THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 25 NUMBER 21
November 1, 1993 Indexed 25 N.J.R. 4813-4980
(Includes adopted rules filed through October 8, 1993)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 16, 1993
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 20, 1993

RULEMAKING IN THIS ISSUE

EXECUTIVE ORDERS

RULE PROPOSALS

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **December 1, 1993.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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

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

RULEMAKING IN THIS ISSUE—Continued

RULE ADOPTIONS

PUBLIC NOTICES

(Continued on Page 4980)

NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

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

EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 100(1993)
Tribute to Senator John E. Dimon

Issued: September 21, 1993.
Effective: September 21, 1993.
Expiration: Indefinite.

WHEREAS, it is fitting and appropriate to honor the memory and mourn the passing of Senator John E. Dimon; and

WHEREAS, born in Roebling, New Jersey in 1916, Senator Dimon devoted his life to serving his community, his State, and his country; and

WHEREAS, enlisting in the U.S. Army in 1940, Senator Dimon served his country with honor and distinction during the duration of this nation's involvement in World War II; and

WHEREAS, after the War, Senator Dimon devoted his legal career to public service, serving as Special Assistant Attorney General, Burlington County Public Guardian for Incompetent Veterans, and a member of the Burlington County Bridge Commission; and

WHEREAS, Senator Dimon also served as a highly distinguished member of the New Jersey Racing Commission; and

WHEREAS, as a member of the Racing Commission, Senator Dimon demonstrated a total commitment to the preservation and advancement of the racing industry in New Jersey; and

WHEREAS, in 1991, Senator Dimon joined the New Jersey State Senate, in which he served with great ability and commitment; and

WHEREAS, it is with deep sadness that we mourn the loss of Senator Dimon, and extend our sincerest sympathies to his family and friends;

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

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours beginning on Tuesday, September 21, 1993 and through and including Friday, September 24, 1993 in recognition and mourning of the passing of Senator John E. Dimon.

2. This order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 101(1993)
Governor's Committee on Welfare Reform

Issued: September 24, 1993.
Effective: September 24, 1993.
Expiration: Indefinite.

WHEREAS, on January 21, 1992 the State of New Jersey passed the most comprehensive welfare reform legislation in the history of the State called the Family Development Program (*N.J.S.A.* 44:10-19 *et seq.*) which serves as a model for reform of the welfare system nationwide; and

WHEREAS, the Family Development Program was first initiated as a pilot program in three pilot counties: Camden, Essex and Hudson; and

WHEREAS, on July 1, 1993 the Family Development Program was expanded to include Passaic, Union, Mercer, Cumberland and Atlantic counties; and

WHEREAS, full State implementation of the Family Development Program should be realized by Fiscal Year 1995; and

WHEREAS, the problems of long-term and intergenerational welfare dependency have resulted in a continuation of poverty and lack of opportunity for welfare recipients to become economically self-sufficient; and

WHEREAS, a comprehensive approach is needed to remedy these complex problems; and

WHEREAS, the Family Development Program is based on the principles that education is the key to self-sufficiency and that all able-bodied welfare recipients should have the same opportunities and responsibilities to become economically self-sufficient as anyone else in our society; and

WHEREAS, this program greatly expands current education, training and employment activities for welfare recipients and moves beyond the Federal Jobs Opportunities and Basic Skills (JOBS) legislation by setting a new direction of individual responsibility, family stability, and self-sufficiency; and

WHEREAS, the Family Development Program provides a full range of services to comprehensively meet the recipients' needs, including case management, enhanced job training and education, job search assistance, extended Medicaid coverage, child care services and other supportive services; and

WHEREAS, the success of the Family Development Program is dependent upon the level of support that the Division of Family Development in the Department of Human Services receives from other State agencies in the implementation and institutionalization of change in the delivery of services at the local level; and

WHEREAS, empowering families under the Family Development Program requires a new paradigm in deployment of resources from a wide range of governmental departments and agencies at the Federal, State, county and local levels; and

WHEREAS, coordination and collaboration across multiple service delivery systems is inherently difficult, requiring a serious and sustained commitment of senior agency leadership; and

WHEREAS, limited budgetary resources and multiple funding streams, including those of a categorical nature, create barriers in accessing essential services and therefore require innovative and creative strategies for program coordination; and

WHEREAS, the future expansion of the Family Development Program from three pilot counties to Statewide implementation will require greatly enhanced communication and coordination of agencies at the State, county, and local levels;

NOW, THEREFORE, I, JIM 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 a Governor's Committee on Welfare Reform (hereinafter referred to as "the Committee").

2. The Committee shall:

a. within 90 days of the date of this Executive Order, develop a plan to coordinate and direct State resources and the efforts of each State department toward efficiently achieving the welfare reforms of the Family Development Program;

b. within 90 days of the date of this Executive Order, complete an action plan to reflect the manner in which appropriate State resources and efforts from the State Departments of Education, Labor, Health, Community Affairs, Commerce, Environmental Protection and Energy, Transportation, and Higher Education shall be directed toward the Statewide implementation of the welfare reform initiative;

c. within 12 months from the date of this Executive Order, report back to the Legislature and to the Governor on the progress of implementation of its plan, which shall coincide with *N.J.S.A.* 44:10-32, which requires an annual report to the Governor and Legislature on the Family Development Act, due July 1, 1995 and annually thereafter;

d. advise the Governor on the plan to direct and coordinate the resources and efforts of agencies at the State, county, and local levels;

e. assess the delivery of services provided by the Family Development Program to families and individuals receiving welfare benefits in order to identify emergent needs and recommend ways to improve the quality and efficiency of these services;

f. reasonably carry out all other duties as necessary to ensure the successful implementation of the Family Development program; and

g. provide other information as the Governor may request.

3. The composition of the Committee shall consist of no more than twenty members appointed by the Governor. The Committee shall include the Commissioners of the following State departments: Community Affairs, Commerce, Education, Environmental Protection and Energy, Health, Human Services, Labor and Higher Education. In the event a commissioner is unable to attend a Committee meeting, the Com-

missioner shall send a designee empowered to make policy decisions and decisions regarding the use of that department's resources to ensure the successful implementation of the Family Development Program.

4. The Committee shall also be comprised of at least one (1) Aid to Families with Dependent Children (AFDC) recipient who is currently receiving services from the Family Development Program. The Committee shall also consist of at least one (1) General Assistance (GA) recipient who is currently receiving services from the Family Development Program.

5. The Committee shall also be comprised of three (3) directors of Family Development Centers (one each from the northern, central and southern regions of the State). The three directors shall be selected by the Commissioner of Human Services to serve on the Committee. The three directors shall serve as *ex officio,* nonvoting members.

6. The Committee may also be comprised of:

(a) other representatives from the Family Development Centers;

(b) advocates of and for individuals receiving services through the Family Development Program;

(c) representatives from private sector businesses;

(d) representatives from providers and organizations that provide services to individuals participating in the Family Development Program; and

(e) other appropriate individuals.

7. Committee members shall serve for terms of two (2) years. Committee vacancies from among the members shall be filled by appointment by the Governor for the remainder of the unexpired term. No member of the Committee can serve more than one (1) consecutive full term. Any vacancy occurring in the membership of the Committee is to be filled in the same manner as an original appointment and the vacancy is not to affect the power of the remaining members to execute the duties of the Committee.

8. The Governor shall designate the Commissioner of the Department of Human Services to serve as the Chairperson of the Committee and the Commissioner of the Department of Education to serve as the Vice Chairperson of the Committee.

9. The Committee shall further organize itself and set its own schedule for meetings as it deems necessary to complete its work.

10. The Committee is authorized to hold such hearings and forums as the Committee may determine to be necessary to carry out the duties of the Council.

11. In performing its work, the Committee shall work with other existing agencies, bodies, and providers in the State designed to plan, coordinate and deliver services to individuals participating in the Family Development Program. The Committee may also draw upon the assistance of any department, organization or agency of the State which may be made available to it for these purposes.

12. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 102(1993)
Governor's Committee on Children's Services Planning

Issued: September 24, 1993.
Effective: September 24, 1993.
Expiration: Indefinite.

WHEREAS, on March 14, 1983, the Governor's Committee on Children's Services Planning was created by Executive Order No. 35 (Kean) in order to make recommendations to improve the quality of services for the children and youth of this State; and

WHEREAS, in January 1993, I created a Cabinet Task Force on Children and Families in order to promote interagency coordination in the development of children's policy; and

WHEREAS, the composition and work of the Governor's Committee on Children's Services Planning should be adjusted to better coordinate its functions with those of the Cabinet Task Force on Children and Families in order to further promote interagency coordination in the development of children's policy and systemic initiatives that would more effectively and efficiently serve youth and their families; and

WHEREAS, with its revised membership and charge, the Governor's Committee on Children's Services Planning should become an even more valuable source of public input and should be able to contribute more effectively toward interagency coordination in promoting the healthy development of our children;

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. Executive Order No. 35 (Kean) is hereby rescinded.

2. There is hereby established the Governor's Committee on Children's Services Planning (hereinafter referred to as the Committee), which shall:

a. Annually, on or before September 1, submit formal recommendations to the Cabinet Task Force on Children and Families (hereinafter referred to as the Cabinet Task Force), and the Governor regarding priorities for the State budget for the next fiscal year.

b. Advise the Governor, the Cabinet Task Force and FamilyNet on the coordination of children's service.

c. Research successful strategies to promote the healthy development of our children and share its findings with the Cabinet Task Force and the Governor.

d. Assess the delivery of services to children and families in the State in order to identify emergent needs and recommend ways to improve the quality and efficiency of these services.

e. Issue an annual report on the condition of children in New Jersey.

f. Provide other information on children's services as the Governor may request.

3. The Committee shall be composed of twenty-five individuals appointed by the Governor from among persons who have distinguished records in serving youth and their families and who represent a broad range of community institutions and services.

a. Members shall serve for terms of four years, except that, of the initial appointees pursuant to this Executive Order, six of the members shall serve for terms of one year; six of the members shall serve for terms of two years; six of the members shall serve for terms of three years; and the remaining members shall serve for terms of four years.

b. Any individual appointed to fill an unexpired term shall serve for the unexpired portion of the term.

4. The Governor shall designate two members of the Committee to serve as co-chairs. The Committee may further organize itself in any manner it deems appropriate and enact by-laws as deemed necessary to carry forth the responsibilities of the Committee.

5. The Committee shall set its own schedule for meetings as it deems necessary to complete its work but shall meet with the chair of the Cabinet Task Force at least once a year and shall meet with the members of FamilyNet at least four times a year.

6. In performing its work, the Committee shall work with other existing bodies in the State designed to coordinate children's policy, including but not limited to the Cabinet Task Force and FamilyNet. The Committee may draw upon the assistance of any department, agency or instrumentality of the State which may be made available to it for these purposes.

7. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 103(1993)
New Jersey Commission for the Blind and Visually Impaired Rehabilitation Advisory Council

Issued: September 28, 1993.
Effective: September 28, 1993.
Expiration: Indefinite.

