, P.H., of Jersey City Medical Center suggests that 10 percent of total project costs, rather than 15 percent, is a more appropriate equity contribution. Mr. Gager proposes that there should be an exception to the 15 percent equity contribution for hospitals with high Medicare patient volumes.

RESPONSE: The Department agrees to amend N.J.A.C. 8:33A-1.16(a), in a proposal published elsewhere in this issue of the New Jersey Register, which specifies the level by which a hospital's equity contribution may be reduced where an applicant can demonstrate financial hardship and that the proposed project will primarily serve a medically underserved population. The 15 percent minimum equity contribution requirement applies to all hospital construction, modernization/renovation, or equipment projects, whether inpatient or outpatient beds. Additionally, the Certificate of Need rules (cited above) require a minimum of 15 percent equity on all projects, hospital or non-hospital; therefore, Dr. Metsch's suggestion cannot be implemented. While not allowing for an exception specifically for hospitals with high Medicare patient volumes, the above-mentioned proposal will allow an exception for those hospitals which can show an underserved population or a history of unreimbursed charity care.

COMMENT: Several individuals comment that the inclusion, in N.J.A.C. 8:33A-1.16(a), of the debt service reserve fund as a component of the total to which any equity requirement applies is inappropriate. The debt service reserve fund is structured to be self-supporting and is used in the final year of the borrowing to pay that final year's carrying charges.

RESPONSE: The inclusion of the debt service reserve fund in the calculation of total project costs, upon which the equity contribution is based, represents a long-standing practice by the Department. This is not a new requirement. It is appropriate to consider the debt service reserve fund as part of the total project cost for purposes of determining the equity contribution, as it is also considered part of the total project cost for purposes of bond financing.

COMMENT: Mr. Gager suggests that N.J.A.C. 8:33A-1.17(b)2 be deleted, as there may be situations where the system benefits by permitting a transferring hospital to assume the costs and losses of a service being transferred. Regarding N.J.A.C. 8:33A-1.17(b)2i, Ms. Leikind asks if there shouldn't be a one-time financial incentive (assuming long term savings to the system) through the hospital rates to accommodate such capital intensive shifts in delivery such as transferring services (in anticipation of future trends towards ambulatory delivery).

RESPONSE: The Department wishes to preserve its policy of closely scrutinizing the transfer of services between corporate entities. Specifically, it is inappropriate for the reimbursement of a service which has been transferred out of a hospital, either physically or corporately, to be retained in the rates of that hospital.

COMMENT: Ms. Rhodes asks the Department to clarify the requirement in N.J.A.C. 8:33A-1.19. It is assumed that this rule, regarding single-bedded rooms, refers only to renovation projects proposing addition of single bed rooms, and would therefore not impede hospitals with a large percent of existing single-bedded rooms from moving forward with all bed-related renovation projects. J. Lawrence Prendergast of The Valley Hospital comments that the standards on single-bedded rooms in N.J.A.C. 8:33A-1.19 are unnecessary and inappropriate for the following reasons: (1) trends in hospital construction and renovation favor private rooms over semi-private; (2) more single-bedded rooms are needed for infection control; (3) single-bedded rooms are preferable when patients are approaching death; and (4) many patients prefer private rooms.

RESPONSE: Ms. Rhodes' assumption is incorrect. The rule regarding single-bedded rooms applies to all bed-related projects whether they are proposing the construction, modernization, renovation, or change in licensed bed capacity of acute care beds. A hospital with a large percentage of existing single-bedded rooms would have to demonstrate compliance with the required percentage, with permitted exceptions as described in the rule, upon completion of the proposed project. Mr. Prendergast's comments are well-taken; however, the Department feels that his concerns regarding the need for single-bedded rooms are addressed in this rule. The rule allows for the exclusion of isolation rooms (as determined necessary by Departmental licensure standards) from the calculation of single-bedded rooms. An exception is also permitted where the hospital can demonstrate genuine clinical necessity for the single-bedded rooms, rather than simply patient preference.

COMMENT: Mr. Coffee notes support for the change in N.J.A.C. 8:33A-1.22(a)1i which provides for an exception to the area bed need requirement where a hospital proposing to relocate will reduce an appropriate level of excess beds. Mr. Gager suggests a paragraph be added to this section, to read: "(b) Exceptions to N.J.A.C. 8:33A-1.22(a)2 will be granted to applicants meeting N.J.A.C. 8:33A-1.13(b)1, 2, or 3."

RESPONSE: The Department acknowledges and appreciates the support for the proposed change. The Department does not feel that the

additional language proposed by Mr. Gager would be appropriate, as the exception criteria to which he refers relate to existing facilities and N.J.A.C. 8:33A-1.22(a)2 refers to the construction of new hospitals.

COMMENT: Mr. Coffee supports the inclusion of child day care centers and other non-direct patient care services in the category of costs which are excluded from reimbursement in N.J.A.C. 8:33A-1.23.

RESPONSE: The Department acknowledges and appreciates the support for the proposed change.

COMMENT: Ms. Rhodes comments that the Commissioner should not have the authority to amend a facility's license to reduce licensed bed capacity as provided in N.J.A.C. 8:33A-1.27. This authority, thus granted, should also include the power to amend a facility's license to increase licensed bed capacity. Arthur T. Dunn of The Hospital Center at Orange asks for clarification of the decertification process: what due process provision is afforded the hospital; is there a time period within which a hospital can contest the Commissioner's decision? Mr. Dunn also asks if the Commissioner has the authority to amend the facility's license when the facility exceeds the optimal occupancy rates.

RESPONSE: The Health Care Cost Reduction Act, P.L.1991, c.187, provides the Commissioner with the authority to amend a facility's license to reduce that facility's licensed bed capacity to reflect actual utilization at the facility if the Commissioner determines that 10 or more licensed beds in the health care facility have not been used for at least the last two succeeding years. Notification of the Commissioner's intent to decertify beds is issued to the hospital through the Division of Health Facilities Evaluation and Licensing which has incorporated the time frames and processes for appeals established in N.J.A.C. 8:100-14.4(b) and (c). Chapter 187 does not grant the Commissioner the authority to amend a facility's license to increase licensed bed capacity (presumably in the absence of a Certificate of Need). However, the Commissioner does have the authority to grant temporary expansion of licensed bed capacity where conditions warrant. Requests for temporary expansion are received and processed through the Division of Health Facilities Evaluation and Licensing.

COMMENT: Mr. Coffee suggests that in N.J.A.C. 8:33A-1.29(b)1i, services proposed for reduction should also be excepted from the 90 percent occupancy requirement for determining community need. Also, in N.J.A.C. 8:33A-1.29(b)1ii language should be added stating, "Services proposed for closure shall not be used in calculating bed need." Several commenters noted that the priority community need criterion of occupancy rates in excess of 90 percent in all services is too restrictive. Ms. Levinson proposes that language in N.J.A.C. 8:33A-1.29(b)1i be revised to read: "i. Occupancy in excess of optimal occupancy in service proposed for expansion. All other services must meet minimum occupancy standards." Louis P. Scibetta of the New Jersey Hospital Association suggests that instead of 90 percent, the occupancy should exceed the optimal occupancy rates in all services (as defined in N.J.A.C. 8:33A-1.11(a)). Ms. Leikind proposes that the Department include an assumption of 90 percent medical/surgical occupancy should the applicant prove willing to convert or delete underutilized medical/surgical beds. Mr. Gager suggests that the occupancy percentages used for obstetrics and pediatrics be reduced to 80 percent. He also proposes a change to N.J.A.C. 8:33A-1.29(b)1ii to read: "ii. The county in which the hospital is located or an adjacent county accounting for more than 25% of the hospital's admissions has been determined to have a bed need; and." Ms. Levinson proposes a change in wording in N.J.A.C. 8:33A-1.29(b)1iii to read: "iii. The county's and hospital's rate of inpatient admissions and length of stay have been demonstrated to be appropriate and inpatient admissions are not likely to decline as a result of changing medical practice or reimbursement policy." Ms. Rhodes expresses concerns also regarding the length of stay criterion. The criterion is vague and could preclude objective and consistently applied analysis. She suggests that outside experts establish prioritization criteria for capital project review.

RESPONSE: The Department does not concur with the amended language in N.J.A.C. 8:33A-1.29(b)1i proposed by Ms. Levinson. In N.J.A.C. 8:33A-1.29(b)1i, the intent is to give priority in a competitive capital batch to those hospitals which are operating at very high occupancy. To lower the occupancy criterion to a level which most hospitals could meet would render useless the prioritization process, as would a priority given to a hospital which is reducing beds over a hospital in dire need of additional beds. However, the Department agrees to amend N.J.A.C. 8:33A-1.29(b)1i as suggested by the New Jersey Hospital Association, because having a 90 percent capacity in all categories is virtually impossible. Hospitals would be required to exceed optimal occupancy rates,

as specified in N.J.A.C. 8:33A-1.11(a), in all services, rather than meet the more stringent criterion of 90 percent occupancy in each service. The Department believes that this amendment on adoption sets the same, less stringent, standards for all, without varying from the original intent and purpose of the rules, does not agree with the wording suggested by Mr. Gager in N.J.A.C. 8:33A-1.29(b)1ii. To give a hospital priority community need on the basis of bed need in a neighboring county and/or when its own county does not have a bed need would not meet the intent of this rule. The wording of N.J.A.C. 8:33A-1.29(b)1iii as it presently exists is correct and as the Department intended. A hospital must demonstrate that both its inpatient admission and length of stay rates are appropriate and that neither are expected to decline. The reason for including the expectation that length of stay rates remain stable is that the Department wants to ensure that a hospital which is deemed to have priority community need is likely to continue its high rate of utilization. The Department's intent is not to encourage excessive lengths of stay but to ensure that the conditions contributing to a hospital's length of stay are legitimate and resistant to either changing medical practice or reimbursement policy. If a hospital anticipates its length of stay to decline, for any reason, then the subsequent impact on utilization and the hospital's plans to make capital investment must be reevaluated. The Department disagrees that outside expertise is needed to establish capital cap prioritization criteria. The criteria, as presently proposed, attempt to provide a framework for decision-making which is both fair and objective, as well as allowing for a reasonable amount of discretion on the part of the Commissioner.

COMMENT: Mr. Scibetta comments that the use of the average age ratio in N.J.A.C. 8:33A-1.29(b)2ii is not a useful measure of facility age, as it is often obscured by purchases of major moveable equipment and renovation projects.

RESPONSE: The Department acknowledges that inclusion of major moveable equipment and renovations lowers the overall average age of a facility's physical plant. However, this is a measure which is consistently applied to all hospitals, thus providing a level playing field. The criterion, as it is written, is intended to give higher priority to those facilities which not only have more aged physical plants, but also, have not had significant recent capital investment. This section is being amended, however, to draw a clear distinction between the two criteria that are contained within this subparagraph. A new subparagraph at N.J.A.C. 8:33A-1.29(b)2iii is thereby created.

It is also important to note that the implementation of the prioritization criteria during the certificate of need review process, as stated at N.J.A.C. 8:33A-1.29(c), will include the extent or "strength" that applicants are able to demonstrate compliance with the criteria as well as the number of criteria that are met. The relative age of each applicant's physical plant, as well as the affordability of each project, given the Statewide cap of \$225,000,000, will be carefully evaluated during the certificate of need review process. It is conceivable that individual components of a project will not be considered appropriate or affordable given the Statewide cap following a review of an applicant's physical plant survey (N.J.A.C. 8:33A-1.28) and an analysis of component need (N.J.A.C. 8:33A-1.14) and Statewide prioritization criteria (N.J.A.C. 8:33A-1.29(b) and (c)) contained in this rule. Additional language has been added at N.J.A.C. 8:33A-1.14(f) to reaffirm the use of N.J.A.C. 8:33A-1.28 and 1.29 in the certificate of need review process. It should also be clarified that the Statewide capital cap will be applicable to all certificate of need applications filed by not-for-profit hospitals which propose financing from sources other than 100 percent equity.

#### Summary of Agency-Initiated Changes:

The Department has made several stylistic changes on adoption, in order to render the rules more clear and precise. These stylistic changes do not effect any change in the requirements upon the regulated public. See N.J.A.C. 8:33A-1.2(d), (e), (f) and (j), 1.10(a), and 1.13(a).

Additionally, the Department has clarified the need for projects to show consistency from year to year by amending N.J.A.C. 8:33A-1.12(a)2, 1.13(a)1ii, and 1.22(a)2iii, to add the phrase "each of the" to "two years beyond project completion."

The Department has amended N.J.A.C. 8:33A-1.13(b)3i on adoption to clarify that the particular hospital or hospitals in which beds are to be replaced or added in a joint application will be considered the base(s) for the measurement of the 15 mile radius required by the rule.

Finally, the Department has corrected an error in citation at N.J.A.C. 8:33A-1.27.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43I, pending Code publication of the adopted recodification to N.J.A.C. 8:33A.

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

#### CHAPTER 8:33A

#### CERTIFICATE OF NEED: HOSPITAL POLICY MANUAL

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 8:33A-1.1 Purpose

(a) The 1971 Health Care Facilities Planning Act (N.J.S.A. 26:2H-1 et seq. as amended) and the Health Care Cost Reduction Act, P.L. 1991, c.187, established as public policy of the State of New Jersey "that hospital and related 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)

(b) To implement this policy, **\*[P.L. 1971, c.136 (N.J.S.A. 26:2H-1 et seq.) and P.L. 1991, c.187 have given]\*** the State Department of Health **\*has\*** "the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospital and related health care services, and all public and private institutions, whether State, county, municipal, incorporated and not incorporated, serving principally as boarding, nursing or maternity homes or other homes for the sheltered care of adult persons or as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity, or physical condition(s)."

(c) 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 as amended and P.L. 1991, c.187)]\***

(d) The Department of Health has a major responsibility for the promotion of quality health services rendered in an efficient and economical manner and available to all residents of the State. To ensure significant progress toward the achievement of this policy goal, planning and Certificate of Need activities will be directed toward the provision of facilities and services which:

1. Improve the health of residents of a hospital service area;
2. Increase the accessibility (including overcoming economic, geographic, architectural and transportation barriers), acceptability, continuity and quality of health services provided **\*[them]\* **\*the residents\*****;
3. Restrain unnecessary increases in the cost of providing the health services;
4. Prevent unnecessary duplication of health resources and encourage the development of cost effective alternative delivery modes; and
5. Reduce financial barriers to care.

(e) (No change.)

(f) The general policies presented in this chapter apply to all acute care facility and service planning within the State. In addition to these general policies, specific planning and review standards and guidelines are presented in this chapter for broad categories of health care facilities and services, as well as for specialized types of health care which shall be made available on a regionalized basis.

(g) This chapter is to be distinguished from the "Certificate of Need Application and Review Process" promulgated by the New Jersey State Department of Health (N.J.A.C. 8:33) which identifies the procedures, rules, and regulations which carry out the Certificate of Need program pursuant to N.J.S.A. 26:2H-1 et seq. **\*[(1971 Health Facilities Planning Act), and P.L. 1991, c.187, the Health Care Cost Reduction Act.]\***

(h) This chapter presents substantive criteria for the planning of health care facilities and services as provided by acute care hospitals within the State. These policies, standards and guidelines shall be applied in the review of proposed actions requiring Certificate of Need authorization.

##### 8:33A\*-1.2\* General policies

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

(c) Each Certificate of Need shall comply with **\*[the State Health Plan and]\*** all appropriate health planning and rate setting rules adopted by the Department of Health **\*[(]\*with **\*the\*** approval of the Health Care Administrative Board\*)]** and should also be in compliance with the adopted plan(s) of the Local Advisory Board (LAB), developed in accordance with the Health Care Cost Reduction Act, in which the action is proposed]\*.

(d) In reviewing Certificate of Need applications, the Department will consider the following **\*[as capital]\*** policy goals **\*for capital projects\***:

1. The reduction of duplicative services and excess bed capacity and the development of cost effective alternatives to inpatient care.
2. Accessibility to all inpatient and outpatient services by **\*[medically indigent]\* **\*medically underserved\*** residents of **\*the\*** State.**

3.-6. (No change.)

(e) Any applicant for a Certificate of Need must agree in writing at the time of filing its Certificate of Need application **\*[to unconditionally accept]\* **\*that it will comply with\*** the following **\*[conditions of approval. These conditions will be a part of any and all Certificate of Need approvals which are issued]\***:**

1.-3. (No change.)

(f) Each applicant must demonstrate **\*[a]\* **\*an\*** historical commitment to caring for the medically indigent (that is, provision of uncompensated charity care, excluding bad debt accounts) and that it has taken steps to develop services for this population; for example, primary care programs followed-up with appropriate specialty referral\*];\*\*.\* **\*[and the]\* **\*The\*** applicant **\*[submits]\* **\*shall submit\*** evidence from its medical staff that staff physicians with admitting privileges will insure access to care by all indigent and Medicaid patients who present.******

(g) The Department of Health encourages planning by hospitals which promotes:

1. Actions consistent with **\*[the New Jersey State Health Plan and]\*** State Department of Health policies and rules;
- \*[2. Actions consistent with the goals and objectives of the plan of the LAB within the service area in which the action is proposed]\*.** Recodify proposed 3. and 4. as **\*2.\*** and **\*3.\*** (No change in text.) **\*[5.]\*4.\*** Accessibility **\*[to]\*** and the availability of services to those persons unable to pay for services (in whole or in part).
- \*[6.]\*5.\*** Reductions in environmental and occupational accidents, illness and disease.

(h) (No change.)

(i) In making determinations on applications for **\*[Certificate]\* **\*Certificates\*** of Need **\*[approval]\***, there shall be taken into consideration the availability of facilities or services which may serve as alternatives or substitutes, the need for special equipment and services in the area, the possible economies and improvement in services to be anticipated from the operation of joint central services, the adequacy of financial resources and sources of present and future revenues, the availability of sufficient manpower in the several professional disciplines, and such other factors as may be established by regulation. (see N.J.S.A. 26:2H-8 **\*[as amended by the Health Care Cost Reduction Act]\***).**

(j) The Department of Health shall give preference to applicants which:

1. (No change.)
2. Make services available to persons who are unable to pay; and
3. Propose mergers, consolidations, or other joint arrangements, or closure of underutilized and unneeded services and document quantifiable cost savings in future years resulting from such actions.

(k) (No change.)

(l) If a hospital has closed, ceased or not maintained operation of any of its beds, facilities, or services for any consecutive two year period, these beds, facilities or services may be removed from the inventory of the facility and a certificate of need shall be required to reopen such beds, facilities, or services.

(m) All hospitals shall report to the Department annually any transfer of funds from the general hospital to affiliated or subsidiary corporations.

#### 8:33A-1.3 Definitions

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

...  
 "Construction" means the erection, building, alteration, reconstruction, improvement, renovation, extension or modification of a health care facility, including fixed equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

...  
 "Equity" means a voluntary non-operating liquid asset contribution which will reduce the total size of the debt. Equity may include cash, donations, and net projected cash from fundraising.

...  
 "Local Advisory Board" means an independent, private non-profit corporation which is not a health care facility, a subsidiary thereof, or an affiliated corporation of a health care facility, that is designated by the Commissioner of the Department of Health to serve as the regional health planning agency for a designated region in the State.

"Major moveable equipment" means equipment, including installation and renovation, which is the subject of a health planning rule or which is proposed by the Commissioner to be the subject of a health planning rule. For purposes of this chapter, major moveable equipment includes all equipment which has received pre-marketing approval from the U.S. Food and Drug Administration, unless the Health Care Administration Board explicitly excludes a specific piece of equipment or a specific technology from the classification of major moveable equipment. Examples of major moveable equipment are identified at Exhibit 3 of the appendix to N.J.A.C. 8:33.

"Medically underserved groups" means segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population, as adjusted to account for their need for such services. This means all population groups including racial, ethnic, and sexual minorities, migrant workers, the handicapped, Medicaid recipients, individuals and families with incomes below 80 percent of the median income for either the state or the Standard Metropolitan Statistical Area in which they reside, and other identifiable segments of the population which currently fail to use health care services in numbers approximately proportionate to their presence in the population as adjusted to account for their need for such services.

"Modernization/renovation" means the alteration, expansion, major repair (to the extent permitted by rules), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment or existing buildings.

"Outpatient surgery" means a minor surgical procedure appropriately performed in private practice settings, or in hospital outpatient departments, on patients who do not require a licensed free standing ambulatory surgery facility or same-day surgery (SDS) status in a hospital. Anesthesia is generally of a local type. In a hospital setting, outpatient surgery is counted as an outpatient visit.

...  
 "Total project cost" means all costs associated with the proposed project, including all capital costs, carrying and financing costs, net interest on borrowings during construction, and debt service reserve fund. Total project cost excludes any contingency amounts.

8:33A-1.4 (No change in text.)

8:33A-1.5 Standards regarding minimum size; acute general hospitals

(a) The minimum size for an acute general hospital shall be 200 beds. This standard shall not apply to:

1. (No change.)

2. Facilities of less than 200 beds proposing to expand to at least 200 beds, where the need for expansion is consistent with \*[the State Health Plan]\* **\*health planning regulations\***;

3. (No change.)

4. Facilities with less than 200 beds that are granted exceptions according to the criteria identified at N.J.A.C. 8:33A-1.13(a)2 and 1.13(b)1-3.

8:33A-1.6 Minimum size of obstetrics units

(a) The minimum size of an obstetric service shall be 20 beds. Exceptions will be considered where:

1. The distance to an alternate obstetric unit exceeds 15 miles; or

2. At the proposed lower capacity, occupancy will exceed minimum occupancy standards identified at N.J.A.C. 8:33A-1.11, and the applicant demonstrates that an appropriate level of care will be provided in a cost-effective manner.

(b) In no case shall the minimum size of an obstetric unit fall below 10 beds.

Recodify existing 8:43I-1.8 and 1.9 as 8:33A-1.8 and 1.9 (No change in text.)

8:33A-1.10 Bed need

(a) Any application for establishment of or expansion of licensed beds must demonstrate need for these beds in the proposed service area based upon needs assessment methodologies represented in\*:

1. Adopted]\* **\*adopted\*** health planning rules governing regionalization of the service(s)\*]; or

2. The State Health Plan, and amendments thereto; or

3. Planning documents as developed by the Department and the State Health Planning Board (SHPB) and the Health Care Administration Board (HCAB)]\*.

(b) Where the applicant is proposing beds to support specialized services for which there are no methodologies referenced in the documents cited at (a) above, the need for beds shall be documented by an analysis of empirical evidence which demonstrates that beds for a new service are cost effective, beneficial to patients, will measurably improve accessibility and quality of care, and could not be provided in a less costly setting. In addition, an applicant shall provide evidence establishing the need for beds by documenting:

1.-4. (No change.)

**\*(c) Notwithstanding N.J.A.C. 8:100-14.8(b) and 14.13, which require that a LAB bed need study be approved by the State Health Planning Board before any hospital within the counties identified in the subchapter above is permitted to submit a certificate of need application related to inpatient acute care services, and N.J.A.C. 8:33A-1.29(b)iii, which includes county bed need as one of the community need prioritization criteria, for the December 1992 call only, hospitals may submit certificate of need applications regardless of the existence of an approved LAB bed need study for acute care hospital capital expenditures.\***

8:33A-1.11 Standards regarding occupancy rates

(a) (No change.)

(b) The level of excess beds within a hospital shall be that number of licensed beds, which, when deleted from a service, will allow a hospital to achieve minimum occupancy levels as identified in (a) above, for a period two years beyond the projected completion date of the project, defined as the "target year". Utilization levels for the target year shall be based on a projection method defined at N.J.A.C. 8:33A-1.15(b), applied forward to the target year.

(c) (No change.)

8:33A-1.12 Standards regarding addition or replacement of beds

(a) Certificate of Need applications may be approved for the replacement or addition of licensed bed capacity where the applicant \*[has demonstrated compliance with the most recently adopted State Health Plan]\* **\*reflects consideration of approved health planning rules\*** and all of the following:

1. In the previous 18 months, the applicant hospital must exceed both minimum occupancy rates for all existing services as well as optimal occupancy rates for the service(s) being proposed for expansion and demonstrate that it will achieve an occupancy rate for

the service(s) being expanded of no less than 10 percentage points higher than the minimum occupancy rates established for that service identified at N.J.A.C. 8:33A-1.11(a) for the year which is two years beyond project completion.

2. For projects proposing the replacement of existing acute care beds, the applicant hospital must exceed minimal occupancy rates identified at N.J.A.C. 8:33A-1.11(a) in all existing services, and demonstrate that it will achieve an occupancy rate in service(s) being replaced of no less than 10 percentage points higher than the minimum occupancy rates identified at N.J.A.C. 8:33A-1.11(a) for **\*each of the\*** two years beyond project completion.

3. The hospital must demonstrate an appropriate average length of stay in the service for which beds are being renovated or expanded.

4. For bed additions, where there are acute care hospitals within the applicant's service area which, during the 18 months preceding the filing of the Certificate of Need application failed to meet the minimum occupancy levels identified at N.J.A.C. 8:33A-1.11 within the service type(s) for which expansion is being requested, the applicant must provide written evidence that the Board of Directors **\*[have]\* \*has\*** undertaken good faith efforts to develop mergers, joint ventures, or other shared service arrangements with the under-utilized facility(ies). The applicant must document these efforts, identify the status of these negotiations at the time the application is filed, describe the impact of agreements made between the boards of hospitals on the proposed project, and, where agreements have not been reached, describe in detail the obstacles preventing the formalization of agreements. Moreover, where an applicant has failed to enter into good faith efforts to achieve agreements of the type referred to in this chapter, a detailed explanation authorized by the board of the applicant institution must accompany the application.

(b) Exceptions to (a)1 and (a)2 above may be considered where:  
1.-3. (No change.)

4. The applicant demonstrates to the satisfaction of the Department of Health that a reduction in beds in order to meet minimum occupancy standards will not measurably reduce capital or operating costs.

#### 8:33A-1.13 Community need standards

(a) A hospital may be approved for necessary capital renovation projects **\*[except]\*** where it **\*[fails to demonstrate]\* \*demonstrates\*** that it meets the following standards:

1. Utilization Standards:

i. Minimum occupancy rates in each licensed bed category as specified at N.J.A.C. 8:33A-1.11(a) at the conclusion of the project; and

ii. Trends in volume (admissions, ALOS, and/or patient days) which indicate occupancy will continue to be above minimum occupancy of remaining licensed beds in each licensed bed category for a period of at least **\*each of the\*** two years beyond completion of the project.

2. Efficient size: A hospital must maintain at least 200 beds at the conclusion of the project while maintaining an overall occupancy rate of at least 75 percent. Where it fails to meet this standard, capital projects may only be approved where the hospital is efficiently operated, geographically isolated, merged into a multi-hospital system in its area, or there is a demonstrated need for continued operation. These criteria are further defined in (b) below.

3. (No change.)

4. Excess bed areas: Where the total number of excess beds as determined under N.J.A.C. 8:33A-1.11(b) in a county exceeds 75 percent of the licensed bed capacity of an applicant hospital at the time of application no approval may be granted unless the applicant qualifies under one or more of the exception conditions outlined in (b) below. As an example, in County A, the Department determined that there is an excess of 300 beds. Hospital A with 200 beds does not meet the standard, as 75 percent of 200 is 150, and the excess of 300 is greater than 150. Hospital B, with 440 beds, meets the standard as 75 percent of 440 is 330, which exceeds the

county bed excess. The intent is to examine need for the institution as a whole in areas of substantial bed excess prior to investment of major new capital obligation.

(b) Exceptions to (a)2 through 4 above will be granted to applicants meeting any of the following:

1. The hospital is geographically isolated, **\*[when each of the following apply]\* \*defined as follows\***:

i. (No change.)

ii. Where at least 40 percent of the residents of the service area utilize the hospital; or

2. The hospital is efficient, **\*[where]\* \*that is,\*** its occupancy rates are above 80 percent overall for the last four quarters reported to the Department; or

3. Where a multi-hospital system application is being proposed in one of two forms:

i. Joint Community Application: An application submitted jointly by all hospitals (or a combination of hospitals constituting a majority of needed beds) within a 15 mile radius of **\*[the applicant]\* \*a\*** hospital **\*seeking replacement and/or addition of beds\*** or in a service area as approved by the Department, that accomplishes the following objectives:

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

4. **\*[An exception to N.J.A.C. 8:33A-1.13 may be considered by the Commissioner where the]\* \*The\*** project scope is limited to correction of conditions constituting an imminent hazard to the health and safety of patients and staff, as determined by the Department.

(c) (No change.)

#### 8:33A-1.14 Project component need

(a) In addition to demonstrating continued community need, as defined in N.J.A.C. 8:33A-1.13, all hospitals must demonstrate the need for each component part of the proposed project. A component means any element of the overall project that is associated with the modernization or renovation, expansion, or new construction of an identifiable physical plant area, such as a nursing unit, ancillary department, administrative area, or any structural element of the facility.

(b) (No change.)

(c) Where a component is the subject of an approved planning **\*[regulation or the approved State Health Plan]\* \*rule\***, that component must satisfy all applicable criteria of the specific **\*[regulation]\* \*rule\*(s)**.

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

(f) Any component(s) of a certificate of need project not demonstrated to be needed as determined by the Department, based on **\*a review of the applicant's physical plant survey, Statewide prioritization criteria, and all other\* \*the\*** criteria in this chapter, may be denied.

#### 8:33A-1.15 Volume projections

(a) (No change.)

(b) Historical hospital volume data must incorporate the last complete three calendar years preceding the date of filing the Certificate of Need application, as well as year-to-date data for the current year, and at a minimum include the following data components:

1.-5. (No change.)

6. Inpatient surgical **\*[procedures]\* \*cases\***;

7. Outpatient surgical **\*[procedures]\* \*cases\***;

8. Same day surgery **\*cases\***;

Recodify 8.-9. as 9.-10. (No change in text.)

(c) Each application shall provide an estimate of projected volume in all categories as listed in (b) above for each year inclusive from the time of application to that year which is two complete calendar years beyond estimated project completion. This estimate must be based on historical data delineated in (b) above, using at a minimum, a straight-line projection and one or more of the following methodologies:

1.-2. (No change.)

3. Official county-based-volume projections and market share statistics published by or acceptable to the Department, if available;

4. (No change.)  
 (d) (No change.)

8:33A-1.16 Standards regarding equity contributions and financing  
 (a) Financing of hospital construction, modernization/renovation, or equipment projects requires a minimum equity contribution from the hospital of at least 15 percent of total project costs, including all capital costs, all financing and carrying charges, net interest on borrowing during construction, and debt service reserve fund.

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

(d) All applicants shall demonstrate the financial feasibility of their projects. An appropriate financial feasibility study shall be submitted for projects in excess of \$15 million at the time of application. The study must test the feasibility of the project under reimbursement rules in effect at the time of the application. A project will be determined financially feasible where the applicant can demonstrate a net positive income for the calendar or fiscal years which are two and five years beyond project completion. Financial projections shall be provided for the first five full years after project completion.

(e) Capital costs associated with approved Certificate of Need applications will not be guaranteed future reimbursement.

8:33A-1.17 Standards regarding the transfer of services from an acute care hospital

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

(c) The facility or corporation receiving the new service must comply with the following criteria and conditions:

1. Any service transferred in whole must provide indigent care at the same level as provided for that same service in the two calendar years preceding the submission of the application or at a level commensurate with other hospitals in the area over the preceding two calendar years, or at a level specified as a condition of the certificate of need at the time of issuance, whichever is greater.

2. Any service transferred in part must, together with the applicant hospital, provide in the aggregate the same level of indigent care as provided for that same service in the two years preceding the application or at a level commensurate with other hospitals in the area over the preceding two years, or at a level specified as a condition of the certificate of need at the time of issuance, whichever is greater.

3.-4. (No change.)

8:33A-1.18 Standards regarding acquisition or replacement of major moveable equipment

(a) Where a certificate of need is required for the acquisition or replacement of major moveable equipment, it will not be awarded unless the applicant has demonstrated compliance with all applicable Departmental rules for the proposed service.

(b) Where a Certificate of Need is required for the acquisition or replacement of major movable equipment it will not be awarded unless the applicant has:

1. (No change.)

2. Where method of acquisition is through an operating lease arrangement, it must be demonstrated that the proposed lease arrangement is more cost-effective than purchase, giving consideration to maintenance costs, warranties, and other related costs, as well as to the imputed value of a 15 percent equity contribution.

(c) Equity contributions to the financing of the project must meet minimum requirements identified at N.J.A.C. 8:33A-1.16(a). In projects proposing both acquisition of major moveable equipment and modernization/renovation, equity contributions must be pro-rated between equipment costs and costs of the remainder of the project.

8:33A-1.19 (No change in text.)

8:33A-1.20 Outpatient clinics

Applicants for any bed-related Certificate of Need must demonstrate the availability of follow-up care for all discharged patients and all residents of the service area either through direct provision of such services by the hospital or its physicians, or through formal written linkages with other health care providers in the area.

8:33A-1.21 (No change in text.)

8:33A-1.22 Standards regarding location of hospitals

(a) Any Certificate of Need application proposing the relocation, major new construction of an existing hospital by a new corporate entity, or new construction of an acute care hospital must meet all criteria in this chapter and must specifically address the following:

1. No Certificate of Need shall be awarded to a hospital proposing to relocate, unless it demonstrates compliance with the following criteria:

i. There must be a bed need in the area of proposed location for all services to be relocated, or a reduction of an appropriate level of excess beds within the relocated facility **\*which\*** will be implemented upon relocation;

ii.-v. (No change.)

2. Applicants proposing construction of a new hospital shall demonstrate compliance with all of the following:

i.-ii. (No change.)

iii. All hospitals located within a 25-mile radius of the proposed location shall have occupancy levels which exceed optimal levels as defined in N.J.A.C. 8:33A-1.11 for **\*each of\*** the previous two calendar years;

iv. (No change.)

8:33A-1.23 Standards regarding costs of parking garages, medical arts buildings, child day care centers or other non-direct patient care services/construction

(a) No Certificate of Need is required for a parking garage or a medical arts building, child day care center or other non-direct patient care services/construction.

(b) The costs of purchase, construction, renovation, expansion and operation of the proposed parking garage shall be fully underwritten by charges to users, as the costs will not be financed, directly or indirectly, in whole or in part, by charges to patients. An exception may be made for components of cost which are reasonable and necessary and conform to the reimbursement definitions and procedures for employee benefits related to patient care set forth **\*[at]\* \*in\*** N.J.A.C. 8:31B.

(c) The costs of the purchase, construction, renovation, expansion and operation of a proposed medical arts building or other non-direct patient care services shall be wholly underwritten by charges to users. An exception can be made when documentation is provided and the Department determines that it is cost effective to locate hospital services in the building.

(d) The costs of purchase, construction, renovation, expansion and operation of a proposed child day care center shall be fully underwritten by charges to users, with no costs financed, directly or indirectly, in whole or in part, by charges to patients. An exception may be made for components of cost which are reasonable and necessary and conform to the reimbursement definitions and procedures for employee benefits related to patient care set forth in N.J.A.C. 8:31B.

8:33A-1.24 Standards regarding accessibility

The applicant must demonstrate compliance with all accessibility criteria as identified in N.J.A.C. 8:33.

8:33A-1.25 Standards regarding transfers of ownership of hospitals

(a) Where a Certificate of Need is required for a transfer of ownership of a licensed New Jersey hospital through merger, acquisition, or other joint arrangement, the following must be demonstrated in the application:

1. (No change.)

2. A reduction of all excess bed capacity, as determined under standard N.J.A.C. 8:33A-1.11, will result for all participating hospitals through decertification or conversion of acute care beds; and

3. Duplication of services will be eliminated where appropriate; and

4. Compliance with all other appropriate criteria contained in this chapter.

8:33A-1.26 Standards regarding relocation or closure of services

A Certificate of Need may be awarded for the relocation or closure of a service except where the applicant fails to demonstrate com-

pliance with Specific Criteria for Review contained in N.J.A.C. 8:33, and other applicable requirements of these rules.

#### 8:33A-1.27 Decertification of unused beds

(a) Pursuant to the Health Care Cost Reduction Act (N.J.S.A. 26:2H-[38]\*\*12\*d), the Commissioner may amend a facility's license to reduce that facility's licensed bed capacity to reflect actual utilization at the facility. This authority may be exercised if the Commissioner determines that 10 or more licensed beds in the health care facility have not been used for at least the last two succeeding years. For purposes of this rule, the Commissioner may review hospital utilization from January 1, 1990.

(b) In determining if licensed beds have been unused, the Commissioner may employ the minimum occupancy rates identified at N.J.A.C. 8:33A-1.11(a), and reduce licensed beds to a number which would permit conformance with these minimum occupancy rates.

#### 8:33A-1.28 Hospital physical plant survey

(a) Certificate of Need applications shall not be accepted by the Department from any hospital which is subject to these rules, unless such hospital has filed a complete physical plant survey or update with the Department at least 60 days prior to filing the application.

(b) Each hospital that is approved (either through the Certificate of Need process or through construction plans review) for any modernization, renovation, construction or expansion project shall provide an update of the hospital physical plant survey to the Division of Health Facilities Evaluation and Licensing. This update shall be provided in a format prescribed by the Division of Health Facilities Evaluation and Licensing and shall be submitted within 60 days of project completion.

#### 8:33A-1.29 Hospital capital cap and review process

(a) Certificate of Need applications for hospital capital construction projects that would be financed by the New Jersey Health Care Facilities Financing Authority shall be subject to the Statewide cap of \$225,000,000 per year. Review of these projects shall follow N.J.A.C. 8:33-4.9(e) of the "Certificate of Need Application and Review Process."

(b) The following criteria shall be used in identifying priority projects in the review of certificates of need subject to the Statewide cap. Those certificate of need projects proposing a capital expenditure where the following factors are demonstrated within the application shall be identified as having priority for approval:

1. Community need: A hospital will be deemed to have exhibited priority community need when it has the following characteristics:

i. Occupancy in excess of \*[90 percent]\* **\*optimal occupancy rates (as specified in N.J.A.C. 8:33A-1.11(a))\*** in all services during the last calendar year preceding the application. Services proposed for closure in the application may be excepted;

ii. The county in which the hospital is located has been determined to have a bed need; and

iii. The county's and hospital's rates of inpatient admission and length of stay have been demonstrated to be appropriate and not likely to decline as a result of changing medical practice or reimbursement policy;

2. Project need:

i. The project is substantially directed to correcting Life Safety Code A or B level deficiencies, or other conditions posing imminent peril to health and safety of patients and staff; and

ii. The hospital has not implemented a major modernization or construction program in the affected areas of the project for a period in excess of 10 years\*[.]\*; or\*

\*[In addition, the]\* **\*iii. The\*** overall average age of the physical plant exceeds 10 years based on the Department's calculations using generally accepted accounting principles; and

3. Project goals: The certificate of need application has been submitted in order to address a priority or a specific recommendation that is identified in the State Health Plan, and is determined by the Department to be essential to \*[acheiving]\* **\*achieving\*** that goal. These in specific include hospital closure or merger applications that demonstrate significant cost savings to the health care system, or projects implementing ambulatory care initiatives that improve health care delivery patterns and reduce system expenditures.

(c) Projects shall demonstrate at least one of the prioritization criteria in (b) above. The strength of the demonstration and the number of prioritization factors demonstrated will be considered in the ranking of projects. The projects will also be prioritized for affordability. Indicators of affordability are the total project cost, cost per adjusted admission, and the institution's ability to obtain low cost financing.

## HUMAN SERVICES

### (a)

#### DIVISION OF YOUTH AND FAMILY SERVICES

##### Department of Human Services Child Death and Critical Incident Review Board

##### Adopted New Rules: N.J.A.C. 10:16

Proposed: October 5, 1992 at 24 N.J.R. 3506(a).

Adopted: November 25, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 25, 1992 as R.1992 d.513, **without change**.

Authority: N.J.S.A. 9:6-8.10a and b, 9:6-8.21 and 30:4C-4(h).

Effective Date: December 21, 1992.

Expiration Date: December 21, 1997.

Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

#### CHAPTER 16

##### DEPARTMENT OF HUMAN SERVICES CHILD DEATH AND CRITICAL INCIDENT REVIEW BOARD

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:16-1.1 Purpose

This chapter establishes the Department of Human Services Child Death and Critical Incident Review Board and describes its organization, scope, membership, functions, and procedures.

##### 10:16-1.2 Scope

(a) The scope of this chapter applies to situations involving children currently or formerly (within the past 12 months) under the supervision of the Division of Youth and Family Services (DYFS):

1. Who are alleged to have died due to child abuse or neglect;

2. Who have died, and whose death is not alleged to be due to child abuse or neglect, but who died under circumstances that have been identified by the Deputy Commissioner or by the Director as presenting issues which could result, through Board review, in recommendations for systems, policy, legislative or regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies; or

3. Who were the subject of a critical incident (not resulting in death) that was:

i. Alleged to have been due to child abuse or neglect, and

ii. Has been identified by the Deputy Commissioner or by the Director as presenting issues that could result, through Board review, in recommendations for systems, policy, legislative/regulatory changes or other broad-based revisions in Departmental or Divisional operations, and/or community remedies.

(b) This chapter applies regardless of where the child involved in the situation described in (a) above is residing or of which State government agency, Division of this Department or non-government provider is or was responsible for caring for the child.

##### 10:16-1.3 Definitions

The following words and terms, when used in this chapter, have the following meanings:

"Abused or neglected child" means a child:

1. Less than 18 years of age;

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i. Whose parent or guardian inflicts, or allows to be inflicted upon such child, physical injury by other than accidental means, which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

ii. Whose parent or guardian creates or allows to be created a substantial or continuing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;

iii. Whose parent or guardian commits or allows to be committed an act of sexual abuse against the child;

iv. Whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his or her parent or guardian to exercise a minimum degree of care:

(1) In supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so, or though offered financial or other reasonable means to do so; or

(2) In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;

v. Who has been willfully abandoned by his or her parent or guardian;

vi. Upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to herself or himself, others or property; or

vii. Who is in an institution other than a day school, and:

(1) Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being; or

(2) Has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

2. No child who in good faith is under treatment by spiritual means alone, through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall for this reason alone be considered to be abused or neglected.

"Board" means the Department of Human Services Child Death and Critical Incident Review Board.

"Child" means any child less than 18 years of age who has been alleged to have been abused or neglected.

"Child abuse death" or "death due to child abuse or neglect" means the death of a child as a result of acts or omissions by a parent or guardian that constitute child abuse or neglect, as these terms are defined in N.J.S.A. 9:6-8.21a, b and c.

"Critical incident" means a serious injury, a life-threatening condition, or a newsworthy event occurring to a child currently or formerly (within the past 12 months) under DYFS supervision and alleged to have been due to abuse or neglect.

"Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis.

"Deputy Commissioner" means the Deputy Commissioner of the Department of Human Services.

"Director" means the Director of the Division of Youth and Family Services in the Department of Human Services.

"DYFS" means the Division of Youth and Family Services in the Department of Human Services.

"Formerly under DYFS supervision" means that the child's case was closed and was not actively receiving DYFS services on the day the injury or death occurred, but had been actively receiving services within the past 12 months.

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"Life-threatening condition" means any condition caused by exceptional or extraordinary occurrences which creates a high probability of death within the reasonably foreseeable future.

"Newsworthy event" means any incident which has attracted media (television, newspaper or radio) interest.

"Parent" or "guardian" means any natural parent, adoptive parent, foster parent, stepparent, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. Parent or guardian includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school.

"Serious injury" includes, but is not limited to, any fracture of the skull or long bones, ribs, spine or pelvis; head injury, such as concussion; human bites puncturing the skin or wounds requiring extensive suturing; extensive burns; bodily injury resulting in gastrointestinal symptoms or genital-urinary symptoms; teeth knocked out; injury to the eye; injury causing multiple hematomas; choking injury leaving marks; and any injury requiring hospitalization.

"Under DYFS supervision" means that the child is registered on the DYFS Service Information System as being actively under investigation or receiving DYFS services on the day the injuries or death occurred.

### SUBCHAPTER 2. ORGANIZATION OF THE BOARD

#### 10:16-2.1 Authority of the Board

The Board shall be duly constituted and recognized as an agency authorized to investigate child abuse and neglect, in accordance with the provisions of N.J.S.A. 9:6-8.10a and b.

#### 10:16-2.2 Functions of the Board

(a) The Board shall be multidisciplinary in nature and shall serve to give an objective review of the case circumstances and to develop recommendations, for those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The Board shall examine ways to achieve better coordination of effort on child welfare and child protective services cases to promote prevention of serious incidents or deaths of vulnerable children and shall seek the involvement of many different professionals and agencies that provide services to children.

#### 10:16-2.3 Responsibilities of the Board

(a) The Board is responsible for reviewing those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The Board shall not participate in any discussion or determination regarding employee disciplinary action.

#### 10:16-2.4 Review by the Board

Board members shall have the authority to review all case materials pertinent to the situation and to interview DYFS and other Department of Human Services staff, as appropriate.

#### 10:16-2.5 Composition of the Board

(a) The Board shall consist of at least five members, in accordance with the following:

1. The Deputy Commissioner, who shall act as chairperson of the Board;

2. The Director of the Division of Youth and Family Services;

3. At least one State government-employed person from within or outside the Department of Human Services, as chosen by the Deputy Commissioner; and

4. At least one non-State government-employed person, who shall participate on a case-by-case basis. This member or members shall be chosen by the Deputy Commissioner from the fields of medicine, child welfare, law enforcement, judiciary, courts, social work or other related fields, including voluntary or child advocacy agencies. The

Deputy Commissioner is authorized to choose different persons to serve as Board members in this category on a rotational basis, as necessary and appropriate.

(b) No designee may attend in a member's stead.

(c) The Board may seek the advice of the following persons within or outside State government in a consulting capacity in specific cases: persons skilled in the disciplines of pediatric medicine, forensic medicine, nursing, psychiatry, psychology, social work, child welfare practice or education, law enforcement, judiciary, child or human care advocacy or other related fields, when facts or circumstances of a particular case warrant such additional expertise. The chairperson of the Board may also invite representatives of other public agencies authorized to investigate child abuse and neglect within the provisions of the law (N.J.S.A 9:6-8.10a) to join the Board in its review of a case.

**10:16-2.6 Conflicts of interest**

(a) If, in reviewing a child death or critical incident case, a Board member becomes aware of a potential conflict involving a personal or family involvement in the case or of any other issue that would or could jeopardize the objectivity of the review, the member shall discuss his or her concerns with the Deputy Commissioner regarding his or her participation in the review of that case.

(b) If the Deputy Commissioner concludes that there is a conflict that would impede the review's objectivity, the Deputy Commissioner shall require the affected Board member to withdraw from participation in the case under review and select an alternate to serve in his or her place.

**10:16-2.7 Quorum**

A quorum of the Board shall be not less than three members, or a majority of the current membership of the Board, whichever is greater. Of this quorum, at least two, or a majority of the quorum, whichever is greater, must be members who were appointed under either N.J.A.C. 10:16-2.5(a)3 or (a)4.

**SUBCHAPTER 3. PROCEDURES OF THE BOARD**

**10:16-3.1 Reporting of child death and critical incidents**

(a) The Director shall ensure that the chairperson of the Board is kept advised of each situation as described in N.J.A.C. 10:16-1.2, Scope.

(b) The Director shall cause an immediate verbal communication to be transmitted to the chairperson of each occurrence of a situation described in N.J.A.C. 10:16-1.2, Scope, followed by a brief written report within no more than 10 working days after the Director receives knowledge of the incident or death.

**10:16-3.2 Internal review**

(a) The appropriate local, regional and central offices of DYFS shall complete an internal review of the case no later than 30 working days after receiving knowledge of the incident or death, or sooner if requested by the chairperson of the Board. The internal review may take longer than 30 working days if the delay is caused by circumstances beyond the control of the Division.

(b) After DYFS has completed the internal review of the case, the Director shall inform the chairperson of the status of the case and shall forward to the chairperson and to each Board member a copy of the case materials and the internal review summary.

(c) The chairperson shall schedule a meeting of the Board to discuss the case within 30 working days of receiving the case materials and internal review summary, such meeting to be held within 30 working days after the notice of the meeting is received by the Board members.

**10:16-3.3 Case materials**

(a) Case materials shall include, as applicable, the following documents:

1. The child's case record;
2. Copies of DYFS Service Information System data;
3. Police, prosecutor, fire, physician, psychologist, psychiatric and hospital records, as applicable and permissible; and
4. Autopsy results and death certificate, when available.

(b) Case materials shall also include information about:

1. The child and his or her family and household;
2. The nature and circumstances of the incident;
3. The nature of DYFS or Department of Human Services involvement with the child, family, or household;
4. A summary of Department of Human Services or other agency responses to the death or incident;
5. A summary of the circumstances leading to the child's death or the incident; and
6. Recommendations regarding the family, the alleged perpetrator, and DYFS or Department of Human Services operations.

**10:16-3.4 Periodic summary report**

(a) The Board shall periodically, but no less frequently than every two years, prepare for the Commissioner and the Director a summary report of recommendations, for those situations described in N.J.A.C. 10:16-1.2, Scope.

(b) The periodic summary report may include the Department's and/or the Division's comments or corrective or follow-up actions that have been or will be taken by the Department of Human Services or by the Division of Youth and Family Services regarding reported situations.

**10:16-3.5 Release of periodic summary report**

(a) The Commissioner shall release to the public the periodic summary report provided under N.J.A.C. 10:16-3.4 no later than 60 days after he or she receives it.

(b) Any such information released shall in no way contain any direct or indirect personally identifying information about the child or children or their families whose deaths or critical incidents are the basis of the periodic summary report.

**10:16-3.6 Confidentiality**

(a) All proceedings and records, including reports of the Board's discussions and recommendations, of the Board are confidential, except as herein provided under N.J.A.C. 10:16-3.5, Release of periodic summary report, and are subject to applicable Federal and State laws and regulations governing access to and confidentiality of records. Also, information and materials obtained by Board members and consulting persons are confidential and shall be treated as confidential by Board members and consulting persons.

(b) Upon joining the Board, each member shall complete and sign a sworn statement agreeing to abide by all applicable State confidentiality laws and rules concerning child abuse and neglect. Consulting persons shall complete and sign a similar sworn confidentiality statement when they participate in a Board review. Any persons supplying clerical support to the Board shall also complete and sign a sworn confidentiality statement.

(c) The report of the Board's discussion shall be limited to internal use by the Department and the Division and are not to be released outside of the Department or the Division.

(d) The periodic summary report shall omit any direct or indirect client identifying information.

**(a)**

**DIVISION OF FAMILY DEVELOPMENT**

**General Assistance Manual**

**Elimination of Inpatient and Outpatient Hospital**

**Medical Services, Eligibility of Aliens, Employable/Unemployable Status, Time-Limited Eligibility Periods for Employables, Pharmaceutical Payment Procedures, Time-Limited Notice Provisions**

**Adopted Amendments: N.J.A.C. 10:85-1.1, 2.1, 3.1, 3.2, 3.3, 3.4, 3.5, 4.1, 4.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.8 and 7.2**

**Adopted New Rule: N.J.A.C. 10:85 Appendix D**

**Adopted Repeals: N.J.A.C. 10:85-5.1 and 5.2**

## ADOPTIONS

Proposed: September 8, 1992 at 24 N.J.R. 3075(a).  
Adopted: November 19, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.  
Filed: November 19, 1992 as R.1992 d.503, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).  
Authority: N.J.S.A. 44.8-111(d), Senate Bill 1000 as introduced June 18, 1992, enacted June 30, 1992 and effective July 1, 1992.  
Effective Date: December 21, 1992.  
Operative Date: January 1, 1993.  
Expiration Date: December 20, 1994.

**Summary of Hearing Officers' Recommendations and Agency Responses:**  
Public hearings were held on October 19, 1992 in the City of Newark and on October 21, 1992 in the City of Camden. The Hearing Officers for both hearings were David Heins, Assistant Director, and Pearl Elias, Assistant Director, Division of Family Development. The Hearing Officers did not provide any recommendations.