WHEREAS, pursuant to the Rehabilitation Act of 1973, as amended by the Rehabilitation Amendments of 1992 (hereinafter referred to as the "Amendments of 1992"), enacted on October 29, 1992, and known as P.L. 102-569, the State of New Jersey is mandated to establish a State Rehabilitation Advisory Council (hereinafter referred to as "the Council") composed of concerned citizens with disabilities; and

WHEREAS, pursuant to the Rehabilitation Act of 1973 as amended by the Amendments of 1992, the Council is to be consumer-controlled so as to provide individuals with disabilities a stronger and more substantive role in shaping the programs and services established to support their employment goals and aspirations; and

WHEREAS, pursuant to the Rehabilitation Act as amended by the Amendments of 1992, the Council must be in place in order for the State of New Jersey to receive federal funds under Title I, Section 105(a), Parts B and C of P.L. 102-569, for the Vocational Rehabilitation, Client Assistance, and Expansion Programs; and

WHEREAS, pursuant to the Rehabilitation Act of 1973 as amended by the Amendments of 1992, the State of New Jersey shall establish the New Jersey Commission for the Blind and Visually Impaired Rehabilitation Advisory Council to carry out the duties set forth in Title I, Part A, Section 101(a)(36) and 105 of P.L. 102-569;

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. The New Jersey Statewide Consumer Advisory Board of the Commission for the Blind and Visually Impaired is hereby reconstituted and redenominated the New Jersey Commission for the Blind and Visually Impaired Rehabilitation Advisory Council (hereinafter referred to as "the Advisory Council").

2. Pursuant to Title I, Part A, sections 101(a)(36) and 105 of P.L. 102-569, the reconstituted and redenominated Advisory Council shall be established as a separate entity apart from any State agency. The Advisory Council shall be established as a separate entity in, but not of, the New Jersey Department of Human Services.

3. The New Jersey Commission for the Blind and Visually Impaired shall be the designated State unit in New Jersey providing services to persons who are blind and visually impaired.

4. The Council shall consist of no more than 15 voting members appointed by the Governor. The composition of the Council shall reflect a majority of qualified persons with disabilities representing the interests of New Jersey's cross-disability population. All members, including those from the business, disability and advocacy communities, shall have knowledge of vocational rehabilitation concepts, programs, policies, and services.

5. The Director of the Commission for the Blind and Visually Impaired (hereinafter referred to as "CBVI") and two vocational rehabilitation counselors shall serve as *ex-officio,* nonvoting members on the Advisory Council.

6. The Advisory Council shall consist of:

a. at least one representative from the Statewide Independent Living Council;

b. at least one representative from a parent training and information center established under the Individuals with Disabilities Act, Title I, Section 631 of P.L. 101-476;

c. a representative from the Client Assistance Program;

d. at least one representative of a community rehabilitation program service provider;

e. four representatives of the business, industry, and labor sectors;

f. at least one representative of a disability advocacy group representing individuals who are blind or visually impaired;

g. at least one parent(s), relative(s), guardian(s), or authorized representatives of individuals with disabilities who have difficulty in representing themselves or are unable to do so due to their disabilities; and

h. at least one current or former applicant for, or recipient of CBVI vocational rehabilitation services.

7. The Advisory Council members shall serve for terms of three (3) years, except for those first appointed, five shall serve for a term of one (1) year, five shall serve for a term of two (2) years, and the remainder shall serve for a term of three (3) years. Council vacancies from among the members shall be filled by appointment by the Governor for the remainder of the unexpired term. No member of the Advisory Council can serve more than two (2) consecutive full terms. Any vacancy occurring in the membership of the Council is to be filled in the same manner as an original appointment and the vacancy is not to affect the power of the remaining members to execute the duties of the Advisory Council. The Advisory Council shall designate a member of the Council to serve as chairperson.

8. The Advisory Council shall:

a. review, analyze, and advise the CBVI regarding the performance of its responsibilities under Title I, Part A, Section 105(c) of P.L. 102-569;

b. advise the CBVI on the development and implementation of the State plan for vocational rehabilitation services, the strategic plan and amendments to the plans, reports, needs assessments, and evaluations required by Title I, Part A, Section 101 of P.L. 102-569 and Part C, Section 121 of P.L. 102-569;

c. conduct a review and analysis of the CBVI's overall effectiveness;

d. conduct a review of consumer satisfaction with:

(1) performance of functions by the CBVI and other public and private entities responsible for providing services to individuals with disabilities; and

(2) vocational rehabilitation services provided to individuals with disabilities by the CBVI and other public and private entities pursuant to the Rehabilitation Act of 1973 or through public or private sources.

e. prepare and submit an annual report to the Governor, the Commissioner of the Department of Human Services, the Executive Director of the CBVI, and the Commissioner of the Rehabilitation Services Administration on the status of vocational rehabilitation programs operated within the State, and make such report available to the public;

f. coordinate planning and training with other councils within the State, including the New Jersey Independent Living Council, the State Developmental Disabilities Planning Council, and the State Mental Health Planning Council;

g. provide for the coordination and the establishment of working relationships between the CBVI and the New Jersey Independent Living Council and Centers for Independent Living within the State;

h. supervise and evaluate staff and other personnel as may be necessary to carry out the functions of the Council; and

i. carry out all other duties set forth in Title I, Section 105 of P.L. 102-569.

9. The Advisory Council shall further organize itself and set its own schedule for meetings as it deems necessary to complete its work.

10. The Advisory Council shall convene at least four (4) meetings a year. The Advisory Council is authorized to hold such hearings and forums as the Advisory Council may determine to be necessary to carry out the duties of the Advisory Council. Pursuant to Title I, Section 105(f) of P.L. 102-569, public meetings are to be announced and open and accessible to the general public.

11. In performing its duties, the Advisory Council may consult with existing bodies in the State designed to plan, coordinate and deliver vocational rehabilitation services to persons with disabilities and their families at the State, county, and local levels. The Advisory Council may draw upon the assistance of any department, organization or agency of the State which may be available to it for these purposes.

12. Pursuant to Title I, Section 105(e) of P.L. 102-569, no member of the Advisory Council may vote on any matter that would provide direct financial benefit to the member thereby creating a conflict of interest or otherwise give the appearance of a conflict of interest.

13. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 104(1993)
Agriculture Development Task Force

Issued: October 5, 1993.
Effective: October 5, 1993.
Expiration: Indefinite.

WHEREAS, the dwindling availability of natural marine animals for food is a consequence of modern harvesting technologies, pollution and disease, and dietary shifts towards non-meat protein foods has placed added focus and value on marine-harvested products; and

WHEREAS, the proximity to markets, the demand for healthful food products, available natural resources, adequate financing and educational resources provided by Rutgers, the State University, have been essential ingredients for the growth of agriculture in New Jersey; and

WHEREAS, these are equally important for the growth of aquaculture, which is the planting, nurturing, and harvesting of aquatic organisms; and

WHEREAS, the State of New Jersey has been committed, through programs such as "Jersey Fresh" and the FARMS Commission, to strengthening, expanding and diversifying agricultural activities in the state, and support for aquacultural development is integral to this mission; and

WHEREAS, the rapid and orderly expansion of aquaculture is constrained by a number of factors, including: lack of domestic broodstock; poor understanding of nutrition and diets of culturable species; need for improvement in fish health management; poor knowledge of water quality criteria in culture systems; a need for education, information, and technology transfer efforts, and; a need to understand markets and marketing barriers for aquaculture and other barriers faced by the aquaculture industry. These include the need to balance the interests and requirements of recreation, commercial, and aquacultural industries, legal and regulatory constraints, and difficulty in locating venture capital for the expansion of aquaculture; and

WHEREAS, the Fisheries and Aquaculture Technology Extension Center, sponsored by the Governor's New Jersey Commission on Science and Technology and housed at Rutgers, has access to expertise in aquaculture and fisheries, and its mission is to foster the orderly development of these industries;

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 an Aquaculture Development Task Force to be organized by the Fisheries and Aquaculture Technology Extension Center, which shall provide or assemble the technical expertise necessary to draft the State Aquaculture Development Plan. The Task Force membership shall include the Secretary of Agriculture and the Commissioners of the Departments of Environmental Protection and Energy, Commerce and Economic Development, and Health, or their designees. The Task Force shall be co-chaired by the Secretary of Agriculture and a person with expertise in the commercial fisheries and aquaculture business, to be selected by the members of the Task Force. The Task Force shall be housed at the Fisheries and Aquaculture Technology Extension Center.

2. The Task Force shall design the State Aquaculture Development Plan to provide for and encourage the development and subsequent expansion of an economically viable aquaculture industry while ensuring the integrity and protection of the natural/wild stocks and their habitat. The Fisheries and Aquaculture Technology Extension Center shall support the Task Force in developing the design of the State Aquaculture Development Plan.

3. The State Aquaculture Development Plan shall be designed to: stimulate private investment in the development and expansion of commercial aquaculture; evaluate job opportunities for individuals displaced from the fishing and shellfishing industries in the areas of research and development, and in new skilled jobs for technically trained aquaculturists; ensure coordination among State agencies to promote the goals of this Executive Order; enhance business diversity opportunities for New Jersey farmers and commercial fishermen, other interested entrepreneurs, and the fish and shellfish processing, marketing, and distribution industries; and develop mechanisms to ensure for the citizens of New Jersey and the Mid-Atlantic region a consistent supply of quality aquacultured products, such as a diversity of finfish, e.g. hybrid striped bass, and specialty varieties of bivalve shellfish products.

4. The State Aquaculture Development Plan should address the issues of water withdrawal, wastewater discharge, optimal habitat conditions for aquacultured products (both fresh and marine), product standards, natural resource protection, marketing, research and demonstration, farm pond utilization, coastal development, economic development, and extension/education. The Plan should also identify those activities already practiced commercially within the State and those aquaculture activities that have a good probability for development in the near future.

5. The New Jersey Aquaculture Development Task Force shall utilize the expertise of industry, academia and governmental agencies, and resources available from the New Jersey-Israel Aquaculture Exchange Program, to design the State Aquaculture Development Plan.

6. The Departments of Agriculture, Environmental Protection and Energy, Commerce and Economic Development, and Health shall provide the Task Force with staff assistance in designing the State Aquaculture Development Plan.

7. The New Jersey Aquaculture Development Task Force shall issue a final report, including the State Aquaculture Development Plan and recommended legislation or regulation, to the Governor and the Governor's Commission on Science and Technology within one year of the date of this Order.

8. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 105(1993)
Tribute to Army Specialists Dominick M. Pilla and James E. Smith

Issued: October 6, 1993.
Effective: October 6, 1993.
Expiration: Indefinite.

WHEREAS, Army Specialists Dominick M. Pilla, a 21-year-old resident of Vineland, Cumberland County, and Army Specialist James E. Smith, a 21-year-old resident of Washington Township, Monmouth County, were killed in battle on or about Sunday, October 3, 1993 in Mogadishu, Somalia; and

WHEREAS, Specialists Pilla and Smith were stationed in Somalia as part of the United Nations' humanitarian relief efforts; and

WHEREAS, the provision of assistance to the needy and the downtrodden exemplifies this country's highest ideals; and

WHEREAS, these valiant New Jersey residents, both of whom were Army Rangers assigned to Company B, 3rd Battalion, 75th Ranger Regiment, stationed in Fort Benning, Georgia, sacrificed their lives in the service of their country to preserve and foster this ideal; and

WHEREAS, it is proper, fitting and just for the citizens of the State of New Jersey to honor the memory of Army Specialists Pilla and Smith, and to convey our deepest condolences to their families on this tragic occasion;

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

1. The flag of the United States of America and the flag of the State of New Jersey shall be flown at half-staff at all State departments, offices, agencies and instrumentalities during appropriate hours beginning on Thursday, October 7, 1993, and through and including Friday, October 8, 1993, in recognition and mourning of the passing of Army Specialists Dominick M. Pilla and James E. Smith.

2. This order shall take effect immediately.

RULE PROPOSALS

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Release of Bank Examination Reports to Independent Auditors

Proposed New Rules: N.J.A.C. 3:3-2.2 and 2.3

Authorized By: Jeff Connor, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:1-8.1 and 12 U.S.C. §1831m(a).
Proposal Number: PRN 1993-580.

Submit comments by December 1, 1993 to:
Stephen Szabatin, Deputy Commissioner
Department of Banking
CN 040
Trenton, New Jersey 08625

The agency proposal follows:

Summary

As a result of amendments to the Federal Deposit Insurance Corporation Improvement Act, 12 U.S.C. §1811, each insured depository institution must submit an annual report to the FDIC, the appropriate Federal bank agency, and any appropriate State bank supervisor. 12 U.S.C. §1831m(a). The report must include an independent audit of the institution's financial statements as well as evaluation of the institution's internal controls which is prepared by an independent auditor retained by the institution. 12 U.S.C. §1831m(c), (d). Each institution which engages the services of an independent auditor is required to provide the independent auditor with a copy of the institution's most recent examination report. 12 U.S.C. §1831m(h)(1)(A).

Regulations promulgated by the Federal Reserve provide for disclosure of examination reports of a bank to a certified public accountant retained by the bank subject to certain conditions. See 12 C.F.R. §261.11. Those conditions are as follows:

1. Independent auditors shall review the confidential supervisory information only on the premises of the institution and shall not make or retain any copies of such information; and

2. The independent auditor shall not disclose the confidential supervisory information for any purpose without the prior written approval of the New Jersey Commissioner of Banking except as necessary to provide advice to the institution. 12 C.F.R. §261.11(b)(2).

As a result of the amendment to the Federal Deposit Insurance Act and the Federal Reserve regulations, the Federal Reserve has revised the confidentiality statement on the cover of its examination reports to include release of the report to the bank's independent auditor subject to the above amendment and regulations.

In order to comply with the amendments to the Federal Deposit Insurance Act, the Department proposes to amend N.J.A.C. 3:3-2 by adding new rules which will provide authority to a bank to release its most recent New Jersey State Department of Banking Report of Examination to an independent auditor subject to all applicable regulations.

Social Impact

Adoption of the proposed new rules will permit depository institutions to remain in compliance with all relevant Federal law and regulations governing the supervision of Federally insured depositories.

Economic Impact

The proposed new rules will have no economic impact since the examination report is only being made available for inspection and requires no additional expenditure of funds for compliance.

Regulatory Flexibility Analysis

The proposed new rules impose compliance requirements on depository institutions, many of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and provide necessary State regulatory authorization to permit the affected institution to remain in compliance with State and Federal law and regulations. No variance in compliance based on business size is necessary nor appropriate in that the rules are not burdensome and are necessary for both State and Federal compliance with law.

Full text of the proposed new rules follows:

3:3-2.2 Definitions

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

"Independent auditor" means a certified public accountant or other person approved by the Commissioner who is retained by the depository institution pursuant to 12 U.S.C. §1831m(a) or N.J.S.A. 17:9A-253.

"Report of Examination" means documents obtained or prepared incident to an examination or audit of a financial institution pursuant to N.J.S.A. 17:9A-260, its holding institution or its subsidiary and any examination or audit report.

3:3-2.3 Release of Bank Examination Reports to independent auditors

(a) The Report of Examination shall be made available for inspection by an independent auditor retained by the depository institution in connection with the audit of the depository institution subject to the following conditions:

1. The independent auditor shall review the Report of Examination only on the premises of the institution and shall not make or retain any copies of such information; and

2. The independent auditor shall not disclose the confidential supervisory information for any purpose without the prior written approval of the New Jersey Commissioner of Banking except as necessary to provide advice to the institution.

(b)

NEW JERSEY CEMETERY BOARD

Cemetery Company Price Lists

Proposed Amendment: N.J.A.C. 3:41-5.1

Authorized By: The New Jersey Cemetery Board through William B. Waits, Executive Director.
Authority: N.J.S.A. 8A:2-2.
Proposal Number: PRN 1993-586.

Submit comments by December 1, 1993 to:
Rule Comments
c/o William B. Waits, Executive Director
New Jersey Cemetery Board
Department of Banking, CN-040
20 W. State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

These proposed amendments concern the price lists which cemetery companies are required to post at their offices and to file with the Board. (See N.J.S.A. 8A:5-4.)

Current rules provide that only those prices which are posted at the cemetery and filed with the Board may be charged. N.J.A.C. 3:41-5.1(e). The proposed amendments would allow cemetery companies which sell 10 or fewer interment spaces per year, and which have no office on the cemetery grounds, to satisfy the requirement that a price list be posted at the cemetery by having copies of the price list available at the off-premises office and giving each prospective customer a copy of the list at any time when it is reasonably anticipated that the prospective customer may purchase an interment space, good or service from the cemetery company.

The proposed amendments would specify that a cemetery company may provide a unique or highly specialized good or service to a customer, or to a very small number of customers, and lawfully charge for that good or service, even if the price is not listed on the price list.

The proposed amendments would require that price lists be on cemetery company letterhead, a flyer or pamphlet, or some other similar document (any of which may be either printed or typed). Price lists shall set forth the name of the cemetery company, the Certificate of Authority number of the cemetery company and the date.

The proposed amendments would require that each cemetery company submit a comprehensive price list with its annual Maintenance and Preservation Trust Fund Report. The list must contain the prices for all of the interment spaces, goods and services which the cemetery company offers (except those which are highly specialized or unique). Each price list would supersede all previous price lists of the cemetery company. Cemetery companies may still amend individual items on their price lists at other times during the year.

Social Impact

The proposed amendments should have a positive social impact. For example, it will give cemetery companies comfort that they may offer unique or highly specialized goods and services to their customers even if those prices are not listed on their price lists. The provision of these services should benefit both the cemeteries and the customers of the cemetery.

The requirement that price lists contain the name of the cemetery company and the Certificate of Authority number, and that they be dated, will make the lists less confusing to customers and more easily filed by the Cemetery Board staff.

The Board thinks that comprehensive price lists should be generated on an annual basis because regularly updated lists are the most effective way to communicate to customers the prices charged. If customers examine the comprehensive price list and any amendments which have been made since the date of the list, they can be confident that they are looking at the current listing of the prices for interment spaces, goods and services offered by the cemetery company.

The Board currently requests that cemetery companies submit price lists with their annual Maintenance and Preservation Trust Fund Reports. The proposed amendments would formalize this requirement. The Board thinks that submitting comprehensive price lists on an annual basis is the most effective and least burdensome way for the Board to monitor the prices which cemetery companies are charging.

Economic Impact

The proposed amendments may encourage some cemetery companies to charge for unique or highly specialized goods or services, which will benefit them economically. Second, the requirement that price lists be on cemetery company letterhead or a flyer, pamphlet or other similar document should result in less confusion on the part of consumers and give them more comfort in dealing with cemetery companies. Finally, the requirement that annual price lists be comprehensive will allow consumers to comparison shop more easily. This should result in economic benefits for consumers as well as for cemetery companies providing competitively priced goods and services.

Regulatory Flexibility Analysis

Many cemetery companies are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments would require that cemetery companies submit comprehensive price lists with their annual Maintenance and Preservation Trust Fund Reports. Currently, the Cemetery Board requests that cemetery companies submit price lists with their annual reports, and cemetery companies have overwhelmingly complied. By formalizing this requirement, the Board does not increase the de facto reporting burden which already exists.

With regard to exempting smaller cemeteries, the Board notes that the statute requires that price lists be posted at the office of each cemetery company as well as filed with the Cemetery Board, irrespective of the size of the entity. The posting of the charges allows customers to confirm for themselves that they are being treated equally by the cemetery company with regard to prices for goods and services. The Legislature has concluded that the protection accorded consumers by this simple device outweighs the minimal burden of preparing and posting a price list. As noted above, the proposed amendments would allow a cemetery company which sells 10 or fewer interment spaces per year and which has no office on cemetery grounds, to satisfy the requirement to post a price list by providing a copy to each prospective customer. This will minimize the posting burdens on smaller cemeteries.

The proposed amendments would require that price lists be either typed or printed, but the Board thinks that this is a minor burden which is outweighed by the comfort which it will give to customers that they have the official price list of the cemetery company.

The cost of copying the posted list for submission with the annual report to the Cemetery Board is regarded as a negligible burden even on smaller cemeteries. Therefore, regarding this requirement, no distinctions have been made in the rule based on the size of the regulated entity.

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

3:41-5.1 Charges and services

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

(e) The following paragraphs shall apply to cemetery price lists:

[(e)]**1.** Only those charges posted by the cemetery **company** and filed with the Board pursuant to N.J.S.A. 8A:5-4[,] **and 8:5-5** are lawful. The collection of any [charges] **charge** that has not been so posted and filed with the Board [are] **is** declared to be in violation of the Cemetery Act.

2. Notwithstanding (e) above, a cemetery company may provide a unique or highly specialized good or service to a customer, or to a very small number of customers, and lawfully charge for that good or service, even if the price for the good or service is not listed on the price list. The following factors shall militate toward a determination by the Board that the good or service is unique or highly specialized:

i. The cemetery company has not provided the good or service in recent years, or has provided it only rarely;

ii. The cemetery company should reasonably expect not to provide the good or service in the future, or should reasonably expect to provide it only rarely;

iii. The good or service is only rarely provided by similar cemetery companies in this State; or

iv. The nature of the good or service makes it reasonable that it be priced individually, for example, removing a tree.

3. A cemetery company which has no office on the cemetery grounds and which sold fewer than 10 interment spaces during its immediately prior fiscal year, as reflected on its annual Maintenance and Preservation Trust Fund Report, may satisfy the requirement to post its price list at the cemetery office by having copies of the price list available at the off-premises office and giving each prospective customer a copy of the price list when it is reasonably anticipated that the prospective customer may purchase an interment space, good or service from the cemetery company.

4. A price list shall be on the letterhead of the cemetery company, or on a flyer, pamphlet, or other similar document. The price list may be either printed or typed, but may not be handwritten. The price list shall set forth the name of the cemetery company, the Certificate of Authority number of the cemetery company, and it shall be dated. However, the effective date of the price list shall be no earlier than the date on which the price list is filed with the Board.

5. A cemetery company shall submit a comprehensive price list to the Board with its annual Maintenance and Preservation Trust Fund Report and shall post the price list at its office. It shall contain the prices for all of the interment spaces, goods and services which the cemetery offers, except for the goods or services which are highly specialized or unique as provided in (e)2 above. The price list shall supersede all previous price lists of the cemetery company. This requirement shall not be deemed to prohibit a cemetery company from amending its charges for individual items on its price list at times other than when its annual Maintenance and Preservation Trust Fund Report is filed, provided that it properly files such amendments with the Board and posts the amendments at the office of the cemetery company.

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

PERSONNEL

(a)

MERIT SYSTEM BOARD

Compensation

Demotional Pay Adjustments: State Service

Proposed Amendment: N.J.A.C. 4A:3-4.10

Authorized By: Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-6(d) and 11A:3-7.
Proposal Number: PRN 1993-587.

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

Thursday, November 18, 1993, at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
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 December 1, 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

On July 30, 1993, the Merit System Board readopted N.J.A.C. 4A:3 with amendments. The readoption was effective on August 5, 1993, upon filing with the Office of Administrative Law. The amendments were effective on September 7, 1993 upon publication in the New Jersey Register. Many comments were received during the public comment period on the readoption of N.J.A.C. 4A:3. One particularly meritorious comment with respect to N.J.A.C. 4A:3-4.10(c) could not be acted on in the readoption process because it would have prompted a substantive change requiring additional public notice and comment.