**Summary of Public Comments and Agency Responses:**  
A list of commenters follows:  
Richard Preissler, Bergen County Board of Social Services  
Brenda M. Spratt, Camden County Board of Social Services  
Carole Trakimas, Center for Food Action in New Jersey  
Alan Zalkind, Essex County Department of Citizen Services  
Lee Porter, Fair Housing Council of Northern New Jersey  
Kate Meil, Citizen  
Kathleen A. Brady, Monmouth County Board of Social Services  
Dorothy Linderman, Township of Mt. Olive Municipal Welfare Department  
Diane Goetz Stutesman, Municipal Welfare Association of New Jersey  
Betty Jane Brown, Passaic County Welfare Association  
Anna S. Hofgesang, Princeton Borough Local Assistance Board  
Marjorie G. Blaxill, Princeton Township Local Assistance Board  
Claire L. Scarano, Citizen  
Mary M. Enyingi, Somerset County Municipal Welfare Directors Association  
Mary Ellen Tango, Union County Municipal Welfare Association  
Anthony W. Salters and Floyd Melvin, United Community Corporation  
Robertta C. Schott, West Windsor Township Local Assistance Board  
Eileen White, Citizen  
Kathy Wonk, Citizen  
Antoinette Ayres, Mt. Olive Township Local Assistance Board  
Sharon Lumford, Citizen  
Lt. William A. Bamford, The Salvation Army  
Gerald Weaber, Essex County Offender Aid & Restoration (OAR) Inc.  
Diane Thomas and Geneva Johnson, Our Mission for God  
Trish Morris-Yamba, Newark Day Center  
Marie Satterfield, Tremont Hotel, Newark  
Valerie Van Dunk and Sandra Ramos, Strengthen Our Sisters, Inc.  
Mimi Abramovitz, author and professor  
Louise S. Conklin, Coalition for Human Priorities of New Jersey  
Robert Bacon II, East Orange/Orange Community Development Corporation  
Mayor Sharpe James, Newark, New Jersey  
John J. Hamilton Jr., Past Essex County Commander of the American Legion  
Michelle Munsat, National Organization for Women (NOW), NJ Chapter  
Barbara Fedoroff, Programs for Parents, Inc.  
Assemblyman Harry A. McEnroe, 28th District, Essex County  
Dr. Cathy Deats, Township of Glen Ridge Borough Municipal Welfare Department  
Jamie Harrison, The League of Women Voters of New Jersey  
Raul Mattei, Jersey City Municipal Welfare Department  
William G. Dressel Jr., New Jersey State League of Municipalities  
Cornelia B. Thum, Somerset County Board of Social Services  
Ronald I. Coun, Jewish Vocational Service  
Assemblywoman Loretta Weinberg, 37th District  
Peter A. Lund, CEAS Committee of the Passaic County Human Services Advisory Council  
Bernice A. May, Borough of Fair Lawn Department of Human Services

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Jaime R. Llanso, Emergency Food Coalition of Passaic County  
Ed Jesteadt, Local Assistance Board of the Borough of Flemington  
Mayor Paul Crane, Township of Willingboro  
Donald L. Fauerbach, New Jersey Conference of Mayors  
Mayor Douglas H. Palmer, City of Trenton  
Mayor Aaron A. Thompson, City of Camden  
Rev. Edward Walsh, Pastor of Immaculate Heart of Mary Church in Camden  
Phyllis Ehrenfeld, The Ethical Culture Society of Bergen County  
Mayor James M. Cahill, City of New Brunswick  
Angelica M. Harrison, Hudson County Comprehensive Emergency Assistance (CEAS) Committee  
Charles Gillon, Union County (CEAS) Committee  
Rowan C. Pearce, Good Samaritan Center in Camden  
Leighton Holness, Legal Services of New Jersey  
Harold B. Garwin, Esq., Community Health Law Project, Elizabeth, New Jersey  
David P. Lazarus, Esq., Community Health Law Project, Elizabeth, New Jersey  
David J. Popiel, Esq., Community Health Law Project, Elizabeth, New Jersey  
Mac D. Snyder, Esq., Community Health Law Project, Elizabeth, New Jersey  
Steven Leder, Esq., Community Health Law Project, Elizabeth, New Jersey  
Karen A. Spinner, New Jersey Association on Correction  
Thomas D'Alessio, Essex County Executive  
Senator Wynona Lipman, District No. 29, Newark  
Mayor Cardell Cooper, East Orange  
Councilwoman Audrey Fletcher, Township of Montclair  
Jackie Pantello, Bergen County Coalition for the Homeless  
Bruce Potter, East Orange Municipal Department  
Rev. Willie Simmons, United Community Corp., Newark  
Adele Latourette, Center for Food Action, Englewood  
Bonnie Perry, Newark Emergency Service  
Jacqueline West, Newark Emergency Service  
Kathleen Diciara, Community Food Bank of New Jersey  
Sharon Reilly-Tobin, MEND Meeting Emergency Needs with Dignity  
Anne Miller-Christensen, National Coalition for Homeless Steering Committee of Hudson County  
Councilman Henry Martinez, City of Newark  
Kurt Culbreath, United Community Corp.  
Melville Miller, Legal Services of New Jersey  
Mark Parrott, Community for the Homeless in Newark  
Rev. Steven Parrott, Lighthouse Community Service in Newark  
Felipe Chavana, Essex County Legal Services  
Dianna Fuller, Essex/Newark Legal Services  
Rev. Bruce Baker, Inter-Religious Fellowship for the Homeless  
Gerald Weaber, Offender and Restoration  
Augustus Blatch, The Market Street Mission  
Elliot Katz, Middlesex Interfaith Partners with the Homeless  
Robert Monks, Paterson Coalition for Housing  
Jackie Tantillo, Bergen County Coalition for the Homeless  
Maya Weintraub, National Org. Legal Services Workers  
Talia Bernal, Hispanic Women Resource Center  
Kevin Tiebout, Montclair Welfare Department  
William Epps, International Committee Against Racism  
James Curry, Light House  
Phyllis Ellenfeld, Housing Justice Task Force  
Michael Gerhardt, B.C./C.A.P., Hackensack  
Gloria William, Vista Volunteer  
Susan Rosenberg, Salvation Army  
Myrna Bartee, East Orange Department of Public Welfare  
Donna Jackson, Citizen  
Edward Walsh, Social Issues Council  
Assemblyman Wayne Bryan, District #5, Camden  
Ann Gorman, Camden Regional Legal Services  
Jesse Coley, Project Home  
Michael Phillips, Volunteers of America  
Calvin Brown, Volunteers of America  
Wendell O'Bryant, Volunteers of America  
Melvin Stokes, Volunteers of America  
Ronald Rovere, Volunteers of America  
Marvin Trice, Volunteers of America  
Barrett Trensil, P.A.T.H., Inc.

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## ADOPTIONS

Mayor Willard Wilkinson, Berlin  
Curtis Sullivan, Volunteers of America, Blackwood  
William Spenser, Parkside Business and Community in Partnership Association  
Andre Jackson, P.A.T.H., Inc.  
Sharon Miller, YMCA  
Rosemary Jackson, Camden Urban Women Center  
Mozelle Freeman, Citizen  
James Vahy, Citizen  
Calvin Briggs, Citizen  
Sonja Abrew  
Councilman Branch, Citizen  
Bonnie Ruffin, Citizen  
Mike Ryan, Citizen  
Ina Lewisohn, Citizen  
Jim Kimble, County of Middlesex Human Services Advisory Council  
Angela Mackaronis, Middlesex County CEAS Committee

**Note:** Individuals who are General Assistance and homeless clients whose identities are confidential pursuant to N.J.A.C. 10:85-1.5 also made comments.

**COMMENT:** A majority of the commenters were opposed to the proposed amendment which sets forth a six-month time-limited period of eligibility in a State fiscal year (SFY) for General Assistance (GA) employable individuals. Many commenters stated that the proposed amendment will increase homelessness and shift financial responsibilities from the State to local, private and non-profit entities which are already overburdened. Another concern was that the safety net of food, shelter, and social services to the poor and most needy population would be eliminated at the time of year which would result in a threat to their very survival. It was further viewed that this proposed amendment would eliminate the incentive and potential for successful participation in training and employment-related activities. A common predicted outcome of primary concern among the commenters is that if this proposed amendment is adopted, criminal and violent activities may escalate to the point of riots.

**RESPONSE:** The Department takes note of the numerous concerns of the commenters regarding the restricted eligibility period for employables. However, due to the Appropriations Act (Senate Bill 1000 as introduced June 18, 1992, enacted June 30, 1992 and effective July 1, 1992) and the fact that no alternative funding sources have been identified, the Department has no other recourse but to adopt these amendments.

**COMMENT:** It is also viewed as unduly harsh for any outstanding months of other penalties of ineligibility incurred by employable clients to be included when determining the six-month limit for such clients.

**RESPONSE:** The Department recognizes the commenter's concern. Months of penalty result because an employable GA client does not comply with GA eligibility requirements, including work/training responsibilities, or because of receipt of duplicative assistance in more than one municipality. As such, since the client is provided due process, and such penalty was the direct result of the inappropriate activity of the individual in question, those penalty month(s) are considered as month(s) in which assistance could have been provided except for the individual's overt action or inaction.

**COMMENT:** A majority of the commenters were vehemently opposed to the lowering of the age from 65 to 55 for unemployable status in GA. It is viewed as discriminatory, degrading, prejudicial and biased and "creates an employment gap in society as bad, if not worse, than the generation gap." It is further viewed that such a definition of an unemployable is in direct opposition to the policies of the Social Security Administration, the Department of Labor, the Division of Vocational Rehabilitation and, indeed, the views of society as a whole. Many of the commenters indicated that contradictory to the overall goal of saving money, this particular amendment would increase the duration of State funded GA expenditures for an additional seven to 10 years. One commenter expressed understanding and support for the reasoning behind classifying persons age 55 and over as unemployable.

**RESPONSE:** The proposed amendment to lower the age of a GA client considered unemployable from age 65 to 55 was not intended to cast a discriminatory or degrading connotation on individuals in that age group; rather, it was intended to be a positive measure to ease the impact of the currently depressed job market on those individuals. The Department takes note of the positive comment. However, in light of the objections by the majority of the commenters to the lowering of the age for GA unemployables from 65 to 55, the Department shall retain the

age at 65 at N.J.A.C. 10:85-3.1(a)5i in order to comport with the policies of related programs of the Social Security Administration, the Department of Labor and the Division of Vocational Rehabilitation, which recognize the potential for employment of individuals up to at least a minimum of age 65. The Department does not believe that the retention of the age at 65 at N.J.A.C. 10:85-3.1(a)5i will be detrimental to individuals in that age group.

**COMMENT:** Although the concern for the elimination of inpatient and outpatient hospital medical services was evident in comments related to other aspects of the GA cuts, some commenters were specific in their opposition to this proposed amendment. Those commenters indicated that elimination of such medical services would not only shift medical financial responsibilities to the already overburdened Health Care Trust Fund Charity Care, but may also pose a substantial life threatening situation for GA recipients. In addition, it is suggested that the Appropriations Act concerns the elimination of outpatient hospital medical services rendered on or after July 1, 1992 to recipients of GA only and not other individuals or families who may qualify for payments of excessive medicals under the GA program.

**RESPONSE:** The commenters' concerns are duly noted. However, due to the Appropriations Act, the Department has no other recourse but to adopt the amendment. In response to the excessive medical payments comment, the Department views that since the excessive medical payment provision is under the GA program, it is also affected by the terms of the Appropriations Act and therefore would affect those individuals and families which are ineligible for any other assistance program, including GA.

**COMMENT:** One commenter specifically supported the elimination of illegal aliens from eligibility for GA; another opposed this exception and questioned the appropriateness of promulgating rules as a result of the Legislature's budget process; while still another indicated that we cannot turn our backs on those who are truly in need no matter where they are born.

**RESPONSE:** The Department takes note of the supporting comment and the concerns of the other commenters. The Department, however, has no other recourse but to adopt the amendments in accordance with the provisions of the Appropriations Act.

**COMMENT:** The appropriateness of the definition of legal alien status at N.J.A.C. 10:85-3.1(a)2 is questioned by one commenter to the effect that it differs with the definition of those aliens identified by the Appropriations Act.

**RESPONSE:** The Department acknowledges that the definition needed clarification as suggested by the commenter; thus, language is amended at N.J.A.C. 10:85-3.1(a)2 to ensure that the definition concerning aliens comports with the Appropriations Act.

**COMMENT:** N.J.A.C. 10:85-3.2(c)6 requires all applicants for GA other than United States citizens to provide an alien registration number ("A" number) to document their alien status. Not all aliens permanently residing in the United States under color of law are given an "A" number by the Immigration and Naturalization Service. Such a requirement illegitimately uses the verification procedures to create an eligibility requirement that cannot be met. Pending receipt of the necessary documentation, assistance should be provided to the individual. It was further noted that the verification process could result in the INS using information on the individual, obtained through this process, to begin deportation proceedings or for other purposes, rather than the intended verification of the immigration status, since no safeguards appear to have been provided by INS as in the other Federally-funded assistance programs.

**RESPONSE:** The Department acknowledges that the INS utilizes other registration indicators to designate the various alien statuses and, therefore, has deleted references to the specific "A" number indicator throughout the text at N.J.A.C. 10:85-3.2(c)6 and revised language to allow flexibility for a more generic interpretation. Additionally, language is added to ensure that assistance is provided to an otherwise eligible individual pending receipt of the required documentation since the Department observes that this provision was inadvertently omitted at time of proposal. Clarifying text was also added to ensure confidentiality of information concerning alien status received through the INS verification system in that such information is for use only in determining eligibility and shall not be used adversely toward the client by the MWD or INS, with the exception of instances of fraudulent activity used to establish eligibility for GA. It should be noted that an agreement is in process between the Department and INS to provide the same safeguards as for the Federally-funded programs using the verification system of INS.

COMMENT: The commenter noted that "each" alien admitted for permanent residence is not required to have sponsors under the Immigration and Nationality Act as indicated in the proposed amendments at N.J.A.C. 10:85-3.4(b)1.

RESPONSE: In light of the above comment, language is revised at N.J.A.C. 10:85-3.4(b)1 to indicate that only those aliens who are required to have sponsors in accordance with INS requirements will be required to submit information on such sponsors.

COMMENT: A commenter views the action of our State Legislature of curtailing the entitlement of GA to eligible employable individuals as an appropriate and necessary measure in order to balance our State's budget. The commenter supports this endeavor if no other alternative funding source can be identified to substantiate maintaining the GA program for employables as is.

RESPONSE: The Department takes note of the favorable comment.

COMMENT: Legal Services of New Jersey urges the Department to abandon the proposed amendments. Legal Services views the Appropriations Act on which the proposed amendments are based to be in violation of several State Constitutional requirements because it has the effect of constituting major amendments to N.J.S.A. 44:8-107 et seq. and 124 et seq.

RESPONSE: The Department maintains its position that the proposed amendments are mandated by Senate Bill 1000, repeals which at this time serves as the authority to promulgate these amendments, repeals and new rules.

COMMENT: The Appropriations Act only applies to State fiscal year (SFY) '93 and there is no authority to limit GA eligibility or GA/EA eligibility for "employables" for any other SFYs.

RESPONSE: The Department recognizes that the Appropriations Act language only limits GA eligibility to six cumulative months in SFY '93 and in effect would also affect GA/EA eligibility for employables for only SFY '93 as well. Since the Department notes that the language of the amendments is generic in nature for eligibility purposes and not specific to any SFY, the need for any subsequent modifications will be addressed through the normal rulemaking process.

COMMENT: A commenter disagrees with the amendment at N.J.A.C. 10:85-3.1(a)6i which states that any part of a month for which assistance is provided counts as a full "calendar month" in determining months of time-limited eligibility for employable clients.

RESPONSE: The Department recognizes the commenter's concern; however, it maintains that the amendment is consistent with the monthly payment concept for GA. The GA payment month represents a full entitlement payment or partial payment based on a payment month period of 30 and 1/3 days.

COMMENT: The Appropriations Act does not restrict the right to GA/EA benefits to only that period of SFY '93 during which GA cash assistance is being received. The EA program is an integral component of the GA program, the purpose and policy of which embodies EA as a last resort for the homeless. It is suggested that GA recipients who do not utilize their entitlement to EA benefits while in receipt of GA cash assistance be able to "bank" such benefits for use when cash assistance is no longer available as long as the individual would continue to cooperate in his or her searches for employment and/or housing.

RESPONSE: EA benefits under the GA program are not an entitlement benefit but are, however, contingent on GA eligibility and are provided only in certain defined situations. Therefore, the "banking" concept would not be a feasible alternative.

COMMENT: N.J.A.C. 10:85-7.2(b)2 should be modified to clarify that appropriate timely and time-limited notices and notice of appeal rights shall be provided to GA/EA recipients as delineated at N.J.A.C. 10:85-4.6.

RESPONSE: The notice provisions of N.J.A.C. 10:85-4.6 shall also be applicable to GA/EA recipients as a normal course of action. The notice provisions of N.J.A.C. 10:85-7.2(b)2 are specific to the expiration notice requirements concerning the time-limited six-month period of eligibility for employables. The language of Form GA-33C, Time-Limited Benefit Period Expiration Notice for General Assistance Employables, specifically includes notification of termination of EA benefits.

COMMENT: The definition of "unemployable" individuals should be expanded to include individuals whose education, training or language skills preclude them from obtaining employment and those individuals who have made reasonable efforts to obtain work and have not been able to do so.

RESPONSE: Unemployable individuals are defined in the regulations at N.J.A.C. 10:85-3.1(a)5. Such suggested modifications would constitute

a substantive change requiring separate regulatory amendment since the text as adopted was merely recodified language from N.J.A.C. 10:85-3.2(g)2v. In any event, the commenter's suggestion to include individuals whose education, training or language skills preclude them from employment and those who have made reasonable efforts to obtain work in the definition of "unemployable" would not constitute unemployable status. Such individuals are helped through the General Assistance Employability program to obtain necessary education, training and work experience opportunities.

COMMENT: A commenter requested the repeal of the provision at N.J.A.C. 10:85-3.2(g)7 concerning the negligence standard for termination from employment.

RESPONSE: Upon reviewing the comment in the context of the entire rule text at N.J.A.C. 10:85-3.2(g)7, the Department submits that the commenter is focused on the current existing regulation and is not addressing the specifics of the proposed amendments. Any consideration of a repeal of the negligence standard provision would require a review and separate rulemaking process.

COMMENT: Language at N.J.A.C. 10:85-3.2(c)5 should be added to clarify that GA eligibility is not conditional on an applicant(s) having a Social Security Number at time of application.

RESPONSE: The Department submits that existing text at N.J.A.C. 10:85-3.1(c)5i and ii addresses the commenter's concern.

COMMENT: Persons who are employable, in accordance with N.J.A.C. 10:85-3.2(a)5ii, retain such employable status until hospital discharge. That provision should be modified so that the status of an individual (employable vs. unemployable) should be changed based upon disability criteria as enumerated in other parts of the regulations regardless of hospitalization.

RESPONSE: The Department submits that the portion of the text at N.J.A.C. 10:85-3.1(a)5ii addressed by the commenter refers to the assistance payment standard that is to be applied for those GA recipients who are in employable "payment" status, prior to entering a hospital for care and treatment. However, contingent on the individual's disabilities upon discharge, a change in his or her status may be warranted and would be duly addressed at that time. The Department concludes that this provision may be reexamined for future rulemaking activity.

COMMENT: N.J.A.C. 10:85-3.1(a)5x sets forth complex medical and vocational criteria to be used in determining whether an applicant is unemployable and requires such determinations to be made by municipal welfare workers who lack training and background to make those determinations. Also, the definitions of incapacity are not consistent and are ambiguous. It is also suggested that the Division of Family Development (DFD) prepare a sample form designed to solicit the information needed for physician certification as required in this subsection.

RESPONSE: The Department submits that the text at N.J.A.C. 10:85-3.1(a)5x does not define "incapacity" in specific terms; however, it sets forth various medical and vocational determination criteria that are needed to fully address the myriad of circumstances which are common to the GA population and which may certainly render such individuals to be unemployable by reason of incapacity. The criteria, which are quite comprehensive, allow incapacity determinations to be made through the combined efforts of the experienced municipal welfare department personnel and the DFD's General Assistance Program Unit's disability review section. The suggestion for the development of a sample form for physician's certification is noted and will be taken into consideration for future development.

COMMENT: N.J.A.C. 10:85-5.1(a)1i states that payments will not be authorized for medical bills which may be paid from benefits provided through Medicaid. This language may be interpreted to deny medical care to those who need it most, the disabled, for an inordinate period of time before an SSI application is approved.

RESPONSE: The Department concludes that individuals are eligible for GA pending an SSI application approval and would not be denied medical care services available under GA. The cited provision, however, does stipulate that such medical bills would be required to be processed for payment through Medicaid if and when applicable.

COMMENT: It is suggested that all individuals prior to expiration of benefits should be provided separate notice in bold lettering describing the eligibility of GA for unemployables and access to apply for such benefits.

RESPONSE: The Department concludes that Form GA-33C serves the purpose of the commenter's suggestion, since this form will be sent to all GA employables one month prior to the expiration of their six-

month period of eligibility, and contains specific language concerning eligibility and application for GA as an unemployable person.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

(OFFICE OF ADMINISTRATIVE LAW NOTE: The text of N.J.A.C. 10:85-3.2(g) and (g)2 reproduced below reflects those paragraphs as amended subsequent to the instant proposal (see 24 N.J.R. 2160(b) and 3356(a)).

#### 10:85-1.1 Purpose of the General Assistance program

(a) General Assistance is a program under which financial and medical aid is provided by municipal departments of welfare to persons who are citizens of the United States or who have eligible alien status and are currently ineligible for participation in any other public assistance program in New Jersey.

(b) Each municipality in New Jersey is required by law (Chapter I of Title 44, Revised Statutes) to provide financial assistance and medical care to all eligible persons residing in the community at the time of application and not otherwise provided for under the laws of this State and to such other persons who may be in the municipality and require emergency assistance. (See N.J.A.C. 10:85-3.2(f) for definition of resident and N.J.A.C. 10:85-4.6 for emergency assistance.)

1. The General Assistance Manual is a compilation of rules based on State law (Chapter 8 of Title 44, Revised Statutes) which govern the provision of assistance to eligible needy persons by all municipalities and authorize 100 percent State funding for non-administrative costs incurred by those municipalities in the administration of the General Assistance program.

(c)-(f) (No change.)

(g) Financial assistance for maintenance requirements or other needs, including medical assistance, shall not be authorized through General Assistance when, during the same period, such needs are actually being provided by any other source.

1. (No change.)

2. Receipt of duplicate assistance from more than one MWD in any one month shall render the client ineligible for General Assistance benefits for a period of 90 days beginning with the month subsequent to the month in which the benefit infraction was identified. Sanctions imposed are for additional/cumulative periods of ineligibility for each infraction.

i. (No change.)

3. The following situations shall be included as duplicative assistance within the meaning of the penalty provisions stipulated in this subsection:

i. General Assistance benefits received from any MWD during any imposed sanction period, such as set forth at N.J.A.C. 10:85-3.2(g)7; and

ii. General Assistance benefits received from any MWD during the ineligibility period for employable clients in a State fiscal year as set forth at N.J.A.C. 10:85-3.1(a)4i and 3.1(a)6;

#### 10:85-2.1 Statutory obligation to provide assistance

It is the basic obligation of every municipality in the State to provide financial assistance and medical care, to the extent established by State regulations and as State resources permit, for all eligible persons living in that community who are in need. This essential obligation is embodied in N.J.S.A. chapter 1 of Title 44.

#### 10:85-3.1 Persons eligible for General Assistance

(a) General **\*[assistance]\* \*Assistance\*** shall be provided to all eligible needy persons who, while in the State, are entitled to receive such assistance. Entitlement does not extend to persons who have been found eligible for or are recipients of public assistance programs administered by the county welfare agency, or who have been found ineligible for such programs due to voluntary refusal to comply with program requirements. (See also (c) and (d) below.)

1. Exceptions relevant to medical care:

i. Individuals and families who are ineligible for public assistance (General Assistance, AFDC, Refugee Resettlement Program) or for SSI payments because their income exceeds the standards

established for the applicable program may apply to the MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this section are not applicable to the payment of bills for inpatient or outpatient hospitalization or for medical services rendered to an inpatient or outpatient;

ii. (No change.)

2. Citizen/alien status: To be eligible for GA an individual shall be either a citizen of the United States or **\*[an]\*** otherwise **\*[lawful permanent resident of the United States]\* \*permanently residing in the United States under color of law\***. Such **\*[lawful permanent residents]\* \*permanently residing persons\*** include individuals **\*[admitted under color of law or any alien who is lawfully present in the United States]\* \*lawfully present in the United States under color of law including any alien who is lawfully present in the United States\*** as a result of the application of the following sections of the Immigration and Nationality Act, 8 U.S.C. §1101 et seq: Section 207(c) concerning refugees; Section 203(a)(7) (prior to April 1, 1980) related to conditional entrants; Section 208 concerning asylees; and Section 212(d)(5) covering parolees.

i. An alien who is legally admitted as a student or visitor shall not be eligible for GA.

ii. Legal alien status shall be verified and documented in accordance with provisions set forth at N.J.A.C. 10:85-3.2(c)6.

iii. Sponsorship of an alien admitted for permanent residency shall be pursued in accordance with provisions at N.J.A.C. 10:85-3.4(b)1.

3. In the GA program, there are two distinct categories of persons eligible for financial assistance, those who are "employable" and those who are "unemployable."

4. An "employable" person is any person applying for or receiving assistance who is able-bodied and does not meet any one of the criteria of "unemployable" delineated in (a)5 below.

i. Eligible individuals determined "employable" shall be eligible to receive benefits for up to a maximum cumulative total of any six calendar months in a State fiscal year (SFY) (July 1-June 30) (see (a)6 below).

5. An "unemployable" person is any person who meets any of the unemployable criteria below:

i. Persons who are **\*[55]\* \*65\*** years of age or older;

ii. Persons receiving inpatient hospital care and treatment who were receiving an unemployable grant prior to entering the hospital. (Persons who were listed as employable shall retain such employable status until hospital discharge);

iii. Persons who are residents in long term care facilities;

iv. Persons in the first 12 months of residential treatment in centers licensed by the New Jersey Department of Health for the treatment of drug abuse, when medical evidence exists that the residential treatment is necessary. The 12 month period starts anew for each commencement of treatment, previous incomplete or unsuccessful courses of treatment notwithstanding;

v. Persons normally eligible to receive RSDI (Title II benefits), SSI or Railroad Retirement benefits on the basis of disability, but due to recovery of overpayments or administrative delays in that respective program, payments are being withheld;

vi. Persons who have been determined to be legally blind by the New Jersey Commission for the Blind and Visually Impaired;

vii. Persons in the third trimester of pregnancy when an examining physician certifies to both the pregnancy and its term;

viii. Pregnant persons when an examining physician certifies that employment poses a threat to the mother or the fetus;

ix. Persons whose presence is required at home to care for one or more children under age six or for disabled family member(s). No more than one person in a household may be considered unemployable for this reason without written authorization from the Division of Family Development (DFD)/GAP Unit; and/or

x. Persons determined to be incapacitated by the MWD are unemployable when such determination of incapacity is supported by any of the following circumstances:

(1) Written certification by an examining physician that the individual is, by reason of an identified physical or mental defect, disease, or impairment, unable to engage in any useful occupation. Such certification shall include the date of examination, diagnosis,

length of incapacity, functional limitations, prescribed treatment, an indication of whether or not reevaluation will be necessary, and the examining physician's signature;

(2) An obvious disability or impairment which makes employment unrealistic at the time of application/redetermination. A determination on this basis shall be valid for up to three months or such longer period as may be specified under (a)5x(4) below;

(3) The individual's history of unemployment and lack of vocational training and/or education, combined with medical evidence of the existence of a mental or physical disability or impairment, negates all possible employment. Facts leading to such determination must be recorded in the case file. A determination on this basis shall be valid for three months or such longer period as may be specified under (a)5x(4) below; and/or

(4) Written Record of Action (Form GA-38) from DFD/GAP Unit. The record may be applied for by MWD submission of such documentary material as the MWD finds appropriate. This may include, but is not limited to, medical or hospital reports and the MWD's own statement of specific observations and recommendations with reasons. Form PA-5/DRS-1, Examining Physician's Report, may be used in this process. Social information submitted by the MWD should include at a minimum, the client's age, educational level attained, experience, and general description of the individual, especially as the description may relate to employment. The DFD/GAP Unit shall consider the individual's age, experience, education, vocational training, and work history as well as physical or mental defects, diseases or impairments in determining whether an individual is able to engage in any useful occupation for which he or she has competence, or his or her ability to engage in retraining.

6. Criteria concerning the eligibility period for receipt of GA benefits of employable persons, up to a maximum cumulative total of any six calendar months in a State fiscal year (SFY) (July 1-June 30), are as follows:

i. All or any part of a month for which assistance is provided shall be considered a calendar month for the purpose of determining the eligibility period for employable clients.

ii. The eligibility period in a SFY for the receipt of assistance for employables shall be determined based on when the months of GA eligibility fall within the SFY.

(1) Example 1: A GA employable client receives four months of GA benefits in September, October, November, and December. The case is terminated by the MWD in January due to receipt of earned income. The individual reapplies in April and is determined GA eligible and employable. This individual may be eligible to receive assistance benefits for up to two months of the three remaining months in the SFY, which would constitute his or her maximum six calendar month eligibility period. If instead, the individual reapplied in June, that individual's eligibility period for that SFY would only be five months, not the maximum six months.

(2) Example 2: A GA employable client who receives six months of GA benefits from July through December shall have exhausted his or her eligibility period for receipt of assistance for that SFY and shall not be eligible for any further GA assistance benefits for the remaining months of January through June.

iii. Employable clients who incur any penalty of ineligibility shall be considered to be in receipt of assistance during the penalty month(s) and those penalty month(s) shall be counted when determining the SFY eligibility period for such clients.

iv. Employable recipients who terminate benefits at their own request, or for whom benefits are terminated by the MWD due to a determination of ineligibility for a reason other than a sanction penalty, shall be considered to have been in receipt of assistance only for those months in which assistance benefits were actually provided.

v. The limited eligibility period for GA employable clients shall also apply to the period of eligibility for Emergency Assistance (EA) and Temporary Rental Assistance (TRA) benefits, since such benefits are contingent on GA eligibility.

vi. Appropriate timely and time-limited notices shall be provided to employable GA clients whose SFY eligibility period ends in

accordance with the notice provisions for GA at N.J.A.C. 10:85-7 and for EA at N.J.A.C. 10:85-4.6.

vii. At the time of expiration of the time-limited eligibility period for employables, the MWD shall advise the client verbally and in writing that if his or her circumstances change to an unemployable status before the end of that State fiscal year, he or she may reapply for assistance.

(b) (No change.)

(c) Rules concerning persons found ineligible by CWA are as follows:

1. Families:

i. (No change.)

ii. Families determined by the CWA to be ineligible for AFDC due to eligibility factors other than financial need (such as age of children) may be eligible for general assistance. Applications will be accepted and processed in accordance with the rules stated in this manual.

(1) (No change.)

iii. (No change.)

2. (No change.)

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

#### 10:85-3.2 Application process

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

(c) Rules concerning taking applications are:

1. Application/affidavit: Any person who indicates a wish to apply for General Assistance shall be recognized as an applicant. Such individual will be assisted by an MWD worker in completing the application (Form GA-1). He or she shall then be required to sign under oath the attached affidavit attesting to the correctness of his or her statements.

i.-iii. (No change.)

iv. The following procedures apply at the time of application:

(1) All applicants shall be required to sign two copies of Form GA-51 (Important Reminder of Your Obligation to Report Changes). The applicant shall retain one copy and the original shall be filed in the case record. The MWD shall explain to the applicant(s) that it is his or her obligation to promptly report changes in income, resources or other circumstances.

(2) Employable applicant(s) shall be required to sign two copies of Form GA-53 (Notice of Time-limited Availability of General Assistance for Employable Clients), incorporated herein by reference as Appendix D, Exhibit 3. The applicant shall retain one copy and the original shall be filed in the case record. The MWD shall fully explain to the employable applicant(s) that the eligibility period for assistance benefits provided to employable individuals shall be time-limited up to a maximum of six calendar months during the State fiscal year which is from July 1-June 30.

(3) All applicants shall be provided with a copy of Form GA-197, Your Rights and Responsibilities in the General Assistance Program. The MWD shall provide any oral explanations the applicant(s) may request.

v. (No change.)

2.-4. (No change.)

5. Social Security number: The Social Security number of every recipient of General Assistance must be recorded on the application form (Form GA-1) and elsewhere in the record as may be appropriate to the facts of the case. Any person who has a number and whose number is not disclosed and recorded is not eligible for assistance.

i.-ii. (No change.)

6. If at the time of application a client indicates on Form GA-1, Application and Affidavit for General Assistance, that he or she is not a United States citizen, he or she shall be required to provide the MWD documentation from the Immigration and Naturalization Service (INS) which indicates his or her alien status \*[and]\*\*. \*Additionally,\* the \*appropriate\* corresponding Alien Registration Number \*["A" Number]\* \*shall be made available\* as soon as possible but no later than 10 calendar days from the date of application. \*If the applicant, who is otherwise GA eligible, cannot provide documentation concerning alien status because he or she

is awaiting receipt of that information, assistance shall not be withheld pending the receipt of the information.\* A copy of such documentation shall be retained in the case file. \*Information about the applicant/recipient's alien status shall not be used to violate the individual's right to confidentiality by the MWD or INS, except in instances of fraudulent activity committed by the individual to establish eligibility for GA.\*

i. Upon receipt of alien status documentation \*(which must indicate the "A" Number)\*, the MWD shall complete and submit (faxed or mailed) Form GA-26 (Alien Verification Form), incorporated herein by reference as Appendix D, Exhibit 1, to the Division of Family Development, Bureau of Integrity Control, CN 716, Trenton, New Jersey 08625. Information supplied in the GA-26 shall be used for verification purposes \*[of the "A" Number]\* through an INS automated system in the Bureau of Integrity Control (BIC).

ii. When the \*[“A” Number]\* \*information\* has been verified, the BIC will fax or mail \*[the verification]\* \*that\* information to the MWD.

iii. When the INS system indicates that additional verification is required, the MWD will be so advised on the returned Form GA-26 (Alien Verification Form) and the MWD shall be required to complete and submit INS Form G-845 (Document Verification Request) to the Regional INS office.

iv. All information concerning alien status shall be kept confidential and secure in the case file.

v. Requests for alien verification shall at no time be made for anyone who is not an applicant or current recipient of GA.

7. (No change in text.)

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

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain, or a person who enters a New Jersey long-term care facility from out-of-State and qualifies as a resident in accordance with (f)1i below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or in a residential medical facility.

1.-2. (No change.)

3. College students: An individual age 18 or over who is attending school or college may be found eligible for General Assistance only when all of the following conditions are present:

i. (No change.)

ii. He or she is eligible in accordance with the eligibility provisions of the GA program.

iii.-iv. (No change.)

4. (No change.)

(g) Work requirement: Eligibility for public assistance in New Jersey is directly related to an individual's willingness to work when he or she is able to do so. It is, therefore, a part of the application process to explain the work requirement to the applicant and to record in the case file the reasons for any exemption from this requirement. If not exempt from the work training requirement, GA recipients shall participate in the work requirements of this subsection or N.J.A.C. 10:86 which delineates the Family Development Program (FDP), which replaces the requirements of this subsection in those counties that have been phased into that enhanced work/training initiative.

1. (No change.)

2. Elements of the work requirement: Unless specifically exempt, all employable recipients of General Assistance benefits shall comply with all parts of this section unless participating in the FDP in accordance with N.J.A.C. 10:86:

i. Maintain current registration with the New Jersey Division of Employment Services. No employable person who is subject to this requirement shall be eligible for any General Assistance payment until after he or she has completed Form NJES-1A and submitted it to the MWD. The MWD will, within one working day thereafter, submit the form to the appropriate Special Programs Office of the

New Jersey Division of Employment Services. Once registered, a GA recipient remains registered as long as he or she remains on assistance.

ii.-vi. (No change.)

3. Exemptions from work requirement: An individual shall be exempt from the work requirement if any of the following exist:

i.-iv. (No change.)

v. The individual is determined to be unemployable. See N.J.A.C. 10:85-3.1(a)5 for those groups of individuals that are considered to be "unemployable."

4. Action in situations of exemption:

i. Action by MWD:

(1)-(2) (No change.)

(3) When appropriate, the MWD will make referral of the recipient to the Division of Vocational Rehabilitation Services (see N.J.A.C. 10:85-8.4(g)) and/or to the Social Security Administration for RSDI and/or SSI benefits (see N.J.A.C. 10:85-8.3(c)).

ii. (No change.)

5.-6. (No change.)

7. Failure to comply: Employable persons who are not exempt (see (g)3 above) and who fail or refuse without good cause (see (g)6 above) to comply with applicable parts of this work requirement section are considered to be unwilling to work and are subject to penalty as indicated in (g)7ii below.

i. (No change.)

ii. Penalties:

(1) Any employable person who fails or refuses without good cause to comply with any part of (g)2i through vi above or who voluntarily ceases employment without good cause or who has been involuntarily terminated from employment for reasons attributable to his or her own negligence, shall be considered unwilling to work for a period of 90 days which shall commence at the end of the month during which the person last received GA benefits. The MWD shall terminate (with notice) all assistance to or for such person for the 90 day period.

8.-9. (No change.)

(h)-(i) (No change.)

#### 10:85-3.3 Financial eligibility

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

(g) Medical care: Persons found eligible for General Assistance maintenance payments in accordance with the procedures and standards established in this subchapter (N.J.A.C. 10:85-3) are likewise eligible for medical care (see N.J.A.C. 10:85-5 regarding provision of medical care). In addition, certain other individuals and families are eligible for medical assistance from the MWD or for referral to the county welfare agency.

1. Medically needy: Individuals and families who are ineligible for General Assistance, AFDC, the Refugee Resettlement Program or SSI, because their income exceeds the standards established for the applicable program may apply to the MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this subsection are not applicable to the payment of bills for inpatient or outpatient hospitalization or for medical services rendered to an inpatient or outpatient by a hospital or hospital clinic. The MWD shall refer to the county welfare agency those persons who appear to be potentially eligible for the Medically Needy Program administered by that agency. Except as stated in (g)1i below, any person found eligible under the provisions of that program is not eligible for benefits under this subsection.

i.-vi. (No change.)

2. (No change.)

#### 10:85-3.4 Resources

(a) (No change.)

(b) Identification: The person(s) applying for assistance shall identify all his or her resources, shall assist in their evaluation, and, where indicated, shall participate in planning and carrying out their liquidation. The failure of any individual to identify a resource and to participate in its evaluation and/or liquidation shall render that individual ineligible for assistance.

**ADOPTIONS**

**HUMAN SERVICES**

1. \***[Each alien admitted for permanent residence is]**\* **\*Those aliens who are\*** required to have a sponsor **\*[who]\*** **\*in accordance with INS requirements and whose sponsor\*** has certified that he or she will provide support to prevent the alien from becoming a public charge\***[.]\*\***,\* **\*[Therefore, an alien admitted for permanent residence]\*** shall supply the name and address of his or her sponsor to the MWD\***.**\* **\*[or, if]\*** **\*If\*** unable to do so, **\*the individual\*** must cooperate in the agency's efforts to obtain the information from the Immigration and Naturalization Service (INS). The alien shall also cooperate in the agency's efforts to obtain support from the sponsor.

i. Communication between the MWDs and the INS for purposes other than obtaining support for an alien admitted for permanent residence is permitted only to the extent authorized at N.J.A.C. 10:85-1.5(b) and 3.1(a)2.

Recodify iii. through viii. as ii. through vii. (No change in text.)  
(c)-(g) (No change.)

10:85-3.5 Continuing eligibility

(a) (No change.)

(b) Redetermination of eligibility: In order to continue granting assistance, the MWD shall make a complete redetermination for each case at least once every six months except that for long term care clients, redetermination shall be completed annually.

1.-5. (No change.)

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

10:85-4.1 State and local responsibilities

(a) (No change.)

(b) The municipal welfare director is responsible for determining the eligibility of persons applying for General Assistance and for providing assistance, based on the established standards, necessary to prevent needy eligible persons from suffering from cold, hunger, lack of shelter or sickness. He or she has specific authority to issue payments to or on behalf of such persons and to expedite investigation of the circumstances of each case.

1.-2. (No change.)

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

10:85-4.2 Periods for which assistance is granted

(a) General assistance is granted to meet needs of individuals in a variety of situations. The director of welfare shall determine which of the following is appropriate:

1.-4. (No change.)

5. Emergency assistance: Emergency assistance benefits may be provided to eligible GA individuals under the conditions stated in N.J.A.C. 10:85-4.6. Emergency assistance made in accordance with such regulations qualifies for State aid.

6. GA recipients determined to be employable shall be limited to a cumulative total of any six calendar months of eligibility for GA benefits in each State fiscal year (July 1-June 30) (see N.J.A.C. 10:85-3.1(a)3 and 4).

7. (No change in text.)

10:85-5.1 Medical service payment

(a) The director of welfare shall authorize payment for medical care and professional practitioner services if such care and services are deemed necessary and appropriate and, for services rendered after July 1, 1988, if the bill for each such service reaches the municipal welfare office within one year after the date of the service. For services rendered after July 1, 1991, the bill for each such service must reach the municipal welfare office within six months after the date of the service. The MWD may seek the advice of the Division of Family Development (DFD) GAP Unit in determining whether particular elements or programs of care or service are necessary and appropriate.

1. In no instance will the rate exceed that payable under the Medicaid Program. Only services covered by the Medicaid Program shall be authorized under this program for payment.

i. Payment of medical bills which is or may be paid from any benefits provided through the Medical Assistance Program (Medicaid) of the State of New Jersey or any other state shall not be authorized.

2. Medical bills, which have been paid by the client or on his or her behalf, are not subject to reimbursement by the MWD.

3. In the event that payment is obtained from a third party by or for any client for whom the MWD has made medical payments, the welfare agency shall seek recovery of such payment from the beneficiary.

4. The director of welfare may authorize payment of other medical insurance premiums.

5. Persons eligible for Medicare benefits must have health services billed to the appropriate carrier (Pennsylvania Blue Cross/Blue Shield) by the provider before submitting bills to the MWD for consideration. The amount of the Medicare deductible may be paid by the MWD.

6. Payment for medical bills which are or may be paid through no-fault insurance benefits shall not be authorized.

(b) (No change.)

(c) (No change in text.)

(d) Mental health services: For all mental health services, the payment shall be deemed to cover all services of the provider. It does not cover prescription costs. If the MWD has negotiated a rate with the mental health agency or provider which is no higher than the rate which would otherwise be payable and which takes into account any funding by the municipality or county, that rate shall be used for all participants receiving services from that provider. In all other instances, payment to other providers shall be at the Medicaid rate.

1. (No change in text.)

i. (No change in text.)

Recodify (A) through (C) as (1) through (3) (No change in text.)

ii. (No change in text.)

iii. (No change in text.)

Recodify (A) through (B) as (1) through (2) (No change in text.)

iv. Service periods are as follows:

(1) The MWD will not authorize payment for any services rendered more than five days prior to notice (see (d)1iii(1) above) nor more than 30 days prior to submittal of Form FD-07 (see (d)1iii(2) above).

(2) (No change in text.)

2. Payment for other mental health services is as follows:

i. Mental health clinics: Payment shall be authorized as described in (d) above for an initial period of 30 days or until receipt by the MWD of a completed Medicaid Form FD-07, whichever occurs first. The MWD will record receipt of the form and forward it promptly to the DFD/GAP Unit. The DFD/GAP Unit will return the form indicating any further services which are approved. For services beyond the initial period, payment shall be authorized only for services approved by the DFD/GAP Unit.

ii. Private practitioners: If no local clinic offers services which are necessary, the MWD shall authorize payment to a private psychologist or psychiatrist in accordance with the provisions and limitations specified in (d)2i above.

(1) (No change in text.)

(e) (No change in text.)

(f) Care of individuals in long term care facilities: The director of welfare shall authorize payments for patient care and allow for a personal needs allowance (PNA) in a skilled nursing home or intermediate care facility when a physician certifies that a client has a defect, disease, or impairment (other than psychosis) which necessitates such care, the client is not eligible for Medicaid, and there is no person available who will provide such care without cost to the client. In the event that a person who is determined ineligible for Medicaid Only benefits by the county welfare agency applies promptly, and is found eligible for GA, payment of eligible medical expenses shall be made retroactive to the date of application for Medicaid Only.

1. Physician certification (completion of GA-18): Physician certification shall be accomplished by means of Form GA-18, Certification of Need for Patient Care in Facility Other than Public or Private General Hospital. This form shall be completed in duplicate, by the attending, or staff physician and the operator or superintendent of the appropriate facility. One copy shall be sub-

mitted to the DFD/GAP Unit for level-of-care determination and subsequently, filed in the case record and the other copy shall be retained by the nursing home or institution.

2. Maximum fees: Payment to the facility shall not exceed the rates for such facility as established by Medicaid or, for non-Medicaid facilities, by the DFD/GAP Unit. The MWD shall contact the DFD/GAP Unit to obtain the per diem rate for room, board and nursing care. A personal needs allowance of \$35.00 per month shall be allowed to the patient.

i.-iii. (No change.)

(g) The director of welfare shall authorize payment for physical, occupational, or speech therapy under the conditions and in the amounts indicated in (g)1 through 2 below.

1.-2. (No change.)

Recodify (g) through (h) as (h) through (i) (No change in text.)

(j) Residential treatment for drug or alcohol abuse: When the director of welfare authorizes the GA grant, payments for room and board shall be made by the client, and a PNA in amounts as specified in N.J.A.C. 10:85-3.3(f)4iv shall be retained by the client. The payment for room and board by the GA client shall be considered as inclusive of all goods and services.

1. (No change.)

10:85-5.2 Procedure for payment of medical bills

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

10:85-5.3 (No change in text.)

10:85-5.4 Medical care for recipients with chronic renal failure

(a) Most patients with chronic renal failure requiring dialysis or transplantation are eligible for Medicare coverage the first day of the third month following the first dialysis treatment, or immediately upon hospitalization for transplantation. Medicare provides payment for the hospitalization. Medicare Part B shall be purchased to provide payment for 80 percent of the cost of outpatient care, including dialysis treatment. Drugs not prescribed as part of the dialysis treatment are not eligible for payment by Medicare.

1. (No change.)

2. MWD responsibility: When utilization of benefits from other sources leaves a medical cost deficit, the municipal welfare director will determine eligibility for other medical costs, if needed, in accordance with N.J.A.C. 10:85-5.1 with due regard for the medically needy provisions of N.J.A.C. 10:85-3.3(g)1. Maximum fees will be determined by the DFD/GAP Unit in accordance with N.J.A.C. 10:85-5.1(b)1.

i. (No change.)

10:85-5.5 (No change in text.)

10:85-5.6 Pharmaceutical payments through DMAHS

(a) Prescription bills, except for medical supplies and equipment, incurred on behalf of recipients in all municipalities shall be processed through the New Jersey Division of Medical Assistance and Health Services (DMAHS).

(b) A General Assistance recipient who requires a pharmaceutical product will take his or her prescription to a Medicaid participating pharmacy. The pharmacist will procure authorization from the MWD (see (d) below), complete Form MC-6, and supply the product. Payment will be as provided in (e) below.

(c) All GA pharmaceutical claims shall be processed via Form MC-6 or any other system utilized by the participating pharmacies. Supplies of the MC-6 claim form are provided to the pharmacies by the Unisys Corporation.

(d) It should be noted that in all instances the "Person No." block on the claim form shall be completed with a code of "01." Each MWD shall provide, in writing, its unique four-digit identification number to each participating pharmacy. In addition, each MWD shall be required to provide the pharmacy with verification that a particular individual is an active GA recipient and has an agency assigned case number. The pharmacy shall require the MWD to provide a six-digit case number in order to process the claim. If a client's case number has less than six digits, the MWD shall add zeros in front of the case number to exact the required six-digit case

number. The MWD shall provide the above information to the pharmacies through either one or a combination of the following:

1. The pharmacy will contact a MWD representative by telephone prior to dispensing the prescription. Agencies using this method only must maintain procedures whereby pharmacies can obtain authorizations outside of agency business hours.

2. The recipient presents a current validation card or letter issued by the MWD to the pharmacist who completes the transaction without additional contact with the agency. Agencies using this method must supply a card or letter to each recipient at each opening or reopening of a case and at least monthly thereafter with dates to ensure validity throughout all periods of assistance eligibility. The size and layout of the validation card or the letter are optional with the agency. Each card or letter must contain as a minimum:

i. Name, address, phone number and four-digit municipality code of the agency;

ii. First and last name(s) of client(s) for whom card or letter applies;

iii. The required six-digit case number (see (d) above);

iv. Expiration date;

v. Notice to client as follows: This validation form indicates eligibility for General Assistance benefits and is to be presented to the pharmacist when having a prescription filled;

vi. Notice to pharmacist as follows: Please complete Form MC-6 according to Medicaid policies and procedures and forward to the Unisys Corporation for payment.

(e) The MWD will make no payment directly to a pharmacy for any prescription charge other than those for medical supplies or equipment. Payment at the Medicaid rate will be made by the Unisys Corporation and reported and charged as described in N.J.A.C. 10:85-6.8(d).

10:85-6.8 Pharmaceutical payments

(a) The provisions of this section apply to all municipalities concerning pharmacy charges paid by the Unisys Corporation as described in N.J.A.C. 10:85-5.6.

(b) Each month the Unisys Corporation will provide to the Division of Family Development (DFD), Bureau of Business Services (BBS), through DMAHS, a computer printout of pharmacy bills paid for General Assistance recipients. The BBS will forward this printout to the respective municipal welfare departments. The monthly printout will show:

|                              |                        |
|------------------------------|------------------------|
| Municipal Code               | Amount dispensed       |
| Provider (Medicaid I.D. No.) | Number of days supply  |
| Sequential claim No.         | Prescription (Rx) No.  |
| Recipient No.                | Individual Medicaid    |
| National Drug Co.            | Practitioner (IMP) No. |
| Name of Drug                 | Date of Service        |
| Metric quantity              | Amount paid            |

1. Upon receipt of the computer printout each month the MWD shall be responsible to check the printout to determine if all claims charged to the municipality are for eligible GA recipients. All identified errors shall be highlighted and the MWD shall provide a copy of the highlighted printout to the BBS. Payments may be recorded in individual case records if desired.

2. Computer printouts shall be retained for the same periods applicable to Form GA-6.

(c) The computer printout shall serve as a supplementary Form GA-6. It will therefore be unnecessary to transfer the printout listings to a regular Form GA-6. However, because the Bureau of Business Services will have retained a copy for charging purposes, it will be necessary to notify that bureau of any adjustments made in the reconciliation process (see (b)1 above).

(d) Periodically, the administrative costs of processing the MC-6 forms up to that time will either be billed to or deducted from payments of State aid to the respective municipalities.

1. For municipalities that maintain a zero balance Public Assistance Trust Fund II Account, a check shall be drawn from the municipal account used for administrative expenses and made payable to the Public Assistance Trust Fund II Account for the total amount billed the municipality for the processing of each Form

## ADOPTIONS

MC-6, the prescription processing form. The amount of the check must be recorded on GA-12, Statement of Refunds, as administrative costs of the pharmaceutical (Rx) program (abbreviate as "Admin Rx Pgm").

2. For municipalities that receive quarterly advance payments of State aid for deposit into the municipality's Public Assistance Trust Fund II Account, the total amount of the administrative costs of processing the MC-6 forms will be deducted from one State aid advance payment. Therefore, a check shall be drawn on the municipal account used for the payment of administrative expenses, made payable and deposited to the Public Assistance Trust Fund II Account, and recorded as a refund on Form GA-12, Statement of Refunds, to the Public Assistance Trust Fund II Account for "Admin RX Pgm."

10:85-7.2 Notices to applicants or recipients

(a) (No change.)

(b) Exceptions to timely notice are:

1. (No change.)

2. Time-limited assistance: When it is mutually understood between the applicant and the MWD that assistance is requested for and will be granted to cover only a limited period of time, or is limited to a specific purpose or an emergency grant (see N.J.A.C.

## HUMAN SERVICES

10:85-4.2(a)4 and 5) or when other circumstances warrant the MWD to grant assistance to cover a limited period of time, the MWD will send a time-limited notice promptly when such assistance is granted. No further notice will be required.

i. Employable GA recipients shall be notified of the expiration date of their time-limited, six-month period of eligibility for receipt of assistance benefits (see N.J.A.C. 10:85-3.1(a)6) via Form GA-33C (Time-limited Benefit Period Expiration Notice for General Assistance Employables), incorporated herein by reference as Appendix D, Exhibit 2.

(1) The MWD shall send Form GA-33C to the employable client the month prior to the month in which the time-limited period of eligibility expires.

(2) If, due to intermittent periods of GA eligibility throughout a State fiscal year, Form GA-33C cannot be provided in accordance with (b)2i(1) above, the MWD shall send Form GA-33C to the employable client no later than 10 calendar days prior to the end of the month in which the time-limited period of eligibility actually expires.

ii. All time-limited notices shall include information regarding the client's right to appeal (see (c)2 below).

(c) (No change.)



APPENDIX D  
Exhibit 2

GA-33C  
(New 7/92)

AGENCY LETTERHEAD

TIME-LIMITED BENEFIT PERIOD EXPIRATION NOTICE FOR GENERAL ASSISTANCE EMPLOYABLES FOR STATE FISCAL YEAR (SFY): July 1, 1992-June 30, 1993

TO: \_\_\_\_\_ CASE NO.: \_\_\_\_\_  
\_\_\_\_\_  
DATE MAILED: \_\_\_\_\_  
\_\_\_\_\_

IMPORTANTE: ESTA ES UNA NOTICIA IMPORTANTE. SI USTED NO ENTIENDE LA INFORMACIÓN CONTENIDA EN ESTA NOTICIA O NO LEE INGLÉS, PÓNGASE EN CONTACTO CON UN REPRESENTANTE DEL DEPARTAMENTO DE BIENESTAR PÚBLICO DEL MUNICIPIO.

IMPORTANT: The information checked below shows action taken on your General Assistance case. If you do not understand, or if you disagree, you should contact your General Assistance worker for an explanation. You also have a right to appeal this matter at a fair hearing. Please read the reverse side of this form which explains fair hearings.

TIME-LIMITED SFY BENEFIT PERIOD. Your specific benefit period for entitlement to General Assistance benefits will end on the last day of \_\_\_\_\_ for this SFY.  
(month/year)

Check one of the blocks below, if applicable:

- Your Emergency Assistance (EA) benefits will end as of the above date since such benefits are contingent on continuing GA eligibility.
- Your Temporary Rental Assistance (TRA) benefits will end as of the above date since such benefits are contingent on continuing GA eligibility.

If your circumstances change, and due to illness, injury or other incapacity you think that you may be eligible for assistance as an unemployable person, you should come to the municipal welfare department to reapply for benefits.

The reason this action has been taken:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE \_\_\_\_\_ DIRECTOR  
\_\_\_\_\_, MUNICIPAL WELFARE DEPARTMENT  
New Jersey Department of Human Services—Division of Family Development

REQUEST FOR A LOCAL HEARING

IF YOU DISAGREE WITH THE ACTION TAKEN REGARDING THE EXPIRATION OF YOUR TIME-LIMITED ELIGIBILITY PERIOD, YOU HAVE THE RIGHT TO REQUEST A LOCAL HEARING BEFORE A MUNICIPAL WELFARE DEPARTMENT REPRESENTATIVE.

TIME LIMITS

A REQUEST FOR A LOCAL HEARING MUST BE MADE WITHIN TEN (10) DAYS OF THE MAILING DATE OF THIS NOTICE. SINCE TIME-LIMITED ASSISTANCE IS BASED ON AVAILABLE FUNDING LEGISLATION, YOU WILL NOT BE ENTITLED TO CONTINUED BENEFITS PENDING THE FINAL HEARING DECISION.

HOW TO REQUEST A LOCAL HEARING

IF YOU WISH A HEARING, PLEASE CONTACT IN PERSON, BY TELEPHONE OR WRITE THE \_\_\_\_\_ MUNICIPAL WELFARE DEPARTMENT AT \_\_\_\_\_

(Address)

OR CALL \_\_\_\_\_ (Phone Number)

YOUR RIGHTS

Concerning the hearing, you have the right to:

- Present your own case or have a friend, relative or attorney make the presentation.
- Submit any evidence and/or bring any witnesses that have knowledge of your case.
- Question or challenge any witness or evidence presented by the municipal welfare department.
- Examine at a reasonable time before the date of the hearing, as well as during the hearing, the contents of your file and all the documents and records to be used at the hearing.
- Review a complete and up-to-date copy of the General Assistance Manual.