In his comments, the Director of Human Resource Services for the Department of Health stated that State employees who are demoted as a result of a reduction in force to step eight of a salary range do not retain their anniversary date and must wait 39 pay periods until they can advance to the ninth step. He suggested that State employees who are demoted to the eighth step should get credit for time spent in the previous step. The proposed amendments are intended to rectify this situation. N.J.A.C. 4A:3-4.10(c)2i would include a new subparagraph (c)2i, providing that if the non-disciplinary demotional action results in step eight, the employee would be eligible, if warranted by job performance, to advance to the ninth step on the pay period which results from the difference between the time served on the step prior to demotion and 39 pay periods. In other words, the employee would receive credit for the time spent in the previous step and would not have to wait a full 39 pay periods before advancement to step nine.

The proposed amendment would not change the effect of a demotion to step nine. The anniversary date would still be based in that case on the effective date of the action.

Social Impact

The proposed amendments would allow State employees who are demoted to the eighth step as contemplated by N.J.A.C. 4A:3-4.10(c) to be treated more equitably. Rather than wait 39 pay periods following the demotion before being eligible for advancement to step nine, the employee's wait would be reduced by the number of pay periods already served on the step prior to the demotion. The fairer treatment of such an employee contemplated by the amendment should substantially increase employee morale and productivity. This proposed amendment would only affect State employees demoted for non-disciplinary reasons.

Economic Impact

The overall economic impact of this amendment on State government would be minimal. However, State employees facing the situation of N.J.A.C. 4A:3-4.10(c) and demoted to the eighth step would be eligible for a salary increase earlier than would be possible under the current rules. An employee in this situation thus would enjoy substantial economic benefits.

Regulatory Flexibility Statement

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

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

4A:3-4.10 Demotional pay adjustments: State service

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

(c) If the demotion is other than disciplinary or in lieu of removal under (b) above, the employee's salary shall be reduced one increment in the higher range. Then the employee's salary in the lower range will be set at the step that is equal to or next higher than such reduced salary.

1. The adjustment in (c) above is made after adjustment for workweek. See N.J.A.C. 4A:3-4.9(d).

2. The anniversary date is retained, unless the action results in step eight or nine [, in which case the anniversary date is based on the effective date of the action].

i. If the action results in step eight, the employee shall be eligible for advancement to step nine, if warranted by performance, on the pay period that reflects the difference between the time served on the step prior to demotion and 39 pay periods.

ii. If the action results in step nine, the anniversary date is based on the effective date of the action.

3.-4. (No change.)

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

(b)

MERIT SYSTEM BOARD

Equal Employment Opportunity

Proposed Amendments: N.J.A.C. 4A:4-2.2 and 2.14; 4A:6-1.3; and 4A:7-1.1, 2.1, 2.2, 2.3 and 3.1

Authorized By: Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.
Authority: N.J.S.A. 11A:2-6(d) and 42 U.S.C. 12101 et seq.
Proposal Number: PRN 1993-588.

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

Thursday, November 18, 1993 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
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 December 1, 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 Americans with Disabilities Task Force on Employment of the New Jersey Department of Personnel (Task Force) was established in July, 1992 by the Commissioner of Personnel to gain comments on the Department's services, policies and practices with respect to persons with disabilities. Gathering this information was necessitated by enactment of the federal Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq. The Task Force, reestablished in July, 1993 by the Commissioner as the Americans with Disabilities Advisory Board, proposed numerous recommendations to improve the State's services for persons with disabilities. One such recommendation was made to the Merit System Board for certain terminology in Title 4A of the New Jersey Administrative

Code to be changed to comply with the spirit of the ADA, and to acknowledge the current accepted terminology used by people with disabilities, as expressed by various groups including the President's Committee on Employment of People with Disabilities.

In the current rules, such terms as "handicapped," "handicapped/disabled" and "disabled persons" are used, although, as noted, the preferred terminology is "persons with disabilities." Use of the term "handicapped," which has previously been used in Federal and State law, is being phased out, as evidenced by the enactment of the ADA. A proposed amendment to N.J.A.C. 4A:7-1.1(c) explains that the outdated term "handicapped" is now subsumed within the term "persons with disabilities."

In addition to that amendment, amendments are proposed to other subsections of N.J.A.C. 4A:7-1.1 and to N.J.A.C. 4A:4-2.2, Types of examinations, N.J.A.C. 4A:4-2.14, Accommodation and waiver of examinations, N.J.A.C. 4A:6-1.3, Sick leave, and several sections of N.J.A.C. 4A:7 which now use the outmoded terminology.

Social Impact

The ADA and the State Law Against Discrimination place a unique responsibility upon State government to establish leadership which effectively implements the mandates of these laws while emphasizing the uniqueness, abilities and worth of individual persons first, and treating their disabilities as secondary factors. The proposed amendments should ensure that persons with disabilities will take their rightful place in the world of work and participate fully in the mainstream of society. These aspirations are finally receiving the attention they deserve as the United States focuses on the implementation of the ADA.

Placing the "person" before the "disability" focuses attention on an individual's uniqueness and worth. Use of expressions like "the handicapped" emphasizes the condition rather than the person, and promotes separateness. This later term is in contravention of the goals of inclusion and individual consideration mandated by the ADA and the State Law Against Discrimination.

Economic Impact

In the long run, these proposed amendments should have a positive economic impact for persons with disabilities, all merit system employees and the general public. The change in terminology should assist persons with disabilities to be recognized for abilities which they can bring to the job, and should enhance their opportunities for hiring and promotions. The general public will benefit from the services of additional talented individuals.

Regulatory Flexibility Statement

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

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

4A:4-2.2 Types of examinations

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

(c) See N.J.A.C. 4A:4-2.14 for rules regarding the accommodation and waiver of examinations for [disabled or handicapped] persons **with disabilities**.

4A:4-2.14 Accommodation and waiver of examinations for [disabled] persons **with disabilities**

(a) Otherwise qualified applicants [who have a disability] **with disabilities** may request **an** accommodation in taking an examination by inndicating their request for accommodation on the examination application.

1. (No change.)

(b) The Commissioner may waive an examination for an otherwise qualified candidate or provisional [who suffers from] **with** a physical, mental or emotional affliction, injury, dysfunction, impairment or disability which makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. (No change.)

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

4A:6-1.3 Sick leave

(a)-(g) (No change.)

(h) Sick leave may be used by [a handicapped] **an** employee **with a disability** for absences related to the acquisition or use of an aid for the [handicap] **disability** when the aid is necessary to function on the job. In such cases, reasonable proof may be required by the appointing authority.

(i) (No change.)

4A:7-1.1 General provisions

(a) There shall be equal employment opportunity for all persons in, or applicants for, the career, unclassified and senior executive services, regardless of race, creed, color, national origin, sex, affectional or sexual orientation, age, marital status, religion, or [handicap/disability] **disability**, except where a particular qualification is specifically permitted and is essential to successful job performance. See N.J.A.C. 4A:4-4.5 on bona fide occupational qualifications.

(b) Equal employment opportunity includes, but is not limited to, recruitment, selection, hiring, training, promotion, transfer, work environment, layoff, return from layoff, compensation and fringe benefits. Equal employment opportunity further includes policies, procedures and programs for recruitment, employment, training, promotion, and retention of minorities, women and [handicapped/disabled] persons **with disabilities**. Equal employment opportunity but not affirmative action is required with respect to persons identified solely by their affectional or sexual orientation.

(c) [Handicapped/disabled persons] **Persons with disabilities** shall include any person who has a physical or mental impairment which substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. See 29 U.S.C. 706 and 42 U.S.C. 12101 et seq. **Persons with disabilities shall also include persons who are defined as handicapped under N.J.S.A. 10:5-5(q).** See also N.J.A.C. 4A:4-2.14 for accommodation and waiver of examinations for [handicapped/disabled] persons **with disabilities**.

(d) (No change.)

4A:7-2.1 Division responsibilities: State service

(a) The Division of Equal Employment Opportunity and Affirmative Action (Division of EEO/AA) shall develop, implement and administer an equal employment opportunity and affirmative action program for all State employees in the career, senior executive and unclassified services. Such program shall:

1. Ensure that each State agency's equal employment opportunity and affirmative action goals for minorities, women and [handicapped/disabled] persons **with disabilities** are in accordance with the Standard for Determining Underrepresentation of Women and Minorities in New Jersey State Government, and are related to their population in the New Jersey labor market as determined by the relevant federal census;

2.-7. (No change.)

4A:7-2.2 Department of Personnel responsibilities: State service

(a) The Department of Personnel, through the Division of EEO/AA, shall:

1. Ensure that minorities, women and [handicapped/disabled] persons **with disabilities** are among the pool of applicants for all vacant positions in the career, unclassified and senior executive services;

2.-7. (No change.)

4A:7-2.3 Equal Employment Opportunity Advisory Commission: State service

(a) An Equal Employment Opportunity Advisory Commission shall be established and shall consist of 11 members appointed by the Governor, at least six of whom shall be minorities, women and [handicapped] persons **with disabilities**, and shall meet at least quarterly.

(b) (No change.)

4A:7-3.1 Appointing authority responsibilities

(a) (No change.)

(b) Each State agency shall:

1.-5. (No change.)

6. Ensure that minorities, women and [handicapped/disabled] persons **with disabilities** are considered for employment opportuntities where the need for aggressive efforts have been identified.

7. (No change.)

(a)

MERIT SYSTEM BOARD

Make-up Examinations

Proposed Amendment: N.J.A.C. 4A:4-2.9

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 1993-589.

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

Thursday, November 18, 1993 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
Trenton, New Jersey

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

Send written comments by December 1, 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 Merit System Board proposes amendments to N.J.A.C. 4A:4-2.9 concerning make-up examinations for professional level engineering promotional examinations, and requests for make-up examinations. Specifically, the schedule for professional level engineering promotional examinations, like the police and fire promotional examinations, are known well in advance of the test dates and are administrated twice a year. These circumstances create the potential for security problems with respect to make-up examinations. For these reasons, the Board believes that authorization for make-ups for professional level engineering promotional examinations should be identical to that for police and fire promotional examinations, as provided in N.J.A.C. 4A:4-2.9(b).

The Board further proposes changing N.J.A.C. 4A:4-2.9(d) to address conflicts which a candidate may have with the test date due to military leave, vacation leave, or any other valid reasons of which the candidate is aware upon receipt of the examination notice. In those cases, the candidate wouuld have to submit a written make-up request within five days of receipt of the notice.

Social Impact

The proposed amendments would enhance the security of the examination process without undue hardship on candidates. The first part of the proposal, the amendments to N.J.A.C. 4A:4-2.9(a) and (b), are intended to permit make-up examinations only in limited, urgent instances, where candidates are aware of the examination scheduling well ahead of time. Since professional level engineers are aware of promotional examination schedules well in advance, restrictions on the eligibility for make-ups for those tests should not create undue inconvenience or hardship. The proposed amendment to subsection (d) likewise is intended to ensure that candidates submit make-up requests in a timely manner when they are aware of military leave, vacation leave or other valid reasons for a make-up upon receipt of the examination notice. This latter amendment also should not cause any hardship on affected candidates.

Economic Impact

The proposed amendments should have a positive economic impact on State agencies and political subdivisions within the merit system, which would benefit from more efficient examination administration and enable these appointing authorities to benefit from a smoother appointment process.