STATE FAIR HEARINGS

IF YOU WISH TO APPEAL THE LOCAL HEARING DECISION YOU MAY REQUEST A STATE FAIR HEARING WITHIN TEN (10) DAYS OF THE MAILING DATE OF THE LOCAL DECISION. YOU MAY ALSO REQUEST A STATE FAIR HEARING IF THE LOCAL FAIR HEARING IS NOT CONVENED WITHIN FIFTEEN (15) DAYS OF THE DATE OF THE HEARING REQUEST. A WRITTEN REQUEST FOR A STATE FAIR HEARING MUST BE MADE EITHER TO THE MUNICIPAL WELFARE DEPARTMENT (LISTED ABOVE) OR DIRECTLY TO THE NEW JERSEY DEPARTMENT OF HUMAN SERVICES, DIVISION OF FAMILY DEVELOPMENT, CN 716, TRENTON, NEW JERSEY 08625.

IF YOU WISH FURTHER INFORMATION ON THE FAIR HEARING PROCESS, YOU MAY CALL THE STATE TOLL FREE HOTLINE NUMBER 800-792-9774.

LEGAL SERVICES

You have a right to pursue legal consultation in your area, if you wish.

Legal Services projects are private, nonprofit organizations that are not connected in any way with any local or county welfare agencies or any other government agencies, and they provide free legal services to poor people in most civil matters.

New Jersey Department of Human Services—Division of Family Development

APPENDIX D  
Exhibit 3

GA-53  
(New 7/92)

NOTICE OF TIME-LIMITED AVAILABILITY OF GENERAL ASSISTANCE  
FOR EMPLOYABLE CLIENTS

This is to advise you that the eligibility period for receipt of assistance benefits for individuals considered to be employable in the General Assistance (GA) program is limited to a maximum cumulative total of any six calendar months in State fiscal year 1993. State fiscal year 1993 is the period of time from July 1, 1992 through June 30, 1993.

In addition, you are further advised that eligibility for Emergency Assistance (EA) or Temporary Rental Assistance (TRA) benefits in the General Assistance program is also limited to a cumulative total of any six calendar months in State fiscal year 1993, since eligibility for such benefits is contingent on your period of eligibility for General Assistance.

The above benefit limitations have been fully explained to me (us) and I (we) understand that since I (we) am considered to be an employable individual(s) in accordance with the provisions of the General Assistance program, assistance benefits afforded to me (us) will be limited to a maximum cumulative total of six calendar months in State fiscal year 1993. I (we) further understand that a notice (Form GA-33C) will be provided to me (us) in the month prior to, or when necessary in the actual month of the expiration of my (our) GA eligibility period.

|                                    |        |
|------------------------------------|--------|
| _____                              | _____  |
| (Employable GA Client's Signature) | (Date) |
| _____                              | _____  |
| (Employable GA Client's Signature) | (Date) |
| _____                              | _____  |
| (MWD Representative's Signature)   | (Date) |

Municipal Welfare Department

(a)

**COMMISSION FOR THE BLIND AND VISUALLY  
IMPAIRED**

**Business Enterprise Program**

**Adopted Amendments: N.J.A.C. 10:97-1.3 and 7.3**

Proposed: August 17, 1992 at 24 N.J.R. 2798(a).  
Adopted: November 25, 1992 by Alan J. Gibbs, Commissioner,  
Department of Human Services.

Filed: November 21, 1992 as R.1992 d.515, **with a substantive  
change**, not requiring additional public notice and comment  
(see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12, 30:6-15.1 and 15.2, 20 U.S.C. 107  
et seq., 34 CFR 395.

Effective Date: December 21, 1992.

Expiration Date: May 15, 1994.

**Summary of Public Comments and Agency Responses:**

COMMENT: Frank Collapardi, an operator in the Business Enterprise Program commented that the make-up of the promotional interview panel, as described in N.J.A.C. 10:97-7.3, is flawed and unfair.

RESPONSE: Neither the Commission nor the Committee of Business Enterprise Operators had proposed to change the make-up of the prescribed interview panel. Since it is current practice and not previously criticized by any concerned consumers, a change has not been considered at this time.

COMMENT: The same commenter stated that the definition of "seniority," as proposed in N.J.A.C. 10:97-1.3 is not as originally requested by the Committee of Business Enterprise Operators.

RESPONSE: The Commission responded that the commenter is correct in that a sentence regarding "unbroken time," as originally requested by the Committee of Business Enterprise Operators, did not appear in

the text as proposed due to an error of omission by the Committee in their transmission to the Commission. The additional text clarifies the original intent of the rule regarding unbroken time. Therefore, the Commission is adding, upon adoption, rule text: "Work time must be unbroken unless there are extenuating circumstances that exist through no fault of the operator," in the definition of seniority.

COMMENT: James Condit, a Business Enterprise Program operator, complained that he thought that there had been a lack of opportunity for program operators to comment on the proposals prior to publication in the *New Jersey Register*.

RESPONSE: The response was that CBVI had distributed copies of the minutes of the Committee of Business Enterprise Operators meetings wherein discussions on the subject were recorded. Also, copies of a resolution by the Committee calling for the proposed changes were circulated to all operators requesting their comments. No negative comments were received at that time.

COMMENT: The second commenter also stated that there is no "collection policy" included in the proposed changes.

RESPONSE: "Collection" is a function of the administration of CBVI, whereas the New Jersey Administrative Code sets forth the rules for licensed operators in the Business Enterprise Program.

COMMENT: The same commenter criticized the scoring procedures, in addition to the overall evaluation process for promotion, as proposed for amendment, as being unfair.

RESPONSE: The proposed amendments regarding the scoring procedures and overall evaluation process for promotion were recommended by the Committee of Business Enterprise Operators, legally elected representatives of all operators in the program, in concurrence with the Commission. The Commission believes that the scoring procedures and evaluation process are fair and equitable.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

## 10:97-1.3 Definitions

The following words and terms shall have the indicated meanings, unless the context clearly indicates otherwise.

...  
 "Seniority" means the total of \*[unbroken]\* work time as a Licensed Operator in the Business Enterprise Program. **\*Work time must be unbroken unless there are extenuating circumstances that exist, through no fault of the Operator.\***

## 10:97-7.3 Promotions and transfers

(a) (No change.)

(b) Any eligible interested operator shall apply, in writing, to the supervisor of the Business Enterprise Program within two weeks of the vacancy announcement.

1. Any operator who is not current in repayment of his or her stock loan, under conditions set forth in N.J.A.C. 10:97-3.4(b), or has not satisfied the debt, in full, within 30 days prior to the application for appointment, shall be ineligible to apply.

2. Any operator who has received a promotion or transfer to a business enterprise in the previous 12 months shall be ineligible to apply. Any exceptions, which would be due to extenuating circumstances that might be detrimental to the Program or the operator, shall be determined by the Program supervisor.

(c) The selection shall be made by the supervisor of the Business Enterprise Program based on an evaluation of the operator's record of performance for the previous year and the results of a panel interview.

(d) Performance evaluation shall account for 50 percent of the total promotion and transfer evaluation procedure. Evaluation shall be based on individual site visit reports, semi-annual evaluations and any other documented reports completed by field representatives assigned to work with the interested operators. The supervisor of the Business Enterprise Program shall give weight value to each factor, depending on the type and needs of the specific business enterprise up for bid. Weight values for all factors shall total 25 points. Each weight value shall be multiplied by the respective performance value ranging from zero for "unsatisfactory" to one for "conditionally satisfactory" to two for "satisfactory." The factors on which all interested operators shall be rated are management ability, health and sanitation, public relations, compliance with Business Enterprise Program rules and participation in meetings and instructional conferences sponsored by the Commission.

(e) The prescribed interview shall account for 50 percent of the total promotion and evaluation procedure. The interview panel shall consist of the supervisor of the Business Enterprise Program (who shall serve as lead interviewer), the field representative assigned to the announced vacant business enterprise, a non-vocational rehabilitation employee of the Commission and a member of the Committee of Business Enterprise Operators (excluding Committee members who have expressed an interest in the vacant business enterprise) or a designee assigned by the Chairperson of the Committee.

(f) As a group, the panel shall give each candidate a rating for the interview based on a scale of 1 to 50. The candidate with the highest seniority shall be awarded an additional three points to his or her final interview score. Questions to be asked of all candidates, based on the requirements of the vacant business enterprise, and procedures for scoring shall be designated by the supervisor of the Business Enterprise Program when the panel convenes and before the interviews are held.

(g) (No change.)

(h) If a candidate has been interviewed for a promotion or transfer opportunity for the same type of business enterprise within the previous six months, the score from the previous interview shall be used for scoring the interview segment of the current evaluation process.

(i) The candidate with the highest overall rating shall be selected for appointment as operator of the business enterprise for which he or she has applied. In the event of a tie, the candidate with the highest seniority shall receive the appointment.

(j) (No change.)

(a)

**DIVISION OF YOUTH AND FAMILY SERVICES  
 Manual of Requirements for Adoption Agencies  
 Readoption with Amendments: N.J.A.C. 10:121A**

Proposed: October 5, 1992 at 24 N.J.R. 3500(a).

Adopted: November 25, 1992 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: November 25, 1992 as R.1992 d.514, 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. 9:3-37 et seq., 30:1A-et seq. and 30:4c-4(b).

Effective Date: November 25, 1992, Readoption;

December 21, 1992, Amendments.

Expiration Date: November 25, 1997.

**Summary of Public Comments and Agency Responses:**

Comments were received from Mark Samuel Ross, Esq., representing Adoption Travel Service, Inc. of Westfield, New Jersey; Ann Gallagher, Chairperson, Inter-Agency Adoption Council; and Marlene Piasecki, Executive Director, Golden Cradle of Cherry Hill, New Jersey.

COMMENT: Mark Samuel Ross, Esq., representing Adoption Travel Service, Inc. of Westfield, New Jersey, specifically objects to N.J.A.C. 10:121A-1.7(a)6 and (a)7, that further defines adoption services to include adoptive parent recruitment and information services. He contends that these services are being regulated merely to facilitate the Division's enforcement efforts against adoption agencies operating in violation of the law.

RESPONSE: The Division of Youth and Family Services concurs with Mr. Ross' contention that adoptive parent recruitment and information services should not be added to the definition of certifiable adoption services merely for the purpose of prosecuting agencies that are providing illegal adoption services under the existing law. The Division regularly exercises its statutory authority to enforce the adoption law and regulations against such agencies that operate illegally. However, the Division disagrees with his position that these services should not be regulated since: 1) both adoptive parent recruitment and information services are recognized by professionals in the social service field as bona fide adoption services; and 2) any agency or organization that provides these services must be regulated to ensure adequate safeguards for the children, birth mothers, and adoptive parents they serve. As such, these services will remain as proposed.

COMMENT: Mark Samuel Ross, Esq. states that N.J.A.C. 10:121A-1.7(a)6 and (a)7 unfairly discriminate against agencies that provide prospective adoptive parent recruitment or information services, since the rules appear to specifically exempt Planned Parenthood, as well as other public social service agencies or private non-profit social service agencies, from this restriction.

RESPONSE: As a result of Mr. Ross' comments, the Division has expanded and clarified this rule in order to more clearly state its original intent—namely, to exclude from certification social service agencies, educational institutions and organizations that provide information on adoption as a family planning option, since this type of information sharing constitutes general counselling services on family planning issues and alternatives, and does not fall within the realm of adoption activities subject to certification. However, if such agencies provide specific services linking prospective birth mothers with adoptive parents, such agencies would be obligated to meet licensing requirements. Further, these regulations would not preclude an agency from providing travel services for clients interested in adoption, as long as the agency was not also involved in providing adoptive parent recruitment or adoption information services as part of the travel package.

COMMENT: Ms. Gallagher and Ms. Piasecki objected to N.J.A.C. 10:121A-5.4(j)2i and ii, which calls for the Bureau of Licensing to review and approve determinations by an agency to make cash payments for medical or hospital care on behalf of the birth mother when the birth mother has not exhausted her personal insurance coverages.

RESPONSE: The Division of Youth and Family Services agrees with both commenters that the Bureau's prior review and approval of such cash payments could unnecessarily increase the amount of time that it would take to release funds for medical and hospital care for birth mothers. Therefore, the Division has made the necessary changes at N.J.A.C. 10:121A-5.4(j)2i and ii, so that the agency can begin processing

such payments prior to submitting to the Bureau the reasons why the birth mother cannot utilize public and private medical insurance. The rule will require the agency to notify the Bureau of Licensing within 15 calendar days, explaining the reason(s) for making payments for the birth mother's medical care in these exceptional cases.

#### Summary of Agency-Initiated Changes:

There are two technical changes made, one punctuation and one grammatical, which correct the body of the text. There is one substantive change to the text upon adoption. The change at N.J.A.C. 10:121A-5.7(a) adds the phrase "upon successful completion of a home study as specified in N.J.A.C. 10:121A-5.6". This addition was based on a typographical omission in the published proposal. As stated in the proposal Summary, the intent of the amendment to this section was to ensure that a home study is completed on the adoptive parents prior to their selection.

Full text of the readoption can be found at N.J.A.C. 10:121A.

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

### CHAPTER 121A MANUAL OF REQUIREMENTS FOR ADOPTION AGENCIES

#### 10:121A-1.5 Definitions

The following words and terms, when used in this chapter, shall have the indicated meanings:

...  
"Manual of Requirements for Adoption Agencies" or "Manual of Requirements" means the rules promulgated in this chapter, which constitute minimum requirements for adoption agencies placing children for adoption in New Jersey.  
...

#### 10:121A-1.7 Eligibility for a certificate of approval

(a) Any public agency or private non-profit firm, partnership, corporation, association, or agency located within or outside the State of New Jersey that provides adoption services to families in New Jersey or to children from New Jersey, whether as part or all of its function, shall secure and maintain a certificate. Adoption services shall include any one or combination of the following:

- 1.-3. (No change.)
4. Post-placement services;
5. Post-adoption services;
6. Adoptive parent recruitment; and/or
7. Information services, unless these services are provided by \*[Planned Parenthood, public social services agencies or private non-profit social services agencies]\* **\*social service agencies and educational institutions as part of general information on adoption as a family planning option\***.

(b) The following are not subject to certification requirements:

1. (No change.)

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

#### 10:121A-1.8 Inter-country adoption

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

(c) Agencies performing inter-country adoptions shall comply with the record keeping requirements of the Manual of Requirements for Adoption Agencies, as specified in N.J.A.C. 10:121A-3.6(e).

#### 10:121A-2.1 Application for a certificate of approval

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

(c) Applicants for a new certificate shall submit to the Bureau a written plan for the agency's operation that includes the following:

- 1.-7. (No change.)

8. A copy of the agency's non-discrimination policy, as specified in N.J.A.C. 10:121A-1.6(b), and approved by the agency's governing board\*[,]\*\*\*;

9. A copy of an audit or financial statement, if requested by the Bureau; and

10. For agencies located outside of New Jersey, a copy of that agency's most current licensing or approval inspection report and the license or certificate that reflects the agency's licensing or ap-

proval status in that state and documentation that indicates that the agency has been in operation for at least two years.

(d) An agency applying for a renewal of a certificate of approval shall submit those items listed in (c)2, 3, 4 and 5 above, and 10 above, if applicable. An agency shall submit the item listed in (c)9 above upon request of the Bureau.

#### 10:121A-2.2 Issuance of a certificate of approval

(a) (No change.)

(b) After the Bureau conducts an initial inspection of a new agency and finds the agency to be in substantial compliance with this chapter, the Bureau shall issue a temporary certificate of approval for a maximum of six months.

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

(i) The Bureau will not issue a certificate to an out-of-State agency unless the agency has received a license or approval from that state's authorized licensing or regulatory agency and has been in operation for at least two years.

#### 10:121A-2.3 Denying, suspending, revoking or refusing to renew a certificate of approval

(a) The Bureau may deny, suspend, revoke, or refuse to renew an adoption agency's certificate for good cause, including, but not limited to the following:

- 1.-5. (No change.)
6. Any activity, policy or conduct that adversely affects or is deemed by the Bureau to be detrimental to the families and children being served, including, but not limited to, violations of the requirements of N.J.S.A. 9:3-37 et seq., the State Adoption Law, N.J.S.A. 9:23-5 et seq., the Interstate Compact on the Placement of Children, N.J.S.A. 9:6-8.9, 8.10, 8.13, and 8.14, State child abuse laws, and this chapter;
7. Failure of an out-of-state agency to maintain a license, approval or certificate in its own state; and
8. Failure to employ the necessary qualified professional staff, as specified in N.J.A.C. 10:121A-4.4.

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

#### 10:121A-2.7 Public access to Bureau records

(a) (No change.)

(b) The Bureau shall make the following items in the files open to public review:

- 1.-4. (No change.)
  5. Forms and other standard documents used to collect routine data on the agency and its program as part of its record of compliance with the Manual of Requirements;
  6. Enforcement letters from the Bureau requiring abatement of violations of the Manual of Requirements;
  - 7.-10. (No change.)
- (c)-(d) (No change.)

#### 10:121A-3.1 Governing board requirements for private agencies

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

(e) The governing board shall meet at least every six months and make records of attendance and minutes of each meeting available for inspection by the Bureau.

(f) The governing board shall have a written policy covering conflict of interest, which shall include the following provisions:

- 1.-5. (No change.)
  6. Agency personnel and members of their families shall not serve as voting members of the board.
- (g) (No change.)

#### 10:121A-3.3 Legal responsibilities

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

(c) A New Jersey-certified agency may provide services for an out-of-state agency only if:

1. The New Jersey-certified agency verifies that the out-of-state agency is licensed, certified or approved in the state where the agency's principal office is located and is a non-profit agency if it places children in New Jersey for adoption;
- 2.-3. (No change.)

## HUMAN SERVICES

### 10:121A-3.4 Information to parents and adoption applicants

- (a) (No change.)
- (b) The written statement or pamphlet shall contain the following information:

1.-2. (No change.)

3. That the agency shall make a current copy of the Manual of Requirements for Adoption Agencies available for review by the parents of children served by the agency;

4. That any parents who believe or suspect that the agency is in violation of any requirements of the Manual of Requirements for Adoption Agencies may report such alleged violations to the Bureau of Licensing;

5. That any parent may secure a copy of the Manual of Requirements for Adoption Agencies by contacting the Bureau of Licensing, Division of Youth and Family Services and that the Bureau will charge a nominal fee for the manual, in keeping with Department policy;

6.-9. (No change.)

(c) (No change.)

### 10:121A-3.6 Agency records

(a) The agency shall ensure that the following general requirements are met:

1.-2. (No change.)

3. The agency shall ensure that all entries in the child, adoptive family, birth family and personnel records indicate the name of the individual making the entry, the date of the entry, and that all entries are signed by that individual.

4. (No change.)

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

(f) The agency shall maintain records of home studies of adoptive applicants, who have had a child placed for adoption, for 99 years. These records shall include:

1.-4. (No change.)

5. Summary documents of the adoption home study of the family which shall be signed and dated by both the social worker who conducted the study and social work supervisor, including any autobiographical or other self-assessment material provided by the family, the basis for the decision to accept or reject the family or to impose any qualifying conditions, an indication that the decision was made jointly by the social worker and social work supervisor, and a record that the family was informed in writing of the decision within 30 calendar days of the last contact with the family;

6.-7. (No change.)

(g) (No change.)

(h) The agency shall maintain the following administrative records in its files:

1. (No change.)

2. A current copy of the Manual of Requirements for Adoption Agencies;

3.-4. (No change.)

5. Copies of general and comprehensive insurance coverage.

(i) (No change.)

(j) The agency shall maintain personnel records on all agency personnel, including paid staff members employed by the agency, paid consultants who provide contracted services and volunteers and students who have direct contact with clients.

1.-2. (No change.)

3. State-operated agencies shall follow policies and guidelines established by the Department and the Division for personnel information of paid consultants in lieu of the information specified in (j)1 and 2 above.

### 10:121A-4.1 General requirements

(a) (No change.)

(b) An agency shall have at least three full-time staff members or their equivalents in part-time staff members.

1. (No change.)

2. The executive director or administrator shall not serve as the social work supervisor.

### 10:121A-4.2 Personnel policies

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

## ADOPTIONS

(c) The agency shall ensure that any staff member or consultant that utilizes the title or designation of social worker, licensed social worker, licensed social worker, certified social worker, medical social worker, social work technician or any other title or designation which includes the words social worker or social work, or any abbreviations such as SW, LCSW, LSW, CSW or SWT, is certified or licensed pursuant to N.J.S.A. 45:15BB-1 et seq., the Social Workers Licensing Act of 1991.

(d) All new in-State agencies prior to receiving a temporary or regular certificate shall ensure that social work staff and social work supervisors are certified or licensed pursuant to (c) above.

(e) All new out-of-State agencies shall ensure that social work staff and social work supervisors are certified or licensed pursuant to that state's laws or requirements, if applicable.

(f) An existing in-State agency shall ensure that staff members who function as social workers or social work supervisors and can meet the educational and experiential requirements to be licensed or certified, but are not currently licensed or certified, obtain the appropriate license or certificate within the time frames prescribed by N.J.S.A. 45:15BB-1 et seq.

(g) An in-State agency may require existing staff members who function as social workers or social work supervisors and who do not currently meet the educational and experiential requirements to be licensed or certified pursuant to (c) above, to obtain the appropriate certificate or license as a condition of continued employment; or it may retain such staff members in the same capacity so long as these staff members are not utilizing titles specified in (c) above.

(h) Existing in-State agencies shall ensure that all new staff members that are hired for the positions of social worker and social work supervisor are licensed or certified pursuant to (c) above.

### 10:121A-4.4 Staff qualifications and duties

(a) The executive director or administrator shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below.

1. The executive director or administrator of the agency shall:

i. Have a bachelor's degree from an accredited college or university and three years of professional experience in the human services field, two years of which shall have been in a supervisory or administrative position; or

ii. Have a master's or doctorate degree from an accredited graduate school in business or public administration or in one of the areas of study in the human services field and two years of professional experience in the human services field; or

iii. (No change.)

2. (No change.)

(b) The social work supervisor shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below.

1. A social work supervisor shall:

i. (No change.)

ii. Have a master's degree in social work or other human services field from an accredited college or university and a minimum of two years of professional experience in services to children and families, one year of which shall be in adoption services; or

iii. (No change.)

2. (No change.)

(c) A social worker shall work for the agency on a full-time basis (at least 30 hours per week) and have the qualifications and responsibilities as specified below. The agency may choose to utilize part-time staff members in lieu of one full-time staff member, provided that these staff have the qualifications and responsibilities as specified in (c)1 and 2 below.

1.-2. (No change.)

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

### 10:121A-5.4 Services to birth parents

(a) An agency shall accept the surrender of a child only after determining that the birth parents or legal guardians are not acting under duress.

## ADOPTIONS

1. The agency shall not require the prospective birth parents to sign a statement committing them to any definite plan for the unborn child in order to obtain services.

2. (No change.)

(b) (No change.)

(c) Before taking a surrender, the agency shall document that the birth parents were:

1. Provided at least three face-to-face counseling sessions by qualified social work staff on separate days and that the birth parents were:

Recodify existing 1.-7. as i.-vii. (No change in text.)

2. Requested to sign a statement that indicates that the agency explained the information in (c)1 above to them; or

3. Requested to sign a statement when they refuse to participate in the counseling sessions.

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

(h) An agency that provides services or payments on behalf of a birth mother who is considering adoption services for her born or unborn child(ren) to assist her in meeting the expenses associated with the birth or illness of the child shall comply with all the appropriate provisions of N.J.S.A. 9:3-37 et seq., the State Adoption Law.

(i) An agency that provides services or payments for medical or hospital care shall ensure that the birth mother receives such medical or hospital care from:

1. The agency's own staff of licensed medical or health care professionals;

2. A state-approved or state-licensed hospital, health care facility or medical clinic; or

3. A private physician licensed to practice in the state where their practice is located.

(j) An agency shall not make any cash payments for medical or hospital care unless all public and private medical insurance benefits to which the birth mother is entitled have been exhausted for such care, except that:

1. An agency may make cash payments for medical or hospital care when all public and private medical insurance benefits to which the birth mother is entitled have not been exhausted, if:

i. There are compelling reasons why the birth mother can not utilize such medical insurance benefits and the agency can adequately document these reasons in the case record; and

ii. The birth mother signs a statement attesting to these reasons.

\*[2. The agency shall notify the Bureau in writing within 15 calendar days when the birth mother chooses not to utilize all public and private medical insurance benefits to which she is entitled and the agency chooses to make cash payments.

i. The Bureau will review the reasons to determine if the agency can make cash payments for medical or hospital care on behalf of the birth mother.

ii. The Bureau will notify the agency in writing of its decision whether or not to permit the agency to make cash payments for medical or hospital care on behalf of the birth mother within 15 calendar days of receiving the written notification from the agency.]\*

**\*2. When the birth mother chooses not to utilize all public and private medical insurance benefits to which she is entitled and the agency determines to make cash payments for that birth mother, the agency shall notify the Bureau in writing within 15 calendar days explaining the reason(s) why they are making cash payments for her medical care.\***

(k) An agency may provide payment to a medical facility, hospital, physician or birth mother for medical bills previously incurred by the birth mother prior to her involvement with the agency for medical services that were associated with her pregnancy or birth of her child. An agency shall provide payment in these instances only when the birth mother provides written documentation that these medical services were provided.

(1) An agency that arranges for, provides directly, finances or subsidizes the costs of medical expenses, as specified in (i) through (k) above, of a birth mother shall comply with all of the following:

1. The agency shall maintain in a file a written policy that governs payments for medical or hospital care on behalf of birth mothers.

## HUMAN SERVICES

i. A copy of this policy shall be given to each birth mother and prospective adoptive \*[couples]\* **\*couple\*** at the time of initial inquiry or application; and

ii. The birth mothers shall be advised in writing, that any services or payments that she may be granted will be made to her without regard to her present or future decision to surrender her child(ren) for adoption and that the agency will not require or request reimbursement from her for such services and/or payments.

2. Unless the birth mother terminates her relationship with the agency, the agency shall notify the birth mother in writing at least 30 calendar days prior to the date of its last services or payments for medical or hospital care that services and/or payments will be terminated by the 30th calendar day following the birth of the child or after the 30th calendar day following the signed release for termination of parental rights for whom adoption services were sought. The agency shall also notify the birth mother in writing within 30 days when the agency documents that the need for such services or payments no longer exists.

3. The agency shall maintain in its case files any receipts, cancelled checks and/or invoices or photocopies of such receipts, cancelled checks and/or invoices as a record of all cash payments that were made on behalf of the birth mother. The agency may utilize a case ledger to record this information provided that copies or actual receipts, cancelled checks and/or invoices are made available to the Bureau upon request.

10:121A-5.6 Home study services

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

(e) The agency shall advise the applicants of the home study process, including the length of time involved. The home study process shall include the following:

1. At least three in-person contacts that are held on separate days to conduct joint and individual interviews with married applicants. Individual interviews with spouses may be counted as separate in-person contacts. Home study groups may be utilized and counted as one separate in-person contact with married applicants provided that:

i. No more than 10 adoptive parents per each group facilitator are in the group;

ii. The person facilitating the group meets the education and experience requirements for the social worker as specified in N.J.A.C. 10:121A-4.4(c); and

iii. The person facilitating the group maintains a record/notes of the discussions that occurred during group;

2. At least one in-person contact to conduct joint and individual interviews with all members of the applicant's household. These contacts may be held on the same day as the contacts for the married applicants;

3.-5. (No change.)

(f) The agency shall obtain information on the applicants. Such information shall include, but not be limited to:

1.-10. (No change.)

11. Written medical reports on each applicant and all other persons living in the home that include health, results of laboratory test or X-rays if ordered by the physician, and the physician's recommendation on the applicant's health status as it relates to the applicant's capacity to be an adoptive parent.

12.-18. (No change.)

(g) After the home study has been conducted, the social worker who conducted the study and the social work supervisor shall co-sign a letter to the adoptive parents or otherwise indicate in writing that the approval or rejection decision was made jointly.

1. (No change.)

2. The agency shall inform the applicant(s) of its decision in writing within 30 calendar days after the last contact with the applicant(s).

i. When an applicant is approved, the agency shall recommend to the applicant the type(s) of child(ren) who can best adjust to the family and to whom the family can best adjust. When the agency's recommendation of the type(s) of child(ren) to be considered for adoption is different from the applicant's initial preference for a certain type(s) of child(ren), the agency shall document in the

adoptive family record the results of the discussion between the social worker and the applicant on this point.

ii. When the applicant pursues a child(ren) different from the type(s) of child(ren) recommended by the agency, the agency shall reevaluate the home study to determine if the applicant can be approved for the type of child they are seeking.

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

(h) (No change.)

(i) For applicants who have been studied, approved and placed on a waiting list for longer than 18 months from the time their home study was approved, the agency shall \*[update]\* **\*update\*** the home study before a child is placed into the home. The updated home study shall include:

1.-2. (No change.)

(j) (No change.)

#### 10:121A-5.7 Placement services

(a) The agency shall have responsibility for the selection of approved adoptive parents for a child **\*upon successful completion of a home study as specified in N.J.A.C. 10:121A-5.6\***.

1.-5. (No change.)

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

#### 10:121A-5.8 Post-placement services

(a) For agency placements, the agency shall:

1. (No change.)

2. For children under five years of age, the agency shall:

i. Conduct bi-monthly home visits after the first visit for at least six months, except when the adoption is delayed past the six month supervisory period because the court has a backlog of cases. In these instances, the agency may conduct office visits on a quarterly basis instead of home visits until the adoption has been finalized.

ii.-iii. (No change.)

3. For children age five or older, the agency shall:

i. Conduct monthly home visits during the minimum supervisory six-month period, and then bi-monthly home or office visits until the adoption is finalized, if the court has a backlog of cases.

ii.-iii. (No change.)

(b) The agency shall ensure that consents are not signed before the completion of the six month supervision, as specified in (a)2i above, unless the child's placement has been at least six months and the agency ensures the completion of the fourth supervision visit as scheduled.

(c) (No change.)

(d) If a child under two years of age is in an adoptive home for more than one year without the adoption being finalized, the agency shall document to the Bureau in writing the reason(s) that the adoption has not been finalized. Such information shall be provided no later than 30 calendar days after the one-year adoptive placement supervision period has ended.

(e) If a child over two years of age is in an adoptive home for more than two years without the adoption being finalized, the agency shall document to the Bureau in writing the reason(s) that the adoption has not been finalized. Such information shall be provided no later than 30 calendar days after the two-year adoptive placement supervision period has ended.

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

#### 10:121A-5.9 Post-adoption services

(a) (No change.)

(b) An agency shall provide the following post-adoption services:

1. (No change.)

2. Upon request and if available, adoptive parents, birth parents and adult adoptees shall be provided with written information on the non-identifying characteristics and background of the adoptee and the adoptee's birth family. This information shall include, but not be limited to:

i. Age or date of birth;

ii. Circumstances surrounding the placement;

iii. Religion;

iv. Education;

v. Nationality/ethnic background;

vi. Employment history;

vii. Medical history; and

viii. Talents or hobbies.

3. (No change.)

(c) (No change.)

#### 10:121A-5.10 Searches

(a) An agency that conducts searches on behalf of adult adoptees, birth parents when the adopted child is 18 years of age or older, or adoptive parents when the child is under 18 years of age, shall establish a written policy that outlines the procedures regarding confidentiality as specified in N.J.A.C. 10:121A-3.6(a) 1 through 4 and the extent to which searches are conducted. This policy shall also include a fee schedule for conducting the search and time frames for completing a search.

(b) A search shall include, but not be limited to:

1. A review of the agency record for background information on the birth or adoptive family, including:

i. The last known address;

ii. Names of the male/female members;

iii. Social Security numbers;

iv. Occupations and addresses of places of employment;

v. Military services, if known;

vi. Clubs or union affiliations, if known;

vii. Names of schools and/or colleges that were attended, if known; and

viii. Dates and places of marriages and deaths.

(c) When the information in the agency record is sufficient to complete a search, the search shall also include:

1. A review of current telephone books on a Statewide basis, and a review of previously published telephone books on a Statewide basis, if accessible, or utilization of a telephone information service provided that the adult adoptee, birth parents or adoptive parents agree to such a service;

2. Sending a "blind" letter to the Social Security Administration for subsequent mailing to family members;

3. Contacting military, union, employment and/or club affiliation;

4. Contacting high school or college alumni offices;

5. Contacting professional licensing boards;

6. Contacting the church where the adopted child was christened/baptized;

7. Contacting the local post office to check old addresses;

8. Contacting cemeteries, when the records indicate a deceased family member;

9. Contacting the local library or town hall to check on voter registration information;

10. Checking tax or real estate records; and

11. Sending letters to the last known addresses of all family members.

(d) The agency shall document and maintain on file all the aspects of a search as specified in (b) above that were undertaken on behalf of the adult adoptees, birth parents or adoptive parents.

(e) The agency shall provide a handbook or pamphlet to each adult adoptee, birth parent and adoptive parent that outlines the range of services that may be included in a search, the confidentiality rights/responsibilities of all parties that are involved in the search and the costs associated with the search.

## LAW AND PUBLIC SAFETY

### (a)

#### BOAT REGULATION COMMISSION

##### Boating Regulations

##### Rotating Lights; Personal Watercraft

##### Adopted Amendments: N.J.A.C. 7:6-1.24 and 9.2

Proposed: May 4, 1992 at 24 N.J.R. 1694(a).

Adopted: November 13, 1992 by the Boat Regulation

Commission, Robert J. Del Tufo, Attorney General.

Filed: November 24, 1992 as R.1992 d.506, **without change.**

Authority: N.J.S.A. 12:7-23.1 et seq. and 12:7-34.36 et seq., particularly 12:7-34.40 and 34.49, and 12:7A-29.

Effective Date: December 21, 1992.

Expiration Date: June 9, 1994.

**Summary of Public Comments and Agency Responses:**

No comments were received on the proposed amendment to 7:6-1.24. The Boat Regulation Commission received a letter and heard a presentation by Bombardier Corporation opposing the proposed amendment to N.J.A.C. 7:6-9.2. Bombardier Corporation sells three-person personal watercraft capable of moving in reverse and believed that such craft should not be treated as personal watercraft for regulatory purposes. The Commission believes that it is in the best interests of public boating safety to treat all such craft uniformly.

**Full text** of the adoption follows.

7:6-1.24 Rotating lights

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

(c) Any vessel engaged in activity recognized by the U.S. Coast Guard as being eligible for its use may display a rotating red and yellow light.

7:6-9.2 Definitions

"Personal watercraft" means a power vessel which:

1. Is designed to be operated by a person or persons, sitting, standing or kneeling; and
2. Uses an internal combustion engine to power a water jet pump which propels the vessel through the water.

(a)

**DIVISION OF CONSUMER AFFAIRS  
BOARD OF CHIROPRACTIC EXAMINERS  
Referral Fees**

**Adopted New Rule: N.J.A.C. 13:44E-2.7**

Proposed: April 20, 1992 at 24 N.J.R. 1470(a).

Adopted: September 21, 1992 by the Board of Chiropractic Examiners, Gerald Sternbach, D.C., President.

Filed: November 24, 1992 as R.1992 d.507, **without change**.

Authority: N.J.S.A. 45:9-41.23(h).

Effective Date: December 21, 1992.

Expiration Date: July 1, 1996.

The Board of Chiropractic Examiners afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:44E-2.7, relating to referral fees. The official comment period ended on May 20, 1992. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on April 20, 1992, at 24 N.J.R. 1470(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Camden Courier Post, the Council of New Jersey Chiropractors, the New Jersey Chiropractic Society, the New Jersey Hospital Association, the New Jersey Association of Osteopathic Physicians and Surgeons, the Southern New Jersey Chiropractic Society, the State Board of Medical Examiners, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Chiropractic Examiners, Post Office Box 45004, Newark, New Jersey 07101.

**Summary of Public Comments and Agency Responses:**

Five letters were received during the 30-day comment period, two from the same individual. All of the commenters represent chiropractic associations, including The Council of New Jersey Chiropractors, the Northern New Jersey Chiropractic Society, the New Jersey Chiropractic Society and the Chiropractic Alliance of New Jersey (two letters). With the exception of the latter commenter, all of the commenters commended the Board for proposing the rule and stated their support for the ethical practice standards set forth in the proposal. The Council of New Jersey Chiropractors and the New Jersey Chiropractic Society recommended amending the rule to make it more specific as to the penalties involved for violations and to include specific language making an associate chiropractor liable for involvement in any illegal practices

of the employer. Specifically noted was the widespread use of referral fees for referral of individuals involved in automobile accidents in order to utilize PIP (personal injury protection) insurance benefits. The commenters urged the Board to take the lead in demonstrating concern for insurance reform through strict regulation of referral fees.

The Board appreciates the support for the rule and agrees that it would be beneficial to strengthen it by reference to penalties and to specific acts involving referral fees which the Board will deem to be professional misconduct. However, rather than delay implementation of this rule, amendments will be proposed in a future issue of the New Jersey Register.

In opposition to the proposal, the Chiropractic Alliance of New Jersey stated that it is both appropriate and ethical to market a professional practice through direct, in-person solicitation of accident victims because people with spinal injuries need chiropractic care as soon as possible after injury. In response, the Board states that it is neither appropriate nor ethical to engage in such practices and reaffirms its original intent in proposing this rule; that is, to maintain and ensure standards of integrity in the profession and prevent any practices which may negatively affect the cost of health care or influence the treatment of a patient. The Board also notes the overwhelming support of the profession for this rule.

In his correspondence to the Board, this commenter asked a number of questions, some of which had no bearing on this proposal. A summary of the questions directly relating to this proposal follows, together with the Board's responses.

The commenter requested background information on how the decision was reached to promulgate this rule, including who suggested its writing and who actually wrote it. As stated in the Notice of Proposal, the rule codifies the traditional prohibition on the receipt or payment of referral fees by professionals. Pursuant to N.J.S.A. 45:9-41.18, the Board is charged with the responsibility to regulate the practice of chiropractic in this State "to properly protect the citizenry who receive the services of a chiropractor by maintaining and ensuring standards of competency and integrity of the profession." The prohibition of referral fees articulates the Board's determination to uphold an appropriate standard of ethical behavior for licensed chiropractors in a manner similar to the standard imposed by other health-related professions.

The commenter also asked what specific acts would constitute professional misconduct. As stated above, the Board will be elaborating on this rule in an amendment to be proposed in the near future.

**Full text** of the adoption follows.

13:44E-2.7 Referral fees

It shall be professional misconduct for a licensee to pay, offer to pay, or to receive from any person any fee or other form of compensation for the referral of a patient. The within prohibition shall not prohibit the division of fees among licensees engaged in a *bona fide* employment, partnership or corporate relationship for the delivery of professional services.

(b)

**STATE ATHLETIC CONTROL BOARD**

**Boxing Rules**

**Compensation for Inspector**

**Adopted New Rule: N.J.A.C. 13:46-9.17**

Proposed: October 5, 1992 at 24 N.J.R. 3492(a).

Adopted: November 17, 1992 by the State Athletic Control Board, Larry Hazzard, Commissioner.

Filed: November 25, 1992 as R.1992 d.511, **without change**.

Authority: N.J.S.A. 5:2A-4, 5:2A-5b and 5:2A-7c and d.

Effective Date: December 21, 1992.

Expiration Date: September 4, 1995.

**Summary of Public Comments and Agency Responses:**

Comments on the proposed rule were received from Madison Square Garden and Ring Star Promotions, Inc.

COMMENT: Madison Square Garden expressed support for the rule but expressed discontent that revenues raised through boxing events are not routed back at a sufficient level into regulation of the sport.

RESPONSE: The Board has no control over the allocation of funds to the Board that are derived from boxing events. The Board is appreciative of the support of the rule voiced by Madison Square Garden in the face of budget reductions.

COMMENT: Ring Star Promotions, Inc. expressed the opinion that two inspectors per promotion were inadequate.

RESPONSE: In the opinion of the Board, two inspectors per promotion should provide sufficient coverage. This level of staffing is consistent with the Board's past practice.

Full text of the adopted new rule follows.

13:46-9.17 Compensation for inspectors

(a) Two inspectors shall be assigned by the Commissioner to each boxing show.

(b) The compensation to the inspectors shall be paid by the promoter and the fee for each of the inspectors shall be \$70.00.

(c) Promoters shall not make any payments of compensation directly to inspectors. The promoter shall write a check to the State of New Jersey in an amount authorized and determined by the Commissioner or his authorized representative. The check shall be given to the Commissioner or his authorized representative. The funds will be disbursed by the Board to the inspectors.

**TRANSPORTATION**

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID**

**BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Restricted Stopping and Parking**

**Routes N.J. 5, U.S. 9W, and N.J. 67 in Bergen County**

**Adopted Amendments: N.J.A.C. 16:28A-1.5, 1.61 and 1.71**

Proposed: October 19, 1992 at 24 N.J.R. 3673(a).

Adopted: November 19, 1992 by Richard C. Dube, Director,

Division of Traffic Engineering and Local Aid.

Filed: November 20, 1992 as R.1992 d.504, **without change**.

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

Effective Date: December 21, 1992.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

**No comments received.**

Full text of the adoption follows.

16:28A-1.5 Route 5

(a) The certain parts of State highway Route 5 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1.-4. (No change.)

(b) The certain parts of State highway Route 5 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. No parking bus stops in the Borough of Edgewater, Bergen County:

i. Along the southerly (eastbound) side:

(1) Mid-block bus stop:

(A) Grant Avenue—Beginning 775 feet west of the westerly curb line of Grant Avenue and extending 135 feet westerly therefrom.

2. No parking bus stops in the Borough of Fort Lee, Bergen County:

i. Along Palisade Avenue, northbound on the easterly side thereof at:

(1) Far side bus stops:

(A) Bridle Way—Beginning at the northerly curb line of Bridle Way and extending 164 feet northerly therefrom.

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

ii. Along Palisade Avenue, southbound on the westerly side thereof at:

(1) Far side bus stops:

(A) Bridle Way—Beginning at the southerly curb line of Bridle Way and extending 160 feet southerly therefrom.

(B) Bluff Road—Beginning at the southerly curb line of Bluff Road and extending 155 feet southerly therefrom.

16:28A-1.61 Route U.S. 9W

(a) The certain parts of State highway Route U.S. 9W described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-4. (No change.)

5. No parking bus stops in the Borough of Fort Lee, Bergen County:

i. Along Fletcher Avenue, northbound on the easterly side thereof at:

(1) Near side bus stops:

(A) Linwood Avenue—Beginning at the southerly curb line of Linwood Avenue and extending 155 feet southerly therefrom.

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

2. Far side bus stop:

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

ii. Along Fletcher Avenue, southbound on the westerly side thereof at:

(1) Near side bus stops:

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

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

(2) Far side bus stop:

(A) Linwood Avenue—Beginning at the southerly curb line of Linwood Avenue and extending 155 feet southerly therefrom.

6.-8. (No change.)

(b) (No change.)

16:28A-1.71 Route 67

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

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

i. (No change.)

ii. Along Palisade Avenue:

(1) (No change.)

(2) Near side bus stop:

(A) Horizon Road—Beginning at a point 30 feet north of the prolongation of the northerly curb line of Horizon Road and extending 125 feet northerly therefrom.

2.-3. (No change.)

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

## TREASURY-TAXATION

(a)

### DIVISION OF TAXATION

#### Public Utility Corporations

**Adopted Amendments: N.J.A.C. 18:22-1.3, 3.3, 6.1, 8.1, 9.2, 9.6 and 10.1**

**Adopted Repeal: N.J.A.C. 18:22-6.3**

**Adopted Repeal and New Rule: N.J.A.C. 18:22-6.2**

Proposed: July 20, 1992 at 24 N.J.R. 2531(b).

Adopted: November 19, 1992 by Leslie A. Thompson, Director, Division of Taxation.

Filed: November 20, 1992 as R.1992 d.505, **with substantive changes** not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:50-1.

Effective Date: December 21, 1992.

Expiration Date: February 24, 1994.

#### Summary of Public Comments and Agency Responses:

COMMENT: The Board of Regulatory Commissioners proposed additional language to the proposed definition of "class" which would indicate the Board's role in approving class designations.

RESPONSE: The Division agreed to add further statutory language addressing this point.

COMMENT: Maria D. Laurino, representing the Hackensack Water Company, and Dennis G. Sullivan, of the Middlesex Water Company, both expressed concern that proposed amendments to N.J.A.C. 18:22-9.6 could be interpreted to mean that the advanced payment schedule would apply to water and sewerage utilities.

RESPONSE: The Division agreed to modify the proposed language to specify that the new payment schedule referred to in N.J.A.C. 18:22-9.6 applies to gas and electric light, heat and power corporations as required by P.L. 1991, c.184.

COMMENT: Thomas P. Bannon, representing GPU Service Corporation, commented that proposed N.J.A.C. 18:22-9.6(b) should include a provision that the sum of advance payments made over calendar years 1993 and 1994 shall not exceed the taxpayer's liability for the year 1992, as required by P.L. 1991, c.184.

RESPONSE: The Division agreed to add this provision.

COMMENT: L. N. Leiter, representing Rockland Electric Company, commented that proposed N.J.A.C. 18:22-3.3 should be modified to indicate that the sum of advance payments for 1993 and 1994 would be limited to the tax liability for 1992.

RESPONSE: The Division agreed to make this change.

COMMENT: Mr. Leiter also argued that the proposed amendment to N.J.A.C. 18:22-6.1 requiring electronic funds transfer payments by 12:00 P.M. E.S.T. on the due date was an unwarranted expansion of the law.

RESPONSE: The Division responded that the provision was within its authority under section 15 of P.L. 1991, c.184, which required the Director to prescribe "the circumstances under which an electronic funds transfer shall serve as a substitute for the filing of another form of return."

COMMENT: Robert K. Krueger, Jr., representing Public Service Electric and Gas Company, submitted several comments. First, it was suggested that it should be clarified that sales to Municipal Electric Supply Operations should not be considered corresponding kilowatt hours of electricity.

RESPONSE: The Division responded that the proposal included the statutory definition of kilowatt hours of electricity in the "Definitions" section of the rules. The statutory definitions exclude sales to public utilities from the definition of "corresponding therms of gas" or "corresponding kilowatt hours of electricity." Sales to municipal electric supply operations would be considered sales to public utilities.

COMMENT: Second, Mr. Krueger inquired whether proposed N.J.A.C. 18:22-9.2 related to the excise tax or the surtax, and it was suggested that N.J.A.C. 18:22-9.2(a)3 should be redesignated N.J.A.C. 18:22-9.2(b).

RESPONSE: The Division responded that the proposed rule related to the unit base under N.J.S.A. 54:30A-54.6, and has made the suggested redesignation on adoption.

COMMENT: Third, Mr. Krueger proposed that the rule addressing advance payments for gas and electric light, heat and power corporations should limit the sum of the advance payments in 1993 and 1994 to the tax liability for calendar year 1992.

RESPONSE: The Division agreed to make this change to N.J.A.C. 18:22-9.6.

COMMENT: Fourth, it was argued by Mr. Krueger that the proposed requirement in N.J.A.C. 18:22-6.1(d) requiring that electronic funds transfers be received on or before 12:00 P.M. E.S.T. of the due date was not in conformance with N.J.S.A. 54:30A-62 or N.J.S.A. 54:30A-24 and that 12:00 P.M. should be changed to 12:00 midnight.

RESPONSE: The Division pointed out that both provisions required the Director to prescribe "the circumstances under which an electronic funds transfer shall serve as a substitute for the filing of another form of return," and noted that the 12:00 P.M. requirement was intended to avoid administrative and legal problems resulting from late payments. The Division therefore declined to make this requested change.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***):

#### 18:22-1.3 Definitions

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

...

"Class" means any segment, grouping or other division of an electric company's or gas company's customers which is established for the purpose of charging rates for electric or gas service. Any such class shall be **\*[designed]\* \*designated\*** to be in the residential class category or nonresidential class category. **\*The Board of Regulatory Commissioners may permit gas and electric light, heat and power corporations to establish new tariffs, contracts or schedules as necessary. Whenever a corporation shall establish in its tariffs, contracts or schedules a new class, the Board of Regulatory Commissioners shall designate it in the residential class category or non-residential class category.\***

1. With respect to electric companies, "residential class category" means any class established by an electric company which generally includes customers taking electric service under rate schedules that are primarily residential in nature; and "non-residential class category" means any class established by an electric company which generally includes customers taking electric service under rate schedules that are primarily nonresidential in nature.

2. With respect to gas companies, "residential class category" means any class established by a gas company which generally includes customers taking natural gas service under rate schedules that are primarily residential in nature; and "nonresidential class category" means any class established by a gas company which generally includes customers taking gas service under rate schedules that are primarily nonresidential in nature.

...

"Corresponding therms of gas" or "corresponding kilowatthours of electricity" means all therms of gas or kilowatthours of electricity from the taxpayer's business over, on, in, through or from the whole of its lines or mains, excluding therefrom, however:

1. Any therms of gas or kilowatthours of electricity as may have been sold and furnished to another public utility which is also subject to either the payment of a tax based upon gross receipts or the payment of a unit-based tax applied to therms of gas of kilowatthours of electricity;

2. Any kilowatthours of cogenerated electrical energy resold by the taxpayer to a producing cogenerator where produced; and

3. Any therms of natural gas sold by the taxpayer to a cogenerator and separately metered for use in a cogeneration facility.

...

"Public street, highway, road or other public place" means any street, highway, road or other public place which is open and used by the public, even though the same has not been formally accepted

as a public street, highway, road or other public place. For purposes of computing the tax in connection with lines or mains installed after February 19, 1991, the term includes without limitation dead end streets, cul-de-sacs, alleys, water or riparian ways, and non-restricted roadways, such as extended residential, commercial or recreational facility driveways, or dead end streets, cul-de-sacs or alleys which are connected to public roadways and are for access to or the use of supermarkets, shopping malls, planned communities (such as apartment complexes and condominium developments), commercial enterprises, and recreation facilities (such as marinas, golf clubs, drag strips, etc.) and the connecting roads within or around the above facilities whether these roadways shall be located on public or on private property. The term "public street, highway road or other public place" shall not include restricted residential communities that control, by way of a permanently manned gate, access to or through said community.

#### 18:22-3.3 Payment; due date

(a) For years prior to 1992, each taxpayer must pay the tax due the State under the Act on or before May 1 of the tax year.

(b) Commencing in 1992, payment of the tax due shall be made on or before April 1. Advance payments are due as follows: on or before April 1, 1993, 50 percent of the taxpayer's tax liability in 1993; and on or before April 1, 1994 and on or before April 1 of each year thereafter, an amount equal to the taxpayer's tax liability in the current year.

1. **\*The sum of advance payments made by the taxpayer over both calendar years 1993 and 1994 shall not exceed the taxpayer's tax liability for the 1992 calendar year, after deducting from that 1992 tax liability the amount of any credits extended by prepayments required for that year pursuant to N.J.S.A. 54:30A-18.1a and N.J.S.A. 54:30A-18.4.\*** In the calculation of the tax due, the taxpayer shall be entitled to a credit in the amount of the tax paid as a partial payment in the preceding year and shall be entitled to the return or credit against taxes due and payable in the next year of any amount so paid which shall be found to be in excess of the total amount payable.

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

#### 18:22-6.1 Payment of tax; installments

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

(c) For the calendar years 1992, 1993, and 1994, payment of all taxes due shall be remitted to the Director on or before April 1. For calendar year 1995 and each calendar year thereafter taxes shall be remitted in the following manner: payment of the estimated tax liability on or before April 1 of the tax year and payment of the remaining tax liability, if any, on or before April 1 of the next following year.

(d) For those utilities which have had a liability greater than \$20,000 for any one tax in the immediate preceding year of liability, the payment of tax shall be received by electronic funds transfer on or before 12:00 P.M. E.S.T. of the date established for payment. For those not subject to the electronic funds transfer provision, payment is due and payable on the date established for payment.

#### 18:22-6.2 Administration and collection

The administration, collection and enforcement of the taxes payable by each taxpayer under the Act and any advance payment or payment of estimated tax liability required with regard to these taxes shall be subject to the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq.

#### Statutory Reference

As to administration and collection, see N.J.S.A. 54:30A-24.

#### 18:22-6.3 (Reserved)

#### 18:22-8.1 Information required on returns; due dates

(a) (No change.)

(b) Every taxpayer shall, on or before February 1 of the tax year, return to the Director a statement showing:

1.-2. (No change.)

3. Every taxpayer operating both gas and electric facilities shall supply the information required by this subsection so that its gross

receipts and sales of units from gas and electric operations are shown separately.

4. Commencing with the statement to be returned on or before February 1, 1992, gas and electric light, heat, and power corporation taxpayers shall return a statement of the corresponding terms of gas and the corresponding kilowatthours of electricity sold in this State in the preceding year itemized separately for classes in the residential class category and the nonresidential class category.

(c) (No change.)

#### 18:22-9.2 Excise tax payable to State; rates

(a) In addition to the excise taxes payable to municipalities (N.J.A.C. 18:22-10.1 (Computation of tax)) every street railway, traction, sewerage, and water corporation shall pay excise taxes to the State for the franchise to operate and conduct business within the State and to use the public streets, highways, roads or other public places in the State, at the following rates:

Recodify (a)-(b) as 1. and 2. (No change in text.)

\*[3.]\*\***(b)\*** Commencing in 1992, every gas and electric light, heat and power corporation using or occupying the public streets, highways, roads, or other public places in this State shall, annually, pay an excise tax for the privilege of exercising its franchises and using the public streets, highways, roads, or other public places in this State as follows:

\*[i.]\*\***1.\*** In 1992, unit-based taxes due upon the corresponding terms of gas and corresponding kilowatthours of electricity sold by such taxpayers in this State for the classes in the residential class category and the nonresidential class category in the preceding year.

\*[ii.]\*\***2.\*** Commencing in 1995, unit-based taxes shall be due upon such units so sold in the current year. The rate of taxation for units sold in each class by each taxpayer shall be separately calculated by the Board of Public Utilities, in consultation with the Director.

#### 18:22-9.6 Payment due; date

(a) The taxes due under the Act prior to 1993 are payable on or before May 1 of the tax year.

(b) In 1993, 50 percent of the \*[taxpayer's]\* liability **\*of gas, electric light, heat and power corporations\*** is due April 1, 1993. Commencing in 1994 and each calendar year thereafter, \*[the taxpayer]\* **\*gas and electric light, heat and power corporations\*** shall make a payment of estimated tax liability for the current year on or before April 1 of that year. The payment shall not be less than the amount of taxes paid by the taxpayer in the preceding year. The taxpayer shall, on or before April 1 of the next following year, file a final tax form sufficient to demonstrate the taxpayer's liability, if any, and pay the amount of any remaining tax liability. **\*The sum of advance payments made by a taxpayer over both calendar years 1993 and 1994 shall not exceed the taxpayer's tax liability for the 1992 calendar year, after deducting from the 1992 tax liability the amount of any credits extended for prepayments required for that year pursuant to N.J.S.A. 54:32B-54.1a and N.J.S.A. 54:30A-54.4.\*** The taxpayer shall be entitled to the refund or credit against taxes due and payable in the next year, or any of the estimated tax payment which is in excess of the total amount payable.