Regulatory Flexibility Statement

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

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

4A:4-2.9 Make-up examinations

(a) Make-up examinations, except for police [and], fire **and professional level engineering** promotional examinations under (b) below, may be authorized for the following reasons:

1. Error by the Department of Personnel or appointing authority;

2. Serious illness or disability of the candidate on the test date, provided the candidate submits a doctor's certificate specifying that the candidate was not able to take the test on that day for medical reasons;

3. Documented serious illness or death in the candidate's immediate family;

4. Natural disaster;

5. Prior vacation or travel plans outside of New Jersey or any contiguous state, which cannot be reasonably changed, as evidenced by a sworn statement and relevant documentation; and

6. Other valid reasons.

(b) For police [and], fire **and professional level engineering** promotional examinations, make-up examinations may be authorized only in cases of:

1. Debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination.

2. Death in the candidate's immediate family as evidenced by a copy of the death certificate; or

3. A candidate's wedding which cannot be reasonably changed as evidenced by relevant documentation.

(c) (No change.)

(d) In situations involving illness, death or natural disasters, a candidate must request, in writing, a make-up examination, within five days after the examination date. [In case of military leave or prior vacation plans, a written request for a make-up examination must be submitted prior to the examination date] **However, a candidate must submit a written request for a make-up examination within five days of receipt of the examination notice in case of military leave, prior vacation plans or other valid reasons of which a candidate is aware upon receipt of the examination notice.**

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

(b)

MERIT SYSTEM BOARD

Voluntary Demotions

Proposed Amendment: N.J.A.C. 4A:4-7.8

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 1993-590.

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

Thursday, November 18, 1993 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza, 1st Floor
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 December 1, 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 Merit System Board proposes that N.J.A.C. 4A:4-7.8 be amended to include a new subsection (f) to provide for the aggregation of seniority of an employee in the title when he or she returns to that title following a voluntary demotion, as long as the following criteria are met: the demotion was necessary due to the temporary loss of a required license; it was agreed to by both the employee and the appointing authority; and it was for a specific period of time but for no longer than one year.

The amendments are necessary to address situations which have arisen in the Department of Transportation and the Department of Environmental Protection and Energy, to cite two examples, in which an employee suffers a temporary loss of licensure and the appointing authority wishes to retain the employee in anticipation of the license in question being restored. The employee thus takes a voluntary demotion. However, when the license is restored and the employee returns to the higher permanent title, the employee has suffered a loss of all seniority accrued prior to the voluntary demotion. The amendments would allow seniority to be aggregated in these limited circumstances.

Social Impact

The impact of this proposed amendment is limited, in that it is intended to restrict the negative effects of a loss of licensure only to the period, up to a maximum of one year, in which the licensure has been lost. An employee who regains eligibility in the higher title upon restoration of the license would not suffer further effects of the temporary loss of license by forever losing all seniority accrued prior to losing the license. In this way, an employee's record of service, which would have been continuous but for the temporary loss of license, would remain intact.

Economic Impact

Employees who meet the criteria set forth in the proposed amendment would benefit from aggregated seniority which could be utilized in promotional and layoff situations, ultimately resulting in economic benefit to these employees. In addition, appointing authorities would benefit from the retention of employees whose service would be recognized rather than lost because of temporary ineligibility for a given title.

Regulatory Flexibility Statement

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

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

4A:4-7.8 Voluntary demotion

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

(f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:

1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;

2. The demotion was agreed to by both the employee and the appointing authority; and

3. The demotion was for a set period of time up to a maximum of one year.

(a)

MERIT SYSTEM BOARD

Leaves of Absence

Proposed Amendments: N.J.A.C. 4A:6-1.2, 1.6, 1.11, 1.12 and 1.13

Authorized By: Merit System Board, Anthony J. Cimino, Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:2-6(d), 11A:6-1 through 15; 38:23-1, 2 and 4; 38A:4-4, 52:14-26.2 and P.L. 1993, c.105.

Proposal Number: PRN 1993-591.

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

Thursday, November 18, 1993 at 5:30 P.M.
Office of Administrative Law
9 Quakerbridge Plaza
Hamilton Township, 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 December 1, 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

Departmental review as well as newly enacted legislation (P.L. 1993, c.105) have presented the need for amending merit system rules on leaves of absences.

Current rules for vacation leave provide, with regard to State employees, that an increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met. See N.J.A.C. 4A:6-1.2(a)3. However, there are situations where an employee is on a leave of absence without pay during the calendar year in which it was anticipated the years of service requirement would be met for an increase (for example, for an employee who began service during 1981, the increase from 15 to 20 days after 12 years of continuous service would be met in 1993) but due to the length of the unpaid leave, the service requirement is not met until the following calendar year (1994). In such situations, the employee is entitled only to 15 vacation days in 1993 and is liable for any days in excess of 15. A new provision, N.J.A.C. 4A:6-1.2(a)3i, would codify this policy.

Collective negotiations agreements for some State units provide certain reappointment rights for unclassified employees following a reduction in force. An amendment to N.J.A.C. 4A:6-1.2(c) would provide that such employees be credited with service time prior to the reduction in force, for purposes of meeting the continuous service requirements.

Recent appeals concerning Sick Leave Injury (SLI) benefits have raised questions on the application of the one-year limit on benefits, particularly with regard to claims arising from carpal tunnel syndrome and similar disorders. N.J.A.C. 4A:6-1.6(b)3 currently provides that SLI benefits are limited to a one year period from the initial date of the injury or illness. The longstanding interpretation of this rule, as expressed in decisions by the Merit System Board, has been that the one year period is continuous, and does not consist of aggregate periods of disability which total one year. To clarify the rule in conformance with this interpretation, N.J.A.C. 4A:6-1.6(b)3 would be amended to provide that SLI benefits are limited to a period beginning on the initial date of the injury or illness and ending one year from that date. Further, a provision would be added that SLI benefits shall not be paid for any absence occurring more thanone year from the initial date of the injury or illness, even if the aggregate period of disability does not exceed one year. With regard to progressive, degenerative or repetitive motion disorders, such as asbestosis or carpal tunnel syndrome, it is nearly impossible to specify "the initial date of the injury or illness" because of the nature of those disorders. Therefore, the Board proposes to add a new N.J.A.C. 4A:6-1.6(b)3ii providing that the one year period begins with the first date of disability from work.

In N.J.A.C. 4A:6-1.11, concerning military leave, questions have arisen regarding entitlement of members of the reserves to leaves of absence with pay. To clarify longstanding application of these rules, the Board proposes to amend subsection (c) to provide that paid leave is available only for field training which is a part of the required annual tour of duty in order to be a member of the reserves component.

With regard to N.J.A.C. 4A:6-1.12, Leave for appointment by Governor, the governing statute (N.J.S.A. 52:14-16.2) makes clear that an employee is entitled to a leave of absence if appointed to an office by the Governor. However, clarification is needed with regard to the responsibility to request such a leave. Therefore, the Board proposes to amend the rule to specify that the appointing authority shall grant and record the leave of absence, provided that the employee requests such a leave prior to the Governor's appointment.

Finally, an amendment to N.J.A.C. 4A:6-1.13, Convention leave, is necessary due to the enactment of Chapter 105 of the Laws of 1993. This law amends N.J.S.A. 11A:6-10 to authorize a leave of absence with pay for any corrections officer who is a member of the Italian American Police Society of New Jersey, in order to attend any State or National convention of the organization. Therefore, the Board proposes to add a new subsection (c) to reflect this new law.

Social Impact

The proposed amendment to N.J.A.C. 4A:6-1.2(c) would have a beneficial impact upon certain unclassified, union-represented employees, by providing credit for prior service in the event of a layoff and subsequent reappointment.

The proposed amendments to N.J.A.C. 4A:6-1.6 would clarify the application of the one-year limit for SLI benefits, while providing a realistic and workable starting date for the one-year period for those State employees who are disabled due to progressive, degenerative or repetitive motion disorders.

The proposed amendment to N.J.A.C. 4A:6-1.13 would implement a new law, allowing correction officers who are members of the Italian American Police Society of New Jersey, paid leave in order to attend conventions of the organization.

The remaining proposed amendments clarify current practice, and therefore are expected to have minimal social impact.

Economic Impact

The proposed amendments would have a negligible economic impact, since they either clarify existing practice or make minor changes in policies governing leaves of absence for public employees.

Regulatory Flexibility Statement

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

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

4A:6-1.2 Vacation leave

(a) Full-time State employees in the career service shall be entitled to annual paid vacation leave, credited at the beginning of each calendar year in anticipation of continued employment, based on their years of continuous State full-time or part-time service in the career, senior executive or unclassified service. See [subsection] (c) **below** for definition of continuous service.

1.-2. (No change.)

3. An increase in vacation leave shall be granted at the beginning of the calendar year in which the years of service requirement will be met.

i. When there is a change in the calendar year in which the years of service requirement is met, due to an employee's leave without pay, the employee shall be liable for any increased vacation leave that was not earned.

4. (No change.)

(b) (No change.)

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

1.-2. (No change.)

3. An unclassified State employee, who is reappointed following a layoff under the provisions of a collective negotiations agreement, shall be credited with service prior to the layoff and shall continue to accrue service upon reappointment.

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

4A:6-1.6 Sick Leave Injury (SLI) requirements: State service

(a) (No change.)

(b) An employee who is disabled due to a work-related injury or illness shall be granted a leave of absence with pay.

1.-2. (No change.)

3. Benefits are limited to a [one year] period [from] **beginning on** the initial date of the injury or illness **and ending one year from that date.**

i. Benefits shall not be paid for any absence from work occurring more than one year from the initial date of the injury or illness, even if the aggregate period of disability does not exceed one year.

ii. In cases of disorders as set forth in (c)4 below, the one year period shall begin with the first date of disability from work.

(c) The disability must be due to an injury or illness resulting from the employment.

1.-3. (No change.)

4. Progressive, degenerative or repetitive motion disorders, such as asbestosis or carpal tunnel syndrome, are compensable only when the claim is supported by medical documentation clearly establishing that the disorder would not have occurred but for the performance of specific work duties.

5.-6. (No change.)

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

4A:6-1.11 Military leave

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

(c) A permanent employee who is a member of the organized reserves of the Army, Navy, Air Force or Marine Corps of the United States or other affiliated organizations shall be entitled to a leave of absence with pay on days on which he or she is required to engage in field training, but only that training which consists of participation in unit training field operations **and is a part of the required annual tour of duty in order to be a member of that component**. However, appointing authorities may reschedule an employee's work time to avoid conflict with military field training.

1.-2. (No change.)

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

4A:6-1.12 Leave for appointment by Governor

[A] **When a** permanent employee or an employee in the senior executive service **is** appointed by the Governor to an office [shall be granted]**, the appointing authority shall grant and record** a leave of absence without pay for the period of appointment**, provided that the employee requests such a leave of absence prior to the appointment**. Upon the expiration of the leave, the employee shall have the right to return to the former title and receive all the rights, privileges and benefits of that title as if he or she had remained in that title. See N.J.S.A. 52:14-16.2.

4A:6-1.13 Convention leave

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

(c) Any corrections officer who is a member of the Italian American Police Society of New Jersey shall be granted a leave of absence with pay to attend any State or national convention of the organization. The leave shall be for a period inclusive of the duration of the convention with a reasonable time allowed for travel to and from the convention. A certificate of attendance at the convention shall, upon request, be submitted by the member so attending. See N.J.S.A. 11A:6-10.

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

COMMUNITY AFFAIRS

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Lease-Purchase Program

Proposed New Rules: N.J.A.C. 5:80-24

Authorized By: New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.
Authority: N.J.S.A. 55:14K-5e and 5aa.
Proposal Number: PRN 1993-605.

Submit comments by December 1, 1993 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate, safe and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing for the construction, rehabilitation or improvement of housing.