#### 18:22-10.1 Computation of tax

(a) In addition to the excise taxes payable to the State (N.J.A.C. 18:22-9.2 (Excise tax payable to the State; rates)) every railway, traction, sewerage and water corporation must pay, to the municipalities in which it operates, taxes for the privilege of exercising its franchises and for the use of the public streets, highways, roads or other public places at the following rates:

Recodify existing (a)-(b) as 1. and 2. (No change in text.)

## OTHER AGENCIES

## (a)

## ELECTION LAW ENFORCEMENT COMMISSION

## Public Financing of Primary Election for Governor

**Adopted Amendments: N.J.A.C. 19:25-16.3, 16.6, 16.8, 16.9, 16.10, 16.11, 16.12, 16.14, 16.18, 16.21, 16.22, 16.31, 16.33, 16.35, 16.37 and 16.38**

Proposed: October 19, 1992 at 24 N.J.R. 3690(b).

Adopted: November 24, 1992 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: November 30, 1992 as R.1992 d.516, **without change**.

Authority: N.J.S.A. 19:44A-38.

Effective Date: December 21, 1992.

Expiration Date: October 1, 1995.

## Summary of Public Comment and Agency Responses:

A public hearing before the Commission was conducted on October 21, 1992, but no witnesses testified.

**No comments were received.**

**Full text** of the adoption follows.

## 19:25-16.3 Definitions for this subchapter

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

...  
 "Contribution eligible for match" means contributions from one contributor to be matched from public funds on a two-for-one basis. No contribution which must be or is intended by the contributor or the recipient to be refunded or repaid at any time, no loan obtained pursuant to section 15 of P.L. 1980, c.74 (N.J.S.A. 19:44A-44), no amount of the candidate's own funds in the aggregate in excess of \$1,800, no in-kind contribution and no other moneys received by the candidate, his or her campaign treasurer, or deputy campaign treasurer, except those contributions described in subsection (a) of section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29(a)), shall be deemed contributions eligible for match. Funds received by an individual who is testing the waters may be matched when the individual becomes a candidate, if such contributions meet all the requirements of the regulation.

...  
 "Qualified candidate" means:

1. Any candidate for nomination for election to the office of Governor whose name appears on the primary election ballot and who has deposited and expended \$177,000 pursuant to N.J.S.A. 19:44A-32; and who, not later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for primary election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial primary election debates; or

2. Any candidate for nomination for election to the office of Governor whose name does not appear on the primary election ballot, but who has deposited and expended \$177,000 pursuant to N.J.S.A. 19:44A-32 and who, not later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for a general election in which the office of Governor is to be filled, notifies the Election Law Enforcement Commission in writing that the candidate intends that application will be made on the candidate's behalf for monies for primary election campaign expenses pursuant to N.J.S.A. 19:44A-33, and signs a statement of

agreement, in a form to be prescribed by the Commission, to participate in two interactive gubernatorial primary election debates.  
 ...

## 19:25-16.6 Contribution limits; applicability

(a) Each candidate, whether or not intending to participate in public funding, and each campaign treasurer or deputy campaign treasurer of such candidate shall not knowingly accept from any person, candidate of political committee any contribution in aid of the candidacy of or in behalf of such candidate in the aggregate in excess of \$1,800 in any primary election.

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

## 19:25-16.8 Non-participating candidates; generally

(a) A non-participating candidate is subject to the \$1,800 limitation on contributions from a person or political committee, pursuant to section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29).

(b) A non-participating candidate is subject to the \$1,800 limit on guarantors of bank loans, except if the guarantor is the non-participating candidate himself or herself.

(c) (No change.)

## 19:25-16.9 Limitations on participating candidates

(a) Each candidate intending to participate in public funding, in addition to any other requirement imposed by the act (N.J.S.A. 19:44A-1 et seq.) or these regulations, is subject to the following limitations:

1.-2. (No change.)

3. The amount which any qualified candidate may spend in aid of his or her candidacy shall not exceed \$2,600,000, which amount shall include all expenditures for testing the waters activity prior to candidacy. Such amount shall not include expenditures listed in N.J.A.C. 19:25-16.27.

4. Contributions by any candidate in excess of \$1,800 from his or her own funds in aid of his or her candidacy shall not be deposited in a matching fund account and shall not be calculated in determining if such candidate is a qualified candidate eligible for public matching funds.

## 19:25-16.10 Who may or may not contribute; generally

(a) No person or political committee, other than a candidate contributing his or her own funds to his or her campaign, shall make any contribution to any candidate, the candidate's campaign treasurer or deputy campaign treasurer, or to any other person of committee, in aid of the candidacy of or in behalf of a candidate, whether or not participating in public funding, for nomination for election to the office of Governor in a primary election, in the aggregate in excess of \$1,800. Any such contribution in excess of \$1,800 must be promptly returned to the contributor, and evidence of the repayment shall be submitted to the Commission. Notwithstanding the provision of N.J.S.A. 19:44A-3(i) and N.J.A.C. 19:25-1.7 excluding "continuing political committees" from the meaning of "political committees", the term "political committee" as it appears in N.J.S.A. 19:44A-29(a) and this subsection shall include "continuing political committees" as defined in N.J.S.A. 19:44A-3(n)(2).

(b) (No change.)

(c) A corporation, association or labor organization or any subsidiary, affiliate, branch, division, department or local unit of any such corporation, association or labor organization shall not make any contribution to or on behalf of a candidate which, when added to any other contribution by any related or affiliated corporation, association or labor organization, exceeds \$1,800 in the aggregate. Whether such corporation, association or labor organization is related or affiliated shall depend on the circumstances existing at the time of such contribution, including, but not by way of limitation, the degree of control or common ownership with related or affiliated corporations, associations or labor organizations, the source and control of funds used for such contribution and the degree to which the decisions whether to contribute, to what candidate and in what amount are independent decisions.

**OTHER AGENCIES****ADOPTIONS****19:25-16.11 Contributions eligible for match; generally**

(a) (No change.)

(b) Only contributions in cash or by check, money order or negotiable instruments shall be contributions eligible for match. Loans shall not be eligible for match. In-kind contributions shall not be eligible for match, but will count toward the individual contribution limit of \$1,800 and the overall expenditure limit contained in section 2 of P.L.1980, c.74 (N.J.S.A. 19:44A-7) except for expenses not subject to expenditure limits pursuant to N.J.A.C. 19:25-16.27. The total of all contributions eligible for match from any person or political committee shall not exceed \$1,800 in the aggregate.

(c) A maximum of \$1,800 in the aggregate of a candidate's own funds may be deposited in the matching fund account.

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

**19:25-16.12 Contributions and loans prior to candidacy**

(a) Each candidate, whether or not intending to participate in public funding, shall certify to the Commission in writing within 10 days after the date of commencement of his or her candidacy that:

1.-2. (No change.)

3. No contribution in excess of \$1,800 in the aggregate from a person or political committee had theretofore been received for pre-candidacy "testing the waters" activity; or contributions in excess of \$1,800 in the aggregate have been received for that purpose, and the amount of each contribution in excess of \$1,800 in the aggregate has been returned to the contributor. The certification shall include:

i. A list of all contributors who contributed more than \$1,800 and the dates and amounts of all such contributions; and

ii. (No change.)

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

**19:25-16.14 Limitation on contributions eligible for match**

(a) Any contribution in the form of the purchase price paid for an item with significant intrinsic and enduring value (such as a watch) shall be eligible for match only to the extent the purchase price exceeds the fair market value of the item or benefit conferred on the contributor, and only the excess will be included in calculating the \$1,800 contribution limit.

(b) A contribution in the form of the purchase price paid for admission to a dinner or testimonial affair as defined in N.J.A.C. 19:25-1.7 shall be a contribution eligible for match and for purposes of the \$1,800 limitation.

(c) (No change.)

**19:25-16.18 Matching of funds**

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

(c) A candidate seeking to become eligible to receive matching funds shall certify to the Commission in a written statement signed by the candidate that he or she is a candidate for Governor in a primary election and that he or she has received and deposited into his or her matching fund account contributions eligible for match of at least \$177,000 from persons or political committees each of whose contributions in the aggregate do not exceed \$1,800, and that at least \$177,000 of such contributions has been expended. "Expended" for this purpose shall mean disbursed or irrevocably committed by a legally binding commitment for expenditure in the campaign and ultimately disbursed.

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

(g) The initial certification shall include three photocopies of checks, receipted bills, contracts or the like, as proof of the expenditure of at least \$177,000.

(h)-(k) (No change.)

**19:25-16.21 Receipt of public funds; generally**

The campaign treasurer or deputy campaign treasurer of any qualified candidate for election to the office of Governor in a primary election shall promptly receive in behalf of such qualified candidate from the funds for primary election campaign expenses moneys in an amount equal to twice the amount of each contribution eligible for match and deposited in such qualified candidate's matching fund account, described in N.J.S.A. 19:44A-32 except that no payment shall be made to any candidate from such fund for

primary election campaign purposes for the first \$59,000 deposited in such qualified candidate's matching fund account.

**19:25-16.22 Receipt of public funds; limitation**

(a) (No change.)

(b) The maximum amount which any qualified candidate may receive from public funds shall not exceed \$1,600,000.

**19:25-16.31 Borrowing of funds; repayment**

Any candidate, his or her campaign treasurer or deputy campaign treasurer may borrow funds from any national or State bank, provided that no person or political committee other than the candidate may in any way endorse or guarantee such loan in the aggregate in excess of the \$1,800 contribution limit. Except for a non-participating candidate guaranteeing a loan to his or her campaign, the amount so borrowed shall not at any one time in the aggregate exceed \$50,000 and must be repaid in full by such candidate or his or her campaign treasurer or deputy campaign treasurer from moneys accepted or allocated pursuant to section 5 of P.L. 1980, c.74 (N.J.S.A. 19:44A-29) not later than 20 days prior to the primary election. Certification of such repayment shall be made by the borrower to the Commission not later than 15 days prior to the date of primary election. In the event of the failure of the borrower to repay timely the full amount of the loan or to certify properly such repayment to the Commission, all payment of public funds to such candidate shall promptly cease and the Commission shall take action as directed by the act to prohibit the expenditure by the candidate of moneys received from the fund and any other moneys received by him or her in aid of his or her candidacy in such primary election.

**19:25-16.33 Post-election contributions; post-election payment of expenses**

(a) Any person or political committee otherwise eligible to make political contributions to a candidate may make a contribution in aid of the candidacy of such candidate after the date of such primary provided such person or political committee does not exceed \$1,800 in the aggregate for such primary.

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

**19:25-16.35 Computation of value of goods and services**

(a) Goods and services shall, for purposes of the reports required to be filed under the act and for purposes of the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7) where applicable, be valued by the reasonable commercial value of such goods and services to the candidate, whether or not the cost or value of such goods or services to the contributor or other provider of those services is higher or lower than such reasonable commercial value.

1. Example 1: Candidate Y, a candidate for the office of Governor who has chosen to accept public funding, obtains the use of a helicopter for travel of the candidate for campaign purposes. By agreement with the owner of the helicopter, the campaign committee for the candidate will pay \$200.00 per hour, which represents the cost to the owner of the maintenance and operation of the helicopter. The reasonable commercial value of the use of the helicopter is \$400.00 per hour. In this example, the amount of \$200.00 per hour paid by the campaign committee of the candidate to the owner for use of the helicopter is not includable as an expenditure for purposes of the expenditure limitations contained in section 7 of the act (N.J.S.A. 19:44A-7). The difference between the \$200.00 per hour actually paid for use of the helicopter and the reasonable commercial value normally charged by the owner for the use of the helicopter, represents a contribution from the owner of the helicopter to the candidate in the amount of \$200.00 per hour. The candidate could obtain the use of the helicopter under this arrangement from a lawful contributor for campaign purposes for not more than nine hours. If the candidate obtained the use of the helicopter for 10 hours under this arrangement, the owner of the helicopter would have made an unlawful contribution to the candidacy of the candidate, since the aggregate of the contributions (\$2,000) from that contributor in this instance would have exceeded \$1,800.

2. Example 2: Candidate Y in example 1, wishes to obtain the use of the helicopter from the owner for 15 hours, and the campaign committee for the candidate pays to the owner the reasonable commercial value of \$400.00 for each hour, or a total of \$6,000.00. The amount paid to the owner is not an expenditure within the expenditure limitation contained in section 7 of the act (N.J.S.A. 19:44A-7). On these facts the owner has made no contribution to the candidate.

- 3. (No change.)
- (b) (No change.)

19:25-16.37 Candidate statement of qualification before participation in public financing

(a) A candidate who intends to apply to the Commission for public matching funds on a date later than the last day for filing petitions to nominate candidates to be voted upon in a primary election for the office of Governor must on or before the last day for filing petitions to nominate candidates in a primary election for Governor file:

1. A certified statement of qualification containing evidence that \$177,000 has been deposited and expended pursuant to N.J.S.A. 19:44A-32 for gubernatorial primary election campaign expenses. Evidence that \$177,000 has been deposited and expended shall be filed with the Commission on the last day for filing petitions in the primary election to nominate candidates for the office of Governor and in a form to be prescribed by the Commission.

2. Each contribution submitted in the report required by (a)1 above as evidence that \$177,000 in contributions has been deposited must be accompanied by a written statement which shall identify the individual making the contribution by full name and full mailing address (number, street, city, state, zip code), the name of the candidate, the amount and date of receipt of the contribution, and shall bear the signature of the contributor. The requirement of such written statement will be deemed to be satisfied in the case where a contribution is made by means of a check, money order or other negotiable instrument payable on demand and to the order for, or specially endorsed without qualification to, the candidate or to his or her campaign committee, if such check, money order or instrument contains all of the foregoing information.

3. Each disbursement submitted in the report required by (a)1 above as evidence that \$177,000 has been expended for primary election expenses shall include two photocopies of checks, receipted bills, contracts, or similar documents as evidence of the expenditure of at least \$177,000.

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

19:25-16.38 Statement of candidates electing to participate in debates

(a) A candidate who has not by the last day for filing petitions to nominate candidates to be voted upon in a primary election applied to the Commission for public matching funds may elect to participate in the series of interactive gubernatorial primary election debates by:

- 1. (No change.)
- 2. Filing a statement of qualification containing evidence that \$177,000 has been deposited and expended pursuant to N.J.S.A. 19:44-32 for gubernatorial primary election expenses. The statement of qualification shall contain the same information as that required at N.J.A.C. 19:25-16.37(a).

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

**(a)**

**CASINO CONTROL COMMISSION**

**Casino Licensees**

**Persons Required To Be Licensed or Qualified Financial Stability of Casino Licensees and Applicants**

**Adopted New Rules: N.J.A.C. 19:43; 19:49-1.4; and 19:51-1.15**

**Adopted Amendments: N.J.A.C. 19:45-1.4 and 1.7**

**Adopted Repeals: N.J.A.C. 19:41-1.1, 3.1 and 4.2**

**Adopted Recodifications: N.J.A.C. 19:41-2 as**

**19:43-6; 19:41-13 as 19:43-13; 19:43 as 19:51; 19:51 as 19:43-14; and 19:52 as 19:43-15**

Proposed: September 21, 1992 at 24 N.J.R. 3225(a).

Adopted: November 18, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: November 19, 1992 as R.1992 d.500, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 5:12-69, 70b., h. and l., and 84.

Effective Date: December 21, 1992.

Expiration Date: December 21, 1997, N.J.A.C. 19:43; March 24, 1993, N.J.A.C. 19:45 and 19:49; April 27, 1994, N.J.A.C. 19:51.

**Summary of Agency-Initiated Changes:**

N.J.A.C. 19:43-9.1(a) and 10.1(a) are modified to reflect current practice; the rule now requires that an original and three copies of the relevant internal controls submissions be filed with the Commission, rather than three copies to the Commission and one to the Division. Also, N.J.A.C. 19:43-6.8 is modified to include a reference to simulcasting facilities, consistent with recent amendments to the Act and rules thereunder.

**Summary of Public Comments and Agency Responses:**

Comments were received from the Division of Gaming Enforcement (Division), Bally's Park Place and GNOC Corp. (Bally's), Caesar's World, Inc. (Caesar's), and the Sands Hotel and Casino (the Sands).

COMMENT: N.J.A.C. 19:43-1.1 provides that "noncorporate entities" shall comply to the extent possible with all reporting requirements of the Casino Control Act. The Division comments that this provision should require that such entities comply with "all relevant," as well as reporting, requirements in the new casino license chapter. The Division also comments that it should be made clear that the term "noncorporate entities" pertains to "controlling natural person qualifiers" as well as to noncorporate entities.

RESPONSE: As expressed in the proposal Summary, N.J.A.C. 19:43-1.1 was intended to "assure that noncorporate entities comply with these requirements to the same extent possible as their corporate counterparts." 24 N.J.R. 3225(a). Since all relevant requirements in the new rules, with the exception of a number of reporting requirements, expressly refer to the general category of "casino licensees or applicants," or specifically to persons required to be qualified, it did not seem necessary to clarify the scope of these rules. Nonetheless, the Commission agrees that the suggested reference to "all relevant requirements" accurately reflects the intended scope of the new rules.

COMMENT: The Division suggests that N.J.A.C. 19:43-2.4 be modified to require notification to the Division as well as the Commission, where a casino licensee or applicant becomes aware that it intends to enter a transaction bearing any relation to its casino project which may result in new financial backers, investors, mortgagees, bondholders or holders of indentures, notes or other evidences of indebtedness that may be subject to N.J.S.A. 5:12-84(b). Likewise, the Division suggests that N.J.A.C. 19:43-2.9 should require the submission of adopted charter provisions relating to subsidiaries of casino licensees and applicants to the Division as well as the Commission.

RESPONSE: The Commission agrees that the suggested modification is consistent with current practice, and it is added upon adoption to N.J.A.C. 19:43-2.4 and 2.9.

COMMENT: The Division comments that it is unclear whether certain lending institutions and financial investors, although no longer required

to qualify as financial sources under N.J.S.A. 5:12-84(b), are still included in the notification provision in N.J.A.C. 19:43-2.4.

RESPONSE: While certain lending institutions and institutional investors may be exempted or waived from qualification, such financial sources are still subject to the notification requirements set forth in N.J.A.C. 19:43-2.4.

COMMENT: The Division notes that N.J.A.C. 19:45-1.4(c) as proposed requires that the casino licensee or applicant provide a list of all record holders of securities issued by its holding companies. The Division comments that this standard should be expanded to include securities issued not only by the holding companies but also affiliated companies which have provided financing that bears a relationship to the casino licensee or applicant.

RESPONSE: The Commission agrees with this comment. However, such addition is a substantive change that will require publication. Such amendment will be addressed by the Commission in a future rulemaking proposal.

COMMENT: Caesar's comments that "eligibility is not a relevant concept" in the context of section 82b of the Act and suggests that this term be deleted from N.J.A.C. 19:43-2.1 and 2.2(b).

RESPONSE: This language in the adopted rules is consistent with the statutory language in N.J.S.A. 5:12-82.

COMMENT: Caesar's comments that the citations in N.J.A.C. 19:43-2.2(b)3 regarding qualification should include subsection 85 of the Act. Caesar's further comments that the reference to N.J.S.A. 5:12-105 in N.J.A.C. 19:43-2.2(c) is inappropriate since "it does not relate to qualifications in the sense of sections 84 and 85."

RESPONSE: Since N.J.S.A. 5:12-85f is relevant to the subject matter of N.J.A.C. 19:43-2.2, a citation to that subsection is added. Section 105 of the Act relates to the standards for qualification and is appropriately cited in N.J.A.C. 19:43-2.2(c).

COMMENT: Caesar's comments that N.J.A.C. 19:43-2.3 "goes well beyond the standard license condition" imposed on it by requiring notification of proposed appointment, proposed nomination, intended resignation and incapacitation. Caesar's further comments that these terms are confusing, "do not provide guidance as to what is sought or why," and are unnecessary.

RESPONSE: In codifying the license conditions that have routinely been imposed on all licensees, the Commission is not constrained from standardizing, clarifying and expanding upon the language of these requirements as it deems necessary and appropriate. Moreover, in this instance the substantive impact of the regulatory language does not vary greatly from that of the license condition previously imposed upon Caesar's, which requires notice "as soon as it becomes known that any new or replacement member will be added . . . or that any member thereof will resign or that and new or replacement corporate officer or other person required to qualify . . . will be elected or appointed, or that any such person . . . will resign."

COMMENT: Caesar's comments that N.J.A.C. 19:43-2.3 should refer only corporate employees or directors.

RESPONSE: N.J.A.C. 19:43-2.3 intentionally includes other persons required to be qualified pursuant to N.J.S.A. 5:12-85(c) and (d). This is in fact consistent with the express provisions of Caesar's current license conditions.

COMMENT: N.J.A.C. 19:43-2.4 requires notice as soon as the casino licensee or applicant "becomes aware that it intends to enter into a transaction bearing any relation to its casino project which may result in" new financial sources. Caesar's argues that the language of this rule "adds confusion" and should instead require "timely" notice of such a transaction. Caesar's further contends that this notice is unnecessary since a new financial source will have to comply with the interim casino authorization provisions of the Act or, if the transaction involves material debt, will have to be approved pursuant to N.J.A.C. 19:43-4.3.

RESPONSE: The timing and scope of the notice requirements in N.J.A.C. 19:43-2.4 are clear and do not require any modification. Further, it is the casino licensee's or applicant's obligation to provide such notice of new financial sources, without regard to whether the financial source or the transaction itself may subsequently be subject to other statutory or regulatory requirements.

COMMENT: Caesar's contends that N.J.A.C. 19:43-2.5(a)2 is confusing since "it does not define or specify who determines whether a holder of securities has 'the ability to control the holding company'." Caesar's comments that under section 85(d)(1) of the Act it is the Commission that makes this determination. Caesar's likewise comments that it is the

Commission that must determine if an entity is a "holding company" for purposes of N.J.A.C. 19:43-2.5.

RESPONSE: The obvious purpose of N.J.A.C. 19:43-2.5 is to ensure that the Commission and Division are notified of any new qualifiers. The casino licensee is able to make the judgement that any person has acquired the ability to control a holding company and is obligated to disclose this information to the Commission and the Division. Section 85(d)(1) of the Act refers to a Commission determination to waive qualifications pursuant to section 85(c) where a security holder does not have the ability to control the holding company.

COMMENT: Caesar's comments that the casino licensee or applicant should not be required to submit copies to the Commission and Division of section 13f filings under the Securities Exchange Act of 1934.

RESPONSE: Each of the SEC filings cited in N.J.A.C. 19:43-2.5(b) contain relevant information and the Commission has and will continue to require that casino licensees and applicants provide copies of such filings.

COMMENT: Caesar's comments that the language of N.J.A.C. 19:43-2.6 "is virtually identical" to N.J.A.C. 19:43-2.7.

RESPONSE: N.J.A.C. 19:43-2.6 applies to qualifiers of a casino licensee. N.J.A.C. 19:43-2.7 applies to qualifiers of a holding company and contains a number of provisions not in N.J.A.C. 19:43-2.6.

COMMENT: Caesar's suggests that the reference to "officer" in N.J.A.C. 19:43-2.7(a) should read "corporate officer" or "officer appointed by the Board of Directors."

RESPONSE: The Commission does not agree that any additional clarification is necessary. The meaning and scope of this subsection is apparent from the text as proposed. The suggested definitions are unnecessary to clarify the adopted rule.

COMMENT: Caesar's comments that N.J.A.C. 19:43-2.7(b) should be clarified to provide that no director, officer of other qualifier shall perform any duties or exercise any powers relating to his or her position "as a corporate officer or director" until qualified.

RESPONSE: The Commission does not agree that any such additional clarification is necessary. The meaning and scope of this subsection is apparent from the text as proposed. The suggested definitions are unnecessary to clarify the adopted rule.

COMMENT: Caesar's argues that N.J.A.C. 19:43-2.8 should require prior approval of transfers of interest only if the transferee is not already qualified.

RESPONSE: Subsection 82d of the Act provides for prior review and approval of all transfers of interest. The focus of such review is not limited to the qualifications of the transferee.

COMMENT: Caesar's comments that the reference to N.J.S.A. 5:12-82(d)9 should be deleted from N.J.A.C. 19:43-2.8.

RESPONSE: Subsections 82(d)7 through 10 of the Act are all generally relevant in this context and are appropriately cited.

COMMENT: Caesar's argues that the employee and vendor internal controls submissions required by N.J.A.C. 19:43-9.1 and 10.1 are unnecessary and that such procedures are not the proper subject of regulation.

RESPONSE: The Commission has an interest in ensuring that the casino licensee's or applicant's procedures accurately represent the licensing status of individuals employed in the casino hotel. Likewise, the Commission has an interest in ensuring that the casino licensee or applicant implements procedures that will provide the Commission with all information necessary to track the enterprise license system.

COMMENT: The Sands objects to the adoption of the proposed amendments and new rules, commenting that the rules "seek to quantify that which ought not to be quantified in advance."

RESPONSE: The adopted rules establish a comprehensive regulatory chapter concerning the application for and issuance of a casino license, as well as related licensing standards and regulatory obligations. Among other things, the new chapter codifies the standards for determining the financial stability of a casino licensee or applicant in accordance with N.J.S.A. 5:12-84(a), bringing a beneficial structure and predictability to that process. The adoption also codifies a number of standard license conditions that are routinely imposed on all casino licensees, and which therefore satisfy the definition of a rule at N.J.S.A. 52:14B-2.

COMMENT: Bally's comments that the definition of capital and maintenance expenditures should specify that in-house design and construction expenses are included. The Sands comments that the definition of capital and maintenance expenditures should specifically include the annual cost of acquisition of property and equipment under operating-type leases.

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**RESPONSE:** By definition, capital and maintenance expenditures include any and all expense items related to the casino hotel incurred in connection with furniture, fixtures, equipment and facilities, and capitalized costs. Although the examples cited fall within this general definition, these need not be specifically referenced.

**COMMENT:** The Sands maintains that the exclusions to the definition of casino bankroll are too broad and "difficult to apply." The Sands sees an "obvious diversity in the application of this term as presently defined" and "the probability of inconsistency in the compilation and reporting of casino bankrolls." The Sands suggests that there be no cash exclusions from the cash maintained in the casino, and that the casino bankroll should be defined as the aggregate closing balances reported in the casino cage and the master coin bank closeouts or summaries, less any non-cash items reported therein.

**RESPONSE:** The Commission agrees that this language clarifies and simplifies the intended definition, and has modified the definition accordingly.

**COMMENT:** Bally's, Caesar's and the Sands comment that the "immediate" access required by the definition of equivalent provisions is not practical since "at least some time is necessary to access lines of credit and the other means contemplated by the proposal." They suggest that the definition should instead refer to funds that can be accessed "on a timely basis."

**RESPONSE:** The Commission agrees, and has so clarified the definition of equivalent provisions.

**COMMENT:** The Sands further suggests that equivalent provisions should include operating and investment funds.

**RESPONSE:** By definition, equivalent provisions include arrangements through which funds are available on an as-needed basis. While investment funds would fall within this definition, it need not be specifically referenced; operating funds would not be included.

**COMMENT:** Caesar's and the Sands suggest that the definition of gross operating profit be amended to clarify that it refers to the Statement of Income required by the Commission. The Sands likewise comments that the definition of operating expenses should be amended to clarify that it is the Commission's Statement of Income that will be the basis for determining operating expenses.

**RESPONSE:** The Commission agrees, and has clarified these provisions.

**COMMENT:** Bally's and Caesar's comment that the definition of material debt should exclude the refinancing, modification or exchange of existing debt on the same or better terms.

**RESPONSE:** The Commission disagrees with the suggested exception from the definition of material debt. N.J.A.C. 19:43-4.3(a)1 provides for continuing assessment of the licensee's or applicant's financial condition through prior Commission review and approval of material debt transactions which involve borrowing for a purpose other than capital and maintenance expenditures. It is appropriate that such review allows the Commission the opportunity to itself assess whether any refinancing, modification or exchange of existing debt is on "the same or better" terms.

**COMMENT:** Bally's argues that lines of credit should be excluded from the definition of material debt, or in the alternative, that draw downs on a line of credit which cumulatively total \$25 million should be excluded. Should the Commission decline to exclude lines of credit from the definition of "material debt," as suggested above, then Bally's further requests an exclusion for "working capital expenditures, tax payments, interest and similar payments."

**RESPONSE:** The Commission disagrees with each of these suggested exclusions. N.J.A.C. 19:43-4.3(a) facilitates the continuous monitoring of the licensee's financial stability through prior review and approval of significant debt transactions. N.J.A.C. 19:43-4.3(a)1 excludes borrowings for capital and maintenance expenditures, consistent with the goals of the Casino Control Act, N.J.S.A. 5:12-83(i). There is no rational basis to exclude from review borrowings for the types of payments cited by the commenter. Moreover, it is the Commission's position that the impact of a \$25 million debt is equally as significant whether incurred in a single transaction or in a series of cumulative transactions.

**COMMENT:** The Division notes that N.J.A.C. 19:43-4.2(b) provides that the Commission may consider any relevant evidence of financial stability, but that a casino licensee or applicant shall be considered financially stable if it establishes by clear and convincing evidence that it meets each of the listed standards. The Division comments that although "a casino licensee may technically or minimally satisfy those standards, there could be indications of future financial instability and

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a need for the regulators to take action or impose certain conditions." The Division suggests a new N.J.A.C. 19:43-4.2(c) as follows: "Nothing in this section shall be construed so as to limit the ability of a casino licensee or applicant, or of the Division or the Commission staff, to present other relevant evidence of financial stability."

**RESPONSE:** N.J.A.C. 19:43-4.2(b) expressly provides that the Commission will consider any evidence that is relevant to financial stability. However, one purpose of codifying the relevant criteria is to provide structure and predictability to the process of determining a casino licensee's or applicant's financial stability. If a licensee or applicant establishes compliance with the criteria in N.J.A.C. 19:43-4.2(b), it will be deemed to have established its financial stability. N.J.A.C. 19:43-4.3 and 4.4 do address the potential for future financial instability. The rules provide for continuous assessment of financial stability and allow the Commission to restrict a material debt transaction, transfer of funds or assumption of debt of an affiliate if it would deprive the licensee or applicant of financial stability. N.J.A.C. 19:43-4.3. Moreover, beyond the standard reporting in N.J.A.C. 19:43-4.4(a)1 and 2, the casino licensee must also file such other information as the Commission or Division may deem material to a showing of financial stability. N.J.A.C. 19:43-4.4(a)3.

**COMMENT:** The Sands comments that the casino bankroll standard in N.J.A.C. 19:43-4.2(b)1 "is not a reliable indicator" of financial stability, since failure to maintain or exceed the prior year's bankroll for one day may be attributable to factors such as the impact of special events or changes in marketing strategies. The Sands instead suggests a comparison of casino bankroll levels on a quarterly basis against that of the corresponding quarter in the previous year. The Sands further requests that the Commission accept a plus or minus 10 percent variance to allow for special events and the like.

**RESPONSE:** The formula set forth in N.J.A.C. 19:43-4.2(b)1 compares the current daily casino bankroll to the average bankroll for the corresponding month in the previous year. Such averaging will account for any variances attributable to factors such as special events. Since these variations are addressed by the averaging process, the suggested 10 percent variance is unnecessary.

**COMMENT:** The Sands comments that the rules "give no guidance as to what steps and actions a licensee must take should the required casino bankroll levels not be attained." The Sands suggests that if a licensee fails to attain the required funds level, it should substantiate, as part of the certification required by N.J.A.C. 19:43-4.4(a)1, that its bankroll is supplemented by specific equivalent provisions.

**RESPONSE:** Pursuant to N.J.A.C. 19:43-4.4(a)1, the licensee must include in its quarterly reports to the Commission a statement of compliance with each of the financial stability criteria in N.J.A.C. 19:43-4.2(b), including "maintenance of a casino bankroll or equivalent provisions adequate to pay winning wagers to casino patrons when due." The adopted rules clearly set forth a formula for compliance with this criterion which considers both casino bankroll and equivalent provisions. A casino licensee or applicant that fails to establish compliance with N.J.A.C. 19:43-4.2(b)1 has failed to demonstrate its financial stability.

**COMMENT:** Bally's comments that N.J.A.C. 19:43-4.2(b)3 should exclude any tax assessment which is in dispute or on appeal.

**RESPONSE:** The standard set forth in N.J.A.C. 19:43-4.2(b)3 assesses the ability to pay taxes at whatever point they become due and payable.

**COMMENT:** N.J.A.C. 19:43-4.2(b)4 requires that a casino licensee submit information regarding capital and maintenance expenditures over a five-year period that includes the previous three calendar years and the license period. Caesar's comments that there would be a gap between the end of the prior calendar year and the beginning of the new license term.

**RESPONSE:** The Commission has modified the formula set forth in N.J.A.C. 19:43-4.2(b)4 to make clear that the five-year period includes the license period and the previous 36 calendar months.

**COMMENT:** The Sands contends that the "general language" of N.J.A.C. 19:43-4.3(a) "appears to prohibit certain transactions which paragraphs 4.3(a)1 and (a)2 appear to approve as of right."

**RESPONSE:** The introductory language in N.J.A.C. 19:43-4.3(a) clearly states that the types of transaction described in paragraphs (a)1 and (a)2 are subject to prior Commission review and approval. The Commission does not believe that any clarification is needed.

**COMMENT:** The Sands comments that N.J.A.C. 19:43-4.3(d) appears to give the Commission the power to modify or void an agreement for financial stability reasons, which the Sands argues is beyond the Commission's statutory authority.

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**RESPONSE:** Section 84a of the Casino Control Act requires that each applicant for a casino license demonstrate its financial stability by clear and convincing evidence. The Commission clearly has the authority to restrict transactions which would deprive the casino licensee of the financial stability required by the Act.

**COMMENT:** The Sands argues that the reporting requirements set forth in N.J.A.C. 19:43-4.4 are "unnecessarily onerous." The Sands argues that any certification as to a casino's capital and maintenance expenditures and ability to pay or refinance debt will involve projections and "marketplace assumptions." The Sands suggests that the certification include a disclaimer concerning "the limitations inherent in the use of forecasted data."

**RESPONSE:** Obviously, certain of these criteria involve projections of the casino licensee's financial stability during the license term. However, the Commission does not agree that it would be appropriate to allow a "disclaimer" to be added to the required statements.

**COMMENT:** N.J.A.C. 19:43-4.4(a)2 provides that, by the end of each calendar year, each casino licensee must file a forecast of its operating and financial performances for the upcoming calendar year, in a format prescribed by the Commission. Caesar's suggests that some flexibility be added to this standard by adding the following in N.J.A.C. 19:43-4.4(a)2i: "or such other format approved by the Commission."

**RESPONSE:** Accepted.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

19:41-1.1 (Reserved)

Recodify existing N.J.A.C. 19:41-2 as 19:43-6 (No change in text.)

19:41-3.1 (Reserved)

19:41-4.2 (Reserved)

Recodify existing N.J.A.C. 19:41-13 as 19:43-13 (No change in text.)

Recodify existing N.J.A.C. 19:43 as 19:51 (No change in text.)

### CHAPTER 43 CASINO LICENSEES

#### SUBCHAPTER 1. GENERAL PROVISIONS

19:43-1.1 Applicability of rules to noncorporate entities

For purposes of this chapter, noncorporate entities shall, to the extent possible, comply with all **\*[reporting]\*** **\*relevant\*** requirements applicable to corporate entities.

#### SUBCHAPTER 2. PERSONS REQUIRED TO BE LICENSED OR QUALIFIED

19:43-2.1 Persons required to be licensed

No person shall own or operate a casino unless a casino license shall have first been issued to every person eligible and required to apply for a casino license pursuant to the provisions of N.J.S.A. 5:12-82.

19:43-2.2 Persons required to be qualified

(a) Except as otherwise provided in N.J.A.C. 19:43-2.7, no casino license shall be issued or renewed by the Commission unless the individual qualifications of every person required by the Act and the Commission to qualify as part of the application for the issuance or renewal of the casino license shall have first been established in accordance with all relevant standards set forth in the Act and the rules of the Commission.

(b) The following persons shall be required to qualify as part of the application for the issuance or renewal of a casino license:

1. All persons eligible and required to apply for a casino license pursuant to the provisions of N.J.S.A. 5:12-82;

2. All financial sources required to qualify pursuant to the provisions of N.J.S.A. 5:12-84b; and

3. All persons required to qualify pursuant to the provisions of N.J.S.A. 5:12-85c, d **\*[and e.]\***, **e and f.\***

(c) The Commission may at any time require a casino licensee or applicant to establish the qualification of any person that the Commission may deem appropriate for qualification pursuant to

N.J.S.A. 5:12-84, 85, and 105. Any person deemed appropriate for qualification shall promptly file the required application form.

19:43-2.3 Notification of anticipated or actual changes in directors, officers or equivalent qualifiers of casino licensees and holding companies

Each casino licensee or applicant or holding company shall immediately notify the Commission and Division, in writing, as soon as is practicable, of the proposed appointment, appointment, proposed nomination, nomination, election, intended resignation, resignation, incapacitation or death of any member of, or partner in, its board of directors or partnership, as applicable, or of any officer or other person required to qualify pursuant to N.J.S.A. 5:12-85c, d or e.

19:43-2.4 Notification of new financial sources

Each casino licensee or applicant shall immediately notify the Commission **\*and the Division\***, in writing, as soon as it becomes aware that it intends to enter into a transaction bearing any relation to its casino project which may result in any new financial backers, investors, mortgagees, bondholders, or holders of indentures, notes, or other evidences of indebtedness who may be subject to the provisions of N.J.S.A. 5:12-84b and Article 6B of the Act.

19:43-2.5 Notification concerning certain new qualifiers of publicly traded holding companies

(a) A casino licensee or applicant shall immediately notify the Commission and Division if the casino licensee or applicant becomes aware that, with regard to any publicly traded holding company of the casino licensee or applicant, any person has acquired:

1. Five percent or more of any class of equity securities;

2. The ability to control the holding company; or

3. The ability to elect one or more directors of the holding company.

(b) If any publicly traded holding company of a casino licensee or applicant either files or is served with any Schedule 13D, Schedule 13G or Section 13f filing under the Securities Exchange Act of 1934, copies of any such filing shall be immediately submitted to the Commission and Division by the casino licensee or applicant or the publicly traded holding company.

19:43-2.6 Qualification of new directors, officers or other qualifiers of a casino licensee

Any natural person 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 shall not perform any duties or exercise any powers relating to such position until qualified by the Commission or, where appropriate, until he or she is temporarily licensed by the Commission as a casino key employee pursuant to N.J.S.A. 5:12-89e.

19:43-2.7 Qualification of new directors, officers or other qualifiers of a holding company

(a) Any proposed new director, partner, officer or other natural person 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 of a casino licensee, shall submit to individual qualification to the standards, except for residency, of a casino key employee by filing any required application forms prior to or immediately upon being elected or appointed to such position.

(b) No person subject to (a) above shall perform any duties or exercise any powers relating to his or her position until qualified by the Commission unless:

1. At least 30 days have elapsed from the date on which initially required and completed application forms were first filed; and

2. Permission to perform duties and exercise powers has been granted by the Commission pursuant to written petition of the casino licensee.

(c) Notwithstanding the provisions of (b) above, any person permitted to perform duties or exercise powers pursuant to this section without having first been qualified shall:

1. Be immediately removed from his or her position if at any time the Division provides information which the Commission determines to indicate reasonable cause to believe that such person may not be qualified;

2. Only be permitted to perform duties or exercise powers without having been qualified for a maximum period of nine months from the date on which permission to assume duties was first granted unless the Commission determines, upon written petition and a showing of good cause by the casino licensee, to extend the nine month period; and

3. At the time of the next renewal hearing of the casino licensee, be required to establish his or her qualifications unless the requirement that he or she be qualified is, temporarily or otherwise, waived by the Commission pursuant to N.J.S.A. 5:12-85d(1).

#### 19:43-2.8 Issuance or transfer of interests; approval

No person shall issue or transfer any security or ownership interest in a casino licensee or applicant or any nonpublicly traded subsidiary or holding company thereof without the express, prior written approval of the Commission. The Commission shall not grant any such approval without considering the provisions of N.J.S.A. 5:12-39, 44, 47.2, 82d(7) through (10), 85c and e, 95.12 through 95.16, and 105.

#### 19:43-2.9 Subsidiaries

(a) Each casino licensee or applicant or holding company thereof shall report immediately, in writing, to the Commission and the Division the formation or dissolution of, or any transfer of a non-publicly traded interest in, any subsidiary of the casino licensee or applicant or any subsidiary of any holding company of the casino licensee or applicant which bears any relationship to the casino project.

(b) Each casino licensee or applicant shall file with the Commission **\*and the Division\*** adopted charter provisions that comply with the requirements of N.J.S.A. 5:12-82d(7) through (10) for each subsidiary of the casino licensee or applicant.

### SUBCHAPTER 3. STANDARDS FOR LICENSURE OR QUALIFICATION (RESERVED)

### SUBCHAPTER 4. FINANCIAL STABILITY OF CASINO LICENSEES AND APPLICANTS

#### 19:43-4.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Affiliate" is defined at N.J.A.C. 19:40-1.2.

"Capital and maintenance expenditures" means expense items related to the approved casino hotel which are incurred in connection with furniture, fixtures, equipment and facilities, and capitalized costs. Such term shall include acquisition; replacement; repairs; refurbishment; renovation; improvements; maintenance, including public area housekeeping; and labor.

"Casino bankroll" means **\*[cash maintained in the casino, excluding any funds necessary for the normal operation of the casino, such as change banks, slot hopper fills, slot booths, cashier imprest funds and redemption area funds]\* \*the aggregate closing balances reported in the casino cage and master coin bank closeouts or summaries, less any non-cash items reported thereon\***.

"Equivalent provisions" means lines of credit, parent company guarantees, or other arrangements approved by the Commission through which funds can be accessed on **\*[an immediate]\* \*a timely\*** and as needed basis.

"Gross operating profit" means net revenues less operating expenses, as reflected on the casino licensee's or applicant's **\*Casino Control Commission\* Statement of Income**.

"Material debt" means debt of \$25,000,000 or more, whether in a single transaction or cumulative transactions during any 12 month period, or such other amount as the Commission may, at the time of licensure or license renewal, determine is appropriate to ensure the continued financial stability of a casino licensee or applicant.

"Operating expenses" means the total of cost of goods and services; selling, general and administrative expenses; and the provision for doubtful accounts **\*as indicated on the casino licensee's or applicant's Casino Control Commission Statement of Income\***.

#### 19:43-4.2 Financial stability

(a) Each casino licensee or applicant shall establish its financial stability by clear and convincing evidence in accordance with section 84(a) of the Act and this subchapter.

(b) The Commission may consider any relevant evidence of financial stability; provided<sup>\*</sup>, however, that a casino licensee or applicant shall be considered to be financially stable if it establishes by clear and convincing evidence that it meets each of the following standards:

1. The ability to assure the financial integrity of casino operations by the maintenance of a casino bankroll or equivalent provisions adequate to pay winning wagers to casino patrons when due. A casino licensee or applicant shall be found to have established this standard if it maintains, on a daily basis, a casino bankroll, or a casino bankroll and equivalent provisions, in an amount which is at least equal to the average daily minimum casino bankroll or equivalent provisions, calculated on a monthly basis, for the corresponding month in the previous year. For any casino licensee or applicant which has been in operation for less than a year, such amount shall be determined by the Commission based upon levels maintained by a comparable casino licensee;

2. The ability to meet ongoing operating expenses which are essential to the maintenance of continuous and stable casino operations. A casino licensee or applicant shall be found to have established this standard if it demonstrates the ability to achieve positive gross operating profit, measured on an annual basis;

3. The ability to pay, as and when due, all local, State and Federal taxes, including the tax on gross revenues imposed by subsection 144(a) of the Act, the investment alternative tax obligations imposed by subsection 144(b) and section 144.1 of the Act, and any fees imposed by the Act and Commission rules;

4. The ability to make necessary capital and maintenance expenditures in a timely manner which are adequate to ensure maintenance of a superior first class facility of exceptional quality pursuant to subsection 83(i) of the Act. A casino licensee or applicant shall be found to have established this standard if it demonstrates that its capital and maintenance expenditures, over the five-year period which includes the previous **\*[three]\* \*36\*** calendar **\*[years]\* \*months\*** and the license period, average at least five percent of net revenue per annum, except that any casino licensee or applicant which has been in operation for less than three years shall be required to otherwise establish compliance with this standard; and

5. The ability to pay, exchange, refinance or extend debts, including long-term and short-term principal and interest and capital lease obligations, which will mature or otherwise come due and payable during the license term, or to otherwise manage such debts and any default with respect to such debts. The Commission also may require that a casino licensee or applicant advise the Commission and Division as to its plans to meet this standard with respect to any material debts coming due and payable within 12 months after the end of the license term.

#### 19:43-4.3 Continuing assessment of financial condition

(a) No casino licensee shall consummate a material debt transaction which involves the following without the prior approval of the Commission. Any transaction not specified in this subsection shall not require prior Commission review and approval with regard to the financial stability standards set forth in this subchapter.

1. An agreement which provides for any borrowing for a purpose other than capital and maintenance expenditures; or

2. A guarantee of the debt of an affiliate, whether by cosignature or otherwise; an assumption of the debt of an affiliate, or an agreement to place any encumbrance on its approved casino hotel facility to secure the debts of an affiliate.

(b) In reviewing any transaction pursuant to (a) above, the Commission shall consider whether the transaction would deprive the casino licensee of financial stability, as defined by N.J.A.C. 19:43-4.2, taking into account the financial condition of the affiliate and the potential impact of any default on the licensee.

(c) Any subsequent use of the proceeds of a transaction previously approved by the Commission pursuant to (a) above, including subsequent drawings under previously approved borrowings, shall not require further Commission approval.

(d) The Commission may restrict or prohibit the transfer of cash to, or the assumption of liabilities on behalf of, an affiliate if, in the judgment of the Commission, such transfer or assumption would deprive the casino licensee of financial stability as defined by N.J.A.C. 19:43-4.2.

#### 19:43-4.4 Financial stability reporting requirements

(a) Each casino licensee shall file with the Commission and Division the following:

1. A statement of compliance with the criteria in N.J.A.C. 19:43-4.2(b), which shall be included in the quarterly reports filed by the casino licensee pursuant to N.J.A.C. 19:45-1.6;

2. At the end of each calendar year:

i. An annual forecast by calendar quarters of the operating and financial performances of the casino licensee for the upcoming calendar year, including statement of income and balance sheet, which shall be submitted in the standard format prescribed by the Commission **\*or such other format approved by the Commission\***; and

ii. A detailed analysis of compliance with N.J.A.C. 19:43-4.2(b)4; and

3. Such other information as the Commission or Division shall deem material to a showing of financial stability for a particular casino licensee.

#### 19:43-4.5 Failure to demonstrate financial stability

In the event that a casino licensee or applicant fails to demonstrate financial stability, the Commission may take such action as is necessary to fulfill the purposes of the Act and to protect the public interest, including, but not limited to: issuing conditional licenses, approvals or determinations; establishing an appropriate cure period; imposing reporting requirements in excess of those otherwise mandated by these regulations; placing such restrictions on the transfer of cash or the assumption of liabilities as is necessary to insure future compliance with the standards set forth in N.J.A.C. 19:43-4.2(b); requiring the maintenance of reasonable reserves or the establishment of dedicated or trust accounts to insure future compliance with the standards set forth in N.J.A.C. 19:43-4.2(b); denying licensure; appointing a conservator pursuant to section 130.1 et seq. of the Act.

### SUBCHAPTER 5. APPLICATION REQUIREMENTS (RESERVED)

### SUBCHAPTER 6. CASINO HOTEL FACILITY REQUIREMENTS

19:43-6.1 Impact of facilities  
(No change in text.)

19:43-6.2 The hotel  
(No change in text.)

19:43-6.3 Declaratory rulings as to proposed casino hotel facilities  
(No change in text.)

19:43-6.4 Policy requiring superior quality and favoring completely newly constructed convention hotel complexes  
(No change in text.)

19:43-6.5 Minimum standards for reconstruction of existing buildings and facilities  
(No change in text.)

19:43-6.6 Declaratory rulings as to reconstructed facilities  
(No change in text.)

19:43-6.7 Duty to maintain and operate a superior quality facility  
(No change in text.)

#### 19:43-6.8 Periodic reports of facility data

Each casino licensee or applicant shall prepare and submit to the Commission, on forms provided by the Commission, a report concerning the current status of **\*[qualifying]\* \*the\* square footages \*and]\* \*of the casino room and simulcasting facility and other\*** related casino hotel facility data. Such reports shall be filed on the first business day of each calendar quarter or on such other periodic schedule as may be directed by the Commission.

#### 19:43-6.9 Traffic flow around the casino hotel facility

Each casino licensee or applicant shall take such steps as are necessary to establish and maintain an efficient flow of traffic within the general ingress and egress routes of the casino hotel complex and to develop an efficient system which accommodates employee parking and transportation requirements in cooperation and consultation with the appropriate government agencies.

### SUBCHAPTER 7. OPERATION CERTIFICATE (RESERVED)

### SUBCHAPTER 8. CONTINUING OBLIGATIONS OF CASINO LICENSEES AND QUALIFIERS

#### 19:43-8.1 Minutes of meetings of boards and committees

Each casino licensee or applicant or holding company thereof shall file with the Commission and Division copies of the minutes of all meetings of its board of directors or partnership executive committee, as applicable, and of all committee meetings including, without limitation, the audit committee, within seven days of their formal adoption.

### SUBCHAPTER 9. EMPLOYMENT REQUIREMENTS

#### 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 **\*[and one copy to the Division]\*** 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. Procedures used to prepare and maintain a jobs compendium;
2. Procedures used to process and submit applications for casino key employee licenses, casino employee licenses and hotel employee registrations;
3. Procedures used to prepare and submit petitions for temporary employee licenses;
4. Procedures for assuring that only properly licensed or registered persons are employed in each position;
5. Procedures used to record the number of hours worked by employees;
6. Procedures used to assure the timely renewal of employee licenses; and
7. Procedures for the use of license credential holders.

(b) The Commission shall review each submission required by (a) above to determine whether it conforms to the requirements of the Act and the regulations of the Commission. If the Commission finds any insufficiencies, it shall specify same in writing to the casino licensee or applicant who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the casino licensee or applicant accordingly. No casino licensee shall commence or maintain gaming operations unless and until its employee licensing internal controls submission is approved by the Commission.

(c) Any proposed amendment to a previously approved employee licensing internal controls submission shall be submitted, unless otherwise directed by the Commission, at least 60 days before any

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change in those procedures or controls is to take effect. Such submission shall conform with the requirements set forth in (a) above.

### SUBCHAPTER 10. VENDOR REQUIREMENTS

#### 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 **\*[and one copy to the Division]\*** 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. Procedures governing the purchase of goods and services;
2. Procedures governing the disbursement of payments for goods and services;
3. Procedures for the filing of vendor registration forms and junket enterprise vendor registration forms;
4. Procedures for the control of petty cash accounts;
5. Procedures insuring compliance with travel industry requirements;
6. Procedures governing the issuance of temporary casino access credentials;
7. Procedures for the generation of purchasing and disbursing reports; and
8. Procedures regarding vendor registration and financial reporting requirements for construction companies and subcontractors.

(b) The Commission shall review each submission required by (a) above to determine whether it conforms to the requirements of the Act and the rules of the Commission. If the Commission finds any insufficiencies, it shall specify same in writing to the casino licensee or applicant who shall make appropriate alterations. When the Commission determines a submission to be adequate in all respects, it shall notify the casino licensee or applicant accordingly.

(c) Any proposed amendment to a previously approved vendor internal controls submission shall be submitted, unless otherwise directed by the Commission, no later than five days after any change in those procedures or controls takes effect. Such submission shall conform with the requirements set forth in (a) above.

### SUBCHAPTER 11. RENEWAL OF CASINO LICENSE (RESERVED)

### SUBCHAPTER 12. INTERIM CASINO AUTHORIZATION (RESERVED)

### SUBCHAPTER 13. CONSERVATORSHIP

#### 19:43-13.1 Definitions (No change in text.)

#### 19:43-13.2 Institution of casino license conservatorship and appointment of conservators (No change in text.)

#### 19:43-13.3 Qualification of conservator (No change in text.)

#### 19:43-13.4 Bonding of conservators (No change in text.)

#### 19:43-13.5 Powers of multiple conservators (No change in text.)

#### 19:43-13.6 Powers and jurisdiction of the Commission (No change in text.)

#### 19:43-13.7 Effect of the conservatorship on licensed casino operation (No change in text.)

#### 19:43-13.8 Powers, authorities and duties of conservators (No change in text.)

#### 19:43-13.9 Compensation of conservators and others (No change in text.)

#### 19:43-13.10 Required reports of the conservator (No change in text.)

#### 19:43-13.11 Review of action of conservator (No change in text.)

#### 19:43-13.12 Payment of net earnings during the period of conservatorship (No change in text.)

#### 19:43-13.13 Payments following a bulk sale (No change in text.)

#### 19:43-13.14 Discontinuation of conservatorship (No change in text.)

### SUBCHAPTER 14. ADVERTISING

#### 19:43-14.1 Applicability of advertising regulations (a)-(b) (No change in text.)

#### 19:43-14.2 Criteria governing advertising (No change in text.)

#### 19:43-14.3 Commission approval

(a) All advertising or in the case of standard or recurring advertising, a sample thereof, which is directly related to casino gaming or casino gaming activity, shall be maintained by the casino licensee or applicant for a period of one year from the date of placement of such advertisement. Advertising which must be maintained shall include such advertising as may have been placed for or on behalf of the casino licensee or applicant. Advertising required to be maintained by this section shall be maintained at the principal place of business of the licensee or applicant, and shall be made available or produced for inspection upon the request of the Commission or the Division.

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

### SUBCHAPTER 15. ENTERTAINMENT

#### 19:43-15.1 Prohibited entertainment activities (No change in text.)

#### 19:43-15.2 Entertainment within the casino room (No change in text.)

#### 19:45-1.4 Records regarding ownership (a)-(b) (No change.)

(c) Each casino licensee or applicant shall, upon request by the Commission or Division, provide a list of all record holders of any or all classes of securities issued by its holding companies.

#### 19:45-1.7 Annual audit and other reports (a)-(g) (No change.)

(h) If the casino licensee or any of its affiliates is publicly held, the licensee or the affiliate shall submit five copies to the Commission and one copy to the Division of any report, including, but not limited to, forms S-1, 8-K, 10-Q and 10-K, proxy or information statements and all registration statements, required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency, at the time of filing with such commission or agency.