The goal of the program proposed herein is to provide affordable homeownership opportunities to moderate-income families in New Jersey through a lease-purchase agreement with eligible buyers. Families will be able to purchase the home with a total downpayment of only $1,000 because the remainder of their downpayment and closing costs will be accumulated during the program's lease period. At the end of the lease period, families will have the option to purchase the unit from the Agency.

To achieve this, the Agency will accept applications from banks and developers/builders to purchase housing developments for the program. The Agency will issue short-term tax-exempt notes to acquire these developments. The Agency would then lease the units to qualified families and own and manage the project during the lease period. During the lease period, the rental income is used to pay the interest on the notes and management costs on the project. Because of the very low rate of interest on the notes, the rental income is sufficient to fund these costs while generating a surplus from the rents to be applied by the Agency as a grant toward the buyer's downpayment and closing costs. The units would be purchased by the families at the end of the lease period, and the sales proceeds would be used by the Agency to retire the notes.

Social Impact

The Lease-Purchase Program is designed to provide affordable homeownership opportunities to moderate income families through a lease-purchase arrangement. By requiring only a $1,000 downpayment, and applying rent during the lease period toward the purchase price and closing costs, the program enables families that would otherwise be unable to purchase a home, with the ability to become a homeowner.

Economic Impact

The Lease-Purchase Program will have an economic impact on eligible buyers as the downpayment cost in the purchase of a home will be significantly less than in the conventional market. Eligible buyers will be required to make a $1,000 downpayment. The program should also assist banks and developers/builders of housing developments by offering a commitment to purchase a portion of the housing development once they have completed 50 percent of the units in the development.

Regulatory Flexibility Analysis

The proposed new rules will impact upon developers/builders, some of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As to reporting, recordkeeping and compliance requirements, the proposed rules require participants to file an application and supporting documents and, if eligible, require participants to enter into loan documents with the Agency. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed rules. Because the program is strictly voluntary and is beneficial to the participants, and due to the minimal nature of the compliance requirement, no differentiation in the compliance requirements based upon business size is proposed.

Full text of the proposed new rules follows:

SUBCHAPTER 24. LEASE-PURCHASE PROGRAM

5:80-24.1 Authority

The rules in this subchapter are issued under and pursuant to the authority of the New Jersey Housing and Mortgage Finance Agency Law of 1983 constituting Chapter 530 of the Laws of 1983, N.J.S.A. 55:14K-1 et seq., including N.J.S.A. 55:14K-5e and 55:14K-5aa.

5:80-24.2 Purpose

These rules are established to assist the Agency to make available a base of housing stock of residential units in the State of New Jersey as contemplated by N.J.S.A. 55:14K-5e and 55:14K-5aa for families under the lease-purchase arrangement. It is intended that the residential units would become owner occupied after a maximum 36-month rental period during which a portion of the monthly fair market lease payments received by the Agency would be set aside by the Agency to enable it to make a grant towards the downpayment and/or closing costs of an eligible buyer who exercises the purchase option.

5:80-24.3 Definitions

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

"Act" means the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.

"Agency" means the New Jersey Housing and Mortgage Finance Agency.

"Developer" means any individual, corporation, general or limited partnership, joint venture or other entity.

"Eligible buyer" means one or more natural persons intending upon execution of a lease-purchase agreement to live together (together with any dependents), who execute a lease-purchase agreement, and who intend to exercise the option on the housing unit subject to such lease-purchase agreement and to purchase that unit in the name of the eligible buyer.

1. To be an eligible buyer, the one or more natural persons must together have an annual income:

i. Sufficient to pay the fair market rental required by the lease-purchase agreement and, in the reasonable estimation of the Agency, sufficient to qualify for any financing required to enable such person to exercise the option to purchase from the Agency the unit subject to the proposed lease-purchase agreement (taking into account the proposed grant); and

ii. Not exceeding 200 percent of the median income, adjusted for family size, in the county where the eligible development is located, as such percentage may be further adjusted by the Agency by amendment of this definition in its reasonable discretion from time to time, and from eligible development to eligible development, to reflect the cost of living and affordable housing prices in the county where the eligible development is located.

2. Notwithstanding 1ii above, admission to eligible developments shall be limited to families whose gross aggregate family income at the time of admission does not exceed six times the annual rental or carrying charges approved by the Agency except for families with three or more dependents whose incomes may be up to seven times the annual rental or carrying charge.

"Eligible development" means that portion of any partially or wholly completed development which is offered for sale to the Agency:

1. The purpose of which is to create one or more residential structures for owner occupancy whether in the form of detached units or attached units for separate occupancy (including, with limita-

tion, condominiums, but excluding cooperative apartments) together with any land, utilities, sewers, structures, facilities or other improvements, appurtenant or ancillary thereto; and

2. Which is located entirely within the geographic boundaries of the State of New Jersey.

"Grant" means the amount designated in the lease-purchase agreement with respect to a unit which the Agency agrees to contribute at the closing on that unit to an eligible buyer who exercises an option to buy that unit, to enable that eligible buyer to meet downpayment and/or closing costs, subject to such recapture provisions on the occurrence of a resale of that unit as set forth in the lease-purchase agreement.

"Lease-purchase agreement" means a contract between the Agency, as lessor/seller, and an eligible buyer, as lessee/option holder, pursuant to which the eligible buyer agrees to rent a unit within an eligible development with an option to buy.

"Purchase agreement" means any purchase agreement entered into by the Agency pursuant to these rules in which the Agency agrees, subject to the terms and conditions set forth in such agreement, to purchase some or all of the housing units, land and other appurtenances related thereto constituting an eligible development.

"Purchase price" means the dollar amount, payable by the Agency to acquire an eligible development pursuant to and as adjusted by the terms of the relevant purchase agreement, as determined on the date of purchase.

"Sales price" means that fair market price set forth in the purchase option that the eligible buyer will pay upon exercise of that option to purchase a housing unit within an eligible development.

5:80-24.4 Authority to enter into purchase agreements

(a) The Agency may enter into a purchase agreement for any eligible development, provided that the maximum purchase price for a unit within the eligible development may not exceed the higher of 250 percent of the annual maximum income of an eligible buyer of that unit or the median sales price of existing single-family homes in the area where the eligible development is located.

(b) The Agency may prioritize requests for purchase agreements, taking into consideration the goals of this program, market conditions for the Agency's securities, together with the feasibility of the respective eligible development, the location of existing eligible developments and the location of the proposed eligible development, the readiness of the developer to proceed, the experience of the developer, and the marketability of the units in the eligible development.

5:80-24.5 Purchase agreement requirements

(a) Each purchase agreement shall contain the following conditions precedent to the Agency's obligation to purchase an eligible development:

1. At least 50 percent of all housing units in the partially or wholly completed development of which the eligible development is a portion, shall have been previously sold to buyers not participating in this lease-purchase program. This requirement shall not apply to eligible developments of 25 or fewer units;

2. At least 50 percent of all housing units comprising the eligible development shall be complete and in move-in condition, with certificates of occupancy issued and in effect for them, and with signed lease-purchase agreements with eligible buyers. The remaining housing units of the eligible development to be purchased by the Agency must be completed, with certificates of occupancy in effect, and with signed lease-purchase agreements with eligible buyers, within one year of the signing of the purchase agreement. The Agency must be the first user of each unit except that the Agency may agree to purchase a substantially rehabilitated unit. A unit shall be treated as substantially rehabilitated when rehabilitation expenditures equal or exceed 25 percent of the purchase price of the unit to the Agency;

3. A builder's warranty must be provided in a form and substance equivalent to the new homeowner's warranty required by N.J.S.A. 46:3B-1 et seq.; and

4. The Agency must have, prior to or simultaneously with such purchase, received proceeds from the sale of the Agency's securities in an amount equal to as much as 110 percent of the purchase price (the purpose of such excess being to provide a cash reserve of up to 10 percent for the payment of such securities, if required in order to market such securities and if such reserve is not established from other funds, allocated or credited to the lease-purchase program).

(b) Each purchase agreement shall contain the following requirements:

1. All documents relating to an eligible development shall be in form and substance satisfactory to the Agency;

2. The developer shall provide title insurance, casualty and liability insurance and builder's risk insurance, all by insurers and in such amounts sufficient to protect against the risk of loss associated with the development, purchase and financing of the eligible developments;

3. Real estate taxes, assessments or like payments relating to the eligible development accruing for the period ending on the last day of the calendar year during which the transactions contemplated by the purchase agreement are consummated shall be paid by the seller of the eligible development; and

4. At closing, the eligible development shall be subject to no encumbrances other than encumbrances acceptable to the Agency.

5:80-24.6 Application

(a) An application for a purchase agreement for an eligible development shall be made by the proposed developer in writing to the Agency, and shall contain the following information:

1. The amount of the requested purchase price, in total and by unit;

2. A description of the eligible development together with a recent appraisal of the eligible development by a New Jersey certified general real estate appraiser, a recent title report, a site plan, a survey by a licensed surveyor, the applicable zoning ordinances, a report on the status of utilities, roads, and the existing financing, if any, relating to the eligible development;

3. A description of the developer (for example, whether a corporation, limited or general partnership, joint venture or otherwise), including a list of all existing and proposed owners of equity in the developer; and

4. At the Agency's discretion, an environmental audit, which will be required if any of the information received in connection with the application indicates that there may be environmental concerns associated with the proposed eligible development.

(b) Prior to the signing of each lease-purchase agreement with an eligible buyer, the developer shall obtain the Agency's approval of that eligible buyer. To enable the Agency to determine whether to approve a proposed eligible buyer, the developer shall submit to the Agency the following information:

1. The name, annual income, and employment history of the proposed eligible buyer, together with the Federal and state income tax returns most recently filed by the individual or individuals constituting the eligible buyer; and

2. Such other information as shall be required by the Agency from time to time pertaining to a specific proposed eligible buyer.

5:80-24.7 Authority to enter into lease-purchase agreements

(a) The Agency may enter into a lease-purchase agreement with an eligible buyer, provided that such lease-purchase agreement contains as a condition precedent to the Agency's obligations thereunder that lease-purchase agreements for at least 50 percent of the housing units in the subject eligible development be or have been fully executed and delivered by all parties thereto prior to, or simultaneously with, the Agency's consummation of the transactions contemplated by the related purchase agreement.

(b) Each lease-purchase agreement with an eligible buyer shall contain the following terms and conditions, in addition to such other terms and conditions that the Agency may from time to time deem appropriate for a particular agreement:

1. The eligible buyer shall agree to rent at a fair market rental a housing unit in an eligible development for a fixed period as determined by the Agency, not to exceed 36 calendar months, and to pay the monthly rental promptly and fully. Failure to make such

rental payments promptly and fully, or physical abuse of the unit, shall result in prompt eviction and the termination of the option described in (b)3 below;

2. The eligible buyer shall agree that such housing unit be used solely as a principal residence, and shall further agree that the unit shall not be used for seasonal use, as an investment property, or for business purposes;

3. The eligible buyer shall pay upon the execution of the lease-purchase agreement, a nonrefundable option fee of $1,000 for an option to purchase for cash the housing unit which is the subject of the lease-purchase agreement, on the expiration date of the lease period set forth therein. If the eligible buyer does not exercise the option, the lease will terminate at the expiration of the lease period, the eligible buyer will immediately vacate the unit, and the Agency will retain the option fee;

4. In return for the option fee, the Agency shall grant the eligible buyer an option to purchase the subject housing unit at a fixed price; each price being the unit's estimated fair market value at the end of the lease period, such estimate being set pursuant to an appraisal prior to the execution of the lease-purchase agreement;

5. The Agency shall accumulate in a segregated fund a percentage (calculated at the time of execution of the lease-purchase agreement) of the fair market monthly rent it will receive during the lease period set forth in the lease-purchase agreement at a rate calculated by the Agency to be sufficient, together with the option fee, and its projected profit on the sale of the unit, if the option is exercised, to enable it to make the grant. The grant will be applied towards closing costs and the downpayment on the sales price for such housing unit for which the eligible buyer has otherwise obtained or is expected to obtain his or her own financing. The amount of the grant to be made will be calculated by the Agency (at the time the lease-purchase agreement is executed) as the amount, given anticipated market conditions, to be necessary, taking into account the assets of the eligible buyer, to induce a mortgage lender to finance the balance of the sales price for the housing unit. Such calculation by the Agency shall not constitute a representation or warranty to the eligible buyer of the availability of mortgage financing and the eligible buyer shall have no recourse against the Agency in the event such eligible buyer fails to obtain mortgage financing or is otherwise unable to exercise the option to purchase the housing unit which is subject to the lease-purchase agreement. If, for any reason, the eligible buyer is unable to or chooses not to exercise the option to purchase, all monies so set aside shall be retained by the Agency.

i. Notwithstanding anything to the contrary contained in these rules, the percentage rent to be set aside by the Agency to fund a portion of the grant shall not reduce the unrestricted portion of the rent to an amount less than the amount sufficient to maintain and operate the rental housing and to meet debt service on the portion of the securities issued by the Agency to finance the purchase of such housing, and all monies set aside with respect to such downpayment and/or closing costs shall be subject to application to pay required debt service on such securities; and

6. The eligible buyer shall acknowledge that the Agency may give a mortgage and/or other security interests in the housing unit to secure repayment of the financing undertaken by the Agency to finance the purchase price for the eligible development.

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Housing Investment Sales

Proposed New Rules: N.J.A.C. 5:80-32

Authorized By: New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.
Authority: N.J.S.A. 55:14K-5g and N.J.S.A. 52:27D-321f.
Proposal Number: PRN 1993-592.

Submit comments by December 1, 1993 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve rental housing for low and/or moderate income families.

Housing sponsors can be either nonprofit or for-profit entities. For-profit sponsors are restricted by law on the profits they may earn during the ownership of projects financed by the Agency. When a project generates income in excess of debt service, operating expenses and the maximum profit the sponsor, by law, may earn, the surplus money remains in the project's operating accounts and is invested. The surplus funds are known as "residual receipts."

Several of the projects financed by the Agency and owned by housing sponsors (both nonprofit and for-profit) have accumulated residual receipts. The Agency adopted rules at N.J.A.C. 5:80-30 which permit nonprofit sponsors to use such surplus for the following purposes:

1. To provide funding to expand the supply of affordable rental housing or to render financial assistance to other Agency financed or affordable housing projects;

2. The funding of supplementary services, such as free senior citizens transportation, medical assistance and other social services programs and activities; and

3. Other uses as may, from time to time, be requested, which will enhance the feasibility of a new project or the financial and social condition of an existing project.

Those rules do not apply to for-profit sponsors. The proposed new rules would permit for-profit sponsors access to a portion of the residual receipts upon a sale of the project to a sponsor which agrees to preserve the low and/or moderate income status of the project. In conjunction with the sale, the portion of the residual receipts not available to the sponsor is distributed to the Agency as a source of funding for the purposes set forth in items 1 through 3 above.

Social Impact

The proposed new rules are expected to increase the supply of affordable housing by providing the Agency with a source of funds to finance additional rental housing. In addition, the rules require the purchaser of the housing project to extend the affordability controls currently in place for an additional 35 years beyond the original mortgage term, thereby extending the preservation of the housing for low and/or moderate income families.

Economic Impact

From the residual receipts that have accumulated by all projects owned by for-profit sponsors, approximately $8,000,000 could be distributed to the Agency, if the sponsors elect to participate in the program. The use of these funds by the Agency would provide needed housing and is expected to have a generally beneficial effect upon the communities in which the housing is based, generating economic investment into the housing and labor markets. In applying for approval of, and concluding, a housing investment sale, a for-profit sponsor will incur the administrative costs of application, and be required to pay the Agency-cost based application fees and necessary bond counsel payments.

Regulatory Flexibility Analysis

The proposed new rules allow for-profit housing sponsors, most of whom are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to have access to a portion of residual receipts upon sale of the project to another sponsor which agrees to preserve the housing for low and/or moderate use. For-profit housing sponsors are not required to participate as the rules are not mandatory. Those sponsors who elect to participate must sell the project and obtain Agency approval of the sale. The sponsor must submit certain documentation in conjunction with the sale of the project. Expenses, such as application fees and bond counsel payments, are also required to be paid by the sponsor. These requirements are not burdensome for the following reasons: (1) the documentation required would ordinarily be done in the normal course of business, (2) most expenses incurred are reimbursed to the sponsor, (3) sponsors will derive economic benefit from receipt of up to 50 percent of the residual receipts which would otherwise be unaccessible to them, and (4) the rules are not mandatory; sponsors do not have to participate and may elect to continue to operate their project under current rules. For these reasons, and because most of the for-profit housing sponsors are small businesses, no differentiation has been provided in the rules.

Full text of the proposed new rules follows:

SUBCHAPTER 32. HOUSING INVESTMENT SALES

5:80-32.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"Available cash" means all the cash available to an eligible LD sponsor upon the closing of a housing investment sale (after payment of all transaction costs), including, but not limited to:

1. The cash portion of the purchase price paid by the buyer; and
2. Any accumulated residual receipts, as defined in N.J.A.C. 5:80-30.1, that are not subject to recapture by the United States Department of Housing and Urban Development.

"Eligible LD sponsor" means a for-profit corporation or partnership organized under, and remaining subject to, the Limited Dividend Law, L. 1949, c.184, §1 et seq., as amended (N.J.S.A. 55:16-1 et seq.), that owns and operates an Agency-financed, multifamily, rental housing project that, in each of the three fiscal years preceding the housing investment sale, has:

1. Produced a positive cash flow from operations; and
2. Been current in all debt service and escrow payments required by the Agency.

"Housing investment sale" means a transaction that promotes the provision or maintenance of low and moderate income housing, as defined pursuant to the Fair Housing Act, through the sale by an eligible LD sponsor of an Agency-financed, multifamily, rental housing project to a qualified housing sponsor upon the following terms:

1. The buyer executes a deed restriction (and such other instruments reasonably required by the Agency) to ensure that the project will remain subject to Agency restrictions regarding tenant income eligibility, tenant selection, project reserves, return on equity and rent increases for 35 years after the expiration of the term of the project mortgage at the closing of the housing investment sale. The foregoing documents shall also provide for the payment of a servicing fee to the Agency for monitoring the restrictions that apply to the project. Such fee shall not be less than the servicing fee being paid by the eligible LD sponsor seller at the time of the housing investment sale; and
2. The eligible LD sponsor invests an amount equal to 50 percent of the maximum additional return in the MAR Revolving Account.

"MAR Revolving Account" means an account established under the Agency's administrative fund. Moneys on deposit in the account may be used, at the Agency's sole discretion, to provide loans or grants that will promote the provision or maintenance of low and moderate income housing as defined pursuant to the Fair Housing Act.

"Maximum additional return" means the additional return payable to the owners of an eligible LD sponsor under the Limited Dividend Law but not under the Housing and Mortgage Finance Agency (HMFA) Law, N.J.S.A. 55:14K-1 et seq., consisting of:

1. Cash invested by the owners in the eligible LD sponsor that has not previously been recognized by the Agency as investment in a housing project;
2. A cumulative annual return of eight percent on the investment described in 1 above;
3. If project revenues representing the return described in 2 above have been invested in the project's residual receipts account or otherwise, any income earned on said annual return;
4. Moneys realized through reduction or amortization of the principal owing on the eligible LD sponsor's mortgage loan from the Agency; and
5. Moneys representing an increase in the market value of the eligible LD sponsor's realty and tangible personalty during the period such assets were owned by the eligible LD sponsor, such increase to be determined by subtracting from the purchase price for those assets:
   i. The eligible LD sponsor's investment in the project as determined by the Agency under the HMFA Law; and
   ii. The original principal amount of the eligible LD sponsor's mortgage indebtedness to the Agency.

"Purchase price" means, in a housing investment sale, and must be comprised of cash and assumption of indebtedness equal, in the aggregate, to the fair market value of the realty and tangible personalty transferred to the buyer in the sale.

5:80-32.2 Realization of maximum additional return

Upon the approval of its members in the exercise of their authority under the Fair Housing Act, N.J.S.A. 52:27D-321f, the Agency shall waive any or all of the investment-return restrictions imposed under the HMFA Law, N.J.S.A. 55:14K-1 et seq., in order to permit an eligible LD sponsor to realize, from available cash upon the closing of a housing investment sale, a maximum additional return, as well as any return otherwise allowable under the HMFA Law. Sponsors who agree to comply with the requirements of this subchapter will meet the waiver criteria.

5:80-32.3 Application procedure

(a) The eligible LD sponsor proposing to sell its project in a housing investment sale must submit to the Executive Director of the Agency a written request for approval of the sale, containing a detailed description of the terms of the sale. The request must also include a detailed project report presenting the current physical, financial, management and tenant needs of the housing project. The Agency will review this report for completeness and accuracy, may require additional information and may conduct its own review of the housing project's condition and operation. Full and complete disclosure of all material facts relating to the proposed sale must be made to the Agency in the request for approval, and the seller and all other parties to the transaction shall be under a continuing obligation to disclose such material facts through the closing of the sale.

(b) In selecting the prospective buyer for the project, the seller may solicit as many proposals as it deems necessary. Bidding is not required. The seller may negotiate among prospective buyers to obtain the best offer.

(c) The housing investment sale shall include an assignment from the seller and an assumption by the buyer of all existing project indebtedness. If the sale includes any supplemental financing, the amount of such financing shall not exceed the debt that the project can reasonably sustain from project income through the remainder of the Housing Assistance Payments (HAP) contract or, if no HAP contract exists, through the remainder of the original mortgage term, without jeopardizing the viability of the project as a low-income project for the remainder of the original mortgage term. The Agency's approval of a sale requiring supplemental financing shall be subject to the receipt of an opinion by nationally recognized bond counsel, in form and substance satisfactory to the Agency and the Attorney General, that such financing does not adversely affect the Federal and State tax treatment of any outstanding bonds, notes or other obligations of the Agency. The cost of such opinion shall be borne by the seller.

(d) As a condition of approving the sale, the Agency will require that the housing project be restored to sound physical condition in accordance with the report submitted by the seller under (a) above and the independent review by the Agency. Deferred maintenance must be completed no later than the closing of the sale, unless otherwise agreed by the Agency. Necessary repairs and capital improvements must be completed within a time frame acceptable to the Agency.

(e) As a condition of approving the sale, the Agency will also require payment of debt service arrearage, current unpaid invoices, total operating expenses covering three months (for senior citizen projects) and six months (for family projects), full funding of all reserves and any other obligations of the project.

(f) Upon assignment and assumption of the Agency's mortgage, modifications shall be made to the mortgage clearly specifying the Agency's right to enforce these regulations.

5:80-32.4 Required documents

(a) To assist the Agency in its review of an eligible LD sponsor's request for approval of a housing investment sale, as described in N.J.A.C. 5:80-32.3(a), the seller shall supply the Agency with the following documents, in form and substance satisfactory to the Executive Director:

1. Administrative questionnaires for the buyer;
2. Copies of the buyer's organizational documents;
3. Any Previous Participation Certificates (form 2530) for the buyer;
4. The buyer's certified financial statement;
5. A physical inspection report approved by the Agency;
6. A financial report on project operations approved by the Agency; and
7. Any other documents or other information requested by the Agency that would reasonably assist it in reviewing the proposed housing investment sale.