(i) (No change.)

#### 19:49-1.4 Advertising

(a) Any advertisement by a junket enterprise vendor registrant or by an applicant for or holder of a junket enterprise license or by any agent thereof, including a junket representative, shall be

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subject to the provisions of N.J.A.C. 19:43-14 to the same extent as if such advertisement were by a casino licensee or applicant.

(b) Notwithstanding the provisions of (a) above, a junket enterprise vendor registrant, an applicant for or holder of a junket enterprise license and any agent thereof, including a junket representative, shall not be subject to the provisions of N.J.A.C. 19:43-14.3(b).

#### CHAPTER 51

##### PERSONS DOING BUSINESS WITH CASINO LICENSEES

(AGENCY NOTE: N.J.A.C. 19:51-1.1 through 19:51-1.3 are recodified as 19:43-14.1 through 19:43-14.3.)

#### SUBCHAPTER 1. GENERAL PROVISIONS

- 19:51-1.1 Definitions  
(No change in text.)
- 19:51-1.2 License requirements  
(No change in text.)
- 19:51-1.3 Standards for qualification  
(No change in text.)
- 19:51-1.4 Persons required to be qualified  
(No change in text.)
- 19:51-1.5 Disqualification criteria  
(No change in text.)
- 19:51-1.6 Competition  
(No change in text.)
- 19:51-1.7 Investigations; supplementary information  
(No change in text.)
- 19:51-1.8 Duration of licenses  
(No change in text.)
- 19:51-1.9 Record keeping  
(No change in text.)
- 19:51-1.10 Causes for suspension, failure to renew or revocation of a license  
(No change in text.)
- 19:51-1.11 Equal employment opportunity  
(No change in text.)
- 19:51-1.12 Fees  
(No change in text.)
- 19:51-1.13 Exemption  
(No change in text.)
- 19:51-1.14 Casino service industry licenses  
(No change in text.)
- 19:51-1.15 Advertising  
(a) Any advertisement by an applicant for or holder of a casino service industry license issued pursuant to N.J.S.A. 5:12-92a and b or by any agent thereof shall be subject to the provisions of N.J.A.C. 19:43-14 to the same extent as if such advertisement were by a casino licensee or applicant.  
(b) Notwithstanding the provisions of (a) above, an applicant for or holder of a casino service industry license issued pursuant to N.J.S.A. 5:12-92a and b and any agent thereof shall not be subject to the provisions of N.J.A.C. 19:43-14.3(b).

#### CHAPTER 52 (RESERVED)

(AGENCY NOTE: N.J.A.C. 19:52-1.1 and 19:52-1.2 are recodified as 19:43-15.1 and 19:43-15.2.)

(a)

#### CASINO CONTROL COMMISSION

##### Accounting and Internal Controls Definitions; Accounting Records; Complimentary Services or Items; Procedures for Complimentary Cash and Noncash Gifts; Alternative Reporting Procedures; Accessible Complimentaries Database; Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs

##### Adopted Amendments: N.J.A.C. 19:45-1.2 and 1.9 Adopted New Rule: N.J.A.C. 19:45-1.9B

Proposed: August 3, 1992 at 24 N.J.R. 2692(b).

Adopted: November 18, 1992, by the Casino Control  
Commission, Steven P. Perskie, Chairman.

Filed: November 19, 1992, as R.1992 d.499, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with the proposed amendments to N.J.A.C. 19:45-1.1 and 1.46, and proposed new rule N.J.A.C. 19:45-1.9c, not adopted.

Authority: N.J.S.A. 5:12-63c, 69a, 70j, 70l, 99 and 102.

Effective Date: December 21, 1992.

Expiration Date: March 24, 1993.

**Agency Note:** As a result of the public comments received in response to this proposal, as summarized below, the Casino Control Commission determined at its public meeting of November 18, 1992, to take no action on the proposed amendments to N.J.A.C. 19:45-1.1 and 1.46 at the present time. The Commission may, however, consider adoption of these provisions at some future date. In addition, the Commission decided not to adopt paragraph (d)1 of new rule N.J.A.C. 19:45-1.9B.

Finally, the Commission also decided not to adopt the proposed new rule N.J.A.C. 19:45-1.9C. Instead, the Commission voted to repropose this rule as well as propose various additional amendments to N.J.A.C. 19:45-1.9 and 1.9B. The reproposal and proposed amendments may be found in the Proposal section of this issue of the New Jersey Register.

##### Summary of Public Comments and Agency Responses:

Comments on the proposal were received from the Division of Gaming Enforcement (Division), Caesars Atlantic City (Caesars), Showboat Casino Hotel (Showboat), Trump Taj Mahal Associates (Taj Mahal), TropWorld Casino and Entertainment Resort (TropWorld), Bally's Park Place, Inc. and GNOC, Corp. (Bally's), Resorts International Hotel, Inc. (Resorts) and Harrah's Casino Hotel (Harrah's).

**COMMENT:** The Division objects to the provision of N.J.A.C. 19:45-1.9(b) which establishes an expedited 15 day review of control submissions required for complimentary distribution programs. The Division "fails to see why the implementation of these internal controls is any more pressing than . . ." any other submission, and requests that the provisions of N.J.A.C. 19:45-1.3(c) (calling for 60 day review) be followed.

**RESPONSE:** The Commission rejects the need for a 60 day review for control submissions related to the authorization and distribution of complimentary services or items. N.J.S.A. 5:12-99a establishes a 60 day review period "unless otherwise directed by the Commission." Although a 60 day review period could be required, it would be counterproductive if a shorter period is feasible. The Commission has undertaken a high priority program to reduce the burden of regulation as long as public regulatory interests can fully be met. Consequently, when a new or revised regulation relates to an area of business to which gaming industry revenues are especially sensitive, it is the intent of the Commission to provide such regulatory relief and increased responsiveness as may be prudent and practical. In the case of the review time necessary for internal control submissions concerning complimentary services or items, the Commission believes that it is essential to expedite review in order to permit casino licensees to make productive use of this important marketing tool. Thus it is asserted that a 15 day review period is adequate absent error or serious omission in the casino licensee's submission. In the event that review of the submission reveals the need to delay approval or implementation of a casino licensee's proposed controls, or a part

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thereof, full approval can be delayed pending resolution of any concerns identified through written notification of the casino licensee. Should the 15 day review period consistently prove unsatisfactory, a longer review period may be considered.

COMMENT: Caesars and Bally's commented that the 15 day review period for control submissions provided by N.J.A.C. 19:45-1.9(b) is too long to wait to make changes in this important and dynamic area of their business. Both casino licensees request a review period for internal control submissions regarding complimentary services and items which is shorter than the proposed 15 days without specifying any desired alternative. Of particular concern to the licensees is the perceived need to file an amendment to their internal controls in order to approve or modify the authority of an employee to approve complimentary services, and the operational difficulty of having to wait 15 days.

RESPONSE: The Commission believes the concerns of Caesars and Bally's are misplaced. The required internal controls do not require the submission of details such as the particular terms or conditions which justify the issuance of a complimentary in a particular casino, nor is it required that controls identify specific individuals authorized to issue complimentary services or the limits, if any, which are placed on their authority. Casino licensees will remain free to alter these and similar management decisions at will. Casino licensees will be required to maintain written records of such decision, however, and clarifying amendments have been added to N.J.A.C. 19:45-1.9(b) to eliminate any confusion in this regard. It should also be noted that, independent of the internal controls required by N.J.A.C. 19:45-1.9, the job description required by N.J.A.C. 19:45-1.11A for any position title which may include persons who may be authorized to issue complimentary services or items should specify such potential authority therein.

COMMENT: The Division believes the Commission should amend N.J.A.C. 19:45-1.9(b)3 to retain the power to require each casino licensee to provide, as part of its internal controls, its policies, terms and conditions for granting various complimentary services and items.

RESPONSE: As noted above, the Commission rejects the assertion that there is a need to require casino licensees to specify detailed complimentary marketing policies in their internal control submissions. The particular reasons why a complimentary service or item may be granted do not rise to the level of internal control procedures, but are management guidelines which may be subject to somewhat greater latitude of interpretation by its employees than procedures normally included in internal control submissions. It is also appropriate to point out that, unlike the environment of many governmental regulations, the decision to grant a complimentary is a business practice which is always discretionary to the casino licensee. No casino licensee is obligated by the terms of any statute or regulation to provide any complimentary to any patron, and thus a casino licensee should be permitted to alter its internal policies in this area without prior review by the Commission. Of course, under the broad regulatory scope of the Casino Control Act, a casino licensee may subsequently be held accountable for policies or conduct which are inconsistent with the policies and standards of the Act.

COMMENT: The Division also stated a concern that if N.J.A.C. 19:45-1.9(b)3 exempts casino licensees from submitting the policy reasons why complimentary services might be granted that it would inhibit the Commission from requiring appropriate explanations as to the reasons a particular patron was granted more than \$2,000 in cash or noncash gifts during a single trip as required by N.J.S.A. 5:12-102m.

RESPONSE: The Commission rejects this assertion. The exemption relates solely to advance approval of general policies controlling the authorization of complimentary services in a particular casino. Nothing in the rule would alter the requirement that casino licensees provide a specific explanation with respect to the grant of complimentary cash and noncash gifts to a patron in excess of \$2,000 during any one trip.

COMMENT: The Division asserts a concern that N.J.A.C. 19:45-1.9(b)3 which exempts licensees from submitting, as part of their internal controls, the limits placed on the authority of individual employees to grant complimentary services could result in unacceptable situations such as an employee having the dual authority to approve complimentary services and also to disburse the cash.

RESPONSE: The Commission rejects the assertion that the exemption of certain management information from the internal controls required for complimentary services or items would adversely affect the Commission's powers or concerns for the control of incompatible functions or the casino licensee's responsibility to prevent any employee from exercising incompatible functions. N.J.A.C. 19:45-1.11(a)2 clearly re-

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quires that each casino licensee segregate incompatible functions so that no employee is in a position both to commit an error or perpetrate a fraud and to conceal the error or fraud in the normal course of his or her duties.

COMMENT: Resorts, TropWorld, Caesars, Showboat, and Bally's assert that N.J.A.C. 19:45-1.9(b) should not include internal control requirements for noncash complimentary gifts on the basis that such controls are not currently required for noncash complimentary services, and that there is no justification for newly requiring them.

RESPONSE: The Commission rejects the logic of separating cash and noncash complimentary services for purposes of internal controls. While it is true that internal controls were not previously required for the issuance of noncash complimentary services, or for any other complimentary services other than transportation reimbursements, the Act clearly provides in N.J.S.A. 5:12-99a(2) and 102m that casino licensees are required to submit internal controls covering complimentary services. This requirement applies to all complimentary services or items, including both cash and noncash complimentary services.

COMMENT: Harrah's, Bally's, and Showboat assert that the daily complimentary submission required by N.J.A.C. 19:45-1.9(e) is difficult to meet and that requiring the daily report is contrary to the Commission's policy on streamlining.

RESPONSE: The Commission does not agree that the daily report should be omitted from the rule. The Commission's rules currently require daily reports to be submitted to the Division within two days of the date of activity. This information is still needed by the Division on a daily basis to fulfill its statutory assignments. An alternative reporting procedure, making use of computer technology was proposed in N.J.A.C. 19:45-1.9C, and was designed by the Commission to continue the policy of report streamlining. The Commission decided not to adopt N.J.A.C. 19:45-1.9C at this time. The proposal has been amended and the reproposal may be found in the Proposal section of this issue of the New Jersey Register.

COMMENT: Caesars urges the Commission to conduct a public hearing to determine the need for a daily complimentary report, and asserts that N.J.S.A. 5:12-102m requires only a quarterly report.

RESPONSE: The Commission will not conduct a hearing on the issue inasmuch as both the Commission and Division have determined that more frequent reporting is necessary. N.J.S.A. 5:12-69a provides that the Commission may adopt any regulation deemed "necessary or desirable" and which is consistent with the objectives of the Act. N.J.S.A. 5:12-102m requires the maintenance of a "regulated complimentary service account" and a quarterly summary report to the Commission with respect to that account. The Commission has determined that the more frequent and detailed reports specified in the regulations are necessary and desirable to assure that the public policies and standards of the Act are observed.

COMMENT: Caesars commented that the word "receipt" in N.J.A.C. 19:45-1.9(e) should be replaced with the word "issuance" in describing the person who authorizes the complimentary service or item.

RESPONSE: The comment has been accepted and was implemented as a minor substantive change at adoption.

COMMENT: Resorts, Caesars, TropWorld and Showboat commented that proposed N.J.A.C. 19:45-1.9(e)1 and (e)2 appear to eliminate the former reporting limitations on complimentary theater tickets with a value of \$25.00 or less, parking and beverages.

RESPONSE: A typographical error in the proposal resulted in use of the word "and" instead of "or" in identifying the exceptions to the reporting requirement. The proposal Summary clearly identified that it is intended that the conditions be in the alternative. The adoption includes the necessary technical correction to clarify this issue. It is clear, therefore, that no complimentary service or item having a value of \$50.00 or less will be subject to the individual reporting requirements of N.J.A.C. 19:45-1.9(e).

COMMENT: The Division believes the provision at N.J.A.C. 19:45-1.9B(a)1, which recognizes that "public relations payments" may be made to resolve patron disputes, would result in patrons presenting "baseless claims" in hopes of receiving a public relations complimentary gift. The Division proposes that the language be amended to state that such payments may only be made to resolve "legitimate complaints . . ."

RESPONSE: The Commission rejects the need to modify the language as suggested. Use of the word "legitimate" is argumentative in that it implies legitimization of the complaint through some adjudicative process. The purpose of public relations payments is to permit casino licensees flexibility in the resolution of public relations problems at the most informal level possible. The Commission believes that casino

licensees possess the necessary skills to control their funds in the face of "baseless claims." Furthermore, regardless of the "legitimacy" of the complaint, a casino licensee may still wish to provide a complimentary gift to preserve the patron's good will. Such decisions are a matter for management discretion unless clearly violative of some other public policy of the Act.

COMMENT: Resorts and Showboat assert that public relations payments permitted by N.J.A.C. 19:45-1.9B(a)1 should not be included in the cash and noncash complimentary regulations in order to permit casino licensees to resolve such claims in any way they see fit under the circumstances of each problem.

RESPONSE: The Commission rejects the suggestion that public relations payments should not be included in the complimentary regulations. Regulations have been drawn to provide casino licensees with the maximum flexibility possible. There are few impediments to resolving public relations problems except for the required yearly maximum limit on cash complimentary gifts imposed by N.J.A.C. 19:45-1.9B(g). The rules simply require that the issuance of the complimentary be reported.

COMMENT: TropWorld asserts that public relations payments and walk money should be left to management discretion and not regulated since both are business decisions and are unrelated to patron's level of play.

RESPONSE: The Commission rejects the suggestion that public relations payments and walk money should be omitted from the complimentary regulations. The Commission has previously ruled that "any complimentary service or item issued by a casino licensee" must be reported under the Act and regulations, regardless of whether it is related to gaming activity. See *In the Matter of the Petition of Resorts International Hotel Inc. For a Declaratory Ruling Concerning Complimentaries* (PRN 287209, February 17, 1984) (Emphasis in original). Nevertheless, the Commission would disagree with the assertion that complimentary issued under such circumstances are not related to gaming activity.

COMMENT: TropWorld, Caesars and Showboat object to the requirement in N.J.A.C. 19:45-1.9B(b) that the identity of the recipient of a noncash complimentary item or gift be verified by the casino licensee on the basis that such verification was not previously required, and because noncash complimentaries are often sent to the recipient via mail or common carrier thus preventing verification.

RESPONSE: The Commission rejects the suggestion that noncash complimentary items or gifts be exempted from the requirement that the identity of the recipient be verified for gifts having a value in excess of \$500.00. There is no valid distinction to be made between cash and noncash complimentaries for internal controls such as verification of the recipient. Insofar as verification of the identity of a recipient whose noncash complimentary is delivered by mail or common carrier is concerned, the proposed regulation states that the identity can be verified through an attestation by the authorizer of the gift. The Commission has included in the adoption a minor change to clarify that the required attestation may include an attestation made after a telephone call to the recipient of the gift.

COMMENT: The Division believes that the proposed language of N.J.A.C. 19:45-1.9B(c) could result in submission of unacceptable documentation. The Division suggests changing the language to require that the documentation actually be specified in the control submission. As suggested by the Division, the sentence would read "... appropriate documentation as specified in a casino licensee's approved internal controls."

RESPONSE: The Commission rejects the proposed wording. Control submissions by definition require approval of the documents to be used in executing the control requirements. Thus the acceptability of documentation to be used for the disbursement of a complimentary cash gift would be preapproved by the Commission. The language proposed by the Division would change the intended meaning of the regulation. The words "or as otherwise specified ..." are intended to modify the requirement that all cash complimentaries be disbursed at the cashiers' cage. Although the cashiers' cage is the preferred location, the rule permits disbursement at other sites if they are otherwise specified in a licensee's approved internal controls. But the rule does not permit deviations from documentation required by a licensee's approved internal controls.

COMMENT: Showboat asserts that N.J.A.C. 19:45-1.9B(c) requires that cash complimentary gifts be distributed only from the cashiers' cage. Showboat maintains that such a limitation is impractical, and gives as an example cash complimentary gifts distributed to members of a casino licensee's slot club program at a slot change booth.

RESPONSE: The proposed regulation provides that cash complimentaries be disbursed at the cashiers' cage, "or as otherwise specified in a casino licensee's approved internal controls." This provision provides the required flexibility to accommodate special situations through the submission and approval of appropriate internal controls.

COMMENT: The Division objects to the provision of N.J.A.C. 19:45-1.9B(d)1 which would allow casino employees to authorize complimentary cash or noncash gifts with a value of up to \$1,000. The Division maintains that any employee with that much discretion as to decisions which regulate casino operations must be licensed as a casino key employee pursuant to section 9 of the Act. Conversely, Showboat, TropWorld and Bally's maintain that the proposed limits on the authority of casino employees to approve complimentaries are too low and are inconsistent with the authority that such employees currently possess.

RESPONSE: The Commission rejects the restrictive reading of section 9 of the Act suggested by the Division. Virtually every employee is required to exercise some discretion in executing the responsibilities of his or her position and the mere exercise of discretion should not, standing alone, dictate that key licensure is always required.

It is apparent from the comments received, however, that substantial disagreement exists as to the level of complimentary authority currently exercised by casino employees with regard to the issuance of noncash complimentary gifts. Upon consideration of the comments received in response to N.J.A.C. 19:45-1.9B(d)1, the Commission has concluded that the amount of complimentary authority which a casino licensee wishes to entrust to a particular employee should generally be a decision for the casino licensee to make and should not control the independent issue of the type of employee license required to be held by each such person. Each casino licensee will be required pursuant to N.J.A.C. 19:45-1.9 to establish procedures for the approval of complimentary authority and to maintain written records of the specific complimentary authority approved for each of its employees. In addition, the actual amount of complimentaries authorized by each employee must be recorded and reported to the Division on a daily basis (see N.J.A.C. 19:45-1.9(e)).

The Commission maintains, however, that when the value of a complimentary cash or noncash gift reaches a certain level, the State has a more significant interest in assuring that the complimentary is being issued in compliance with the policies of the casino licensee. Therefore, the Commission has retained the requirement that any complimentary cash or noncash gift which has a value of \$10,000 or more must be approved by at least two casino key employees.

The Commission believes that these provisions, working together, will provide adequate regulatory oversight of this area without unduly interfering with the ability of casino licensees to carry out their marketing policies. Accordingly, as noted above, the Commission has determined not to adopt paragraph (d)1 of proposed new rule N.J.A.C. 19:45-1.9B.

COMMENT: The Division suggests using the word "within" rather than "during" in describing the "five day period" specified in N.J.A.C. 19:45-1.9B(e) and (f).

RESPONSE: The Commission accepts the suggestion inasmuch as N.J.S.A. 5:12-102m uses the word "within" rather than "during." The word "within" has been included in the adoption as a minor technical change.

COMMENT: Showboat, TropWorld, and Caesars object to the provision of N.J.A.C. 19:45-1.9B(f) which requires a new report providing the names of patrons who were granted cash and noncash gifts exceeding \$2,000 within any five day period during the preceding month. It is asserted that this information could be gleaned from documentation which would be available for inspection, is included in both the daily and quarterly complimentary reports, and that no new report is specifically called for by N.J.S.A. 5:12-102m. Bally's asserts that the reports should only include cash complimentaries in excess of \$2,000.00.

RESPONSE: The Commission will require the report as proposed. Inasmuch as casino licensees are already required to maintain a cumulative record of the value of noncash complimentaries, it will not be a major additional responsibility to add cash complimentaries. Moreover, the record and report must include both cash and noncash complimentaries to be in compliance with the language of N.J.S.A. 5:12-102m, which establishes the \$2,000 threshold with respect to any "cash or noncash gifts."

COMMENT: Caesars points out, and Showboat joins in the comment, that their corporate financial reports are balanced in mid-month thus making it highly impractical to provide the report required by N.J.A.C.

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19:45-1.9B(f) within five days of the end of each month. Similarly, Bally's request that the due date of the report be within 30 days of the end of the month.

**RESPONSE:** The Commission agrees that the report due date should be modified to "the last business day of the following month" inasmuch as certain casino licensees balance internal financial reports during the first several weeks of the month. Therefore, the Commission adopted the later due date as a minor substantive change. The Commission believes, however, that casino licensees would benefit from modifying their complimentary recording systems to provide running balances so that they are assured of complying with the requirements of N.J.S.A. 5:12-102m.

**COMMENT:** The Division objects to the establishment in N.J.A.C. 19:45-1.9(g) of a floating 12 month period for purposes of measuring maximum allowable cash complementaries. Instead, it suggests describing the measurement period as "the twelve month period immediately prior to, and including the date of any complimentary cash gift." The Division also suggests that the limit embrace noncash gifts as well as cash gifts because the value of cash and noncash complementaries equally affect casino finances and stability. The Division argues that, while subsection 102m of the Act does not require that noncash gifts be limited, there is nothing to preclude such a regulation.

**RESPONSE:** The Commission rejects the Division's suggestion to redefine the 12 month period. It does not believe that the current language creates any regulatory loophole. The Commission also rejects, at this time, the proposal to add noncash complementaries to the limit on cash complimentary gifts required by N.J.S.A. 5:12-102m. The Legislature clearly distinguished between cash and noncash complementaries, and required a limit only on cash complementaries. To add a further restriction in the absence of persuasive evidence that such a limit is necessary would, in the view of the Commission, be inappropriate.

**COMMENT:** Resorts and TropWorld oppose the provision of N.J.A.C. 19:45-1.9B(g) which places an upper limit on the granting of cash complementaries within a 12 month period, and states that a casino licensee should be free to make its own business decisions with regard to cash complementaries. Several casino licensees commented that limiting the calculation of the maximum cash complimentary gifts which may be granted during any twelve month period to a patron's theoretical win as provided in N.J.A.C. 19:45-1.9(g) creates impractical limits because the actual win may vary significantly from the projected figure. Resorts, TropWorld, and Caesars suggest as an alternative the use of the greater of the theoretical win or actual loss. The Taj Mahal suggests adding a provision permitting discretion where a new player has a low theoretical win because he or she loses quickly and therefore has a low number of gaming hours as part of the rating calculation.

**RESPONSE:** The Commission is required by the specific language of N.J.S.A. 5:12-102m to establish by regulation an annual limit on cash complementaries. The Commission decided at its November 18, 1992, meeting to adopt the subsection as proposed. The Commission agrees, however, that special circumstances may arise which are not envisioned in the adopted rule. Inasmuch as the "theoretical win" ceiling on cash complementaries comports with the Act and will permit casino licensees to commence their cash complimentary programs, the Commission adopted the proposed language and also proposed a new amendment to address the special problems identified by the casino industry. The proposed new limit appears in the Proposal section of this issue of the New Jersey Register.

**COMMENT:** Harrah's and TropWorld assert that the formula used by a casino licensee to calculate theoretical win in compliance with N.J.A.C. 19:45-1.9B(g) is proprietary and should not be divulged in an internal control submission.

**RESPONSE:** The Commission rejects this argument. N.J.S.A. 5:12-74 assures that all internal control submissions are confidential and would, therefore, never be released to a competitor of the submitting casino licensee. Inasmuch as the Commission is not "a competitor," the issue is moot with respect to any information required by the Commission pursuant to the Act. Further, it is clear from N.J.S.A. 5:12-102m that the Legislature intended that there be a real limit on cash complementaries granted during a 12 month period. It is necessary that the Commission be able to determine that the statistical method for arriving at the maximum amount which might be granted to a single patron meets the requirements of the Act. In addition, it is clear that variances in methodology among licensees must be kept to a minimum. Should the statistical method used to arrive at the maximum cash complimentary figure be unavailable to the Commission, there would be no way to assure

that the legislative requirement is being met with uniformity among casino licensees. Such confidentiality could lead to the use of novel methods of performing the calculation in order to gain a competitive edge over other licensees whose methods result in lower maximum amounts.

**COMMENT:** The Division suggests that since player ratings are often calculated by computer and not on a "form," that the language of N.J.A.C. 19:45-1.9B(g) be amended to read "as reasonably determined from a patron's data contained in the casino licensee's player rating system."

**RESPONSE:** The Commission agrees that the proposal could be clarified. Accordingly, revised language has been adopted as a minor substantive change.

**COMMENT:** Harrah's commented that proposed new rule N.J.A.C. 19:45-1.9C violates the intent of the existing computer access agreement between the casino industry and the Division, forces revelation of proprietary information and requires individual negotiation of agreements, a process which is likely to be tedious and difficult. Resorts and Showboat endorsed Harrah's comments.

**RESPONSE:** The Commission disagrees that the proposed rule would either conflict with existing computer access agreements or require the disclosure of proprietary information. The data which would be provided pursuant to the proposed rule is the same data which would otherwise have to be reported to the Commission and Division in writing. The computer reporting system, as envisioned, would involve the maintenance by each casino licensee of carefully sequestered raw data summarizing the complementaries issued by that licensee. This data would be maintained in a database format which would be accessible by the Commission, the Division and the casino licensee, so that each party could individually copy and analyze the data in whatever manner might be relevant for each user. Such a system would eliminate the need for casino licensees to file voluminous paper reports, would enable each casino licensee and the Division to analyze complimentary data in an organized and focused manner, and would generally reduce the time, expense and effort presently required to produce reports concerning complimentary services and items.

The Commission does agree with the industry comment that a special agreement with each casino licensee is not needed in order to make this alternative reporting system work. As with all other internal control requirements, it should be up to each casino licensee which wishes to avail itself of this alternative reporting mechanism to describe its system in an internal control submission which the Commission should review against preestablished regulatory standards. Accordingly, the Commission has decided to revise the proposal and to republish it for additional comments. The revised proposal may be found in the Proposal section of this issue of the New Jersey Register.

**COMMENT:** The Division objected to several aspects of proposed new rule N.J.A.C. 19:45-1.9C.

**RESPONSE:** Since the Commission has determined not to adopt the current version of the proposal, the objections of the Division are summarized and addressed in the rule reproposal, published in the Proposal section of this issue of the New Jersey Register.

**COMMENT:** Showboat expressed concern that the proposed amendments and new rules shifted control of slot club programs from N.J.A.C. 19:45-1.46 to N.J.A.C. 19:45-1.9B, and expressed the opinion that such a change would require "a radical and burdensome change in the accounting and internal controls governing these programs."

**RESPONSE:** Showboat correctly interprets the impact of the proposed rules on the regulation of slot club programs. The Commission is cognizant of the concerns expressed by Showboat, however, and has decided not to adopt the proposed amendments to N.J.A.C. 19:45-1.1 and 1.46 at this time to determine if a more mutually satisfactory method of addressing complementaries of this type can be developed. An alternative proposal has been included in the package of proposed amendments which are contained in this issue of the New Jersey Register. The Commission will analyze the comments it receives in response to this alternative procedure before deciding how to proceed in this area.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

19:45-1.2 Accounting records

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

(c) The detailed, supporting, and subsidiary records shall include, but not necessarily be limited to:

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1.-2. (No change.)

3. Records supporting the accumulation of the costs and number of persons, by category of service, for regulated complimentary services.

4.-9. (No change.)

### 19:45-1.9 Complimentary services or items

(a) (No change.)

(b) No casino licensee may offer or provide any complimentary services, gifts, cash or other items of value to any person except as authorized by N.J.S.A. 5:12-102(m). Each casino licensee shall, pursuant to the provisions of N.J.S.A. 5:12-99a(2) and N.J.A.C. 19:45-1.3, prepare and maintain internal controls for the authorization and issuance of complimentary services and items, including cash and noncash gifts issued pursuant to N.J.S.A. 5:12-102(m) and N.J.A.C. 19:45-1.9B. Such internal controls shall include, without limitation, the **\*[identification of all position titles authorized]\*** **\*procedures by which the casino licensee delegates to its employees the authority\*** to approve the issuance of complimentary services and items and the **\*procedures by which\*** conditions or limits, if any, which may apply to such authority **\*are established and modified\***, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes. Notwithstanding the provisions of N.J.A.C. 19:45-1.3, a casino licensee shall submit the internal controls, or any changes thereto, required by this section to the Commission and Division at least 15 days prior to their implementation. Such internal controls shall be deemed approved by the Commission 15 days after submission unless the casino licensee is notified in writing to the contrary. Notwithstanding the foregoing:

1. Internal controls for complimentary distribution programs shall be subject to the requirements of N.J.A.C. 19:45-1.46; **\*[and]\***

2. Internal controls for transportation expense reimbursement programs shall be subject to the requirements of N.J.A.C. 19:45-1.9A **\*[.]\***; **and\***

3. Nothing herein shall be deemed to require a casino licensee to identify in its submission **\*[the reasons why]\*** **\*the terms or conditions pursuant to which\*** a complimentary service or item may be granted or, except as otherwise provided in N.J.A.C. 19:45-1.9B, to obtain Commission approval of any limits or conditions which may be placed on the authority of its employees to approve or issue complimentary services or items; **provided, however, that each casino licensee shall be required to maintain a written record of all such terms, limits or conditions and the specific employees to whom they apply\***.

(c) (No change.)

(d) The licensee shall accumulate both the dollar amount of and number of persons provided with each category of complimentary services or items.

1. A quarterly report shall be filed with the Commission regarding the complimentary services or items provided.

2. The complimentary services or items shall, at a minimum, be separated into categories for rooms, food, beverage, travel, cash gift, noncash gift, and other services or items.

(e) Each casino licensee shall record, on a daily basis, the name of each person provided with complimentary services or items, the category of service or item provided, the value (as calculated in accordance with (c) above) of the services or items provided to such person, and the person authorizing the **\*[receipt]\*** **\*issuance\*** of such services or items. A copy of this record shall be submitted to the Division's office located on the casino premises no later than two days subsequent to its preparation. Excepted from this requirement are the individual names of persons authorizing or receiving complimentary services or other items which:

1. Have a value (as calculated in accordance with (c) above) of \$50.00 or less; **\*[and]\*** **\*or\***

2. Are issued pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.

### 19:45-1.9B Procedures for complimentary cash and noncash gifts

(a) No casino licensee shall offer or provide, either directly or indirectly, any complimentary cash or noncash gift to any person

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or his or her guests except in accordance with the provisions of N.J.S.A. 5:12-102m and this section. For the purposes of this section, "complimentary cash or noncash gift" does not refer to any complimentary service or item which is provided pursuant to N.J.S.A. 5:12-102m (1) through (3). Complimentary cash gifts shall include, without limitation:

1. Public relations payments made for the purpose of resolving complaints by or disputes with casino patrons;

2. Travel or walk money payments made for the purpose of enabling a patron to return home; and

3. Slot tokens issued to any person except those provided pursuant to a complimentary distribution program regulated by N.J.A.C. 19:45-1.46.

(b) All complimentary cash and noncash gifts provided by a casino licensee shall be recorded in accordance with the provisions of N.J.A.C. 19:45-1.9(e). If a complimentary cash or noncash gift has a value of \$500.00 or more, the casino licensee shall also:

1. Record the address of the recipient;

2. Verify the identity of the recipient by an examination of identification credentials which contain a photograph or physical description of the recipient or by a personal attestation by the authorizer of the gift, **which may include an attestation made after a telephone call to the recipient of the gift\***; and

3. Record the method of verification.

(c) All complimentary cash gifts shall be disbursed directly to the patron by a general cashier at the cashiers' cage after receipt of appropriate documentation, or as otherwise specified in a casino licensee's approved internal controls.

(d) Notwithstanding the provisions of N.J.A.C. 19:45-1.9(b), no casino licensee shall permit any employee to authorize the issuance of a complimentary cash and noncash gift with a value of **\*[**

1. \$1,000 or more unless the employee is licensed and functioning as a casino key employee; or

2.]\* \$10,000 or more unless the employee is licensed and functioning as a casino key employee and the authorization is co-signed by a second employee licensed and functioning as a casino key employee.

(e) If a casino licensee provides complimentary cash and noncash gifts worth \$2,000 or more to a person or his or her guests **\*[during]\*** **\*within\*** any five day period, the casino licensee shall record the reason why such gifts were provided and maintain such records available for inspection by the Commission or Division upon request. Such reasons may include, without limitation, information concerning the person's player rating, which rating shall be based upon the actual amount and frequency of play by the person as recorded in the casino licensee's player rating system.

(f) Each casino licensee shall submit to the Division a report listing each person who has received \$2,000 or more in complimentary cash and noncash gifts **\*[during]\*** **\*within\*** any five day period ending during the preceding month. Such report shall be filed by the **\*[fifth]\*** **\*last\*** business day **\*of the\*** following **\*[the end of the]\*** month and shall include the total amount of complimentary cash or noncash gifts provided to each such person.

(g) Notwithstanding any other provision of this section, no casino licensee shall provide to any patron, during any 12-month period, complimentary cash gifts which exceed the licensee's theoretical win from that patron during that same 12-month period, as reasonably determined from **\*[the patron's]\*** **\*data contained in the\*** player rating **\*[form]\*** **\*system of the casino licensee\***. Each licensee shall include in its procedures developed in accordance with N.J.A.C. 19:45-1.9(b), the mathematical formula by which it calculates its theoretical win from the information contained in its player rating system.

(a)

**CASINO CONTROL COMMISSION**

**Internal Controls**

**Procedure for Control of Coupon Redemption and Other Complimentary Distribution Programs**

**Adopted Amendment: N.J.A.C. 19:45-1.46**

Proposed: September 21, 1992 at 24 N.J.R. 3254(a).

Adopted: November 18, 1992 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: November 19, 1992 as R.1992 d.501, **without change.**

Authority: N.J.S.A. 5:12-69(a), 70(l) and 102(m).

Effective Date: December 21, 1992.

Expiration Date: March 24, 1993.

**Summary of Public Comments and Agency Responses:**

Comments in general support of the proposal were submitted by the Division of Gaming Enforcement, Harrah's Casino Hotel, Resorts International Hotel, the Sands Hotel and Casino and TropWorld Casino and Entertainment Resort.

**Full text** of the adoption follows.

19:45-1.46 Procedure for control of coupon redemption and other complimentary distribution programs

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

(l) Each casino licensee shall:

1. File a quarterly report for all programs regulated by (a) above, which shall list, by type of coupon, the total number of coupons used, the total number of coupons redeemed, the total value of the complimentary cash or slot tokens given to patrons in redemption of coupons and any liability to patrons remaining on unredeemed coupons; and

2. Prepare a monthly report for all programs regulated by (b) above, which shall list, by program offered during the month, a description of the complimentary items and services provided, the total number of persons receiving complimentary items or services, the total dollar amount of complimentary items or services provided, and the names of all persons receiving a complimentary item or service in a dollar amount equal to or greater than \$100.00. Such report shall be available upon request by the Commission or Division.

(m) (No change.)

(n) In addition to the reports required in (l) above, the casino licensee shall accumulate both the dollar amount of and the number of persons redeeming coupons pursuant to (a) above, and the dollar amount of and the number of persons receiving complimentary items or services pursuant to (b) above, and shall include this information on the quarterly complimentary report required by N.J.A.C. 19:45-1.9. Complimentary items or services, including cash and slot tokens, distributed through programs regulated by this section shall not be subject to the daily complimentary reporting requirements imposed pursuant to N.J.A.C. 19:45-1.2.

# PUBLIC NOTICES

## COMMUNITY AFFAIRS

(a)

### DIVISION OF HOUSING AND DEVELOPMENT

#### Notice of Public Hearing and Opportunity for Public Comment

##### Truth-in-Renting Statement

Take notice that on Monday, January 4, 1993, pursuant to the provisions of the "Truth-in-Renting Act," P.L. 1975, c.310, the Division of Housing and Development of the Department of Community Affairs shall hold a public hearing on the proposed revised text of the Truth-in-Renting statement that is required to be distributed to all tenants living in buildings or projects with three or more tenant-occupied units. The hearing will take place at 10:00 A.M. at 3131 Princeton Pike, Building 3, Lawrenceville, New Jersey.

Written comments concerning the proposed revised text may be submitted on or before January 4, 1993 to:

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

Full text of the proposed revised text follows:

#### INTRODUCTION

##### About the "Truth In Renting" Act

The "Truth in Renting" Act was signed into law on February 19, 1976, as Chapter 310 of the New Jersey Public Laws of 1975. The Act requires the New Jersey Department of Community Affairs to prepare, distribute, and update annually a statement in English and in Spanish of the established rights and responsibilities of residential tenants and landlords in the State. The Act calls for distribution of the statement to all tenants with a rental term of at least one month living in residences with more than two dwelling units (or more than three if the landlord occupies one). The landlord is required to give a copy of the current statement to each tenant when a lease is entered into, and to make available the current statement in the building where the tenants can easily find it.

A landlord who does not properly distribute the statement can be subject to a penalty of up to \$100 for each offense. Enforcement of this statute is handled through the Superior Court, Special Civil Part, Landlord-Tenant Section in the county the building is located or in the county the defendant resides. You may represent yourself or hire an attorney.

##### About the Current Statement

The Truth in Renting statement is available from the Department of Community Affairs, Office of Landlord-Tenant Information, CN 805, Trenton, N.J. 08625-0805 (see order form in the back of this booklet). The Office of Landlord-Tenant Information does not have jurisdictional authority over the administration of the courts, nor can the Office render legal advice. Any change in the size of print or content of the booklet that is not approved in writing by the Office of Landlord-Tenant Information will be considered to be in violation of the Act. The deadline for posting and distributing this current statement is 30 days after the Department of Community Affairs makes it available for distribution.

The statement is based on existing State laws, regulations and court cases. Its purpose is for information and reference only, not for legal advice. It is not a complete summary of all laws and court decisions that concern landlord-tenant relations. Any person who plans to take any legal action in a landlord-tenant dispute may wish to consult with the appropriate enforcing agency, a county legal services agency, a private attorney, or an owners, tenants, or mobile home organization (see Directory in back for address and telephone listings).

##### Special Note on Applicability

The information contained in this statement should be generally useful to all residential tenants and landlords in New Jersey. However, not all the laws apply to all types of buildings. You can find out if a law applies to your situation by carefully reading the section describing that law. If it does not say that there are exceptions, then the law applies to all residential tenants and landlords.

To obtain copies of the footnotes and literature listed in the back of this booklet, please request copies in writing from the Office of Landlord-Tenant Information, CN 805, Trenton, New Jersey 08625-0805. Please remember this Office is for information only. For legal information and assistance, you may contact the appropriate Legal Services Office listed in the back of the booklet, the New Jersey Bar Association in your county, or your own attorney.

##### The Lease

##### General Provisions

A landlord-tenant relationship is formed when a landlord allows another person to use a dwelling unit for a specified period of time in return for rent. A dwelling unit may be an apartment, a house, a room or a mobile home or mobile home space. Parties to a lease must be at least 18 years old and mentally competent.<sup>1</sup>

A lease may be either oral or written. If written, it must be in plain language.<sup>2</sup> This means that it must be written so that an average person can understand it. The Division of Consumer Affairs can review leases to see if they comply with the Plain Language Law. This review is only available to landlords who must request the review in writing. A fee is charged for this service. For more information, write to the Division of Consumer Affairs, P.O. Box 45027, Newark, N.J. 07102, or call (201) 504-6339.

The Truth-in-Renting Act<sup>3</sup> provides that any written lease entered into or offered to a tenant must not violate any State laws in effect at the time the lease is made. Agreements in a lease must be reasonable. Once a lease has been made, neither party can be made to accept any new agreements while it is in effect. Any fees that the landlord intends to charge should be clearly stated. This can prevent confusion and possible dispute later. A lease may permit a "late charge" when the rent is not paid by a certain date, although this charge may not be made when the five-day senior citizen grace period<sup>4</sup> applies, and may also provide for payment by the tenant of the landlord's attorney fees and court costs in the event of eviction for non-payment of rent or for other causes.

A landlord can require a written lease or rental agreement at the beginning of the rental or at any time after that. There is no law that requires the landlord to give the tenant a copy of the lease. The tenant should read the lease or rental agreement before signing. It is advisable for the tenant to get a copy of the lease for his or her own records at the time that it is signed. If a new landlord takes over the building, both the new landlord and the tenant must honor the lease or rental agreement until it expires.

Later disputes can be avoided if tenant and landlord (or landlord's representative) walk through the unit together and make a list (which both should sign) of all items that are in need of repair or replacement. Neither a tenant nor a landlord has the right to damage the other's property and either can be sued by the other for any property damage.

When no statutory law exists, all landlord or tenant responsibilities or prohibitions of the rental must be written as lease provisions or as rental rules and regulations at the beginning of the lease to be enforceable. Examples of such provisions are: (1) Landlord may restrict subletting or assigning of the leased unit; (2) A landlord may forbid or limit the keeping of domesticated animals; however, in senior citizens housing projects or senior citizens planned real estate developments (senior citizens must be 62 years of age or older), having 3 or more rental units, landlords must permit domesticated animals unless they become a nuisance or the tenant does not fulfill rules and regulations concerning the care and maintenance;<sup>5</sup> (3) A

landlord may require tenants to give copies of keys; (4) A landlord may require a tenant to obtain rental insurance.

If a lease contains provisions that are against State statutes, local ordinances or governmental regulations, a tenant has the right to enter an action in Superior Court, Special Civil Part, Landlord-Tenant Section in the county the building is located or in the county the defendant resides, asking the court to remove this provision from the lease.<sup>6</sup> If a tenant and landlord cannot agree on a lease provision prior to acceptance of the document, the tenant may pursue a court action for clarification of this provision.

Generally, it is the responsibility of the landlord to obtain any certificate of occupancy that may be required by the municipality before a new tenant moves into a unit, although this responsibility is not always made clear in local ordinances and some leases provide that this cost is passed on to the tenant. (Note: Not all municipalities require a certificate of occupancy when a unit is rented.)

A landlord may not forbid or prevent installation of cable television and may not require advance payment from tenants for permission to install it.<sup>7</sup>

#### Mobile Home Leases

A mobile home park landlord or operator is required:<sup>8</sup> (1) to offer a written lease for at least 12 months to each mobile home dweller within the park or to a person who has purchased a mobile home from the landlord or operator. The lease must be offered within 30 days from the time the purchaser lawfully moved in; (2) to give the mobile home dweller a copy of all park rules and regulations prior to signing a lease; (3) to post a copy of park rules and regulations in a recreation hall or some other place within the park where they can be easily found; and (4) to fully disclose all fees, charges and assessments, which must be based on actual costs incurred, and all rules and regulations, before the dweller moves in. Written notice of any changes must be given at least 30 days before the changes become effective.

No mobile home park landlord or operator may move, or require anyone else to move, any mobile home owned by someone else, unless he or she is able to show that it is reasonably necessary to do so and 30 days written notice is given, except in the case of an emergency. All costs of moving a mobile home at the request of the park landlord or operator, including any loss or damage, must be paid or reimbursed by the park landlord or operator. Any bribe or other payment to get into a mobile park accepted by a park landlord or operator makes the landlord or operator a disorderly person and the person making the payment can recover double its amount plus costs in Superior Court, Special Civil Part, Landlord-Tenant Section in the county the mobile home park is located or in the county the defendant resides.

No mobile park landlord or operator may deny any resident the right to sell the resident's own mobile home within the park or require the unit to be moved solely on account of being sold. The park landlord or operator can reserve the right to approve the purchaser, but permission cannot be unreasonably withheld. The posting of a "For Sale" sign on a mobile home may not be forbidden, nor can the landlord or operator charge a commission or fee for the sale unless he or she acted as the sales agent under a written agreement with the mobile home owner. The Mobile Home Law<sup>9</sup> has new restrictions on park owners when they plan to remove the park from residential use or to sell the park. For further information, please see the Directory covering mobile homes in the back of this booklet.

#### Public Housing Leases

Public housing authorities must follow lease regulations developed by the U.S. Department of Housing and Urban Development (HUD) as well as existing State laws. These HUD regulations list both provisions that must be included in housing authority leases and provisions that may not be included. Any questions regarding public housing can be directed to HUD at (201) 877-1662, or write to the U.S. Dept. of Housing and Urban Development, Newark Office, Military Park Building, Attn: Public Housing, 7th Floor, Newark, New Jersey 07102.

#### Renewal and Breaking

No landlord or residential rental properties, except those in owner-occupied two or three-family dwellings, motels, hotels, transient, or seasonal units, may fail to renew any lease, regardless of whether it is written or oral, except for one of the good cause reasons described in detail under the section entitled "Eviction".<sup>10</sup> Tenants of owner-occupied buildings should refer to the section entitled "Other Evictions."

In certain circumstances, a tenant in a yearly lease can break a lease due to disabling illness or accident, if the tenant can show a loss of income, using a prescribed form.<sup>11</sup> Termination will take place on the 40th day following receipt of the form by the landlord.

Certain tenants in yearly leases can terminate a lease due to the death of a spouse upon notice duly given to the landlord. Such termination shall take place by the 40th day, however, the property shall be vacated and possession turned over to the landlord at least 5 days prior to the 40th day following receipt of the notice by the landlord.<sup>12</sup> Please note, however, the provisions of this act shall not apply to any lease the terms of which shall explicitly provide otherwise.

A lease is a binding contract. A tenant who breaks a lease could be required to make rental payments until the expiration date of the lease, unless the tenant can demonstrate that either: (1) "constructive eviction" (unlivable conditions) exists, meaning that the tenant notified a landlord of unlivable conditions or disturbances by other tenants and received no help to correct those conditions;<sup>13</sup> or (2) the landlord had re-rented. A landlord may sue the tenant who breaks a lease in the appropriate court for any damages (loss of rent, structural damage, monies extended to advertise, etc., to obtain a new tenant) caused to the dwelling unit by the tenant.

Once a unit is re-rented, there is no further obligation to pay rent unless the landlord has had to re-rent at a lower rental rate. The landlord must be able to demonstrate that he or she tried to mitigate damages by making a reasonable effort to re-rent.<sup>14</sup>

Tenants who remain in a unit after giving their landlord notice of their intent to leave may be held responsible for double rent payments for the months that the tenant shall continue to occupy the unit.<sup>15</sup>

#### Sailors and Soldiers Civil Relief Act

A person who enters the military after leasing an apartment has the legal right under this Act<sup>16</sup> to give a 30-day notice to the landlord and break the lease with no further monetary responsibility. He or she is also entitled to the return of his or her security deposit.

If a serviceperson leases an apartment after entering the military, he or she is still legally responsible for the rent payments up to the end of the lease if no tenant is found to re-rent the unit.

Another thing to be aware of is that no dependents of a serviceperson may be evicted from the unit in the case of non-payment of rent where the rent does not exceed the greater amount of \$1,200 per month, unless a court order for removal is obtained through the New Jersey Eviction Statute; however, suits could be delayed or postponed when a serviceperson is not in the general area of the court.

For further help, you should contact the Legal Assistance Section of Fort Dix at (609) 562-2497 or the Reserve Office of Fort Monmouth at (908) 532-4371.

#### Security Deposits

The following applies to all residential rental properties, including mobile homes, except owner-occupied two or three-family dwellings. (A tenant in an owner-occupied two or three-family dwelling may, however, make this provision applicable to his or her tenancy 30 days after sending a written request to the landlord that the landlord fulfill the requirements of the Security Deposit Law.)<sup>17</sup>

The security deposit cannot be more than one and one-half times one month's rent.<sup>18</sup> It can be less. This money continues to be the property of the person making the deposit and must be held in trust by the person receiving the money. This means that the person who receives the money must make sure that no use is made of the money that is not permitted by law.

The security money must be deposited in a bank or savings and loan association in New Jersey in an account bearing interest at the current rate. However, a person who receives security deposit money for 10 or more units must invest that money in an insured money market fund of a New Jersey-based investment company or deposit it in a money market account at a New Jersey bank, savings bank or savings and loan association. To pay for his administrative expenses, the person who received the security deposit is entitled to keep either 1 percent of the amount deposited or 12½ percent of the interest, whichever is greater, minus any service fee charged by the investment company, bank, savings bank or savings and loan association.

This section of the Security Deposit Law does not apply to "seasonal rentals." Seasonal rentals are rentals that do not exceed 60 consecutive days by persons having a permanent residence elsewhere. This section does not apply to migrant, seasonal or temporary workers where the rental is in connection with the job performance.

A person who receives a security deposit may not combine security deposit money with his or her own funds.

A tenant must be notified in writing of the name and address of the banking institution or investment company at which the money is deposited and the amount of the deposit. This must be done within 30 days after the deposit is made. If a tenant does not receive this notice, the tenant may use the security deposit for rent payments. A tenant who wants to use the security deposit for payment of rent must give written notice to the landlord that the security money should be used for rent payments due or to become due from the tenant. After giving this notice, the tenant does not have to make another security deposit while he is living at that dwelling.<sup>19</sup>

After all administrative expenses are deducted, the security money that is left, plus all interest, belongs to the tenant. The interest must be credited toward the payment of rent due on the anniversary or renewal of a lease or, if the building has 10 or more units, it can be left on deposit to compound for the benefit of the tenant.

If a tenant is forced to move from a dwelling as a result of fire, flood, evacuation or condemnation by a municipal or State agency, and will not be able to move back in for at least seven days, the landlord must return the security deposit, minus any rent that may be due and owing. Within three business days after receiving notice that the tenant has had to move, the landlord must let the tenant know that the security deposit will be returned and tell the tenant where it can be collected. The landlord may arrange to have the municipal clerk hold the security deposit so that the tenant may collect it at the clerk's office. If the tenant has not collected the deposit within 30 days, the landlord can redeposit it with the same banking institution or investment company with which it was deposited before. If the tenant is later able to move back into the apartment but has already collected the deposit, the tenant must again pay a security deposit (½ will be due immediately, another ½ in 30 days and the last ½ in 60 days) to the landlord.

Within 30 days after the end of a tenancy, a landlord must return to a tenant the money made as a deposit plus the interest that has been earned. The landlord may deduct from this sum the cost of any damages to the property or any other money due to him or her under the terms of the lease or agreement. The landlord must return this money either by personal delivery or by registered or certified mail. If there are any deductions made from the security deposit by the landlord, an itemized list of these deductions must also be sent to the tenant by registered or certified mail within 30 days. If the amount of money owed to the landlord for damages or unpaid rent is greater than the amount of the security deposit, the landlord may sue for the difference.

If a landlord fails to return the security deposit within 30 days, the tenant may sue. If the tenant is successful, the court may award the tenant double the amount owed, together with court costs and reasonable attorney's fees.<sup>20</sup>

If a building is sold, the original landlord is required to turn over the deposit plus any interest owed to the new landlord and then to notify the tenant by registered or certified mail that the new landlord will be responsible for the security deposit.<sup>21</sup> A recent court

decision held that it is the responsibility of the new landlord to get the deposited security from the old landlord and the new landlord will be held responsible for the return of the security money even if he or she does not get it from the old landlord.<sup>22</sup>

The Small Claims section of the Special Civil Part of the Superior Court Law Division in the county the building is located or in the county the defendant resides has jurisdiction in actions involving security deposits where the amount does not exceed \$1,500. For actions over \$1,500 but not to exceed \$7,500, you must file in the Special Civil Part of the Superior Court Law Division.<sup>23</sup>

Any person who unlawfully uses security deposit moneys may be criminally charged as a disorderly person and may be subject to a fine of not less than \$200.00 or imprisonment for not more than 30 days, or both.<sup>24</sup>

### Discrimination

The New Jersey Law Against Discrimination requires equal treatment in the sale or rental of housing regardless of race, creed, color, national origin, ancestry, sex, marital status, or physical condition.<sup>25</sup> The Law applies to all landlord-tenant relationships, except those involving owner-occupied dwellings and residences planned exclusively and occupied by one sex (example, YMCA).<sup>26</sup> Discrimination complaints should be reported to the field office of the Division of Civil Rights, New Jersey Department of Law and Public Safety, which is responsible for the area where the property is located. (See the Directory in the back of the booklet.)

Refusal to rent to a family that includes children under 14 years of age and refusal to rent because of the source of any legal income are prohibited by another New Jersey law<sup>27</sup> while discrimination based on age is, with certain exceptions, forbidden by the Federal "Fair Housing Act." Retirement communities, especially those with minimum ages below 55, are affected by the 1988 amendments to the Federal "Fair Housing Act."<sup>28</sup> Also prohibited is an agreement that a lease is cancelled upon the birth of a child. A complaint against a person who refuses to rent, or who tries to cancel a lease, on any of these grounds may be filed with the Municipal Court in the community in which the discrimination occurred. Violations of Federal law may be reported to the United States Department of Housing and Urban Development or the United States Attorney. It is not illegal to refuse to rent if illegal overcrowding would result, or if an applicant has a poor credit rating or does not have enough income to afford the rent.

### Consumer Fraud Protection

Since 1976, deception, fraud, misrepresentation, or knowing failure or refusal to provide important information in connection with the sale or advertisement of real estate have been illegal in New Jersey.<sup>29</sup>

The Department of Law and Public Safety, Division of Consumer Affairs, Office of Consumer Protection, Post Office Box 45027, Newark, New Jersey 07102, (201) 504-6200, is responsible for enforcing the Consumer Fraud Act. An individual can also sue for triple damages for consumer fraud.<sup>30</sup>

### Identity of Landlord

A landlord who owns a one or two-family non-owner occupied house is required by law to file a registration statement with the clerk of the municipality in which the building is located.<sup>31</sup> If the building has three or more units, the statement must be filed with the Bureau of Housing Inspection, CN 810, Trenton, New Jersey 08625-0810, upon a registration form provided by the Bureau. The Bureau sends a validated copy of the filed registration form to the municipal clerk. No filing is required for owner-occupied two-family houses.

The registration statement must also be given to each tenant and posted in a place in the building where it can be easily seen. The document must state the date of preparation and contain the names and addresses of the following: (a) the owner or owners of the building and the owners of the rental business if not the same persons; (b) the registered agent and corporate officers if the owner is a corporation; (c) a person who resides in or has an office in the same county as the building and is authorized to accept service

of process, if the owner is not located in the county; (d) the managing agent; (e) regular maintenance personnel; (f) the owner's representative who must be available and able to act in an emergency (the representative's telephone number must be listed); (g) every holder of a recorded mortgage on the building. If fuel oil is used to provide heat to the building and it is furnished by the owner, the name and address of the fuel oil dealer and the grade of oil used must also be included.

If there is any change in any of this information, a landlord must file an amended registration with the Bureau of Housing Inspection or, in the case of a one or two-family dwelling, with the clerk of the municipality, within 20 days, correct the information posted in the building and notify each tenant in writing within 7 days after filing. No fee is charged by the Bureau for the filing of amended registration statements.

If any eviction action by a landlord who has failed to follow the provisions of this law, the court is required by law to reserve judgment and continue the case—that is, to keep the case open and not issue a judgment for eviction—for up to 90 days to allow the landlord time to comply. If the owner has not complied within this time, the court must dismiss the case, which means that the tenant is not evicted.

A landlord who violates this act is liable for a penalty of not more than \$500.00 for each offense. The penalty may be enforced in a summary proceeding in the Special Civil Part of the Superior Court Law Division in the county the building is located or in the county the defendant resides or in the municipal court under the Penalty Enforcement law upon a complaint by the Attorney General or any other person. If there is a money judgment, the amount will be paid to the State Treasurer of New Jersey, if the Attorney General brings suit, or to the municipality if anyone else brings suit.

#### Rent

A tenant has the responsibility to pay the full amount of rent on time. In exchange, an owner has the responsibility to maintain the dwelling in a livable condition.

#### Senior Citizen Grace Period

Any senior citizen receiving a Social Security Old Age Pension, a Railroad Retirement Pension, or any other governmental pension in lieu of Social Security, must be given a 5-day grace period for payment when the rent is due on the first of the month. No delinquency or late charge may be made for this 5-day grace period. Any person who fails to allow this grace period may be criminally prosecuted as a disorderly person.<sup>32</sup>

#### Nonpayment and Distraint

When a tenant threatens to leave the unit without payment of rent, and a landlord has not yet received judgment from the court, the landlord may seek a temporary restraining order to prohibit the tenant from leaving the jurisdiction of the court without paying rent.<sup>33</sup>

A landlord is prohibited from taking or holding a residential tenant's possessions for nonpayment of rent. The legal term for this practice is "distraint." A landlord cannot use distraint for money owed on a lease or other agreement for a unit used only as a residence.<sup>34</sup>

A tenant may sue for damages resulting from distraint for nonpayment of rent in Superior Court, Special Civil Part, Landlord-Tenant Section, in the county the building is located or the county the defendant resides. The court may award double damages and costs of action to a tenant whose property was wrongfully distrained.

#### Rent Increases and Rent Control

The State of New Jersey has no laws that establish, govern or control rents. Each municipal governing body in this State may pass an ordinance establishing rent control or rent levelling. These ordinances are enforced by locally-created boards. They have been upheld as a valid exercise of the municipal police power where there is a housing shortage.<sup>35</sup>

Notice requirements for rent increases are contained in the Eviction Law.<sup>36</sup> This law provides that before an owner can evict a tenant

for nonpayment of an increased rent, he or she must first serve the tenant with a valid notice to quit and increase of rent.<sup>37</sup> (This notice does not mean that the tenant must actually leave; the tenant has the right to remain as long as he or she pays any legal increase in rent.) The increase in rent must not be unconscionable—that is, it must not be so unreasonable as to shock the conscience of a fair and honest person—and must comply with state laws and any municipal ordinances governing rent increases. If a tenant does not agree that a rent increase is legal and the landlord sues to evict the tenant for not paying the increase, it will be up to the court to decide if the increase is legal. If the court finds that the increase is legal, the tenant will have to pay it in order to avoid being evicted.

When a building is converted to a condominium or cooperative form of ownership, or to fee simple ownership of units, rents may not be increased to cover costs resulting solely from the conversion.<sup>38</sup> (This does not mean that rents may not be increased to cover the cost of new services or amenities.) This protection applies to all tenants, regardless of whether they are eligible for protected tenancy as senior citizens or disabled persons.

When a landlord follows the requirements for increasing rent and a tenant refuses to pay the increased amount, the landlord may begin an eviction action. If an increase is unconscionable or a tenant has not received proper notice, the tenant may file a complaint with a municipal rent control board where one exists.

Where there is no municipal rent control and a rent increase is charged that a tenant does not pay on the grounds that it is unconscionable, the landlord may seek to evict the tenant by court action and prove that the increase is not unconscionable.

Housing developments owned or subsidized by the U.S. Department of Housing and Urban Development (HUD), as well as unsubsidized developments with HUD-insured mortgages determined by HUD to have certain economic problems, are not subject to municipal rent control ordinances. For further information on the proper notice of a rent increase (the allowable amount of each rent increase in HUD buildings) write to U.S. Department of Housing and Urban Development, Newark Office, Military Park Building, Newark, New Jersey 07102, or call (201) 877-1662. Likewise, rents fixed and controlled by the New Jersey Housing and Mortgage Finance Agency (NJHMFA) in projects it finances are not subject to municipal rent control ordinances. For further information on the proper notice of a rent increase or the allowable amount of rent increase in a NJHMFA project, please write to New Jersey Housing and Mortgage Finance Agency, 3625 Quakerbridge Road, CN 18550, Trenton, New Jersey 08650-2085, or call (609) 890-8900.

#### Property Tax Rebate for Tenants

The Tenant Property Tax Rebate Act of 1990<sup>39</sup> requires owners to pass through to their tenants, as a rent credit or cash rebate, the full amount of any current property tax reduction. The amount is derived by comparison of current year taxes with the previous year or with 1990, whichever shows the larger rebate amount.

Each owner is due a Rebate Notice from the local tax collector within 30 days after tax bills are issued. Generally, rebates are to be in monthly installments at rent payment dates, beginning within 30 days after receipt of the Rebate Notice. But the first rebate is to be cumulative from January 1, and all are to be completed by December 31.

Exceptions to the Tenant Property Tax Rebate are made for owner-occupied two and three-family dwellings, including separate units on a single parcel; for hotels, motels, and other guesthouses serving transient or seasonal tenants; and buildings or agencies subject to payments in lieu of taxes, as cooperatives, mutual housing corporations, or continuing care retirement communities subject to the Limited Dividend and Non-Profit Housing Corporations or Associations Law.

This information is a summary of the 1990 Act. It is conceivable that this information may change each year. For this reason, please direct all questions about this program to the Tenant Property Tax Rebate Program, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, N.J. 08625, (609) 984-5076, to ascertain any current changes between this booklet reprints.

### State Income Tax Rebate for Tenants

Tenants may also be eligible for a rebate entitled "Homestead Credit for Tenants,"<sup>40</sup> if they were tenants during the year for which the return is filed. This is not a credit on rent payments and is not paid by or through the landlord. A tenant may receive payment from the New Jersey Division of Taxation by completing the information required on page 2 of the New Jersey Gross Income Tax form under HR 1040. This form must be filed by April 15th of each year with the New Jersey Division of Taxation. Even tenants who are not required to file a return for income taxes should file this form. These tenants may still be eligible for this rebate. Questions concerning this credit should be directed to the New Jersey Division of Taxation, Taxpayers Information Service, 50 Barrack Street, Trenton, N.J. 08646, (609) 292-6400.

### Maintenance

Both landlords and tenants have certain obligations for the maintenance of dwelling units. These are based on lease provisions, New Jersey statutes, local municipal ordinances, and court decisions.

In general, a tenant must protect and preserve a landlord's property. Generally acceptable housekeeping practices must be followed. Proper and timely notice must be given to a landlord when there are conditions that must be repaired or corrected. A property should be returned to the landlord in the same condition as it was received, except for normal wear and tear.

A landlord, in turn, must maintain the property in livable condition. The New Jersey Supreme Court has held that a landlord offering a dwelling unit for rent implies that it is in livable condition and agrees to keep it in that condition. A landlord must repair damage to vital facilities caused by normal wear and tear after being properly notified in writing and after being given a reasonable amount of time.

### Health, Safety, and Maintenance Standards

By state statute and/or municipal ordinances, certain state and local agencies have the power to adopt and enforce standards for the condition of dwelling units. These powers are outlined in the following three subsections.

#### State Inspection and Enforcement

The Bureau of Housing Inspection (BHI) in the Department of Community Affairs is responsible for the statewide enforcement of the Hotel and Multiple Dwelling Law and the Regulations for the Maintenance of Hotels and Multiple Dwellings. Every owner of a multiple dwelling that has three or more units in a building structure or a hotel, must file a certificate of registration with the Bureau. Multiple dwellings and hotels are required to be inspected at least once every five years.

The Hotel and Multiple Dwelling Law gives the Commissioner of the Department of Community Affairs power to issue and enforce regulations and to levy penalties to assure that multiple dwellings are maintained so that they do not endanger the health, safety or welfare of the tenants or the general public.<sup>41</sup> Both landlords and tenants must maintain buildings so that there is no violation of these regulations. Tenants must take care of their units and report any code violations to the landlord or superintendent and must<sup>42</sup> upon one-day notice, allow the landlord or his representative to enter the unit to make any inspections, repairs or alterations required in order to meet Code requirements. The landlord must keep the property in good repair, clean, free of infestation and free of any hazards or nuisances that might be harmful to the health or safety of the occupants, and must provide basic maintenance, including heat, building security, smoke alarm systems and properly functioning plumbing and electrical systems, etc.

Tenants who occupy one or two-family dwellings should be aware that an amendment to the Uniform Fire Safety Act requires working smoke detectors in these residences; and that a certificate of smoke detector compliance must be obtained by the owner before any change of occupancy occurs.<sup>43</sup> Any person needing additional information should contact the local, (i.e., city, town, borough, township) FIRE OFFICIAL who administers the Uniform Fire Safety Act.

### State Heat and Utility Requirements

The Hotel and Multiple Dwelling regulations establish heating standards for buildings with three or more units. (For buildings with fewer than three units, tenants need to contact their local building or health offices for enforcement of local ordinances regarding heating.) Every unit or dwelling space must have a heating system that will provide and maintain heat at a temperature of 68°F. From October 1 to May 1, the landlord is responsible for maintaining a temperature of at least 68°F. from 6:00 A.M. to 11:00 P.M. and 65°F. at other hours, supplying the required fuel or energy, and maintaining the heating system in good condition so that it can provide the required amount of heat. However, a landlord and a tenant may agree that the tenant will supply heat to a dwelling unit when the unit is served by separate heating equipment and the source of that heat can be separately computed and billed.

The State Board of Regulatory Commissioners (B.R.C.) enforces regulations that prohibit utility companies from shutting off utilities in tenant-occupied buildings whose owners have failed to make payments until tenants have been notified and given an opportunity to agree to make future payments.<sup>44</sup> The two offices of the B.R.C. are located at 2 Gateway Center, Newark, NJ 07101, (201) 648-2350 or 1-800-624-0241, and at 44 S. Clinton Avenue, CN 350, Trenton, NJ 08625, (609) 777-3300.

### State Department of Health and Municipal Authority

The State Department of Health requires that local Boards of Health conduct a housing code enforcement program that meets State standards. The local, regional, or county board of health must adopt an ordinance at least equivalent to the New Jersey State Housing Code or BHI regulations, both published by the New Jersey Department of Community Affairs, or equivalent to the maintenance codes published by BOCA (Building Officials and Code Administrators, Inc.) or APHA (American Public Health Associations). The board of health must conduct complaint inspections in any building within its jurisdiction and follow up with any necessary court enforcement.<sup>45</sup>

A local board of health has the authority the order to removal of lead paint from the interior of a dwelling unit when it causes a danger to occupants. When the heating equipment in a residential unit fails and the landlord does not take appropriate action after receiving proper notice from the tenant, the local board of health may act as agent for the landlord and order the repairs necessary to restore the equipment to operating condition.<sup>46</sup>

For emergency action in the event of failure to provide required heat, a tenant can contact the local health officer immediately after giving, or attempting to give, notice to the landlord.

### "Repair and Deduct" and Rent Withholding

"Repair and deduct" and rent withholding are remedies available to a tenant only when there is a defect in a vital facility, that is, something necessary for living does not work, or a hazardous condition threatening the safety of residents. A maintenance problem that does not make something necessary for living unusable and does not threaten residents' safety is not a "defect in a vital facility." In any particular case, the courts may have to decide if the reason for using either remedy is justified. It is important that any rent that is withheld be set aside and not used for any other purpose until the court has decided the matter. Legal assistance, or the assistance of a tenants' or mobile home organization, in the use of these remedies is advisable.

The New Jersey Supreme Court has allowed the self-help remedy of "repair and deduct."<sup>47</sup> A landlord promises at the beginning of a lease that the vital facilities needed to make the dwelling unit livable are in good condition and the property will be maintained. When there are defects in the vital facilities, A TENANT MUST FIRST NOTIFY THE LANDLORD OF THE SITUATION AND ALLOW A REASONABLE AMOUNT OF TIME FOR THE LANDLORD TO MAKE REPAIRS OR REPLACEMENTS. If a landlord fails to take action, a tenant may have the repairs made and deduct the cost from future rents. However, a landlord may take a tenant to court for nonpayment of rent. As a defense, the

tenant would have to prove the presence of defects, the failure of the owner to act despite having received reasonable notice, and the need to make repairs. In case the matter goes to court, the tenant may be required to demonstrate that the deducted amount is in hand. This is not required by statute but it is the practice in some courts. If there is a finding in favor of the landlord, the unpaid rent must be paid by the end of the court day to avoid eviction.

Rent withholding was authorized when the New Jersey Supreme Court<sup>48</sup> held that the obligation of a tenant to pay rent and the obligation—whether written or not—on the part of a landlord to maintain the property in a livable condition are mutually dependent.

If there are defects in the vital facilities and the landlord has not fixed them after receiving proper and timely notice from the tenant, the tenant may either seek a decrease in rent by court action or simply withhold rent. A landlord may bring an eviction action for nonpayment of rent. As a defense, the tenant must prove the necessity to make repairs and the failure of the landlord to act despite having received reasonable notice. To avoid possible eviction in the event the court finds in favor of the landlord, the tenant should save the amount of money withheld so that he will be able to pay it by the end of the day. It is a good idea to set up a separate bank account for this purpose.

#### Rent Receivership

In the event that a dwelling unit fails to meet minimum standards of safety and sanitation, the Rent Receivership Law permits the public officer of a municipality or tenant(s) of a dwelling to petition the court for a judgment directing the deposit of rents into court and the appointment of an administrator who must use the money to correct the unsafe conditions.<sup>49</sup>

#### Crime Insurance Information

State law requires that every landlord of a multiple dwelling of 10 or more dwelling units make available to tenants, within 30 days after they move in, information regarding crime insurance (available through the Federal Crime Insurance Program of Title VI of the Housing and Urban Development Act of 1970) and advise them where applications for such insurance may be obtained.<sup>50</sup> Information is available from the Federal Emergency Management Agency, Federal Insurance Administration, Federal Crime Insurance Program, 451 Hungerford Drive, P.O. Box 6301, Rockville, MD 20850.

Any landlord who fails to provide information on crime insurance shall be liable for a penalty of not more than \$200 for each offense. The penalty may be enforced in a summary proceeding in Superior Court under the Penalty Enforcement Law upon a complaint by the Attorney General or any other person. If there is a money judgment, the amount will be paid to the State Treasurer.

#### Locks

In order for a dwelling unit to be insurable, it must be equipped with locks that meet Federal standards as described below.

State law requires that every landlord of a multiple dwelling equip the building with locks meeting Federal standards. These standards are the same as those required under the New Jersey Hotel and Multiple Dwelling Regulations.

The regulations call for each exterior doorway to be protected by a door which, if not a sliding door, is equipped with a dead lock using either an interlocking vertical bolt and striker, or a minimum ½-inch throw dead bolt, or a minimum ½-inch throw self-locking latch. For further information on locks, write to the Code Administrator, Bureau of Housing Inspection, Department of Community Affairs, CN 810, Trenton, NJ 08625-0810. In buildings of fewer than three units, the tenant should contact the municipal building inspector or health officer for enforcement of any existing local ordinances.

#### Penalties for Damaged Property

Destruction, damage, or injury to the premises by a tenant, whether done willfully or through gross negligence, is a cause for eviction.<sup>51</sup> The landlord may institute a summary dispossession action in the Landlord-Tenant Section, Special Civil Part of the Superior Court Law Division in the county the building is located to obtain

possession of the premises three days after giving written notice to the tenant.<sup>52</sup>

A landlord may sue a destructive tenant in a civil action in Superior Court for costs resulting from damage. The Landlord-Tenant Section, Special Civil Part of the Superior Court Law Division in the county the building is located has jurisdiction in actions between a landlord and a tenant when the amount is \$7,500 or less.

A tenant who is maliciously destructive can be brought to municipal court on charges of being a disorderly person.<sup>53</sup>

#### Public Housing Maintenance

Public Housing Authority leases must contain the rights and responsibilities of both the authority and the tenant in the event there is extensive damage to a property and conditions are created that are hazardous to life, health, or safety of the occupants. A lease must include a provision for standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time, and a provision for reduction of rent in proportion to the seriousness of the damage and loss in value as a dwelling.<sup>54</sup>

#### Eviction

A landlord may recover possession of a dwelling unit used only as a residence by consent of the tenants or through the legal process of eviction. When a landlord obtains a judgment of possession from a court, the landlord is entitled to a warrant of removal. This warrant will direct an officer of the court to remove all persons from the dwelling unit and give the landlord full possession. The warrant may also direct the officer of the court to remove tenants' belongings.

#### "Self-help" Evictions

"Self-help" evictions—that is, entry into a dwelling unit and removal of tenants without their permission or without a judgment from a court—are not permitted in New Jersey under any circumstances.<sup>55</sup> A landlord or any other person who enters an apartment or property without a court order authorizing such entry and/or holds a tenant's belongings unlawfully by force or threat of monies owed may be liable to damages to the tenant.<sup>56</sup>

A person evicted in this manner may file a complaint with the Clerk of the Landlord-Tenant Section, Special Civil Part of the Law Division, or the Chancery Division, of the Superior Court, in the county in which the act was committed. In a successful action by a tenant evicted through forcible entry and detainer, the court may award possession of the dwelling unit and all damages, including court costs and reasonable attorney's fees. If the dwelling unit cannot be returned to the tenant, the court may award damages.

#### Causes for Eviction

The eviction for good cause law applies to all residential rental properties, including mobile homes, and land in a mobile home park, except owner-occupied two or three-family dwellings, hotels, motels, and other dwellings housing transient or seasonal tenants, or a unit held in trust on behalf of a member of the immediate family where one member of the immediate family permanently occupies the unit and this person has a developmental disability.<sup>57</sup> The Rooming and Boarding House regulations adopted by the Department of Community Affairs make it applicable to rooming and boarding houses as well and also provide that notice for residents of those buildings must be given to the county welfare board three days for an eviction action is instituted.<sup>58</sup>

There are a number of causes for eviction. Each cause, except for nonpayment of rent, must be described in detail by a landlord in a written notice to a tenant.<sup>59</sup> No residential landlord may evict or fail to renew a lease, whether written or oral, unless the landlord can prove in court one of the 16 causes listed below.<sup>60</sup> Depending on the cause, a certain amount of time must pass after delivery of written notice before a landlord may begin eviction action by filing a complaint in the Landlord-Tenant Section, Special Civil Part of the Superior Court Law Division in the county the building is located. When a complaint is filed, a tenant will receive a summons

to appear in court on a certain date. FAILURE TO APPEAR MAY RESULT IN LOSING THE CASE BY DEFAULT.

In some cases a landlord is required to give a tenant a preliminary written notice (written notice to cease) to stop certain acts. Only when a tenant continues such acts after the first notice does a landlord have a cause for eviction.

CAUSES FOR EVICTION, NOTICE REQUIREMENTS, AND TIME BEFORE LEGAL ACTION FOR EVICTION MAY BE INSTITUTED, ARE AS FOLLOWS:

A. A TENANT FAILS TO PAY RENT, DUE AND OWING, ON AN ORAL OR WRITTEN LEASE. No written notice is required and legal action may be instituted immediately.

B. A TENANT CONTINUES DISORDERLY CONDUCT THAT DENIES PEACE AND QUIET TO OTHER TENANTS OR TO OTHER PEOPLE IN THE NEIGHBORHOOD AFTER A WRITTEN NOTICE TO STOP. Legal action may be instituted three days after a second written notice.

C. A TENANT CAUSES DESTRUCTION, DAMAGE, OR INJURY TO THE PREMISES WILLFULLY OR THROUGH GROSS NEGLIGENCE. Legal action may be instituted three days after a written notice.

D. A TENANT CONTINUES TO VIOLATE ANY REASONABLE RULES AND REGULATIONS AFTER A WRITTEN NOTICE TO STOP. (THE RULES AND REGULATIONS MUST HAVE BEEN ACCEPTED IN WRITING BY THE TENANT OR MADE PART OF THE LEASE AT THE BEGINNING OF THE LEASE TERM.) Legal action may be instituted one month after a second written notice. (Note: Month to month leases begin on the day rent is due and end one month later. Any rules or regulations for this type of tenancy would be given on or before the start of the new month and continue after that.)

E. A TENANT CONTINUES A SUBSTANTIAL BREACH OF ANY REASONABLE COVENANT OR AGREEMENT IN A LEASE AFTER A WRITTEN NOTICE TO STOP. (THE COVENANT OR AGREEMENT MUST HAVE BEEN CONTAINED IN THE LEASE AT THE BEGINNING OF THE LEASE TERM.) Legal action may be instituted one month after a second written notice.

F. A TENANT FAILS TO PAY RENT AFTER A VALID NOTICE TO QUIT AND NOTICE OF RENT INCREASE.<sup>61</sup> THE INCREASE MUST NOT BE UNCONSCIONABLE AND MUST COMPLY WITH ANY LAWS OR MUNICIPAL ORDINANCES GOVERNING RENT INCREASES.<sup>62</sup> No written notice is required and legal action may be instituted immediately. (Note: The notice to "quit" the premises that accompanies a rent increase notice does not mean that the tenant must actually leave the unit—although he or she may have to do so if the court determines that the rent increase is not unconscionable—or that the landlord is bringing an eviction action.)

Note: Tenants evicted under the following "G" provisions may be eligible for financial and other assistance for relocation. If they are eligible, this assistance must be provided before they can be evicted. Copies of the Eviction/Relocation Regulations can be obtained from the Office of Landlord-Tenant Information, CN 805, Trenton, NJ 08625-0805, (609) 530-5423. Information on relocation assistance can be obtained from the Relocation Assistance Program<sup>63</sup> of the Bureau of Housing and Community Development, CN 806, Trenton, NJ 08625-0806, (609) 633-6258.

G. (1) A LANDLORD OR OWNER WHO HAS BEEN CITED FOR VIOLATIONS OF LOCAL OR STATE CODES WANTS TO PERMANENTLY BOARD UP OR DEMOLISH THE PREMISES OR CAN PROVE IT IS ECONOMICALLY UNFEASIBLE FOR THE OWNER TO ELIMINATE THE VIOLATIONS. Legal action may be instituted three months after a written notice. No warrant for possession will be issued until the requirements of the relocation law have been met.

G. (2) A LANDLORD OR OWNER HAS BEEN CITED FOR VIOLATIONS OF LOCAL OR STATE CODES AND IT IS NOT FEASIBLE TO REMEDY THE CONDITIONS WITHOUT REMOVING THE TENANTS. Legal action may be instituted three months after a written notice. No warrant for possession will be

issued until the requirements of the relocation laws have been met. In addition, notice must be given by the landlord to the Department of Community Affairs of Landlord-Tenant Information, CN 805, Trenton, NJ 08625-0805, so that the Department may prepare a report advising the court and the parties as to the feasibility of remedying the conditions without removing the tenants.

G. (3) A LANDLORD OR OWNER WHO HAS BEEN CITED FOR VIOLATION OF LOCAL OR STATE CODES SEEKS TO CORRECT AN ILLEGAL OCCUPANCY. Legal action may be instituted three months after a written notice. No warrant for possession will be issued until the requirements of the relocation law have been met.

G. (4) A LANDLORD OR OWNER IS A GOVERNMENTAL AGENCY THAT WANTS TO REMOVE THE PROPERTY FROM THE RENTAL MARKET TO CARRY OUT A REDEVELOPMENT OR LAND CLEARANCE PLAN. Legal action may be instituted three months after a written notice. No warrant for possession will be issued until the requirements of the relocation law have been met.

H. AN OWNER IS PERMANENTLY REMOVING A BUILDING OR A MOBILE HOME PARK FROM RESIDENTIAL USE. Legal action may be instituted 18 months after written notice. When a lease is in effect, no legal action may be taken until the lease expires.

I. A LANDLORD OR OWNER AT THE TERMINATION OF A LEASE PROPOSES REASONABLE CHANGES OF SUBSTANCE IN THE TERMS OR CONDITIONS OF THE LEASE (WHICH COULD INCLUDE A CHANGE IN TERM) AND THE TENANT REFUSES TO ACCEPT THE CHANGES AFTER RECEIVING A WRITTEN NOTICE DESCRIBING THE CHANGES. Legal action may be instituted one month after a second written notice.

J. A TENANT HABITUALLY FAILS TO PAY RENT DUE AND OWING WITHOUT LEGAL JUSTIFICATION AFTER RECEIVING A WRITTEN NOTICE TO CEASE. Legal action may be instituted one month after a second written notice. (Note: The second written notice in this and the other cases where the phrase "second written notice" is used is usually entitled a "notice to quit." A "notice to cease" must come first in order to warn the tenant that such action as habitual late payment or the causes in B, D, or E are no longer acceptable, and, if continued, will serve as a cause for eviction.)

K. A LANDLORD OR OWNER OF A BUILDING IS CONVERTING FROM THE RENTAL MARKET TO A CONDOMINIUM OR COOPERATIVE. Legal action may be instituted three years after written notice, except that tenants who qualify for protection under the Senior Citizen and Disabled Protected Tenancy Act (see below) cannot be evicted for 40 years. When a lease is in effect, no legal action may be taken until the lease expires. The landlord must comply with the regulations governing conversion to condominiums and cooperatives. At any time within 18 months of receiving notice demanding possession of the unit, a tenant may request, in writing, that the landlord provide an opportunity to rent comparable housing. ("Comparable housing" is housing that is decent, safe and sanitary and does not violate any housing codes; that is open to all people regardless of race, creed, national origin, ancestry, marital status or sex; that is similar to the unit from which the tenant is being evicted with regard to size, number of rooms, rent range, major kitchen and bathroom facilities and any special facilities needed for a handicapped or infirm person; is located in an area that is as desirable with regard to closeness to the tenant's job or business, closeness to shopping and community facilities and the quality of the general surroundings; and that meets such additional reasonable requirements as the tenant has included in his or her written request for comparable housing.) Up to five one-year stays of eviction shall be granted by the court until the court is satisfied that the tenant has been offered a reasonable opportunity to examine and rent comparable housing, except that not more than one one-year stay shall be granted if the landlord allows the tenant five months' free rent as compensation for hardship in relocation. (Note: Further information concerning condominium and cooperat-

ive conversion and application for senior citizen and disabled protected tenancy may be obtained from the Office of Landlord-Tenant Information, CN 805, Trenton, NJ 08625-0805, (609) 530-5423).

(L) (1) AN OWNER OF A BUILDING OR MOBILE HOME PARK THAT IS CONSTRUCTED AS OR IS BEING CONVERTED TO, A CONDOMINIUM, COOPERATIVE OR FEE SIMPLE OWNERSHIP OF UNITS HAS CONTRACTED TO SELL THE UNIT TO A BUYER WHO WANTS TO OCCUPY IT. (THE TENANT MUST HAVE MOVED IN AFTER THE RECORDING OF THE CONDOMINIUM MASTER DEED, COOPERATIVE AGREEMENT OR SUBDIVISION MAP.) Legal action may be instituted two months after written notice. (When a lease is in effect, no legal action may be taken until the lease expires. In addition, the statement concerning conversion as required by law must be provided to the tenant.)<sup>64</sup>

L. (2) AN OWNER OF THREE OR FEWER CONDOMINIUM OR COOPERATIVE UNITS IN A BUILDING WANTS TO PERSONALLY OCCUPY THE UNIT OR HAS SOLD IT TO A BUYER WHO WISHES TO PERSONALLY OCCUPY IT. (THE TENANT MUST HAVE MOVED IN AFTER THE RECORDING OF THE MASTER DEED OR COOPERATIVE AGREEMENT AND MUST HAVE RENTED THE UNIT FROM AN OWNER OF THREE OR FEWER UNITS.) Legal action may be instituted two months after written notice. (When a lease is in effect, no legal action may be taken until it expires. In addition, the statement concerning conversion required by law must be provided to the tenant.)<sup>65</sup>

L. (3) AN OWNER OF A BUILDING WITH THREE OR FEWER UNITS WISHES TO PERSONALLY OCCUPY A UNIT OR HAS CONTRACTED TO SELL THE BUILDING TO A PERSON WHO WISHES TO PERSONALLY OCCUPY IT AND THE CONTRACT CALLS FOR THE UNIT TO BE VACANT AT CLOSING. Legal action may be instituted two months after written notice. (When a lease is in effect, no legal action may be taken until it expires.)

M. A LANDLORD OR OWNER CONDITIONED A TENANCY UPON THE TENANT'S EMPLOYMENT BY THE LANDLORD AS A SUPERINTENDENT, JANITOR OR IN SOME OTHER CAPACITY AND THE EMPLOYMENT IS BEING TERMINATED. Legal action may be instituted three days after written notice.

N. THE PERSON, INCLUDING A JUVENILE ADJUDICATED DELINQUENT OR TENANT WHO KNOWINGLY HARBORS SUCH PERSON, HAS BEEN CONVICTED OF OR PLEADED GUILTY TO AN ACT WHICH CONSTITUTES AN OFFENSE UNDER THE COMPREHENSIVE DRUG ACT OF 1987 AND HAS NOT, IN CONNECTION WITH HIS SENTENCE FOR THAT OFFENSE, EITHER SUCCESSFULLY COMPLETED OR BEEN ADMITTED TO, AND CONTINUED WITH WHILE ON PROBATION, A DRUG REHABILITATION PROGRAM. Legal action may be instituted three days after a second written notice.

O. THE PERSON, INCLUDING A JUVENILE ADJUDICATED DELINQUENT OR TENANT WHO KNOWINGLY HARBORS SUCH PERSON, HAS BEEN CONVICTED OF OR PLEADED GUILTY TO AN OFFENSE INVOLVING ASSAULT OR TERRORISTIC THREATS AGAINST THE LANDLORD, THE LANDLORD'S FAMILY, OR AN EMPLOYEE OF THE LANDLORD. Legal action may be instituted three days after a second written notice.

P. THE PERSON, OR TENANT WHO KNOWINGLY HARBORS SUCH PERSON WHO, HAS BEEN FOUND TO BE LIABLE IN A CIVIL ACTION FOR REMOVAL COMMENCED FOR AN OFFENSE UNDER (N) OR (O) OF THIS SECTION EXCEPT THAT THIS SECTION SHALL NOT APPLY TO A PERSON WHO HARBORS OR PERMITS A JUVENILE TO OCCUPY THE PREMISES IF THE JUVENILE HAS BEEN ADJUDICATED DELINQUENT UNDER THE COMPREHENSIVE DRUG ACT OF 1987. Legal action may be instituted three days after a second written notice.

### Other Evictions

Tenants of non-residential or commercial premises, or landlord-occupied two and three-family dwellings, can be removed only when a court issues an order for eviction. However, in these cases, none of the good causes listed above needs to be proven and the landlord must only show that the tenant (a) is staying after the expiration of the terms of the lease and receipt of a written notice to leave, (b) is staying after a failure to pay rent, (c) is disorderly so as to destroy the peace and quiet of other tenants, (d) willfully destroys or damages the premises, (e) constantly violates the written rules and regulations or (f) violates any lease provision where the lease provides a right of re-entry reserved. No further notice is required before bringing action in court to evict in the first two causes, but a three day written notice is required for any of the causes described as disorderly, destructive or violative of written rules or lease provisions.<sup>66</sup>

### Senior Citizen and Disabled Protected Tenancy

Tenants who are at least 62 years of age by the date of the conversion recording or who are permanently disabled or a person who has been honorably discharged or released under honorable circumstances from active service in any branch of the U.S. Armed Forces who is rated as 60 percent disabled or higher as a result of service who live in a building being converted to a condominium, cooperative or fee simple ownership of units may be protected from eviction for 40 years if they have lived in the building for at least one year prior to the conversion recording date and have a family income that is not more than three times the average per person income in their county or \$50,000, whichever is greater. (The "conversion date" is the date on which a master deed or deed to a cooperative corporation, or a subdivision deed or map legally establishing separate lots, is filed.) The landlord or converter is required to notify all tenants of their right to file for protected tenancy if they may be eligible. Generally, applications for protected tenancy must be filed with the designated municipal official or board within 60 days, although later filings may be accepted if there is good reason for the late filing and the conversion has not yet taken place. Tenants in Hudson County may be eligible for an additional protected tenancy established under the Tenant Protection Act of 1992. For copies of the law, regulations or forms, landlords or converters, tenants and local officials may write the Office of Landlord-Tenant Information, CN 805, Trenton, NJ 08625-0805, (609) 530-5423. For help in filling out the forms, please contact your appropriate municipal administrative agent who sent you the forms.

### Tenant Protection Act of 1992

This amendment to the Eviction Law became effective on June 1, 1992.<sup>67</sup> It replaced the eviction moratorium for tenants in buildings being converted to condominiums, cooperatives or fee simple units of dwelling space established by P.L.1991, Chapter 45. The 1992 amendment extends protections to **qualified** tenants in **qualified** counties in buildings converted or being converted who **were not** eligible for Protected Tenancy as either Senior Citizens or Disabled persons under the "Senior Citizens and Disabled Protected Tenancy Act of 1987." At the present time, the only qualified county is Hudson County. Tenants in Hudson County with questions or in need of assistance in filling out the required forms should contact the Administrative Agent of their municipality.

### Rooming and Boarding House Evictions

The Regulations Governing Rooming and Boarding Houses, which are enforced by the Bureau of Rooming and Boarding House Standards of the Department of Community Affairs, require owners of rooming and boarding houses to follow the good causes and notice requirements of the Eviction Law<sup>68</sup> when evicting residents, except if otherwise ordered by the Bureau. There is a further requirement that the owner give at least three days' notice to the County Welfare Board before starting the eviction action.<sup>69</sup>

Any building having at least two living units without private kitchens and bathrooms is a rooming or boarding house if it does not meet one of the exceptions in the Rooming and Boarding House Act.<sup>70</sup> These exceptions include hotels with more than 85 percent

temporary occupancy by people with homes elsewhere, school and college dormitories, buildings housing only college students and certain residences for the disabled. For additional information concerning rooming and boarding houses, contact the Bureau of Rooming and Boarding House Standards, CN 804, Trenton, NJ 08625-0804.

#### Penalties for Eviction Law Violations

When a tenant vacates a dwelling unit after having been given notice that the landlord wishes personally to occupy the unit and the landlord then arbitrarily fails to occupy the unit for at least six months, but instead permits personal occupancy of the unit by another tenant or registration of conversion of the property to a planned real estate development, the landlord is liable to the former tenant for three times the damages plus attorney fees and costs.

When a tenant vacates a dwelling unit after having been given notice that the landlord seeks to permanently board up or demolish the building or to permanently retire it from residential use, and the landlord does not do any of these, but instead allows any residential use of the unit for a period of five years from the date the unit became vacant, the landlord, or the former landlord, may be liable to the tenant for three times the damages plus attorney fees and costs. Additionally, the landlord or former landlord may be liable to a civil penalty of from \$2,500 to \$10,000 for each violation of this law and the property may not be registered as a planned real estate development during the five-year period following the date on which any dwelling unit in the property became vacant as a result of an eviction notice stating that the property was being permanently removed from residential use.<sup>71</sup>

#### Reprisal—Civil Rights of Tenants

A landlord cannot take reprisal against a tenant by eviction, substantial alteration of a lease or its terms, or refusal to renew a lease when a tenant exercises certain civil rights.<sup>72</sup> The law against reprisal applies to all rental properties used for dwelling purposes, including mobile homes, except owner-occupied two- or three-family dwellings.

These civil rights are:

1. A tenant attempts to enforce any rights under the lease or State or local laws.
2. A tenant has made a good faith complaint to a governmental authority about a landlord's violation of any health or safety law, regulation, code, or ordinance. (A TENANT MUST HAVE FIRST NOTIFIED THE LANDLORD AND GIVEN THE LANDLORD A REASONABLE TIME TO CORRECT THE VIOLATION BEFORE MAKING THE COMPLAINT.)
3. A tenant has been an organizer, or member, of any lawful organization, including a tenant organization.
4. A tenant refuses to comply with changes in the lease or agreement, if the changes have been made by the owner because the tenant took any of the above actions.

If a landlord does take reprisal action against a tenant, a tenant may sue the landlord for damages in a civil action.

#### Procedures for Recovery of Premises

A landlord may recover possession of a dwelling unit through a summary dispossession action in the Landlord-Tenant Section, Special Civil Part of the Superior Court Law Division in the county the building is located. Monetary damages must be recovered in a separate civil action in Superior Court. Actions for rent in the Special Civil Part cannot exceed \$7,500.

When a landlord obtains a judgment for possession from the Special Civil Part, the warrant of removal cannot be issued until three days after judgment and only between the hours of 8:00 a.m. and 6:00 p.m. This warrant of removal cannot be executed until a minimum of three days (two days for seasonal tenants in buildings with five or fewer units) have elapsed since it was issued.<sup>73</sup> The Fair Eviction Notice Act requires any warrant for removal to include a notice that the tenant has a right to request more time (called a "stay of execution").<sup>74</sup> The court will continue the case for up to 10 days after the execution of the warrant for the purpose of hearing applications by the tenant for lawful relief.

#### Public Housing Evictions

Public housing authorities must follow State laws regarding evictions as well as the regulations of the U.S. Department of Housing and Urban Development (HUD). In the case of an eviction, a public housing tenant may request a hearing from the housing authority after receiving a notice of termination of tenancy. A housing authority may not begin an eviction action in court until the decision of the hearing officer or the hearing panel has been mailed or delivered to the tenant and a notice to vacate has been served.<sup>75</sup>

#### FOOTNOTES FOR TRUTH-IN-RENTING

1. NJSA 9:17B-1 (1973) Legal Age Requirement
2. NJSA 56:12-1 (1980) Plain Language Review Law
3. NJSA 46:8-43 thru 49 (1976) Truth in Renting Act
4. NJSA 2A:42-6.1 thru 6.3 Senior Citizen Grace Period
5. NJSA 2A:24-103 thru 112 Pets in Senior Housing
6. NJSA 46:8-48 (1976) Truth in Renting Act
7. NJSA 48:5A-49 (1972) CATV Law
8. NJSA 46:8C-2 thru 9 (1973) Mobile Home Law
9. NJSA 46:8C-10 thru 20 Mobile Home Law
10. NJSA 2A:18-61.3 Eviction Law
11. NJSA 46:8-9.2, NJAC 5:29-2.1 and 2.2 Disabling Illness  
For copies of the form write to:  
Landlord-Tenant Information,  
CN 805,  
Trenton, NJ 08625.
12. NJSA 46:8-9.1 Death of leasee
13. Reste Realty Corp. v. Cooper, 53 NJ 444 (March 7, 1969)
14. Sommer v. Kridel, 74 NJ 446 (1977) Mitigate damage court dec.
15. NJSA 2A:42-5 Hold over tenant
16. 50 U.S.C. App. 510 Sailors and Soldiers
17. NJSA 46:8-26 Security Deposit Law
18. NJSA 46:8-21.2 Security Deposit Law
19. NJSA 46:8-19 Security Deposit Law
20. NJSA 46:8-21.1 Security Deposit Law
21. NJSA 46:8-20 Security Deposit Law
22. Hunter v. Weissberger 212 NJ Super 262 (June 25, 1986)
23. Court Rule 6:1 et seq. Small Claims Section Special Civil Part
24. NJSA 46:8-25 Security Deposit Law
25. NJSA 10:5-12(g)(h) 1945 Law Against Discrimination
26. NJSA 10:5-5(n) Law Against Discrimination
27. NJSA 2A:42-100 thru 102 Law Against Discrimination Against Children
28. 42 USC 3601 Federal Fair Housing Act
29. NJSA 56:8-1(e) Consumer Fraud
30. NJSA 56:8-19 Consumer Fraud
31. NJSA 46:8-27 thru 37 Landlord Identity Law
32. NJSA 2A:42-6.1 thru 6.3 Senior Grace Period Law
33. NJSA Court Rule 4:51-1 thru 4:51-5 Writ of Ne Exeat
34. NJSA 2A:33-1 thru 23 (1971) Distraint Law

**PUBLIC NOTICES**

- 35. *Inganamort v. Borough of Fort Lee*, 120 NJ Super. 286, 293 (Law Division, 1973). See also *Helmsley v. Borough of Fort Lee*, 78 NJ 200 (1978) Rent Increase Case
- 36. NJSa 2A:18-61.1(f) Eviction Law
- 37. Definition of a valid notice to quit can be found in *Gretkowski v. Wojciechowski*, 26 NJ Super. 245 (App. Div. 1953) Valid Rent Increase Notice
- 38. NJSa 2A:18-61.31 Eviction Law
- 39. NJSa 54:4-6.3 thru 6.13 and NJAC 5:30-3.3 Tenants Property Tax Rebate Law and Tenants Property Tax Rebate Program Administrative Regulations
- 40. See page 2 of the N.J. Income Tax Return form or contact the Division of Taxation (609) 292-6400.
- 41. The New Jersey Hotel and Multiple Dwelling Law NJSa 55:13A-1 (1967) and the New Jersey Administrative Code (NJAC) 5:10-1; which defines the Maintenance regulations are available for \$5.00. You may write for copies to the Bureau of Housing Inspection, Department of Community Affairs, CN 810, Trenton, NJ 08625-0810, (609) 633-6225.
- 42. NJAC 5:10-5.1 Multiple Dwelling Regs. for entry of units
- 43. NJSa 52:27D-192 State Uniform Fire Safety Act
- 44. NJAC 14:3-7.14 Board of Regulatory Commissioners
- 45. NJAC Title 8:51 Board of Health Regulations
- 46. NJAC 26:3-31 to 31.10 Board of Health Regulations
- 47. *Marini v. Ireland*, 56 NJ 130 (1970) Repair and Deduct Case
- 48. *Berzito v. Gambino*, 114 NJ Super 124 (1971) and 63 NJ 460 (1973).
- 49. NJSa 2A:42-85 thru 93 (1971) Rent Receivership Law
- 50. NJSa 48:8-38 thru 42 Crime Insurance Law
- 51. NJSa 2A:18-61.1(c) Eviction Law
- 52. NJSa 2A:18-16.2(a) Eviction Law
- 53. Anyone found to be a disorderly person will be guilty of a petty offense and may be imprisoned for not more than six months or fined not more than \$500 or both unless otherwise noted. A disorderly person complaint is made to a municipal court. NJSa 2C:1-4
- 54. See Section entitled Rent Increases and Rent Control; last paragraph
- 55. NJSa 2A:39-1 (amended 1971) Forcible Entry and Detainer Law
- 56. NJSa 2A:33.1 Distress Law
- 57. NJSa 2A:18-61.1 (1967) Eviction Law
- 58. NJAC 5:27-3.3(c) Rooming and Boarding House Regulations
- 59. NJSa 2A:18-61.2 Eviction Law
- 60. NJSa 2A:18-61.3 Eviction Law
- 61. NJSa 2A:18-61.1(f) Definition of valid notice to quit can be found in *Gretkowski v. Wojciechowski*, 26 NJ Super 245 (1953)—Valid Rent Increase
- 62. NJSa 2A:18-61.1(f) Unconscionability is an indefinite standard. It has been defined in terms of "action which would not be acceptable to any fair and honest man or conduct which is monstrously harsh and shocking to the conscience." *Black's Law Dictionary*, 4th Ed.: *Toker v. Westerman* 113 NJ Super 252 (Dist. Court) (1970). See also *Edgemere at Somerset v. Barbara Jean Johnson*, March 23, 1976, Somerset County District Court, and see *Philip Sgroi v. Ricky L. Rosenbaum and Karen Arkenau*, May 10, 1978, Union City Dist. Court. (The judge in the latter case

**COMMUNITY AFFAIRS**

- decided that an increase of more than 10 percent in a calendar year may be considered "unconscionable," depending on the facts of the situation.)
- 63. NJSa 52:31B-1, NJSa 20:4-1 or NJAC 5:11-1
- 64. NJSa 2A:18-61.9 (1976) Eviction Law and NJAC 5:24-1 Section 9
- 65. NJSa 2A:18-61.9 (1976) Eviction Law and NJAC 5:24-1 Section 9
- 66. NJSa 2A:18-53 Eviction Law
- 67. NJSa 2A:18-61.40 thru 61.59 Eviction Law
- 68. NJAC 5:27-3.3(c) Rooming and Boarding House Regulations
- 69. NJAC 5:27-3.4(c) Rooming and Boarding House Regulations
- 70. NJSa 55:13B-3 Rooming and Boarding House Law
- 71. NJSa 2A:18-61.6 and 61.1 (a-f) Eviction Law
- 72. NJSa 2A:42-10.10 (1970) Reprisal Law
- 73. NJSa 2A:18-57 (1976) and court Rules Eviction Law
- 74. NJSa 2A:42-10.16 & 17 (1974) Summary Dispossess: warrant for removal
- 75. Title 24, Code of Federal Regulations, Part 866, Federal Register August 7, 1975, pp. 33402-33408. Public Housing Lease Regulations.

**RIGHT OF ENTRY**

There is no law currently in effect in New Jersey which requires a tenant to furnish a landlord with the key to his apartment, nor is there one which prohibits it. In the event that a lease contains a provision which obligates the tenant to furnish a key, the tenant has the right to petition Superior Court, Special Civil Part, Landlord-Tenant Section, in the county the building is located or the county in which the defendant resides to void that lease provision. It is then entirely up to the judge to decide the legality of the requirement.

If there is no written rule or regulation or lease provision requiring the key to be given to the landlord, any eviction action by the landlord to enforce a verbal requirement would then be unlikely to succeed. The landlord could take a tenant to court to demand entry for some important reason such as inspection, repair, emergency or even perhaps to gain entry for the purpose of showing the unit for re-renting. In such cases, again, the judge would have to make each decision on the basis of the facts.

THE ONLY EXCEPTION IS where a State employed housing inspector or local inspector conducting inspections for the State Bureau of Housing Inspection is in need of entry into the unit in accordance with the Regulations for Maintenance of Hotels and Multiple Dwellings. N.J.A.C. 5:10-5.(c) provides that "every occupant of each unit of dwelling space shall give the owner thereof or his agent or employees, access to any part of the unit of dwelling space upon reasonable notification, which under ordinary circumstances shall be one day for multiple dwellings except immediately for hotels, for the purpose of making such inspection and such repairs or alterations as are necessary to effect compliance with the law and these Regulations. In case of safety or structural emergencies immediate access shall be given." **The only purpose of this regulation is to make it possible for the inspectors to do their job.**

Any disputes that arise regarding a landlord's right of entry must be decided in court.

**ANTI-DISCRIMINATION OFFICES**

State of New Jersey  
Department of Law and Public Safety  
Division of Civil Rights

- |  |  |
|--|--|
| <p>a. 31 Clinton St., 3rd Floor<br/>Newark, NJ 07102<br/>(201) 648-2700</p> <p>b. 1548 Atlantic and Kentucky<br/>Avenues, 2nd Floor<br/>Atlantic City, NJ 08401<br/>(609) 441-3100</p> <p>c. 101 Haddon Avenue<br/>Suite 1<br/>Camden, NJ 08102<br/>(609) 757-2850</p> | <p>d. 369 Broadway, 1st Floor<br/>Paterson, NJ 07501<br/>(201) 977-4500</p> <p>e. 383 West State Street<br/>Trenton, NJ 08625<br/>(609) 292-4605</p> |
|--|--|

**NEW JERSEY'S LEGAL SERVICES PROGRAMS**

Bergen County Legal Services  
47 Essex Street  
Hackensack, NJ 07601  
(201) 487-2166

Camden Regional Legal  
Services

1. **Burlington County**  
50 Rancocas Rd.  
Mt. Holly, NJ 08068  
(609) 261-1088
2. **Cumberland & Salem  
Counties**  
71 E. Commercial Street,  
Bridgeton, NJ 08302  
(609) 451-0003
3. **Gloucester County**  
44 Cooper Street  
Woodbury, NJ 08096  
(609) 848-5360
4. **Camden County**  
530 Cooper Street  
Camden, NJ 08102  
(609) 964-2010

Cape May & Atlantic Counties  
Legal Services  
One So. South Carolina Avenue  
Atlantic City, NJ 08401  
(609) 348-4200

Hudson County Legal Services  
574 Newark Avenue  
Jersey City, NJ 07306  
(201) 792-6363

Hunterdon County Legal  
Services  
123 Main Street  
Flemington, NJ 08822  
(908) 782-7979

Mercer County Legal Services  
16-18 West Lafayette Street  
Trenton, NJ 08608  
(609) 695-6249

Middlesex County Legal  
Services  
78 New Street  
New Brunswick, NJ 08901  
(908) 249-7600

Morris County Legal Services  
Hall of Records  
Court Street  
CN 900  
Morristown, NJ 07960  
(201) 285-6911

Ocean-Monmouth Legal  
Services  
73 Broad Street  
Red Bank, NJ 07701  
(908) 747-7400

Passaic County Legal Services  
140 Market Street  
Paterson, NJ 07505  
(201) 345-7171

- Somerset & Sussex  
Legal Services
1. **Somerset County**  
P.O. Box 159  
Newton, NJ 07860  
(201) 383-7400
  2. **Sussex County**  
78 Grove Street  
Somerville, NJ 08876  
(908) 231-0840

Union County Legal Services  
60 Prince Street  
Elizabeth, NJ 07208  
(908) 354-4340

Warren County Legal Services  
91 Frontier Street, P.O. Box 65  
Belvidere, NJ 07823  
(908) 475-2010

**MOBILE HOME ORGANIZATIONS**

1. For copies of the Mobile Home Law; NJSA 46:8C *et seq.* please write to: Office of Landlord-Tenant Information, CN 805, Trenton, New Jersey 08625-0805.
2. (For persons owning the trailer and renting the ground)  
Mobile Home Owners Association of New Jersey, Inc.  
P.O. Box 1492  
Jackson, New Jersey 08627  
(908) 367-6268
3. (For owners of park and landlords of rented trailers)  
New Jersey Manufactured Housing Association  
2382 Whitehorse-Mercerville Road  
Trenton, New Jersey 08619  
(609) 588-9040
4. (For questions concerning mobile home construction)  
New Jersey Department of Community Affairs  
Bureau of Construction Code Enforcement  
Attn: Paul Sachdeva  
Mobile Home Section  
CN 816  
Trenton, New Jersey 08625-0816  
(609) 530-8837
5. Private attorney of your choosing. For a referral to an attorney, contact your County Bar Association listed in your telephone directory.
6. Legal Services Office in your county.
7. If you are being faced with an Eviction action or a Condominium Conversion, you may obtain information concerning the rights you possess under these circumstances by requesting copies of the Eviction Law from:  
  
Department of Community Affairs  
Bureau of Homeowner Protection  
Office of Landlord-Tenant Information  
CN 805  
Trenton, New Jersey 08625-0805
8. For Mobile Home Parks designating themselves as adult parks only:  
  
Office of Fair Housing & Equal Opportunities  
New York Regional Office  
Attn: Chief of Investigations  
26 Federal Plaza  
New York, New York 10278-0068  
(212) 264-5071

**APARTMENT HOUSE SAFETY TIPS**

1. Safety Devices (deadbolt locks, peepholes, door chains) are required by law for your protection. **USE THEM!**
2. Do not admit strangers to your apartment. Utility employees, telephone repairers, etc., carry photo identification (I.D.). Insist upon seeing this I.D. before you open your door. Accept deliveries at your door. Do not let strangers come in and look around your apartment to see what you have there.
3. The police are your friends. Always call them if you are suspicious about any person or activity in your building.
4. If you find your apartment has been burglarized while you were away, do not touch anything but your phone. Call the police. **DO NOT STRAIGHTEN THINGS UP.**
5. Do not leave small valuables lying around where they can be seen. You can rent a safe deposit box at your bank. It is less expensive than a loss of valuables. It is also a good idea to protect your investment in your property, and protect yourself from liability in case someone is injured in your apartment, by having tenant property insurance.
6. Try to organize your building or floor into a crime watch unit. Watching out for each other works. Your local police department can help you set it up properly.

7. Do not leave your house or apartment keys on your car keys holder.

8. Assigned parking spaces should not bear the same number as the apartment occupied by the car owner, since this can let burglars know when nobody is home. Landlords and tenants should cooperate to develop and follow a safer space identification system.

9. Even if not required in your lease, a spare key can be left with your management office, in a sealed envelope, preferably a personalized one, with your signature across the sealed flap. It could be useful in case of an emergency, system failure or fire.

10. Do not leave your apartment unlocked, even if you are just going to the mail box, laundry room or pool. It is an invitation to an intruder.

#### OPERATION IDENTIFICATION

"Operation Identification" is the engraving of your valuables with your New Jersey driver's license number to deter burglars and also to prove ownership should the article be stolen and recovered by the police. Permanently marked valuables are more difficult for a burglar to dispose of and many times he or she won't bother stealing these items.

DO NOT mark valuables with your Social Security number. Federal regulations governing the identity of Social Security registrants makes the numbers next to impossible to trace.

Electric engravers are usually available from your Police Department Crime Prevention Unit, or can be purchased inexpensively from a hardware store. You should mark your valuables "NJ" followed by your driver's license number. This number can then be traced back to you in the event that marked or stolen property is recovered by the police.

Valuables that cannot be marked, such as antiques, silver, china, coins, etc., should be photographed in detail with a complete description of the article on the back of the photograph.

After you have marked your valuable property, display an Operation Identification sticker on all exterior doors to advertise the fact. This alone may discourage a potential burglar. Stickers are available from your Police Department.

Make sure you have a record of all marked valuables that includes their serial number, make, model and the location of your marking.

To obtain the electric engraver and inventory sheet, contact your Police Crime Prevention Unit.

## CORRECTIONS

(a)

### THE COMMISSIONER

#### Notice of Receipt of Petition for Rulemaking Food Packages; Canteen

**N.J.A.C. 10A:5-4.10**

Petitioner: Robert O. Marshall, New Jersey State Prison.

**Take notice** that on November 6, 1992, the Department of Corrections received a petition for rulemaking at N.J.A.C. 10A:5-4.10(a) and (b), the Department's rules concerning food packages to and canteen privileges of inmates in the Capital Sentence Unit (C.S.U.).

Petitioner requests that the Department amend N.J.A.C. 10A:5-4.10(a) and (b) to allow inmates in the Capital Sentence Unit to receive food packages from outside sources and be permitted to order any New Jersey State Prison canteen foods, including canned goods.

In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

## ENVIRONMENTAL PROTECTION AND ENERGY

(b)

### OFFICE OF LEGAL AFFAIRS

#### Notice of Action on Petition for Rulemaking Requirements for Hazardous Waste Facilities Delay of Closure Period for Hazardous Waste Management Facilities

**N.J.A.C. 7:26-9.4, 9.8 and 9.10**

Petitioner: Exxon, Inc.

Authority: N.J.S.A. 13:1E-6(a)2 and 52:14B-4(f).

**Take notice** that on October 1, 1992, the Department of Environmental Protection and Energy ("Department") received a petition from Exxon, Inc. requesting that the Department amend three sections contained in subchapter 9 (Requirements for Hazardous Waste Facilities) of N.J.A.C. 7:26. The sections proposed for amendment are: N.J.A.C. 7:26-9.4, General facility standards; 7:26-9.8, General closure requirements; and 7:26-9.10, Financial requirements for facility closure.

A notice acknowledging receipt of the petition was filed with the Office of Administrative Law on October 15, 1992 and appeared in the November 16, 1992 New Jersey Register at 24 N.J.R. 4285(a).

Specifically, the petitioner has suggested that the above regulations be amended to conform with provisions adopted on August 14, 1989 by the United States Environmental Protection Agency (USEPA). The Federal regulations were adopted pursuant to the Resource Conservation and Recovery Act (RCRA), 42 USC 6901 *et seq.* See 54 FR 33376, "Delay of Closure Period for Hazardous Waste Management Facilities"; 40 CFR Parts 264, 265 and 270.

In its petition, the petitioner cites the following language from the preamble to the Federal regulation:

The Environmental Protection Agency (EPA) is today amending portions of the closure requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA) applicable to owners and operators of certain types of hazardous waste facilities. Today's final rule allows, under limited circumstances, a landfill, surface impoundment, or land treatment unit to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This final rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units.

...

Today the Agency is promulgating requirements amending 40 CFR 264.113 and 265.113, that will allow certain landfills, surface impoundments and land treatment units to be eligible to delay closure to receive only non-hazardous waste after the final receipt of hazardous waste. The Agency believed that these units, including surface impoundments that do not meet the part 264 liner and leachate collection system elements of the minimum technological requirements (MTR) specified by RCRA section 3004(o), but from which hazardous wastes have been removed, can operate in an environmentally protective manner by meeting the requirements set forth in this rule. \*\*\*See 54 FR 33376 and 33377.

\*\*\*

The petitioner is requesting that the Department amend its regulations so that they contain provisions that parallel the Federal regulations. This will enable the petitioner and other similarly situated parties to delay closure of hazardous waste management units and enable them to receive only non-hazardous wastes in accordance with the amendments to the regulations which were submitted by the petitioner.

The petitioner operates the Bayway petroleum refinery situated in Linden, Union County, New Jersey. Unless the relief sought in this petition is granted, the petitioner asserts that it will be placed at a severe and unjustified economic disadvantage.

According to the petitioner, under RCRA, a waste is considered hazardous if it is a listed waste (for example, API Separator Solids, Primary Sludge) or if it exhibits certain characteristics (for example, toxicity, corrosivity, reactivity). The regulations governing characteristics

of a waste which would be considered toxic were originally promulgated in 1980. Revisions to the toxicity characteristic (TC) were promulgated in March, 1990.

The 1990 revisions added 25 organics, including Benzene, with the largest impact on the refining industry. Based on these revisions, effective September, 1990, wastewater containing  $\geq 0.5$  ppm Benzene is considered to be a hazardous waste. In order to comply with revised RCRA regulations, the petitioner filed an amendment to the Bayway refinery, Part A RCRA permit, indicating that the BIOX Lagoons were accepting hazardous wastes. The BIOX Lagoons are aeration basins for the activated sludge portion of the refinery's wastewater treatment plant. The lagoons are considered surface impoundments. The petitioner asserts that activated sludge is a proven form of biological treatment, highly suited for treatment of refinery wastewaters.

The petitioner asserts that RCRA regulations also require that facilities receiving hazardous wastes submit a Part B permit application. The Part B for the BIOX Lagoons was submitted in September, 1991. The submitted Part B indicated the closures of the existing BIOX lagoons by March 1994 since the current facilities cannot be operated in compliance with RCRA requirements. The facilities must be upgraded to meet Minimum Technology Requirements (MTR) or no longer receive a hazardous waste. Upgrading would require lining the existing lagoons or replacing them with above ground tanks.

The petitioner asserts that in order to comply with Benzene Waste NESHAP requirements, a benzene stripper is scheduled to be built on site to handle wastewater streams containing benzene. As a result, the influent to the BIOX Lagoons will be less than the 0.5 ppm limit and the unit will no longer be receiving a hazardous waste.

The petitioner further asserts that Federal RCRA requirements allow for delay of closure if certain conditions can be met. The key conditions are:

- The facility must cease accepting hazardous wastes prior to the required closure date.
- The facility must not be causing an impact to groundwater.

Therefore, the petitioner asserts that if the Department were to adopt the requested delay of closure regulations, and the other conditions required were satisfied, the refinery could continue to operate its wastewater treatment plant without the economically burdensome and environmentally unnecessary measures described above.

After evaluating the petitioner's contentions and suggested language for rule amendments, the Department has decided to deliberate further upon the petition. The petitioner has submitted draft amendments which must be evaluated by not only the Department's hazardous waste management personnel, but also by the Division of Solid Waste Management and the New Jersey Pollutant Discharge Elimination System ("NJPDDES") programs as well. This extensive review is necessary because the Federal regulation addresses both hazardous waste and solid waste issues. Additionally, NJPDDES issues may arise because of possible wastewater treatment impacts and the potential necessity for a new permit. Moreover, the Department is currently drafting its own delay of closure regulations which are based upon the Federal provisions, and will need to compare and evaluate the petitioner's suggested amendments in light of Departmental requirements. Finally, as an authorized state, New Jersey is required to modify its regulations to reflect changes in the Federal regulatory program. Such state regulatory changes must undergo USEPA review and are required to have USEPA approval. The Department will deliberate on the petition and will take action on it by April 30, 1993.

A copy of the notice of action has been mailed to the petitioner, as required by N.J.A.C. 7:1-1.2.

(a)

## DIVISION OF PARKS AND FORESTRY

### Natural Areas System

#### Notice of Adoption of a Management Plan for Strathmere 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 the recommendation of the Natural Areas Council, Scott A. Weiner, Com-

missioner, Department of Environmental Protection and Energy, has adopted a management plan for the Strathmere Natural Area.

The Strathmere Natural Area, located within Corson's Inlet State Park in Upper Township, Cape May County, is a State-owned parcel administered by the Department's Division of Parks and Forestry through Belleplain State Forest (hereinafter referred to as the administering agency). The designation objective for Strathmere Natural Area is preservation of a dune habitat, plant community associations, and rare species habitat. 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 designation objective (see N.J.A.C. 7:5A-1.8).

At the February 18, 1992 Council meeting, the Natural Areas Council reviewed a draft management plan prepared by the Department and received staff recommendations regarding management of the Strathmere Natural Area. By unanimous resolution, the Council adopted recommendations for management of the Strathmere Natural Area and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection and Energy for his approval as required by N.J.A.C. 7:5A-1.8(f). The Commissioner of Environmental Protection and Energy agreed with all of the recommendations of the Council and approved the Strathmere Natural Area Management Plan on November 13, 1992.

Following is a summary of the management techniques prescribed in the Strathmere Natural Area Management Plan along with the reason for each:

1. The Department's Division of Fish, Game and Wildlife, which has been involved in the past in monitoring and managing State endangered beach nesting bird species populations at Strathmere Natural Area and other locations throughout the State, will continue to monitor the State endangered beach nesting bird populations at Strathmere Natural Area.

This management requirement was included in the plan because the barrier beach at Strathmere Natural Area provides critical nesting habitat for three State endangered bird species: least tern (*Sterna antillarum*), black skimmer (*Rynchops niger*) and piping plover (*Charadrius melodus*). The piping plover is also a federally threatened species. Monitoring of nesting areas provides the basis for determining management needs on a yearly and seasonal basis.

2. The Division of Fish, Game and Wildlife will construct string and post fencing as needed around the peninsula just above high-tide line in April and will remove it by September 30. String and post fencing will consist of twine strung between widely spaced posts. Colored plastic flagging tape will be tied to the string to increase visibility.

This technique is required to reduce human disturbance and allow nesting by State endangered bird species to become established.

3. The administering agency may post signs in areas of anticipated foot traffic through the posted nesting area to direct the public to appropriate trails.

This management option was included to reduce disturbance to nests by informing the public of the location of trails that will lead them around the posted nesting area to the other side of the natural area.

4. The Division of Fish, Game and Wildlife will construct seasonal nest site closure fencing on either side of a located piping plover nest immediately prior to or within one day of clutch completion (late April-early June) or when located, if the clutch is already complete. All seasonal nest site closure fencing will be removed after the chicks from that nest have fledged (usually by August 15). Nest site closure fencing will consist of fencing aligned perpendicular to the water and may extend to the high-tide line on the beach side and extend into the back dune on the bay side. In the case where a nest is established near the narrow, northern tip of the natural area, the fencing may extend past the high-tide line on the bay side, but may not so extend on the ocean side.

This technique is required to reduce human disturbance to nesting and feeding piping plovers. Piping plovers nest in the dry sand and feed at the wrack line. This fencing provides them with an undisturbed corridor in which to nest and feed.

5. The Division of Fish, Game and Wildlife will construct predator enclosures around plover nests as needed. These 10-foot-diameter structures will be constructed of two inch by four inch hardware wire fencing encircling the nest. The bottom of the enclosure will be buried in the sand and the top opening fitted with twine or netting.

This management technique was included to prevent predators from reaching the nests or the young birds. Since plovers leave and return

to their nests on foot, the enclosures allow for continuation of incubation while preventing entry by most predators.

6. The administering agency will prohibit pets on the entire beach from April 1 to September 15. The administering agency will post a sign indicating this prohibition, along with the reason for the pet ban, at all entrance points. The administering agency will develop and distribute by December 31, 1992 a flyer to the residents near the Strathmere Natural area informing them of the new prohibition on pets on the entire beach and night closure to all visitors between April 1 and September 15 of each year, and the reasons for the restrictions. Additional educational materials, developed by the administering agency or the Division of Fish, Game and Wildlife, may be distributed to residents during the summers of 1993 and 1994 in order to stress the importance of species protection and the incompatibility of pets with beach nesting bird species.

This technique is required because general information obtained from the Division of Fish, Game and Wildlife's Endangered and Nongame Species Program indicates that cats and dogs are incompatible with the endangered beach nesting bird species that use this unique area during this period each year. Field research indicates, in general, that dogs and cats are a major source of predation and disturbance to these birds and their nests. This threat only exists while the birds are nesting, so the prohibition is to apply only during a portion of the year. According to the superintendent of this and other natural areas where pets are a problem, previous attempts to restrict pets by requiring leashes did not prove successful in curbing the threats to these bird species. According to these superintendents, it is more feasible to enforce a seasonal ban on pets than to enforce a leashing requirement. Furthermore, information from the Endangered and Nongame Species Program indicates that even leashed pets are potentially very disruptive. Distribution of educational materials to the public is included to inform the public about the importance of protecting state endangered beach nesting birds and to reduce or eliminate endangered bird nest predation by pets.

During 1992, the Division of Parks and Forestry instituted a seasonal prohibition on all pets, leashed or unleashed, throughout Strathmere Natural Area and Corson's Inlet State Park, of which the Strathmere Natural Area is a part, because of the documented use of this area by both State and Federally endangered beach nesting birds. The pet prohibition was in effect from April 1 to September 15, and residents and visitors were notified of the seasonal restriction through a flyer that was mailed or otherwise distributed. The DEPE and Governor's office received seven pieces of correspondence concerning the prohibition. Of these, six referred to Corson's Inlet State Park, located on the north side of the inlet, not the Strathmere Natural Area which is on the south side of the inlet. In addition, four of the seven letters responded in a positive manner to the DEPE's efforts to preserve the habitat for these endangered beach nesting birds. Based on the overall lack of public response to the seasonal ban on pets during 1992 at Strathmere and the documented need for the pet restriction in order to meet the designation objective for this natural area, the DEPE has concluded that pets will be prohibited from the Strathmere Natural Area between April 1 and September 15 of each year.

7. The Division of Fish, Game and Wildlife, in cooperation with the administering agency, will close the Backdune Trail should a piping plover nest be located within 50 meters of the trail. This access may be reopened when chicks vacate the nest (mid-May to late July). The Bay Trail will be kept open at all times.

This management requirement was included to reduce disturbance to nesting piping plovers while allowing continued year-round public access to the Natural Area.

8. The administering agency will construct and post seasonal night closure signs by April 1 of each year at the beach, bay and Commonwealth Avenue access points stating "Area closed at dusk April 1-September 15." Signs will be replaced as needed.

This technique was included to prevent adult piping plovers from being disturbed while feeding at night.

9. The administering agency will obtain and post a sign (available from the Division of Fish, Game and Wildlife) by December 31, 1992 indicating hazards to beach nesting birds.

This management requirement was included to educate and inform the public about how certain activities can cause disturbance to beach nesting birds.

10. The administering agency will post State Natural Area signs along the boundary of the natural area and at the beach and bay access points by December 31, 1992. Signs will be replaced as needed.

Posting of the boundaries of all natural areas is required in accordance with the Natural Areas System Rules at N.J.A.C. 7:5A-1.9(e)1. 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.

11. The Division of Parks and Forestry and the Green Acres Program will seek vacation of the following paper streets which exist in the natural area: Seaspray Avenue, Seabreeze Avenue, Dorance Avenue, Bayview Drive, Unnamed Street and the portion of Commonwealth Drive north of its intersection with Seaspray Avenue by June 30, 1993.

This management requirement was included because the area where these paper streets were planned is now held under State ownership as part of the Natural Area and there is no need for Upper Township to complete the road system. Vacation of the streets will provide a permanent measure of protection for the natural area.

12. By December 31, 1992, ONLM will seek legal advice regarding the vacation of the proposed Sareta Haven development.

This management requirement was included to assist the Division of Parks and Forestry in requesting that Upper Township vacate the paper streets and the proposed cove within the natural area. Sareta Haven was designed as a development whereby a cove would be created on the bay side of the natural area and each of the properties would abut the cove. Currently, Upper Township considers the property that was to become the cove in the same category as a paper street. Vacation of the property would need to take into account the rights of the adjacent property owners on Bayview Drive.

13. Purchase of Block 866 Lots 8.01/8.02 and the undeveloped portion of Block 862, Lot 1 should be pursued by the Division of Parks and Forestry and the Green Acres Program if funding becomes available. Should any of these lots be acquired by the State, they will be proposed for addition to Strathmere Natural Area pursuant to N.J.A.C. 7:5A-1.12.

This management requirement was included because the property is seen as an asset to the natural area in terms of creating an additional physical and visual buffer between the Natural Area and adjacent development and because the possibility exists to establish a contact station at this location. Acquisition of these lots would also benefit the natural area by guaranteeing continued use of the current access at the northern limit of Commonwealth Avenue. On May 31, 1991 Commissioner Scott A. Weiner signed a land acquisition administrative authorization to acquire Block 866 Lot 8 in Upper Township, Cape May County. The authorization directed that an encumbrance of 1989 Open Space Preservation Bond funds in the amount of \$200,000 be established to cover acquisition costs at the Strathmere Natural Area. Block 866 Lot 8 has since been subdivided into lots 8.01 and 8.02.

14. The administering agency will maintain the pilings and signs designating the area for landing and launching of water craft in Strathmere Bay.

This management requirement was included so that there will be continued use of the designated landing and launching area for water craft. Maintaining this designated area will assist in keeping the numbers of visitors accessing the natural area by water craft to a manageable level. The location of the designated landing and launching area was designed so that visitors have easier access to trails leading to other portions of the natural area, thus reducing foot traffic through the posted nesting area.

15. The administering agency will construct, install and maintain an information board at the access point at Commonwealth Drive by April 1, 1993.

This management requirement was included so that educational materials, rules, regulations and trail locations can be posted at a centralized access point for visitors. Currently no contact station exists where this information can be displayed and/or distributed.

16. The administering agency, in consultation with the ONLM and the Endangered and Nongame Species Program, will limit and/or restrict recreational activities in the Natural Area if it believes that the activity is detrimental to beach nesting birds.

Limiting and/or restricting access and use to achieve the designation objective is required in accordance with the Natural Areas System Rules at N.J.A.C. 7:5A-1.9(e)16 if it is determined that the activity is detrimental to beach nesting birds.

17. The administering agency will obtain all applications to conduct research or collect specimens in the Natural Area, forward a copy to ONLM, and provide a response within 30 days of application submittal. The administering agency shall coordinate response with 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 Division of Fish, Game and Wildlife's Endangered and Nongame Species Program will continue to provide educational information about endangered beach nesting birds to citizens via the Strathmere Post Office and lifeguard station.

This management requirement was included to continually inform and educate the public about the importance of beach nesting birds and how they can assist in their protection.

19. The administering agency will maintain the existing snow fence along the trails.

This management requirement is included in accordance with the Natural Areas System Rules at N.J.A.C. 7:5A-1.9(e)5 regarding existing structures.

20. Current dune management techniques by the administering agency will be continued in the natural area. Any repair of the dune line with snow fencing should be staggered to allow for an irregular primary dune line. If a blowout or other major damage to the primary dune occurs, the administering agency, in consultation with the ONLM and the Division of Fish, Game and Wildlife, will evaluate the need for dune reconstruction. Such evaluations will be made in an individual event basis. Conflicts over dune reconstruction actions will be resolved by the Natural Areas Council.

This management requirement was included because the deed for this property states that the State must "... take all appropriate and necessary measures within its power to control and prevent beach erosion, and to restore eroded beach front, and to reconstruct sand dunes when necessary." Furthermore, presence of dune fence has not discouraged use of this area by piping plover, least tern or black skimmer.

21. Should erosion or other factors result in the exposure of cultural remains within the natural area, the administering agency will contact the Office of New Jersey Heritage.

This management requirement was included so that ONJH could determine the potential and appropriateness for non-damaging site stabilization and/or investigation of the cultural remains exposed.

22. The administering agency will conduct law enforcement patrols at a minimum of four times per month and every weekend from Memorial Day through Labor Day.

This management requirement was included due to the high level of use of this area by both endangered beach nesting bird species and the using public, especially throughout the summer season.

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 REGULATORY POLICY

### Notice of Public Hearing and Statement of Basis In the Matter of:

#### Shops at Primrose Brook Mount Kemble Avenue and Baxter Farm Road Harding, New Jersey 07976

Draft NJPDES Permit No. NJ0069035

Notice is hereby given that the New Jersey Department of Environmental Protection and Energy (NJDEPE) proposes a draft New Jersey Pollutant Discharge Elimination System (NJPDES) Permit No. NJ0069035 to restrict and control the discharge of sanitary wastewater pollutants from the Shops at Primrose Brook in accordance with the provisions of the New Jersey "Water Pollution Control Act" (N.J.S.A. 58:10A-1 et seq.) and its implementing regulations (N.J.A.C. 7:14A-1 et

seq.). The NJDEPE is also seeking public comment on a proposed amendment to the Northeast Water Quality Management (WQM) Plan for this facility.

Implementation of the NJPDES requirements is the regulatory mechanism by which pollutant discharges are brought into conformance and compliance with laws, regulations and standards. The pollution control requirements are those conditions necessary to restrict the discharge of pollutants and protect the public health and the environment.

The Shops at Primrose Brook is a proposed retail shopping center covering 40,000 square feet and containing a 50 seat restaurant. The facility will generate a sanitary wastewater design flow volume of 6,125 gallons per day. The wastewater will be managed by a Wastewater Recycling and Treatment System which will recycle approximately 4,225 gpd for use as toilet flushing water and discharge less than 2,000 gpd. The sanitary wastewater treatment system shall treat the discharge wastewater to the following limits:

Flow < 2,000 gpd

pH = 5-9 S.U.

Total Nitrogen (Nitrate + Ammonia Nitrogen) = 3 mg/l

Coliform Bacteria = 2 colonies/100 ml

Phosphorus = 0.16 mg/l

The discharge limits were based on ambient surface water quality of Primrose Brook as described in the *Great Swamp Water Quality Monitoring Study Data Report* (January, 1988), and a ground water dilution model provided by the permittee. The limits were developed in order to prevent the ground water discharge from contravening the water quality of Primrose Brook pursuant to N.J.A.C. 7:9-6.4(f).

After treatment, the effluent will be discharged to ground water via a subsurface disposal bed. Several ground water quality monitoring wells shall be installed hydraulically downgradient of the disposal bed and in close proximity to Primrose Brook to ensure compliance with ground water limits contained in TABLE III Part III-DGW.

The amendment to the Northeast WQM Plan for the Shops at Primrose Brook was noticed in the March 4, 1991 New Jersey Register. Due to certain comments received during the public comment period, the Department withheld action on the amendment pending the NJPDES permit process. The amendment is for an on-site groundwater disposal system to serve the facility described above. The projected wastewater flow and square footage specified in the amendment for this facility have been revised to reflect the figures identified in the draft NJPDES permit.

Notice is further given that a public hearing has been requested for the NJPDES permit and the amendment to the Northeast WQM Plan and therefore a nonadversarial public hearing has been scheduled for Thursday, January 7, 1993, at 5:00 P.M. The location of the hearing had originally been scheduled for the Kirby Municipal Building, but due to the large audience expected, the hearing location has been moved to the Harding Township Elementary School, Lee's Hill Road, New Vernon, New Jersey to afford the public an opportunity to be heard on the proposed actions by the Department. The hearing shall be held before a hearing officer designated by the Department. The permittee and other interested persons will have the opportunity to present and submit information and comment on the proposed terms and conditions contained in the draft permit and the information included in the amendment to the Northeast WQM Plan. In accordance with N.J.A.C. 7:14A-8.3(b) and N.J.A.C. 7:15-3.4(g)7, the public comment period for both the NJPDES permit and the amendment shall end 15 days following the public hearing (which is on or before January 22, 1993). In response to this notice, any person may submit by certified mail written comments concerning the NJPDES permit to Dennis Hart, Administrator, Wastewater Facilities Regulation Program, Bureau of Municipal Discharge Permits, CN-029, Trenton, New Jersey 08625 (Telephone (609) 633-3869). Written comments concerning the amendment to the Northeast WQM Plan should be submitted to Barry Chalofsky, Assistant Administrator, Office of Regulatory Policy, Environmental Regulation, CN-423, Trenton, New Jersey 08625 (Telephone: (609) 633-1021).

All persons, including applicants, who believe that any condition of these draft documents is inappropriate or that the Department's tentative decision to issue these draft documents as final agency actions is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All comments submitted by interested persons in response to this notice, within the time limit, will be considered by the NJDEPE with respect to the requirements being applied to this facility. After the close of the public comment period, the Department will make

final decisions. The Department will respond to all significant and timely comments when final decisions are made. The discharger and each person who has submitted written comments will receive notice of NJDEPE's final decisions.

The draft NJPDES permit and pertinent data may be examined at the Central File room of the NJDEPE at 401 East State Street, 1st Floor, Trenton, New Jersey. An appointment to inspect the documents may be arranged by calling the Central File room at (609) 292-0400.

All information dealing with the proposed amendment is located at the Office of Regulatory Policy at 401 East State Street, Third Floor, Trenton, New Jersey. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

## HEALTH

### (a)

#### DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

##### Notice of Receipt of Petition for Rulemaking Hospital Licensing Standards

##### N.J.A.C. 8:43G-15.2(g)

Petitioner: Louis P. Scibetta, representing the New Jersey Hospital Association.

**Take notice** that on November 20, 1992, the New Jersey State Department of Health received a petition from Louis P. Scibetta, representing the New Jersey Hospital Association, requesting that the Department amend its hospital licensing standards regulations, N.J.A.C. 8:43G-15.2, to include the use of electronic imaging technology as an acceptable means of storage and retrieval of medical records. The specific amendment language suggested is "Medical records or the reproduction thereof on film or in any other acceptable form as determined by the Department of Health (including but not limited to photograph, photostat, microfilm, or optical or electronic medium) shall be retained . . . N.J.S.A. 26:8-5 et seq." (additional text in boldface thus).

This amendment would define more broadly the phrase "photographic reproductions" allowing the use of new electronic technology. The petitioner states that the use of new technology, for the storage of medical records, will reduce expenses associated with record storage and retrieval and will reduce data loss. The petitioner also states that current storage of records on microfilm and microfiche presents problems such as slow retrieval, tearing of film and poor definition of records.

### (b)

#### OFFICE OF MINORITY HEALTH

##### Notice of Availability of Grants Minority Health Promotion Initiative

**Take notice** that, in compliance with N.J.S.A. 52:14-34.4 et seq. (P.L. 1987 c.7), the Department of Health hereby publishes notice of the availability of the following grant:

**Name of grant program:** Minority Health Promotion Initiative, Grant Program No. 93-87-OMH.

**Purpose for which the grant program funds will be used:** Minority Health Promotion Projects intended to support community based initiatives which strengthen access to health education information, services and resources, targeted to minority populations. The project should demonstrate a significant potential to reach the defined minority population in a culturally, ethnically and linguistically appropriate manner to impact on their health status, consistent with objectives set forth in Healthy People 2000.

**Amount of money in the grant program:** The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

**Groups or entities which may apply for the grant program:** Applications may be submitted by a community based non-profit organization or public health agency that predominantly serves minority populations.

**Qualifications needed by an applicant to be considered for a grant:** Applicants must demonstrate a commitment to develop a community-based health promotion initiative that specifically targets minority populations.

**Procedures for eligible entities to apply for grant funds:** Complete and timely submission of application.

**For information contact:**

Rosalind Thigpen-Rodd, M.P.H.  
Director, Office of Minority Health  
CN 360  
Trenton, New Jersey 08625-0360  
(609) 292-6962

**Deadline by which applications must be submitted:** Applications are submitted approximately four to six weeks after release of RFA.

**Date by which applicant shall be notified whether they will receive funds:** Approximately eight weeks after completed applications are returned to the Office of Minority Health.

## STATE

### (c)

#### NEW JERSEY STATE COUNCIL ON THE ARTS

##### Notice of Grants Application Process and Deadlines Fellowship Support

##### Fiscal Year 1994 (July 1, 1993-June 30, 1994)

**Take notice** that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces in accordance with N.J.S.A. 52:14-34.4 et seq., the availability of the following grant program.

**Name of program:** Fellowship Support, Fiscal Year 1994.

**Purpose:** In recognition of outstanding artistic work, Fellowships are awarded to New Jersey artists to enable them to pursue their artistic goals. Fellowships are awarded in choreography, music composition, opera/music theatre composition, theatre (mime), experimental art, graphics, painting, sculpture, design arts, crafts, photography, media arts (film/video), prose, playwriting, poetry, and interdisciplinary.

**Eligible applicants:** Artists who are residents of the State of New Jersey (all awards are subject to verification of New Jersey residency); artists who have not received a fellowship since Fiscal Year 1990-91; artists who are not students matriculating in an undergraduate program at the time of application. (Fellowships do not provide funding for scholarships or academic study in pursuit of a college degree). NOTE: Artists may apply in one discipline only and only in one category of a single discipline.

**Ineligible applicants:** Artists who are residents in another state, are students matriculating in an undergraduate program at the time of application, or who received an NJSCA Fellowship during Fiscal Years 1991-92 or 1992-93.

**Amount of awards:** Contingent upon the availability of funds and Council action. For Fiscal Year '93, 73 awards ranging from \$5,000 to \$12,000 were made from among the 993 applicants.

**Match:** This is a non-matching award.

**Deadline for submission:** Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than February 4, 1993 (5:00 P.M. if delivered in person to office).

**Decision-making process:** All complete applications by eligible applicants are evaluated by an independent panel of experts in the applicant's discipline for evidence of artistic excellence and promise, which is the sole criteria. The Council reviews the evaluations of all applicants as well as Council funding priorities and issues. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 27, 1993. Applicants are notified in writing of the Council's decision within six weeks following the annual meeting.

**To receive a set of guidelines and application forms,** call (609) 292-6130 or write FELLOWSHIPS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

(a)

**NEW JERSEY STATE COUNCIL ON THE ARTS**  
**Notice of Grants Application Process and Deadlines**  
**Organizational Grants in Aid to the Arts**  
**Fiscal Year 1994 (July 1, 1993-June 30, 1994)**

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces the availability of the following grant program.

**Name of program:** Organizational Grants in Aid to the Arts, Fiscal Year 1994.

General Operating Support (for arts organizations)

Special Project Support (for arts projects)

Arts Basic to Education Expansion Project Support (for arts organizations)

**Purpose:** To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations.

**Eligible applicants:** Must be a New Jersey incorporated, nonprofit organization that is tax exempt as 501(c)(3) or (4) by determination of the Internal Revenue Service, or a unit of government; must have been in existence and active in presenting, producing or servicing the fine, performance or literary arts for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finance; and must comply with all existing State and Federal regulations and laws as described in the Guidelines and Application.

**Ineligible applicants:** Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

**Grant size:** Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

**Amount of available funding for the program:** Will depend on the finalization of the Council's legislative appropriation for Fiscal Year (FY) 94.

**Match:** All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions and indirect costs are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must be able to project a 4:1 match of applicant cash to NJSCA dollars; Special Project applicants who are arts organizations, a 1:1 match of applicant cash to NJSCA dollars and Special Project applicants who are not arts organizations, a 3:1 match of applicant cash to NJSCA dollars.

**Projected deadline for submission:** Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than January 29, 1993, (5:00 P.M. if delivered in person to office). All prospective applicants that are not direct recipients of FY 93 NJSCA Grants must submit a Letter of Intent. **PROJECTED DEADLINE FOR LETTERS OF INTENT IS DECEMBER 21, 1992 (5:00 P.M. receipt).** These deadlines are subject to change that would place them later in the year. The NJSCA urges all organizations interested in applying for FY 94 support to call the Grants Office immediately to discuss issues related to deadlines and eligibility.

**Decisions:** All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council reviews the evaluations of all applications as well as Council funding priorities and issues. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 27, 1993. Applicants are notified in writing of the Council's decision within six weeks following the annual meeting.

To receive a set of guidelines and application forms, call (609) 292-6130 or write GRANTS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

(b)

**NEW JERSEY STATE COUNCIL ON THE ARTS**  
**Notice of Grants Application Process and Revised**  
**Deadlines**  
**Organizational Grants in Aid to the Arts**  
**Fiscal Year 1994 (July 1, 1993-June 30, 1994)**

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces, in accordance with N.J.S.A. 52:14-34.4 et seq., the availability of the following grant program:

**Name of program:** Organizational Grants in Aid to the Arts, Fiscal Year 1994.

General Operating Support (for arts organizations)

Special Project Support (for arts projects)

Arts Basic to Education Expansion Project Support (for arts organizations)

**Purpose:** To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations.

**Eligible applicants:** Must be a New Jersey incorporated, nonprofit organization that is tax exempt as 501(c)(3) or (4) by determination of the Internal Revenue Service, or a unit of government; must have been in existence and active in presenting, producing or servicing the fine, performance or literary arts for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finance; and must comply with all existing State and Federal regulations and laws as described in the Guidelines and Application.

**Ineligible applicants:** Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

**Grant size:** Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

**Amount of available funding for the program:** Will depend on the finalization of the Council's legislative appropriation for Fiscal Year (FY) 94.

**Match:** All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions and indirect costs are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must be able to project a 4:1 match of applicant cash to NJSCA dollars; Special Project applicants who are arts organizations, a 1:1 match of applicant cash to NJSCA dollars and Special Project applicants who are not arts organizations, a 3:1 match of applicant cash to NJSCA dollars.

**Projected deadline for submission:** Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than February 10, 1993, (5:00 P.M. if delivered in person to office). All prospective applicants that are not direct recipients of FY 93 NJSCA Grants must submit a Letter of Intent. **Projected deadline for letters of intent is January 6, 1993 (5:00 P.M. receipt).** These deadlines are subject to change that would place them later in the year. The NJSCA urges all organizations interested in applying for FY 94 support to call the Grants Office immediately to discuss issues related to deadlines and eligibility.

**Decisions:** All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council reviews the evaluations of all applications as well as Council funding priorities and issues. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 27, 1993. Applicants are notified in writing of the Council's decision within six weeks following the annual meeting.

To receive a set of guidelines and application forms, call (609) 292-6130 or write GRANTS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

# EMERGENCY ADOPTION

## HUMAN SERVICES

(a)

**DIVISION OF FAMILY DEVELOPMENT**
**Home Energy Assistance Handbook  
Eligibility Requirements; Income Eligibility  
Guidelines**
**Adopted Emergency Amendments and Concurrent  
Proposed Amendments: N.J.A.C. 10:89-2.3, 3.1, 3.4  
and 4.1**
**Adopted Emergency Repeal and New Rule and  
Concurrent Proposed Repeal and New Rule:  
N.J.A.C. 10:89-3.6**

Emergency Amendments Adopted and Concurrent Proposed  
Amendments Authorized: December 4, 1992 by William  
Waldman, Acting Commissioner, Department of Human  
Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): December 4,  
1992.

Emergency Amendment Filed: December 8, 1992 and R.1992  
d.517.

Authority: N.J.S.A. 30:4B-2.

Concurrent Proposal Number: PRN 1992-545.

Emergency Amendments Effective Date: December 8, 1992.

Emergency Amendments Operative Date: January 1, 1993.

Emergency Amendments Expiration Date: February 6, 1993.

Submit comments by January 20, 1993 to:

Marion E. Reitz, Director  
Division of Family Development  
CN 716  
Trenton, New Jersey 08625

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted amendments become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)), if filed on or before the emergency amendments expiration date.

The agency emergency adoption and concurrent proposal follow:

**Summary**

The Home Energy Assistance (HEA) Program is a Federal block grant program authorized by the Low Income Home Energy Assistance Act of 1981, Title XXVI of P.L. 97-35. The purpose of the program is to assist low income households meet the costs of home heating and medically necessary cooling.

A major issue of concern for the upcoming HEA Program is program funding. New Jersey has been experiencing decreases in Federal funding over the past few years, and there will be a reduction from the Fiscal Year (FY) 92 Federal allocation of \$57.3 million to \$51.3 million in FY 93. Also potentially \$14 million will be the only amount available in oil overcharge funds, as compared to the \$20.4 million available in FY 92.

The Department of Human Services is proposing to reduce benefit levels for all households by 17 percent and limit the application intake period through the end of February for heating and cooling assistance. Also, emergency assistance for all fuel types except for electric and natural gas will end on March 15. Utility and natural gas emergencies will be issued until April 30. A two-party generic copayee will also be issued to automatic payment households which heat with oil. Previously, these households received one party checks.

Due to delays experienced in the receipt of Federal funding over the last several years, the Department will again be issuing the first HEA benefit payments (automatic and special energy assistance) in December instead of November. This schedule change was first implemented in

FY 91. Applications for special assistance have been accepted since November 1, and emergency energy assistance (EEA) will be made available beginning two weeks after the first heating assistance benefits are issued in December 1992.

The Department is proposing to continue utilizing the allowable 150 percent of the current Federal Poverty Level as the income eligibility guideline, and, thus, continue to make assistance available to the maximum number of households throughout the entire winter heating season.

Since the Federal Poverty Level was updated in February, 1992, to account for last year's increase in prices as measured by the Consumer Price Index, the Department is proposing to adjust the income eligibility guidelines for New Jersey's HEA Program to coincide with the updated Federal Poverty Level.

The proposed amendments include the following:

N.J.A.C. 10:89-2.3(g) adjusts the monthly allowable gross income limits to continue to be based on 150 percent of the current Federal Poverty Level.

N.J.A.C. 10:89-3.1(a) describes the two party check system as it pertains to automatic payments. A two-party generic check will be issued to those households which heat with oil. The check will be payable to the head of household and the generic copayee "Your Heating Supplier." Previously, these households received a one party check.

N.J.A.C. 10:89-3.4(a) lists the months emergency energy assistance that will be available in FY 93. Due to the expiration of the utility moratorium on March 15, utility and gas emergencies will extend until April 30. Emergency assistance for other fuel types will end on March 15.

The proposed repeal and new rule at N.J.A.C. 10:89-3.6 reduces the HEA payment schedules for all households by approximately 17 percent.

N.J.A.C. 10:89-4.1(a) adjusts the application intake period to the end of February for both heating and cooling assistance.

**Social Impact**

The proposed amendments are in keeping with an ongoing effort on the part of the Department's Division of Family Development to provide expeditious and appropriate disbursement of HEA benefits to New Jersey's low income population. The proposed amendments are in response to Federal compliance requirements and will serve to maintain uniformity with regulations. Additionally, the upward adjustment in the monthly allowable gross income limit for HEA program eligibility is expected to increase the number of households served.

**Economic Impact**

There will be no direct impact upon New Jersey taxpayers since the entire cost of the assistance and administration of the HEA program is Federally funded. There will be an indirect benefit to the public as a whole since there will be an influx of Federal dollars into the State's economy. The direct beneficiaries of the program will be those households eligible to receive Home Energy Assistance benefits in FFY 1993.

**Regulatory Flexibility Statement**

The proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The amended rules govern a public assistance program designed to certify eligibility for the Home Energy Assistance program to a low-income population by a governmental agency rather than a private business establishment.

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

10:89-2.3 Income eligibility

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

(g) Gross Income Eligibility Limits for Home Energy Assistance:

**HUMAN SERVICES**

**EMERGENCY ADOPTION**

| Household Size         | Monthly Allowable Gross Income Limit |      |
|------------------------|--------------------------------------|------|
|                        |                                      |      |
| 1                      | \$[828]                              | 851  |
| 2                      | [1111]                               | 1149 |
| 3                      | [1394]                               | 1447 |
| 4                      | [1677]                               | 1745 |
| 5                      | [1960]                               | 2043 |
| 6                      | [2243]                               | 2341 |
| 7                      | [2526]                               | 2639 |
| 8                      | [2809]                               | 2937 |
| 9                      | [3092]                               | 3235 |
| 10                     | [3375]                               | 3533 |
| Each Additional Member | [+283]                               | +298 |

10:89-3.1 Automatic payments to certain households

(a) Recipient households:

1. (No change.)

2. Eligible households which heat by electricity or natural gas will receive the automatic payment(s) in the form of a two-party check, payable to the head of household and the generic copayee "your heating utility." Households which heat by oil will receive the automatic payment(s) in the form of a two-party check payable to the head of household and the generic copayee "Your Heating Supplier."

3. (No change.)

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to HEA eligible households and is subject to the following conditions:

1.-7. (No change.)

8. Emergency assistance will be authorized only during the months of December, January, February, March and April. Emergency assistance will be available for all fuel sources except electric and gas until March 15. Utility and gas emergencies will be available until April 30.

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

10:89-3.6 Payment schedule

(a) Schedule A: Electricity, Natural Gas:

| Household Size      | 1 or 2 |     | 3 to 5 |     | 6 or more |     |
|---------------------|--------|-----|--------|-----|-----------|-----|
|                     | Blue   | Red | Blue   | Red | Blue      | Red |
| Region Designation  |        |     |        |     |           |     |
| Monthly Income      |        |     |        |     |           |     |
| \$0-\$667.00        | 454    | 394 | 606    | 526 | 726       | 632 |
| \$668.00-\$1084.00  | 378    | 330 | 504    | 438 | 606       | 526 |
| \$1085.00-\$1501.00 | 304    | 262 | 404    | 350 | 484       | 422 |
| \$1502.00-\$1918.00 |        |     | 302    | 262 | 364       | 314 |
| \$1919.00-\$2335.00 |        |     |        |     | 242       | 210 |
| Over \$2335.00      |        |     |        |     | 122       | 104 |

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(b) Schedule B: Fuel Oil, Kerosene:

| Household Size      | 1 or 2 |     | 3 to 5 |     | 6 or more |     |
|---------------------|--------|-----|--------|-----|-----------|-----|
|                     | Blue   | Red | Blue   | Red | Blue      | Red |
| Region Designation  |        |     |        |     |           |     |
| Monthly Income      |        |     |        |     |           |     |
| \$0-\$667.00        | 428    | 372 | 572    | 498 | 686       | 596 |
| \$668.00-\$1084.00  | 356    | 310 | 476    | 414 | 572       | 498 |
| \$1085.00-\$1501.00 | 286    | 248 | 380    | 332 | 458       | 398 |
| \$1502.00-\$1918.00 |        |     | 284    | 248 | 342       | 298 |
| \$1919.00-\$2335.00 |        |     | 190    | 164 | 228       | 198 |
| Over \$2335.00      |        |     |        |     | 114       | 98  |

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(c) Schedule C: All other fuel and renters:

| Household Size      | 1 or 2 |     | 3 to 5 |     | 6 or more |     |
|---------------------|--------|-----|--------|-----|-----------|-----|
|                     | Blue   | Red | Blue   | Red | Blue      | Red |
| Region Designation  |        |     |        |     |           |     |
| Monthly Income      |        |     |        |     |           |     |
| \$0-\$667.00        | 280    | 244 | 374    | 324 | 448       | 390 |
| \$668.00-\$1084.00  | 232    | 204 | 310    | 270 | 374       | 324 |
| \$1085.00-\$1501.00 | 188    | 164 | 248    | 216 | 298       | 258 |
| \$1502.00-\$1918.00 |        |     | 186    | 162 | 224       | 194 |
| \$1919.00-\$2335.00 |        |     | 124    | 108 | 150       | 130 |
| Over \$2335.00      |        |     |        |     | 74        | 64  |

"Blue" means Sussex and Warren counties.

"Red" means all other counties.]

(a) Schedule A: Electricity, Natural Gas:

| Household Size      | 1 or 2 |     | 3 to 5 |     | 6 or more |     |
|---------------------|--------|-----|--------|-----|-----------|-----|
|                     | Blue   | Red | Blue   | Red | Blue      | Red |
| Region Designation  |        |     |        |     |           |     |
| Monthly Income      |        |     |        |     |           |     |
| \$0-\$667.00        | 376    | 326 | 502    | 436 | 602       | 524 |
| \$668.00-\$1084.00  | 314    | 274 | 418    | 364 | 502       | 436 |
| \$1085.00-\$1501.00 | 252    | 216 | 334    | 290 | 402       | 350 |
| \$1502.00-\$1918.00 |        |     | 250    | 216 | 302       | 260 |
| \$1919.00-\$2335.00 |        |     | 166    | 144 | 200       | 174 |
| Over \$2335.00      |        |     |        |     | 100       | 86  |

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(b) Schedule B: Fuel Oil, Kerosene:

| Household Size      | 1 or 2 |     | 3 to 5 |     | 6 or more |     |
|---------------------|--------|-----|--------|-----|-----------|-----|
|                     | Blue   | Red | Blue   | Red | Blue      | Red |
| Region Designation  |        |     |        |     |           |     |
| Monthly Income      |        |     |        |     |           |     |
| \$0-\$667.00        | 354    | 308 | 474    | 412 | 568       | 494 |
| \$668.00-\$1084.00  | 294    | 256 | 394    | 344 | 474       | 412 |
| \$1085.00-\$1501.00 | 236    | 206 | 314    | 276 | 380       | 330 |
| \$1502.00-\$1918.00 |        |     | 236    | 206 | 284       | 246 |
| \$1919.00-\$2335.00 |        |     | 158    | 136 | 189       | 164 |
| Over \$2335.00      |        |     |        |     | 94        | 80  |

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

(c) Schedule C: All other fuel and renters:

| Household Size      | 1 or 2 |     | 3 to 5 |     | 6 or more |     |
|---------------------|--------|-----|--------|-----|-----------|-----|
|                     | Blue   | Red | Blue   | Red | Blue      | Red |
| Region Designation  |        |     |        |     |           |     |
| Monthly Income      |        |     |        |     |           |     |
| \$0-\$667.00        | 232    | 202 | 310    | 268 | 372       | 324 |
| \$668.00-\$1084.00  | 192    | 168 | 256    | 224 | 310       | 268 |
| \$1085.00-\$1501.00 | 156    | 136 | 206    | 178 | 246       | 214 |
| \$1502.00-\$1918.00 |        |     | 154    | 134 | 186       | 160 |
| \$1919.00-\$2335.00 |        |     | 102    | 90  | 124       | 108 |
| Over \$2335.00      |        |     |        |     | 60        | 52  |

"Blue" means Sussex and Warren counties.

"Red" means all other counties.

10:89-4.1 Opportunity and decision to apply

(a) Any individual(s) who believes he or she or his or her household is eligible for HEA must be given the opportunity to apply without delay. Heating and cooling assistance applications shall be accepted from November 1 through [March 31] the end of February of each year. [Cooling assistance applications shall be accepted from November 1 through May 31 of each year.] Applicants will be informed about eligibility requirements and their rights and obligations in applying for and receiving assistance. The decision to apply rests with the applicant. The applicant has the right to withdraw the application before eligibility or ineligibility has been determined. Upon completion of the application process, the application shall be transmitted to DFD in accordance with (e) below.

1. (No change.)

(b)-(j) (No change.)

# 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 November 2, 1992 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1992 d.1 means the first rule adopted in 1992.

**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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT OCTOBER 19, 1992**

**NEXT UPDATE: SUPPLEMENT NOVEMBER 16, 1992**

**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 |
|------------------------------------|--|------------------------------------|--|
| 23 N.J.R. 3679 and 3840            | December 16, 1991  | 24 N.J.R. 2315 and 2486            | July 6, 1992   |
| 24 N.J.R. 1 and 164                | January 6, 1992  | 24 N.J.R. 2487 and 2650            | July 20, 1992  |
| 24 N.J.R. 165 and 318              | January 21, 1992   | 24 N.J.R. 2651 and 2752            | August 3, 1992   |
| 24 N.J.R. 319 and 508              | February 3, 1992   | 24 N.J.R. 2753 and 2970            | August 17, 1992  |
| 24 N.J.R. 509 and 672              | February 18, 1992  | 24 N.J.R. 2971 and 3202            | September 8, 1992  |
| 24 N.J.R. 673 and 888              | March 2, 1992  | 24 N.J.R. 3203 and 3454            | September 21, 1992   |
| 24 N.J.R. 889 and 1138             | March 16, 1992   | 24 N.J.R. 3455 and 3578            | October 5, 1992  |
| 24 N.J.R. 1139 and 1416            | April 6, 1992  | 24 N.J.R. 3579 and 3784            | October 19, 1992   |
| 24 N.J.R. 1417 and 1658            | April 20, 1992   | 24 N.J.R. 3785 and 4144            | November 2, 1992   |
| 24 N.J.R. 1659 and 1840            | May 4, 1992  | 24 N.J.R. 4145 and 4306            | November 16, 1992  |
| 24 N.J.R. 1841 and 1932            | May 18, 1992   | 24 N.J.R. 4307 and 4454            | December 7, 1992   |
| 24 N.J.R. 1933 and 2102            | June 1, 1992   | 24 N.J.R. 4455 and 4606            | December 21, 1992  |
| 24 N.J.R. 2103 and 2314            | June 15, 1992  |                                    |  |

## N.J.A.C. CITATION

### ADMINISTRATIVE LAW—TITLE 1

|                       |  | PROPOSAL NOTICE<br>(N.J.R. CITATION) | DOCUMENT<br>NUMBER | ADOPTION NOTICE<br>(N.J.R. CITATION) |
|-----------------------|--|--------------------------------------|--------------------|--------------------------------------|
| 1:1-1.5, App. A       | Conduct of administrative law judges               | 24 N.J.R. 2755(a)                    | R.1992 d.430       | 24 N.J.R. 4028(a)                    |
| 1:13A-1.2, 18.1, 18.2 | Lemon Law hearings: exceptions to initial decision | 24 N.J.R. 1843(a)                    |                    |                                      |
| 1:31-3.1              | Conduct of administrative law judges               | 24 N.J.R. 2755(a)                    | R.1992 d.430       | 24 N.J.R. 4028(a)                    |

**Most recent update to Title 1: TRANSMITTAL 1992-4 (supplement September 21, 1992)**

### AGRICULTURE—TITLE 2

|                 |   |                   |  |  |
|-----------------|---|-------------------|--|--|
| 2:6             | Animal health: biological products for diagnostic or therapeutic purposes                                       | 24 N.J.R. 2974(a) |  |  |
| 2:6             | Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes | 24 N.J.R. 3981(a) |  |  |
| 2:32-2.4        | Sire Stakes Program: stallion standing full season  | 24 N.J.R. 3981(b) |  |  |
| 2:76-3.12, 4.11 | Farmland Preservation Program: pre-existing uses of enrolled lands  | 24 N.J.R. 2831(a) |  |  |
| 2:76-6.15       | Farmland Preservation Program: pre-existing uses on lands permanently deed restricted                           | 24 N.J.R. 2833(a) |  |  |
| 2:90-1.4, 1.5   | Certification of soil erosion and sediment control plans  | 24 N.J.R. 3587(a) |  |  |

**Most recent update to Title 2: TRANSMITTAL 1992-5 (supplement October 19, 1992)**

### BANKING—TITLE 3

|  |   |                   |              |                   |
|--|---|-------------------|--------------|-------------------|
| 3:1-2.1-2.9, 2.18, 2.20, 2.21  | Branch and charter application procedures for banks, savings banks, and savings and loan associations | 24 N.J.R. 3034(a) | R.1992 d.483 | 24 N.J.R. 4341(a) |
| 3:18   | Secondary Mortgage Loan Act rules   | 24 N.J.R. 3982(a) |              |                   |
| 3:18-1, 2.1, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 7.4, 7.5, 8.1, 8.2, 9, 10.5, 10.7, 10.8, 11 | Secondary Mortgage Loan Act rules   | 24 N.J.R. 2760(a) |              |                   |
| 3:38-1.9, 5.2, 5.3   | Branch offices; mortgage services licensure exemption; solicitor registration                         | 24 N.J.R. 1937(a) | R.1992 d.431 | 24 N.J.R. 4032(a) |

**Most recent update to Title 3: TRANSMITTAL 1992-7 (supplement October 19, 1992)**

### CIVIL SERVICE—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)**

### PERSONNEL—TITLE 4A

|                    |   |                   |  |  |
|--------------------|---|-------------------|--|--|
| 4A:3-5.3, 5.6, 5.9 | Comparable time off restrictions                                  | 24 N.J.R. 3588(a) |  |  |
| 4A:4-2.6, 2.15     | Promotional examinations  | 24 N.J.R. 3589(a) |  |  |
| 4A:4-6.5           | Medical and psychological examinations as condition of employment | 24 N.J.R. 3596(a) |  |  |
| 4A:6               | Leaves, hours of work, employee development, and awards program   | 24 N.J.R. 3590(a) |  |  |

**Most recent update to Title 4A: TRANSMITTAL 1992-3 (supplement October 19, 1992)**

### COMMUNITY AFFAIRS—TITLE 5

|           |   |                   |              |                   |
|-----------|---|-------------------|--------------|-------------------|
| 5:10-25.2 | Indirect apportionment of heating costs in multiple dwellings | 24 N.J.R. 3597(a) |              |                   |
| 5:12-2.1  | Homelessness Prevention Program: eligibility                  | 23 N.J.R. 3439(a) | R.1992 d.433 | 24 N.J.R. 4035(a) |

| N.J.A.C. CITATION  |  | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|--|--|-----------------------------------|-----------------|-----------------------------------|
| 5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7                             | Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions | 24 N.J.R. 1144(a)                 |                 |                                   |
| 5:19   | Continuing care retirement communities   | 24 N.J.R. 1146(a)                 |                 |                                   |
| 5:23   | Uniform Construction Code  | 24 N.J.R. 1420(b)                 |                 |                                   |
| 5:23-2.1, 2.15   | Uniform Construction Code: licensing disputes  | 24 N.J.R. 4(a)                    |                 |                                   |
| 5:23-2.5   | UCC: increase in building size   | 24 N.J.R. 1421(a)                 |                 |                                   |
| 5:23-2.17, 8   | Asbestos Hazard Abatement Subcode  | 24 N.J.R. 1422(a)                 |                 |                                   |
| 5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25 | Uniform Construction Code: mechanical inspector license and mechanical inspections                     | 24 N.J.R. 3457(a)                 |                 |                                   |
| 5:23-4.18, 4.20  | UCC enforcing agencies: minimum fees   | 24 N.J.R. 169(b)                  |                 |                                   |
| 5:23-5.4, 5.5  | Uniform Construction Code: licensure of elevator subcode officials and inspectors                      | 24 N.J.R. 4309(a)                 |                 |                                   |
| 5:23-5.5   | UCC: administrative correction regarding elevator inspector licensure                                  | _____                             | _____           | 24 N.J.R. 4344(a)                 |
| 5:23-9.7   | Uniform Construction Code: manufacturing, production and process equipment exemption                   | 24 N.J.R. 3458(a)                 |                 |                                   |
| 5:27-3.5   | Rooming and boarding houses: conformity with Fair Housing Act amendments                               | 24 N.J.R. 4310(a)                 |                 |                                   |
| 5:33-3.2, 3.3, 3.6, 3.8-3.11                                       | Tenant Property Tax Rebate Program   | 24 N.J.R. 3205(a)                 | R.1992 d.469    | 24 N.J.R. 4255(a)                 |
| 5:80-32  | Housing and Mortgage Finance Agency: project cost certification  | 24 N.J.R. 2208(a)                 |                 |                                   |
| 5:91   | Council on Affordable Housing: procedural rules  | 24 N.J.R. 2671(a)                 | R.1992 d.491    | 24 N.J.R. 4344(b)                 |

Most recent update to Title 5: TRANSMITTAL 1992-10 (supplement October 19, 1992)

#### MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)

#### EDUCATION—TITLE 6

|                             |  |                   |              |                   |
|-----------------------------|--|-------------------|--------------|-------------------|
| 6:3-2.6                     | Conditions for access to pupil records   | 24 N.J.R. 3038(a) | R.1992 d.490 | 24 N.J.R. 4362(a) |
| 6:8                         | Thorough and efficient system of public schools  | 24 N.J.R. 3039(a) | R.1992 d.510 | 24 N.J.R. 4508(a) |
| 6:8-6                       | Programs and services for pupils at risk   | 24 N.J.R. 3494(a) |              |                   |
| 6:12-1.2, 1.7-1.10, 1.14    | Governor's Teaching Scholars Program   | 24 N.J.R. 3050(a) | R.1992 d.489 | 24 N.J.R. 4362(b) |
| 6:21-5, 6, 6A, 6B, 6C, 8, 9 | Pupil transportation: school bus and small vehicle standards                                     | 24 N.J.R. 2109(a) | R.1992 d.397 | 24 N.J.R. 4069(a) |
| 6:21-6A.6                   | Pupil transportation: administrative correction to N.J.A.C. 6:21-6A.6 regarding school bus color | 24 N.J.R. 2325(a) |              |                   |
| 6:29-3.4                    | Medical examination requirement for interscholastic athletic participation                       | 24 N.J.R. 4150(a) |              |                   |
| 6:29-8                      | Nonpublic school nursing services  | 24 N.J.R. 3495(a) |              |                   |
| 6:31-1.1-1.7, 1.9-1.16      | Multiple indicators for exit from bilingual programs   | 24 N.J.R. 3497(a) |              |                   |

Most recent update to Title 6: TRANSMITTAL 1992-5 (supplement October 19, 1992)

#### ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

|                      |   |                   |              |                   |
|----------------------|---|-------------------|--------------|-------------------|
| 7:0                  | Well construction and sealing: request for public comment regarding comprehensive rules   | 24 N.J.R. 3286(a) |              |                   |
| 7:1-1                | Organization of Department  | Exempt            | R.1992 d.441 | 24 N.J.R. 4085(a) |
| 7:1-1.3, 1.4         | Delegations of authority within the Department  | 23 N.J.R. 3276(a) | R.1992 d.473 | 24 N.J.R. 4363(a) |
| 7:1A-2.13, 5.2       | Water supply loan programs: administrative corrections concerning eligible project costs and priority determination                 | _____             | _____        | 24 N.J.R. 4364(a) |
| 7:1C-1.5, 1.6, 1.7   | Ninety-day construction permit fees   | 24 N.J.R. 2768(a) |              |                   |
| 7:1J                 | Spill Compensation and Control Act: processing of damage claims (repeal 17:26)  | 24 N.J.R. 1255(a) |              |                   |
| 7:1K                 | Pollution Prevention Program  | 24 N.J.R. 3609(a) |              |                   |
| 7:6-1.24, 9.2        | Boating rules: rotating lights; "personal watercraft"   | 24 N.J.R. 1694(a) | R.1992 d.506 | 24 N.J.R. 4556(a) |
| 7:7-1.7              | Coastal Permit Program fees   | 24 N.J.R. 2768(a) |              |                   |
| 7:7A-1.4, 2.7, 8.10  | Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation                          | 24 N.J.R. 912(b)  |              |                   |
| 7:7A-16.1            | Freshwater wetlands permit fees   | 24 N.J.R. 2768(a) |              |                   |
| 7:7E-7.5             | Alternative traffic reduction programs in Atlantic City   | 24 N.J.R. 1986(a) |              |                   |
| 7:9-4                | Surface water quality standards: request for public comment on draft Practical Quantitation Levels                                  | 24 N.J.R. 4008(a) |              |                   |
| 7:9-4 (7:9B-1), 6.3  | Surface water quality standards   | 24 N.J.R. 3983(a) |              |                   |
| 7:9-4.14 (7:9B-1.14) | NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria | 24 N.J.R. 4008(b) |              |                   |
| 7:9-6                | Ground water quality standards  | 24 N.J.R. 181(a)  |              |                   |

| N.J.A.C. CITATION  |  | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|--|--|-----------------------------------|-----------------|-----------------------------------|
| 7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2-12.6, App. A, B  | Individual subsurface sewage disposal systems  | 24 N.J.R. 1987(a)                 |                 |                                   |
| 7:11-2.9   | Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: administrative correction concerning standby charge | _____                             | _____           | 24 N.J.R. 4518(a)                 |
| 7:12   | Shellfish-growing water classifications  | 24 N.J.R. 3657(a)                 | R.1992 d.508    | 24 N.J.R. 4518(b)                 |
| 7:14A-1, 2, 3, 5-14, App. F  | NJPDES program and Clean Water Enforcement Act requirements  | 24 N.J.R. 344(b)                  |                 |                                   |
| 7:14A-1.2, 1.7-1.10, 2.1, 2.4, 2.5, 2.12, 2.13, 3.8, 3.9, 3.11, 3.12, 3.13, 3.17, App. A, B, 7.8, 9.1, 10.3, 14.8, App. H  | Statewide Stormwater Permitting Program  | 24 N.J.R. 2352(a)                 | R.1992 d.434    | 24 N.J.R. 4088(a)                 |
| 7:14A-1.8, 3.9, App. A, B; 10.3, App. H  | Statewide Stormwater Permitting Program: administrative corrections and changes  | _____                             | _____           | 24 N.J.R. 4364(a)                 |
| 7:14A-1.9, 3.14  | Surface water quality standards  | 24 N.J.R. 3983(a)                 |                 | 24 N.J.R. 4522(a)                 |
| 7:14A-3.13   | Statewide Stormwater Permitting Program: administrative correction regarding DSW permit conditions                       | _____                             | _____           | 24 N.J.R. 4522(a)                 |
| 7:14B  | Underground storage tanks  | 24 N.J.R. 2975(a)                 | R.1992 d.498    | 24 N.J.R. 4523(a)                 |
| 7:14B  | Underground storage tanks: public hearing  | 24 N.J.R. 3286(b)                 |                 |                                   |
| 7:15-1.5, 3.4, 3.6, 4.1, 5.22  | Statewide water quality management planning  | 24 N.J.R. 344(b)                  |                 |                                   |
| 7:19-3.9   | Water supply allocation permits: fee schedule  | _____                             | _____           | 24 N.J.R. 4121(a)                 |
| 7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12 | Financial assistance programs for wastewater treatment facilities  | 24 N.J.R. 4310(b)                 |                 |                                   |
| 7:25-6   | 1993-94 Fish Code  | 24 N.J.R. 2539(a)                 | R.1992 d.439    | 24 N.J.R. 4122(a)                 |
| 7:25-11  | Introduction of imported or non-native shellfish or finfish into State's marine waters                                   | 24 N.J.R. 3660(a)                 |                 |                                   |
| 7:25-16.1  | Defining freshwater fishing lines  | 24 N.J.R. 204(a)                  |                 |                                   |
| 7:25-16.1  | Freshwater fishing line for Rahway River in Union County   | 24 N.J.R. 2977(a)                 |                 |                                   |
| 7:25-18.1  | Filleting of flatfish at sea   | 24 N.J.R. 1456(a)                 | R.1992 d.476    | 24 N.J.R. 4368(b)                 |
| 7:25-18.1, 18.5  | Atlantic sturgeon management   | 24 N.J.R. 205(a)                  |                 |                                   |
| 7:25-18.1, 18.12, 18.14  | Summer flounder management; otter and beam trawls  | 24 N.J.R. 4249(a)                 |                 |                                   |
| 7:25-18.5  | Haul seining and fyke netting regulation   | 24 N.J.R. 207(a)                  | R.1992 d.449    | 24 N.J.R. 4256(a)                 |
| 7:25-18.16   | Taking of horseshoe crabs  | 24 N.J.R. 2978(a)                 |                 |                                   |
| 7:26-1.4, 2.13, 6.3, 6.8   | Solid waste management: scrap metal shredding residue, animal manure, interdistrict and intradistrict flow               | 24 N.J.R. 1995(a)                 |                 |                                   |
| 7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8   | Solid waste flow through transfer stations and materials recovery facilities   | 24 N.J.R. 3286(c)                 |                 |                                   |
| 7:26-4.3   | Thermal destruction facilities: compliance monitoring fees and postponed operative date                                  | 24 N.J.R. 1999(a)                 |                 |                                   |
| 7:26-4.3   | Thermal destruction facilities: extension of comment period regarding compliance monitoring fees                         | 24 N.J.R. 2687(a)                 |                 |                                   |
| 7:26-4A.6  | Hazardous waste program fees: annual adjustment  | 24 N.J.R. 2001(a)                 |                 |                                   |
| 7:26-5.4, 7.4, 7.6, 9.4, 12.4  | Hazardous waste manifest discrepancies   | 23 N.J.R. 3607(a)                 |                 |                                   |
| 7:26-6.5, 6.6  | Interdistrict and intradistrict solid waste flow   | 24 N.J.R. 3291(a)                 | R.1992 d.496    | 24 N.J.R. 4523(b)                 |
| 7:26-8.2   | Hazardous waste exclusions: household waste  | 23 N.J.R. 3410(a)                 | R.1992 d.448    | 24 N.J.R. 4258(a)                 |
| 7:26-8.2   | Hazardous waste exclusions: used chlorofluorocarbon refrigerants   | 23 N.J.R. 3692(a)                 |                 |                                   |
| 7:26-8.16  | Hazardous constituents in waste streams  | 23 N.J.R. 3093(b)                 | R.1992 d.440    | 24 N.J.R. 4126(a)                 |
| 7:26-8.16  | Hazardous constituents in waste streams: reopening of comment period   | 24 N.J.R. 2003(a)                 |                 |                                   |

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| 7:26-8.20  | Used motor oil recycling  | 24 N.J.R. 2383(a)                 |                 |                                   |
| 7:26-12.3  | Hazardous waste management: interim status facilities   | 24 N.J.R. 4253(a)                 |                 |                                   |
| 7:26A-6  | Used motor oil recycling  | 24 N.J.R. 2383(a)                 |                 |                                   |
| 7:26B  | Environmental Cleanup Responsibility Act rules  | 24 N.J.R. 2773(b)                 | R.1992 d.497    | 24 N.J.R. 4524(a)                 |
| 7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A | Environmental Cleanup Responsibility Act rules  | 24 N.J.R. 720(a)                  |                 |                                   |
| 7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. 1 | ECRA rules: extension of comment period   | 24 N.J.R. 1281(a)                 |                 |                                   |
| 7:26B-7, 9.3   | Remediation of contaminated sites: Department oversight   | 24 N.J.R. 1281(b)                 |                 |                                   |
| 7:26C  | Remediation of contaminated sites: Department oversight   | 24 N.J.R. 1281(b)                 |                 |                                   |
| 7:26D  | Cleanup standards for contaminated sites  | 24 N.J.R. 373(a)                  |                 |                                   |
| 7:26D  | Cleanup standards for contaminated sites: additional public hearing and extension of comment period | 24 N.J.R. 1458(b)                 |                 |                                   |
| 7:26D  | Cleanup standards for contaminated sites: additional public hearing and extension of comment period | 24 N.J.R. 2003(b)                 |                 |                                   |
| 7:26E  | Technical requirements for contaminated site remediation  | 24 N.J.R. 1695(a)                 |                 |                                   |
| 7:27-1.4, 1.6-1.30, 8.4, 8.14-8.24, 16.9, 21                 | Air contaminant emission statements from stationary sources   | 24 N.J.R. 2979(a)                 |                 |                                   |
| 7:27-1.4, 1.36, 1.37, 1.38, 8.1, 8.3, 8.4, 8.24, 18          | Control and prohibition of air pollution from new or altered sources: emission offsets              | 24 N.J.R. 3459(a)                 |                 |                                   |
| 7:27-8.1, 8.3, 8.27  | Air pollution control: requirements and exemptions under facility-wide permits                      | 24 N.J.R. 4323(a)                 |                 |                                   |
| 7:27-25.1, 25.3  | Control and prohibition of air pollution by vehicular fuels: administrative corrections             | _____                             | _____           | 24 N.J.R. 4524(b)                 |
| 7:27-26  | Low Emissions Vehicle Program   | 24 N.J.R. 1315(a)                 |                 |                                   |
| 7:27-26  | Low Emissions Vehicle Program: correction to proposal   | 24 N.J.R. 1458(c)                 |                 |                                   |
| 7:27A-3.10   | Civil administrative penalties for violations of emission statement requirements                    | 24 N.J.R. 2979(a)                 |                 |                                   |
| 7:27A-3.10   | Air pollution civil administrative penalties: administrative correction                             | _____                             | _____           | 24 N.J.R. 4524(b)                 |
| 7:28-42.3  | Radio frequency protection guides: administrative corrections                                       | _____                             | _____           | 24 N.J.R. 4526(a)                 |
| 7:28-42.4  | Radio frequency protection guides for whole body exposure: administrative correction                | _____                             | _____           | 24 N.J.R. 4371(a)                 |
| 7:30   | Pesticide Control Code  | 24 N.J.R. 2776(a)                 | R.199d d.509    | 24 N.J.R. 4526(b)                 |
| 7:36-9   | Green Acres Program: nonprofit land acquisition   | 24 N.J.R. 2405(a)                 |                 |                                   |
| 7:61   | Commissioners of Pilotage: licensure of Sandy Hook pilots   | 24 N.J.R. 3477(a)                 |                 |                                   |

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**HEALTH—TITLE 8**

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| 8:2                                       | Creation of birth record  | 24 N.J.R. 4325(a) |              |                   |
| 8:21-3.13                                 | Repeal (see 8:21-3A)  | 24 N.J.R. 3100(a) |              |                   |
| 8:21-3A                                   | Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices | 24 N.J.R. 3100(a) |              |                   |
| 8:31A-1.5, 7.4, 7.5, App. D               | SHARE Manual: per diem add-on fee assessment  | 24 N.J.R. 2810(a) | R.1992 d.450 | 24 N.J.R. 4259(a) |
| 8:31B-4.40                                | Uncompensated care collection procedures  | 24 N.J.R. 1124(c) |              |                   |
| 8:33-3.11                                 | Certificate of Need process for demonstration and research projects   | 24 N.J.R. 3104(a) |              |                   |
| 8:33A                                     | Hospital Policy Manual  | 24 N.J.R. 3280(a) | R.1992 d.512 | 24 N.J.R. 4528(a) |
| 8:33G                                     | Computerized tomography services: certification of need   | 24 N.J.R. 4221(a) |              |                   |
| 8:33I-1                                   | Megavoltage radiation oncology services: certification of need  | 24 N.J.R. 4222(a) |              |                   |
| 8:33M-1.6                                 | Bed need methodology for adult comprehensive rehabilitation services  | 24 N.J.R. 4225(a) |              |                   |
| 8:33R                                     | Psychiatric health care facilities and services: policy manual for planning and certificate of need reviews                                 | 24 N.J.R. 3598(a) |              |                   |
| 8:39-13.4, 27.1, 27.8, 29.4, 33.2, 45, 46 | Long-term care facilities: use of restraints and psychoactive drugs; pharmacy supplies; Alzheimer's and dementia care services              | 24 N.J.R. 4228(a) |              |                   |
| 8:41                                      | Mobile intensive care programs  | 24 N.J.R. 3255(b) |              |                   |
| 8:43                                      | Residential health care facilities: standards for licensure   | 24 N.J.R. 2506(a) |              |                   |
| 8:43A                                     | Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure                             | 24 N.J.R. 3603(a) |              |                   |

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| 8:43E                    | Recodification (see 8:33R)   | 24 N.J.R. 3598(a)                        |                        |  |
| 8:43I                    | Hospital Policy Manual (recodified as 8:33A)   | 24 N.J.R. 3280(a)                        | R.1992 d.512           | 24 N.J.R. 4528(a)                        |
| 8:65-2.5                 | Controlled dangerous substances: physical security controls                                  | 24 N.J.R. 174(a)                         |                        |  |
| 8:71                     | Interchangeable drug products  | 24 N.J.R. 59(b)                          | R.1992 d.137           | 24 N.J.R. 949(a)                         |
| 8:71                     | Interchangeable drug products (see 24 N.J.R. 947(b), 1897(a), 2560(a), 3173(b))              | 24 N.J.R. 61(a)                          | R.1992 d.461           | 24 N.J.R. 4260(a)                        |
| 8:71                     | Interchangeable drug products (see 24 N.J.R. 1896(a), 2560(b))                               | 24 N.J.R. 735(a)                         | R.1992 d.350           | 24 N.J.R. 3174(a)                        |
| 8:71                     | Interchangeable drug products  | 24 N.J.R. 1673(a)                        | R.1992 d.296           | 24 N.J.R. 2559(a)                        |
| 8:71                     | Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a))                               | 24 N.J.R. 1674(a)                        | R.1992 d.462           | 24 N.J.R. 4260(b)                        |
| 8:71                     | Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a))                               | 24 N.J.R. 2414(b)                        | R.1992 d.464           | 24 N.J.R. 4262(a)                        |
| 8:71                     | Interchangeable drug products  | 24 N.J.R. 2997(a)                        | R.1992 d.463           | 24 N.J.R. 4261(a)                        |
| 8:71                     | Interchangeable drug products  | 24 N.J.R. 4009(a)                        |                        |  |
| 8:100                    | State Health Planning Board: public hearings on draft chapters of State Health Plan          | 24 N.J.R. 3788(a)                        |                        |  |
| 8:100                    | State Health Plan: draft chapters  | 24 N.J.R. 3789(a)                        |                        |  |
| 8:100                    | State Health Plan: draft chapters on AIDS, and preventive and primary care                   | 24 N.J.R. 4151(a)                        |                        |  |
| 8:100-14.8, 14.13        | State Health Plan: hospital inpatient services   | 24 N.J.R. 2704(a)                        | R.1992 d.451           | 24 N.J.R. 4262(b)                        |
| 8:100-16                 | State Health Plan: correction to Economic Impact statement regarding Long-Term Care Services | 24 N.J.R. 1675(a)                        |                        |  |

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**HIGHER EDUCATION—TITLE 9**

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| 9:1-1.2, 3.1, 3.2, 3.4, 3.5 | Teaching university  | 24 N.J.R. 1464(a) | R.1992 d.466 | 24 N.J.R. 4371(a) |
| 9:1-5.11                    | Regional accreditation of degree-granting proprietary institutions | 24 N.J.R. 3207(a) |              |                   |
| 9:6A                        | State college personnel system                                     | 24 N.J.R. 3052(a) |              |                   |
| 9:7                         | Student Assistance Programs  | 24 N.J.R. 2510(a) | R.1992 d.486 | 24 N.J.R. 4373(a) |
| 9:9-7.6                     | NJCLASS Program: loan interest rate                                | 24 N.J.R. 2687(b) | R.1992 d.436 | 24 N.J.R. 4035(b) |
| 9:16-1                      | Primary Care Physician and Dentist Loan Redemption Program         | 24 N.J.R. 1192(a) |              |                   |

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**HUMAN SERVICES—TITLE 10**

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| 10:8   | Administration of State-provided Personal Needs Allowance  | 24 N.J.R. 681(a)  |              |                   |
| 10:16  | Child Death and Critical Incident Review Board concerning children under DYFS supervision  | 24 N.J.R. 3506(a) | R.1992 d.513 | 24 N.J.R. 4536(a) |
| 10:36  | Patient supervision at State psychiatric hospitals   | 24 N.J.R. 4232(a) |              |                   |
| 10:38A                                       | Pre-Placement Program for patients at State psychiatric facilities   | 24 N.J.R. 4326(a) |              |                   |
| 10:46-1.3, 2.1, 3.2, 4.1, 5                  | Developmental Disabilities: determination of eligibility for division services   | 24 N.J.R. 211(a)  |              |                   |
| 10:50-1.1-1.4, 1.6, 1.7, 2.1, 2.2            | Livery services: Medicaid reimbursement, age of vehicles, workers' compensation coverage; invalid coach services                     | 24 N.J.R. 2517(a) | R.1992 d.447 | 24 N.J.R. 4264(a) |
| 10:51  | Pharmaceutical Services Manual   | 24 N.J.R. 3053(a) |              |                   |
| 10:53A                                       | Hospice Services Manual  | 24 N.J.R. 2778(a) | R.1992 d.442 | 24 N.J.R. 4036(a) |
| 10:60-2.3, 3.15, 4.2                         | Home Care Services: personal care assistant services; eligibility for Home Care Expansion Program                                    | 24 N.J.R. 2687(c) | R.1992 d.438 | 24 N.J.R. 4054(a) |
| 10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13 | HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery                             | 24 N.J.R. 4329(a) |              |                   |
| 10:69A-2.1, 4.1-4.4, 5.3, 5.5                | PAAD prescription copayment  | 24 N.J.R. 4328(a) |              |                   |
| 10:71-5.6                                    | Medicaid Only income eligibility standards for hospice care  | 24 N.J.R. 2778(a) | R.1992 d.442 | 24 N.J.R. 4036(a) |
| 10:72-1.1, 3.4, 4.1                          | New Jersey Care: Medicaid eligibility of children  | 24 N.J.R. 1860(a) | R.1992 d.484 | 24 N.J.R. 4378(a) |
| 10:81-11.4, 11.9                             | Public Assistance Manual: provision of information regarding services to AFDC clients; legal representation in child support matters | 24 N.J.R. 2327(a) |              |                   |
| 10:81-11.5, 11.7, 11.9, 11.20, 11.21         | Public Assistance Manual: child support and paternity services   | 24 N.J.R. 2328(a) |              |                   |
| 10:83  | Service Programs for Aged, Blind or Disabled Persons   | 24 N.J.R. 3074(a) | R.1992 d.477 | 24 N.J.R. 4379(a) |
| 10:83-1.2                                    | Emergency Assistance benefits for SSI recipients   | 24 N.J.R. 326(a)  | R.1992 d.488 | 24 N.J.R. 4379(b) |
| 10:83-1.2                                    | Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period                                     | 24 N.J.R. 1204(a) |              |                   |

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| 10:85-1.1, 2.1, 3.1-3.5, 4.1, 4.2, 5.1-5.8, 6.8, 7.2, App. D  | General Assistance program: time-limited eligibility for employable persons; alien eligibility; payment of hospital medical services | 24 N.J.R. 3075(a)                        | R.1992 d.503           | 24 N.J.R. 4538(a)                        |
| 10:87-2.4, 2.6, 2.31, 2.39, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5.10, 6.9, 6.20, 10.3, 10.6, 10.18, 11.26, 11.29, 12.1 | Food Stamp Program revisions   | 24 N.J.R. 3207(b)                        |                        |  |
| 10:89-2.3, 3.1, 3.4, 3.6, 4.1   | Home Energy Assistance   | Emergency (expires 2-6-93)               | R.1992 d.517           | 24 N.J.R. 4593(a)                        |
| 10:97-1.3, 7.3  | Business Enterprise Program for the blind and visually impaired: promotion and transfer  | 24 N.J.R. 2798(a)                        | R.1992 d.515           | 24 N.J.R. 4551(a)                        |
| 10:120-1.2  | Youth and Family Services: scope of responsibilities and services  | 23 N.J.R. 3420(b)                        | R.1992 d.471           | 24 N.J.R. 4386(a)                        |
| 10:121A   | Manual of Requirements for Adoption Agencies   | 24 N.J.R. 3500(a)                        | R.1992 d.514           | 24 N.J.R. 4552(a)                        |
| 10:122B   | Division of Youth and Family Services: requirements for foster care  | 23 N.J.R. 3693(a)                        |                        |  |
| 10:122C   | DYFS: approval of foster homes   | 23 N.J.R. 3696(a)                        |                        |  |
| 10:122D   | DYFS: foster care services   | 23 N.J.R. 3703(a)                        |                        |  |
| 10:122E   | DYFS: removal of foster children and closure of foster homes   | 23 N.J.R. 3708(a)                        |                        |  |
| 10:123-3.4  | Personal needs allowance for eligible residents of residential health care facilities and boarding houses                            | 24 N.J.R. 3088(a)                        |                        |  |
| 10:124  | Children's Shelter Facilities and Homes: manual of standards   | 24 N.J.R. 3089(a)                        | R.1992 d.485           | 24 N.J.R. 4387(a)                        |
| 10:131  | DYFS: Adoption Assistance and Child Welfare Act of 1980 requirements   | 24 N.J.R. 2522(a)                        | R.1992 d.437           | 24 N.J.R. 4055(a)                        |
| 10:133  | DYFS: initial response and service delivery  | 23 N.J.R. 3714(a)                        |                        |  |
| 10:133A   | DYFS: initial response and screening   | 23 N.J.R. 3717(a)                        |                        |  |
| 10:133B   | DYFS: information and referral   | 23 N.J.R. 3720(a)                        |                        |  |
| 10:133C-3   | DYFS: assessment of family service needs   | 24 N.J.R. 217(a)                         |                        |  |
| 10:150  | Organization of Division of the Deaf and Hard of Hearing   | Exempt                                   | R.1992 d.460           | 24 N.J.R. 4267(a)                        |

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**CORRECTIONS—TITLE 10A**

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| 10A:6          | Inmate access to courts   | 24 N.J.R. 2799(a) | R.1992 d.470 | 24 N.J.R. 4390(b) |

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**INSURANCE—TITLE 11**

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| 11:1-32.4             | Automobile insurance: limited assignment distribution servicing carriers   | 24 N.J.R. 519(a)  |              |                   |
| 11:1-32.4             | Workers' compensation self-insurance   | 24 N.J.R. 1944(a) |              |                   |
| 11:1-32.4             | Workers' compensation self-insurance: extension of comment period  | 24 N.J.R. 2708(b) |              |                   |
| 11:1-33               | Public Advocate reimbursement disputes   | 24 N.J.R. 2706(a) |              |                   |
| 11:1-34               | Surplus lines: exportable list procedures  | 24 N.J.R. 4331(a) |              |                   |
| 11:2-17.7             | Payment of health insurance claims   | 23 N.J.R. 3196(c) | R.1992 d.493 | 24 N.J.R. 4391(a) |
| 11:2-17.11            | Payment of third-party claims: written notice to claimant  | 24 N.J.R. 522(a)  |              |                   |
| 11:2-26               | Insurer's annual audited financial report  | 24 N.J.R. 1940(a) |              |                   |
| 11:2-26               | Insurer's annual audited financial report: extension of comment period   | 24 N.J.R. 2708(a) |              |                   |
| 11:2-33               | Workers' compensation self-insurance   | 24 N.J.R. 1944(a) |              |                   |
| 11:2-33               | Workers' compensation self-insurance: extension of comment period  | 24 N.J.R. 2708(b) |              |                   |
| 11:2-35.1-35.6        | Insurer relief from FAIR Act obligations   | 24 N.J.R. 3212(a) |              |                   |
| 11:3-2A               | New Jersey Automobile Full Insurance Underwriting Association claims payment deferral for residual bodily injury | 24 N.J.R. 3480(a) | R.1992 d.494 | 24 N.J.R. 4392(a) |
| 11:3-16.7             | Automobile insurance: rating programs for physical damage coverages  | 24 N.J.R. 3604(a) |              |                   |
| 11:3-19.3, 34.3       | Automobile insurance eligibility rating plans: incorporation of merit rating surcharge                           | 24 N.J.R. 2332(a) |              |                   |
| 11:3-28.8             | Reimbursement of excess medical expense benefits paid by insurers  | 24 N.J.R. 3215(a) |              |                   |
| 11:3-29.1, 29.2, 29.4 | Motor bus medical expense benefits coverage  | 24 N.J.R. 3605(a) |              |                   |
| 11:3-29.6             | Automobile PIP coverage: physical therapy services   | 24 N.J.R. 2998(a) |              |                   |
| 11:3-33.2             | Appeals from denial of automobile insurance: failure to act timely on written application for coverage           | 24 N.J.R. 2128(b) |              |                   |

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| 11:3-34.4                             | Automobile insurance coverage: eligible person qualifications   | 24 N.J.R. 3420(a)                        | R.1992 d.481           | 24 N.J.R. 4396(a)                        |
| 11:3-35.5                             | Automobile insurance rating: eligibility points of principal driver   | 24 N.J.R. 2331(a)                        |                        |  |
| 11:3-42                               | Producer Assignment Program   | 24 N.J.R. 3421(a)                        | R.1992 d.482           | 24 N.J.R. 4397(a)                        |
| 11:4-14.1, 15.1, 16.2, 19.2, 28.3, 36 | BASIC health care coverage  | 24 N.J.R. 1205(a)                        |                        |  |
| 11:4-16.5                             | Individual health insurance: disability income benefits riders  | 24 N.J.R. 338(a)                         |                        |  |
| 11:4-16.8, 23, 25                     | Medicare supplement coverage: minimum standards   | 24 N.J.R. 12(a)                          |                        |  |
| 11:5-1.8                              | Real Estate Commission: deposit of monies paid to broker  | 24 N.J.R. 3483(a)                        |                        |  |
| 11:5-1.9                              | Real Estate Commission: transmittal of funds to lenders   | 24 N.J.R. 4268(a)                        |                        |  |
| 11:5-1.15                             | Real Estate Commission: advertising by brokers and licensees  | 24 N.J.R. 3484(a)                        |                        |  |
| 11:5-1.16                             | Real Estate Commission: documentation of offers and counter-offers  | 24 N.J.R. 3485(a)                        |                        |  |
| 11:5-1.23                             | Real Estate Commission: transmittal by licensees of written offers on property  | 24 N.J.R. 3486(a)                        |                        |  |
| 11:5-1.28                             | Real Estate Commission: surety bond posting by prelicensure schools   | 24 N.J.R. 3488(a)                        |                        |  |
| 11:5-1.38                             | Real Estate Commission: fee cap for mortgage services   | 24 N.J.R. 1957(a)                        | R.1992 d.468           | 24 N.J.R. 4268(a)                        |
| 11:5-1.38                             | Real Estate Commission: pre-proposal regarding buyer-brokers  | 24 N.J.R. 3488(b)                        |                        |  |
| 11:13                                 | Commercial lines insurance  | 24 N.J.R. 2830(a)                        | R.1992 d.492           | 24 N.J.R. 4408(a)                        |
| 11:16-2                               | Reports to National Insurance Crime Bureau regarding motor vehicle theft or salvage                                       | 24 N.J.R. 3606(a)                        |                        |  |
| 11:17-1.2, 2.3-2.15, 5.1-5.6          | Insurance producer licensing  | 24 N.J.R. 3216(a)                        |                        |  |
| 11:17A-1.2, 1.7                       | Appeals from denial of automobile insurance: failure to act timely on written application for coverage; premium quotation | 24 N.J.R. 2128(b)                        |                        |  |
| 11:17A-1.3                            | Licensure as insurance producer or registration as limited insurance representative: compliance deadline                  | 24 N.J.R. 3220(a)                        |                        |  |
| 11:19-2                               | Financial Examination Monitoring System: data submission by domestic insurers   | 24 N.J.R. 2999(a)                        |                        |  |
| 11:19-3                               | Financial Examination Monitoring System: data submission by surplus lines producers and insurers                          | 24 N.J.R. 3003(a)                        |                        |  |

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**LABOR—TITLE 12**

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| 12:15-1.3-1.7              | Unemployment Compensation and Temporary Disability: 1993 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test | 24 N.J.R. 3014(a) | R.1992 d.454 | 24 N.J.R. 4269(a) |
| 12:16-4.8                  | Board and room, meals and lodging in lieu of wages: 1993 rates   | _____             | _____        | 24 N.J.R. 3182(a) |
| 12:60-3.2, 4.2             | Prevailing wages on public works contracts: telecommunications worker  | 24 N.J.R. 2689(a) |              |                   |
| 12:60-3.2, 4.2             | Prevailing wages on public works contracts: extension of comment period  | 24 N.J.R. 3015(b) |              |                   |
| 12:60-3.2, 4.2             | Prevailing wages for public works: extension of comment period   | 24 N.J.R. 3607(a) |              |                   |
| 12:100-4.2                 | Public employee safety and health: occupational exposure to bloodborne pathogens   | 24 N.J.R. 3607(b) |              |                   |
| 12:100-4.2, 10, 17.1, 17.3 | Safety standards for firefighters  | 24 N.J.R. 73(a)   |              |                   |
| 12:110                     | Public employee occupational safety and health: procedural standards   | 24 N.J.R. 4234(a) |              |                   |
| 12:190                     | Regulation of explosives   | 24 N.J.R. 4235(a) |              |                   |
| 12:235-1.6                 | Workers' Compensation: 1993 maximum benefit rate   | 24 N.J.R. 3015(a) | R.1992 d.467 | 24 N.J.R. 4270(a) |
| 12:235-9.4                 | Workers' Compensation: appeal procedures regarding discrimination complaint decisions  | 24 N.J.R. 1684(a) |              |                   |
| 12:235-9.4                 | Workers' Compensation appeal procedures regarding discrimination complaint decisions: extension of comment period  | 24 N.J.R. 3090(a) |              |                   |

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**COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A**

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| 12A:11 | Certification of women-owned and minority-owned businesses: Waiver of Executive Order No. 66(1978) expiration provision | 24 N.J.R. 4333(a) |  |  |
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| <b>LAW AND PUBLIC SAFETY—TITLE 13</b> |   |                                   |                 |                                   |
| 13:2-22                               | Alcoholic Beverage Control: licensee training and certification   | 24 N.J.R. 1958(b)                 | R.1992 d.445    | 24 N.J.R. 4055(b)                 |
| 13:20-37                              | Motor vehicles with modified chassis height   | 24 N.J.R. 3662(a)                 |                 |                                   |
| 13:20-37                              | Motor vehicles with modified chassis height: extension of comment period  | 24 N.J.R. 4333(b)                 |                 |                                   |
| 13:21-19.9                            | Motor Vehicle Franchise Committee: administrative hearing costs   | 24 N.J.R. 3015(c)                 |                 |                                   |
| 13:24-4.1, 4.2                        | Amber light permit for rural route letter carrier vehicles  | 24 N.J.R. 4236(a)                 |                 |                                   |
| 13:28-5.1, 6.35                       | Schools of cosmetology and hairstyling: use of annex classrooms   | 24 N.J.R. 2333(a)                 | R.1992 d.444    | 24 N.J.R. 4057(a)                 |
| 13:30-8.5                             | Board of Dentistry: complaint review procedures   | 24 N.J.R. 2800(a)                 |                 |                                   |
| 13:30-8.6                             | Board of Dentistry: professional advertising  | 24 N.J.R. 2801(a)                 |                 |                                   |
| 13:31-1.11, 1.17                      | Electrical contractor's business permit: telecommunications wiring exemption  | 24 N.J.R. 339(a)                  |                 |                                   |
| 13:32                                 | Rules of Board of Examiners of Master Plumbers  | 24 N.J.R. 2334(a)                 | R.1992 d.457    | 24 N.J.R. 4270(b)                 |
| 13:33-1.35, 1.36                      | Ophthalmic dispensers and technicians: referrals; space rental agreements   | 24 N.J.R. 4010(a)                 |                 |                                   |
| 13:35-6.13                            | Bio-analytical laboratory directorships: license fees   | 24 N.J.R. 4011(a)                 |                 |                                   |
| 13:35-6.13                            | Physician assistant licensing fees  | 24 N.J.R. 4334(a)                 |                 |                                   |
| 13:35-6.13, 9                         | Acupuncture Examining Board: practice of acupuncture  | 24 N.J.R. 4013(a)                 |                 |                                   |
| 13:35-6.17                            | Corporate medical practice: administrative correction regarding significant beneficial interest   | _____                             | _____           | 24 N.J.R. 4409(a)                 |
| 13:35-6.18                            | Board of Medical Examiners: control of anabolic steroids  | 24 N.J.R. 4012(a)                 |                 |                                   |
| 13:36-5.12, 5.20                      | Mortuary Science: licensee advertising; referral fee prohibition  | 24 N.J.R. 3016(a)                 |                 |                                   |
| 13:37                                 | Certification of homemaker-home health aides: open public forum   | 24 N.J.R. 1861(a)                 |                 |                                   |
| 13:37-13.1, 13.2                      | Nurse anesthetist: conditions for practice  | 24 N.J.R. 4020(a)                 |                 |                                   |
| 13:38-1.2, 1.3, 2.5                   | Practice of optometry: permissible advertising  | 24 N.J.R. 4237(a)                 |                 |                                   |
| 13:38-2.4, 4, 5.1                     | Board of Optometrists: issuing prescriptions; certification by examination; fees  | 24 N.J.R. 2802(a)                 | R.1992 d.443    | 24 N.J.R. 4058(a)                 |
| 13:40-5.1                             | Land surveys: setting of corner markers   | 24 N.J.R. 51(a)                   |                 |                                   |
| 13:40-5.1                             | Land surveys: extension of comment period regarding setting of corner markers   | 24 N.J.R. 554(a)                  |                 |                                   |
| 13:40A-1, 2, 2A, 3.6, 6.1, 6.2, 6.3   | Board of Real Estate Appraisers: certified residential classification; general appraiser; temporary visiting license; fees and designations | 24 N.J.R. 3489(a)                 |                 |                                   |
| 13:41-2.1                             | Board of Professional Planners: professional misconduct   | 24 N.J.R. 3221(a)                 |                 |                                   |
| 13:44-2.5, 2.7, 2.11                  | Veterinary Medical Examiners: referral fee prohibition; product endorsements; licensee advertising  | 24 N.J.R. 3017(a)                 | R.1992 d.478    | 24 N.J.R. 4409(a)                 |
| 13:44B                                | Per diem compensation for members of professional and occupational licensing boards   | 24 N.J.R. 3019(a)                 | R.1992 d.480    | 24 N.J.R. 4410(a)                 |
| 13:44E-2.7                            | Chiropractic practice: referral fees  | 24 N.J.R. 1470(a)                 | R.1992 d.507    | 24 N.J.R. 4557(a)                 |
| 13:44F                                | Rules of State Board of Respiratory Care  | 24 N.J.R. 2336(a)                 |                 |                                   |
| 13:44G-14.1                           | Board of Social Work Examiners: fees for licensure, certification, and services   | 24 N.J.R. 2523(a)                 |                 |                                   |
| 13:45A-9.2, 9.3, 9.4                  | Advertising of merchandise by manufacturer  | 24 N.J.R. 684(a)                  |                 |                                   |
| 13:45A-24                             | Toy and bicycle safety  | 24 N.J.R. 3019(b)                 |                 |                                   |
| 13:45A-24                             | Toy and bicycle safety: extension of comment period   | 24 N.J.R. 3666(a)                 |                 |                                   |
| 13:46-9.17                            | Boxing inspectors   | 24 N.J.R. 3492(a)                 | R.1992 d.511    | 24 N.J.R. 4557(b)                 |
| 13:47A-1-8, 10, 11                    | Bureau of Securities rules  | 24 N.J.R. 2524(a)                 | R.1992 d.435    | 24 N.J.R. 4060(a)                 |
| 13:47K-5.2                            | Weights and measures: magnitude of allowable variations for packaged commodities  | 24 N.J.R. 1233(a)                 |                 |                                   |
| 13:54-1.15                            | Confidentiality of information regarding firearms permits, ID cards, licenses and registration  | 24 N.J.R. 3022(a)                 | R.1992 d.446    | 24 N.J.R. 4068(a)                 |
| 13:70-4.1, 4.2, 4.15, 9.41, 22.5      | Thoroughbred racing: licensure fees; partnership registration   | 24 N.J.R. 4021(a)                 |                 |                                   |
| 13:70-12.4                            | Thoroughbred racing: claimed horse  | 24 N.J.R. 4022(a)                 |                 |                                   |
| 13:71-7.1, 7.5, 7.26, 7.35, 24.5      | Harness racing: licensure fees; partnership registration  | 24 N.J.R. 4023(a)                 |                 |                                   |
| 13:72                                 | Casino simulcasting of horse races  | 24 N.J.R. 3666(b)                 |                 |                                   |
| 13:75-1.19                            | Violent Crimes Compensation Board: moneys received from other sources by claimants  | 24 N.J.R. 4239(a)                 |                 |                                   |

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| <b>PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14</b> |   |                   |              |                   |
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| 14:1-5.4   | Board of Regulatory Commissioners: administrative correction concerning filing of petitions | _____             | _____        | 24 N.J.R. 4410(b) |
| 14:3-3.2, 7.12   | Discontinuance of fire protection service by water utility                                  | 24 N.J.R. 2341(a) | R.1992 d.456 | 24 N.J.R. 4271(a) |
| 14:3-5.1   | Relocation or closing of utility office   | 24 N.J.R. 2132(a) |              |                   |
| 14:3-6.5   | Public records  | 24 N.J.R. 1966(a) |              |                   |

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| 14:3-7.15                    | Discontinuance of services to customers: notification of municipalities and others      | 24 N.J.R. 3023(a)                 |                 |                                   |
| 14:3-10.15                   | Solid waste collection: customer lists  | 24 N.J.R. 3286(c)                 |                 |                                   |
| 14:3-11                      | Solid waste collection regulatory reform  | 24 N.J.R. 1459(a)                 |                 |                                   |
| 14:5A                        | Nuclear generating plant decommissioning: periodic cost review and trust fund reporting | 23 N.J.R. 3239(b)                 |                 |                                   |
| 14:6-5                       | Natural gas service: preproposal on inspection and operation of master meter systems    | 24 N.J.R. 1862(b)                 |                 |                                   |
| 14:9B                        | Private domestic wastewater treatment facilities  | 24 N.J.R. 1863(a)                 |                 |                                   |
| 14:10-5                      | Competitive telecommunications services   | 24 N.J.R. 1868(a)                 |                 |                                   |
| 14:10-7                      | Telephone access to adult-oriented information  | 24 N.J.R. 1238(a)                 |                 |                                   |
| 14:11                        | Board of Regulatory Commissioners: administrative orders                                | 24 N.J.R. 1684(b)                 |                 |                                   |
| 14:11-7.10                   | Solid waste disposal facilities: initial tariff for special in lieu payment             | 24 N.J.R. 3286(c)                 |                 |                                   |
| 14:12-1.2, 3.6, 4.1-4.3, 5.3 | Demand side management  | 24 N.J.R. 2804(a)                 |                 |                                   |

Most recent update to Title 14: TRANSMITTAL 1992-3 (supplement August 17, 1992)

**ENERGY—TITLE 14A**

Most recent update to Title 14A: TRANSMITTAL 1992-3 (supplement October 19, 1992)

**STATE—TITLE 15**

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| 15:10-1.5, 7 | Distribution of voter registration forms through public agencies                              | 24 N.J.R. 736(a)  |  |  |
| 15:10-1.5, 7 | Distribution of voter registration forms through public agencies: extension of comment period | 24 N.J.R. 1688(a) |  |  |
| 15:10-1.5, 7 | Distribution of voter registration forms through public agencies: extension of comment period | 24 N.J.R. 2531(a) |  |  |

Most recent update to Title 15: TRANSMITTAL 1992-2 (supplement July 20, 1992)

**PUBLIC ADVOCATE—TITLE 15A**

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**TRANSPORTATION—TITLE 16**

|                                  |  |                   |              |                   |
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| 16:28A-1.4, 1.5, 1.6, 1.13, 1.30 | Restricted parking and stopping zones along Routes 4 and 5 in Bergen County; Route 7 in Kearny, Jersey City, Nutley and Belleville; U.S. 22 in Readington; and Route 44 in Greenwich and West Deptford | 24 N.J.R. 3024(a) | R.1992 d.455 | 24 N.J.R. 4273(a) |
| 16:28A-1.5, 1.61, 1.71           | Bus stop zones along Route 5, U.S. 9W, and Route 67 in Bergen County   | 24 N.J.R. 3673(a) | R.1992 d.504 | 24 N.J.R. 4558(a) |
| 16:28A-1.27                      | Restricted parking and stopping along Route 38 in Burlington County  | 24 N.J.R. 3492(b) | R.1992 d.495 | 24 N.J.R. 4411(a) |
| 16:28A-1.112                     | Restricted stopping and standing along Route 138 in Wall Township  | 24 N.J.R. 4334(b) |              |                   |
| 16:54                            | Licensing of aeronautical and aerospace facilities   | 24 N.J.R. 2542(a) |              |                   |
| 16:54                            | Licensing of aeronautical and aerospace facilities: extension of comment period  | 24 N.J.R. 3026(a) |              |                   |
| 16:54                            | Licensing of aeronautical and aerospace facilities: extension of comment period  | 24 N.J.R. 4025(a) |              |                   |
| 16:83                            | Conduct and safety of public in use of NJ TRANSIT equipment and facilities   | 24 N.J.R. 3674(a) |              |                   |

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**TREASURY-GENERAL—TITLE 17**

|               |  |                   |  |                   |
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| 17:1-4.12     | Purchase of service credit in State retirement systems                       | 24 N.J.R. 4239(b) |  |                   |
| 17:2-1.4      | Public Employees' Retirement System: election of member-trustee              | 24 N.J.R. 3690(a) |  |                   |
| 17:9-2.3      | State Health Benefits Program: annual enrollment periods                     | 24 N.J.R. 4025(b) |  |                   |
| 17:9-2.4      | State Health Benefits Program: retirement or COBRA enrollment                | 24 N.J.R. 4025(c) |  |                   |
| 17:9-4.1, 4.5 | State Health Benefits Program: "appointive officer" eligibility              | 24 N.J.R. 3493(a) |  |                   |
| 17:9-4.2      | State Health Benefits Program: part-time deputy attorneys general            | 24 N.J.R. 2345(a) |  |                   |
| 17:9-5.6      | Health maintenance organization charges: administrative correction           |                   |  | 24 N.J.R. 4068(b) |
| 17:26         | Repeal interim rules regarding Spill Compensation and Control Act (see 7:1J) | 24 N.J.R. 1255(a) |  |                   |

Most recent update to Title 17: TRANSMITTAL 1992-8 (supplement October 19, 1992)

**TREASURY-TAXATION—TITLE 18**

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| 18:1-1.3 | Background investigations of applicants for Division positions | 24 N.J.R. 4240(a) |  |  |
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| 18:5-2.3, 3.2-3.13, 3.20-3.25, 4.3-4.7, 5.8        | Cigarette Tax rate and stamps  | 24 N.J.R. 2415(a)                        |                        |  |
| 18:7-3.18  | Corporation Business Tax: recycling tax credit                                 | 24 N.J.R. 2809(a)                        | R.1992 d.479           | 24 N.J.R. 4411(b)                        |
| 18:12-6, 6A  | Tax exemptions and abatements for rehabilitated properties                     | 24 N.J.R. 4335(a)                        |                        |  |
| 18:22-1.3, 3.3, 6.1, 6.2, 6.3, 8.1, 9.2, 9.6, 10.1 | Public utility corporations  | 24 N.J.R. 2531(b)                        | R.1992 d.505           | 24 N.J.R. 4559(a)                        |
| 18:26-3.7  | Interest rate on late payments of estate taxes                                 | 24 N.J.R. 4240(b)                        |                        |  |
| 18:35-1.27   | Gross Income Tax: interest on overpayments                                     | 24 N.J.R. 2419(a)                        |                        |  |
| 18:35-2.11   | Gross income tax refunds and homestead rebates: priorities in claims to setoff | 24 N.J.R. 1967(b)                        |                        |  |

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**TITLE 19—OTHER AGENCIES**

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| 19:4-6.28   | HMDC Official Zoning Map: public utilities zoning  | 24 N.J.R. 1690(b) | R.1992 d.487 | 24 N.J.R. 4414(a) |
| 19:8-1.2  | Garden State Parkway speed limits  | 24 N.J.R. 3222(a) |              |                   |
| 19:8-1.2  | Garden State Parkway speed limits: reopening of comment period   | 24 N.J.R. 4241(a) |              |                   |
| 19:25-3.1, 12.7, 16.3, 16.5, 16.16, 16.18, 16.24, 16.25, 16.27-16.30, 16.39, 16.43, 16.48   | ELEC: Pre-candidacy activity; independent expenditures; public financing of gubernatorial primary candidates | 24 N.J.R. 3026(b) | R.1992 d.458 | 24 N.J.R. 4274(a) |
| 19:25-16.3, 16.6, 16.8-16.12, 16.14, 16.18, 16.21, 16.22, 16.31, 16.33, 16.35, 16.37, 16.38 | ELEC: Public financing of primary election candidates for Governor   | 24 N.J.R. 3690(b) | R.1992 d.516 | 24 N.J.R. 4561(a) |
| 19:25-20.11, 20.13  | ELEC: Lobbyists and legislative agents; reporting of identity of State officials receiving benefits          | 24 N.J.R. 3031(a) | R.1992 d.459 | 24 N.J.R. 4277(a) |

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**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

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| 19:40-1.2  | Submission and approval of new games   | 24 N.J.R. 3223(a) | R.1992 d.474 | 24 N.J.R. 4417(a) |
| 19:40-1.2  | Casino simulcasting of horse races   | 24 N.J.R. 3695(a) |              |                   |
| 19:40-2.5  | Delegation of Commission authority   | 24 N.J.R. 2348(a) |              |                   |
| 19:41-1.1, 2, 3.1, 4.2, 13   | Casino licensure and financial stability   | 24 N.J.R. 3225(a) | R.1992 d.500 | 24 N.J.R. 4563(a) |
| 19:41-1.3  | Casino simulcasting of horse races   | 24 N.J.R. 3695(a) |              |                   |
| 19:41-1.3, 1.4   | Issuance of temporary license credentials  | 24 N.J.R. 4335(b) |              |                   |
| 19:41-1.11   | Casino licensee-bus company agreements   | 24 N.J.R. 3694(a) |              |                   |
| 19:41-9.8, 9.9, 9.9A, 9.10, 9.11, 9.14, 9.15, 9.16, 9.17   | Commission fees  | 24 N.J.R. 4337(a) |              |                   |
| 19:41-14   | Renewal of employee licenses   | 24 N.J.R. 2133(a) |              |                   |
| 19:42-5.9, 5.10  | Casino simulcasting of horse races   | 24 N.J.R. 3695(a) |              |                   |
| 19:42-10   | Administrative suspension of license or registration, or dismissal of application upon determination of unpaid fees or civil penalties | 23 N.J.R. 3249(a) | R.1992 d.35  | 24 N.J.R. 298(a)  |
| 19:43  | Casino licensure and financial stability   | 24 N.J.R. 3225(a) | R.1992 d.500 | 24 N.J.R. 4563(a) |
| 19:43-1.2  | Casino simulcasting of horse races   | 24 N.J.R. 3695(a) |              |                   |
| 19:43-1.2  | Casino service industries: licensure criteria  | 24 N.J.R. 4241(b) |              |                   |
| 19:45-1.1, 1.2, 1.7, 1.8, 1.10-1.16, 1.19, 1.20, 1.20A, 1.25, 1.27, 1.33, 1.46   | Casino simulcasting horse races  | 24 N.J.R. 3695(a) |              |                   |
| 19:45-1.1, 1.2, 1.9, 1.9B, 1.9C, 1.46  | Complimentary cash and noncash gifts   | 24 N.J.R. 2692(b) | R.1992 d.499 | 24 N.J.R. 4570(a) |
| 19:45-1.1, 1.2, 1.11, 1.12, 1.14, 1.15, 1.16, 1.20, 1.24, 1.24A, 1.24B, 1.25, 1.25A-1.25I, 1.26, 1.27, 1.27A, 1.28, 1.29, 1.33, 1.34 | Authorized financial statements: acceptance and processing   | 24 N.J.R. 3232(a) |              |                   |
| 19:45-1.1, 1.2, 1.16, 1.18, 1.20, 1.33, 1.46   | Exchange of coupons at gaming tables for gaming chips  | 24 N.J.R. 4243(a) |              |                   |
| 19:45-1.1, 1.40  | Jackpot payouts not paid directly from slot machine  | 24 N.J.R. 3251(a) |              |                   |
| 19:45-1.4, 1.7   | Records on ownership; public holding   | 24 N.J.R. 3225(a) | R.1992 d.500 | 24 N.J.R. 4563(a) |
| 19:45-1.8  | Records retention schedules  | 24 N.J.R. 3694(b) |              |                   |
| 19:45-1.19   | Implementation of game of pokette  | 24 N.J.R. 2140(a) | R.1992 d.453 | 24 N.J.R. 4279(b) |

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| 19:45-1.33                               | Asset numbers on slot machines and bill changers                                  | 24 N.J.R. 3253(a)                 | R.1992 d.475    | 24 N.J.R. 4418(a)                 |
| 19:45-1.42                               | Slot drop and slot cash storage box procedures                                    | 24 N.J.R. 2695(a)                 | R.1992 d.432    | 24 N.J.R. 4068(c)                 |
| 19:45-1.42                               | Reading and recording bill changer meters   | 24 N.J.R. 4026(a)                 |                 |                                   |
| 19:45-1.46                               | Coupon redemption and complimentary distribution programs: reporting requirements | 24 N.J.R. 3254(a)                 | R.1992 d.501    | 24 N.J.R. 4575(a)                 |
| 19:45-1.46A                              | Location of automated coupon redemption machines                                  | 24 N.J.R. 3255(a)                 |                 |                                   |
| 19:46-1.1, 1.13D, 1.17, 1.18, 1.20       | Implementation of game of pokette   | 24 N.J.R. 2140(a)                 | R.1992 d.453    | 24 N.J.R. 4279(b)                 |
| 19:46-1.2, 1.3, 1.5, 1.6, 1.9-1.20, 1.27 | Casino simulcasting of horse races  | 24 N.J.R. 3695(a)                 |                 |                                   |
| 19:46-1.7                                | Quadrant wager in roulette  | 24 N.J.R. 1871(a)                 |                 |                                   |
| 19:46-1.7, 1.9                           | Single zero roulette  | 24 N.J.R. 3033(a)                 | R.1992 d.452    | 24 N.J.R. 4279(a)                 |
| 19:46-1.10, 1.17, 1.20                   | Use of card reader device in blackjack  | 24 N.J.R. 2351(a)                 |                 |                                   |
| 19:46-1.16, 1.18                         | Primary storage areas for cards and dice; daily collection of used cards and dice | 24 N.J.R. 4339(a)                 |                 |                                   |
| 19:46-1.18, 1.19                         | Pai gow poker: temporary adoption of amendments concerning dealing from the hand  | _____                             | _____           | 24 N.J.R. 4283(a)                 |
| 19:46-1.18, 1.19                         | Pai gow poker: dealing from the hand  | 24 N.J.R. 4247(a)                 |                 |                                   |
| 19:46-1.26                               | Asset numbers on slot machines and bill changers                                  | 24 N.J.R. 3253(a)                 | R.1992 d.475    | 24 N.J.R. 4418(a)                 |
| 19:47-1.3-1.6, 2.3, 5.1, 5.6, 8.2        | Casino simulcasting of horse races  | 24 N.J.R. 3695(a)                 |                 |                                   |
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