5:80-32.5 Fee

The eligible LD sponsor seller shall pay a processing fee to the Agency in such amount, as determined by the Agency, as will reimburse the Agency for its administrative cost (that is, Agency staff time and actual expenses incurred) in reviewing and processing the seller's request to engage in a housing investment sale. With its initial request for approval of the sale, the seller shall submit a nonrefundable $5,000 deposit that shall be credited toward the processing fee. The seller will be billed for any balance due at the closing of the sale, and said balance shall be due and payable at that time.

5:80-32.6 Closing

(a) At the closing of any approved housing investment sale, the following documents, in form and substance satisfactory to the Agency, shall be delivered:

1. Legal opinions from the seller's and buyer's attorneys to the effect that the respective entities' participation in the housing investment sale is fully lawful; and
2. Any legal opinion of nationally recognized bond counsel reasonably required by the Agency relating to the proposed housing investment sale or its effect upon any outstanding obligations of the Agency.

(b) At the closing of any approved housing investment sale, the following shall occur:

1. The eligible LD sponsor shall transfer title to the realty and tangible personalty comprising its project, as well as any required project accounts, escrows and reserves, to the nonprofit buyer;
2. The buyer shall pay to the eligible LD sponsor the purchase price for the project by assuming the project indebtedness of the eligible LD sponsor and paying the balance of the purchase price in cash; and
3. The Agency shall review and approve the following payments to be made from the available cash of the eligible LD sponsor:

i. To the eligible LD sponsor, an amount equal to its investment in the project, as determined under the HMFA Law;

ii. To the eligible LD sponsor, an amount equal to 50 percent of its maximum additional return;

iii. To the MAR revolving account, an amount equal to 50 percent of the maximum additional return of the eligible LD sponsor;

iv. To the State Treasurer, the balance of eligible LD sponsor's available cash, as required under the Limited Dividend Law.

APPENDIX

Example of Application of Subchapter Rules

(a) A group of individuals formed an eligible LD sponsor and invested $1,500,000 in it: $1,000,000 was invested in the physical assets of the project (that is, its realty and tangible personalty) and was recognized as investment in the project under the HMFA Law; $500,000 represented promoters' fees and was not recognized as investment in the project under the HMFA Law. The eligible LD sponsor received a non-recourse loan of $9,000,000 from the HMFA.

(b) If the Agency had recognized the entire $1,500,000 as investment in the project, which it was not required to do, the eligible LD sponsor would have been entitled to an additional return on its investment of $40,000 in each year of operation. For 15 years the project generated revenues sufficient to cover this additional $40,000. The $600,000 (15 years × $40,000) aggregate representing this additional return, along with other surpluses, was invested and earned a total of $200,000 in interest income over the 15 years.

(c) Fifteen years after the formation of the eligible LD sponsor, a qualified housing sponsor proposes to buy the physical assets of the eligible LD sponsor in a housing investment sale. At the time of the sale, the eligible LD sponsor has repaid $1,800,000 of the HMFA loan and has received the full annual return on investment permitted under the HMFA Law. At the closing of the housing investment sale, the project's residual receipts, as defined in N.J.A.C. 5:80-30.1 were $2,200,000. The purchase price paid by the buyer to the eligible LD sponsor is $10,900,000, paid by assuming the $7,200,000 mortgage loan still outstanding and paying $3,700,000 cash at closing.

(d) At the closing of the house investment sale, $200,000 of the purchase price is applied to transaction costs. Thus, the available cash of the eligible LD sponsor is $5,700,000, computed as follows: $3,500,000 (the cash portion of the Purchase Price, $3,700,000, less $200,000 in transaction costs), plus $2,200,000 (the residual receipts). (See N.J.A.C. 5:80-32.1, "available cash".)

(e) The maximum additional return is $4,000,000, computed as follows:

1. $500,000 cash invested by the owners of the eligible LD sponsor that was not recognized as investment in the project (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 1), plus
2. $600,000 representing cumulative annual return on the $500,000 described in (e)1 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 2), plus
3. $200,000 investment income earned on the $600,000 described in (e)2 above (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 3), plus
4. $1,800,000 representing amortization of principal on the Agency's mortgage loan (see N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 4), plus
5. $900,000 in market appreciation of realty and tangible personalty (that is, the purchase price of $10,900,000 less investment in the project of $1,000,000 and original mortgage loan of $9,000,000, as provided in N.J.A.C. 5:80-32.1, "maximum additional return" paragraph 5).

(f) At closing, the following payments are made from the available cash:

1. To the eligible LD sponsor, $1,000,000, representing its investment in the project, as determined under the HMFA Law (see N.J.A.C. 5:80-32.6(b)3i);
2. To the eligible LD sponsor, $2,000,000, representing 50 percent of its maximum additional return (see N.J.A.C. 5:80-32.6(b)3ii);
3. To the MAR Revolving Account, $2,000,000 representing 50 percent of the maximum additional return (see N.J.A.C. 5:80-32.6(b)3iii); and
4. To the State Treasurer, $700,000, representing the balance of available cash (see N.J.A.C. 5:80-32.6(b)3iv).

(a)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Investment of Project Funds

Proposed Amendments: N.J.A.C. 5:80-29

Authorized By: New Jersey Housing and Mortgage Finance Agency, Christiana Foglio, Executive Director.
Authority: N.J.S.A. 55:14K-5g.
Proposal Number: PRN 1993-524

Submit comments by December 1, 1993 to:
Anthony W. Tozzi
New Jersey Housing and Mortgage Finance Agency
3625 Quakerbridge Road
CN 18550
Trenton, New Jersey 08650-2085

The agency proposal follows:

Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency"), pursuant to its statutory authority, serves as an advocate for increasing the supply of adequate and affordable housing in the State. To fulfill its statutory objective, the Agency acts as a mortgage lender by providing financing to housing sponsors who wish to construct, rehabilitate or improve housing for low and moderate income families.

Housing sponsors which own Agency financed housing projects are restricted to a specified return on equity. When a project generates more surplus income than the sponsor, by law, may earn, the money remains in the project's operating accounts and is invested. The so-called "phantom income" which is generated from such investments cannot be distributed to the sponsors and, yet, is taxable to them.

In response to this problem, the Agency adopted rules at N.J.A.C. 5:80-29 which grant housing sponsors the flexibility to invest surplus funds in allowable tax free or taxable investments. Sponsors who elect to invest surplus cash in tax free investments will avoid income tax consequences.

The rules at N.J.A.C. 5:80-29 permitted only surplus cash (as defined in the rules) to be invested in tax free investments. Other operating income and required escrow accounts could not be invested in tax free investments. The proposed amendments will permit sponsors to invest all available income and escrow accounts in tax free investments.

Social Impact

The proposed amendments will increase the flexibility of housing sponsors to determine the best investment strategy for surplus funds.

Economic Impact

The proposed amendments will enable housing sponsors to choose the form of investment that will benefit the project and minimize the sponsor's tax obligations for that income which exceeds the sponsor's return on equity.

Regulatory Flexibility Analysis

The proposed amendments allow housing sponsors, most of which are small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., greater flexibility in determining the form of investment for project funds. The only reporting or recordkeeping requirement imposed by the amendments is that a housing sponsor obtain Agency approval prior to the investment of funds. It shall be the Agency's responsibility, however, at the housing sponsor's written request, to determine the extent and availability of funds for investment. As to compliance requirements, the proposed amendments provide greater flexibility for housing sponsors to determine investment strategies for income. The Agency foresees no increase in capital costs or the need for professional services in meeting the requirements of the proposed rules. As housing sponsors are predominantly small businesses and because of the minimal nature of the compliance requirements in light of the benefits to be derived from the proposed rules, no differentiation in the compliance requirement based upon business size is proposed.

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

SUBCHAPTER 29. INVESTMENT OF [SURPLUS] **HOUSING PROJECT** FUNDS

[5:80-29.1 Definition of surplus funds

"Surplus funds" means funds available after payment of: debt service and other project expenses, including operating deficits and the full funding of all required reserve accounts; permitted return on equity distributions; any anticipated or proposed capital improvements; a six month reserve for operating expenses for family projects or a three month reserve for senior citizen projects; and any other current obligations of the project.]

5:80-[29.2]**29.1** Permitted investments

(a) Housing sponsors whose mortgages are insured by the U.S. Department of Housing and Urban Development (HUD), or whose housing projects have executed an Annual Contributions Contract to receive Section 8 subsidies subsequent to February, 1980 may, with prior Agency approval, invest [surplus] **available** funds **including escrow funds** in taxable or tax free investments permitted by HUD, **provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request**.

(b) All other projects, with prior Agency approval, may invest [surplus] **available** funds **including escrow funds** in the following**, provided that they have not incurred operating losses for the past three years and provided that all escrows are fully funded at the time of the request:**

1.-7. (No change.)

(c) (No change.)

(d) Agency staff, at the sponsors' written request, [shall determine the extent and the availability of surplus funds and] shall respond [to a request to invest surplus funds] within 30 days after the complete request is received. The sponsors shall submit a certification that the investments requested are within the permissible investments listed in these rules.

(e) Investment of escrow funds shall be made by an Agency designated investment services firm.

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
Crab Management

Reproposed Repeal: N.J.A.C. 7:25-7.13
Reproposed Repeal and New Rule: N.J.A.C. 7:25-14.1
Reproposed Amendments: N.J.A.C. 7:25-14.2, 14.4, 14.5, 14.6 and 14.10
Reproposed New Rules: N.J.A.C. 7:25-14.7, 14.8 and 14.11
Reproposed Recodification and Amendments: N.J.A.C. 7:25-14.7 and 14.8 as 14.12 and 14.13

Authorized By: Jeanne M. Fox, Acting Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 23:2B-6, 23:2B-14 and 50:3-16.13.
DEPE Docket Number: 54-93-10/301.
Reproposal Number: PRN 1993-595.

A **public hearing** on the reproposal will be held on Wednesday, November 17, 1993 at 6:30 P.M. at the Residential Life Center, Stockton State College, Pomona, New Jersey.

Submit comments by December 1, 1993 to:
Richard McManus, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

The agency reproposal follows:

Summary

On April 5, 1993, the Department of Environmental Protection and Energy (Department) published a proposal in the New Jersey Register (25 N.J.R. 1371(a)) indicating the Department's repeal of N.J.A.C. 7:25-7.13, repeal and new rule at N.J.A.C. 7:25-14.1, amendments at N.J.A.C. 7:25-14.2, 14.4 and 14.6, new rules at N.J.A.C. 7:25-14.7, 14.8 and 14.11, and recodification with amendments at N.J.A.C. 7:25-14.7 and

14.8 as 14.12 and 14.13. The intent of the proposal was to develop a crab management program with provisions to delay entry into the commercial fishery, allow crab dredging in a section of Delaware Bay, define allowable dredges for crabs, close the Newark Bay complex to crab potting, change the crab dredge license fee, institute an instate landing requirement for harvested crabs, eliminate harvesting of organisms by crab pots and dredges other than crabs and conchs, increase the minimum width of creeks for pots and trot lines from 25 feet to 50 feet, eliminate crab pots and trot lines from man-made lagoons, institute a crab pot checking requirement and alllow for the recreational harvest of crabs by bait seine.

A public hearing on the proposal was held on April 22, 1993. Stephen Herb served as hearing officer, and recommended the changing of the original proposal and the reproposal now undertaken. The hearing record may be examined by contacting Janis E. Hoagland, Esq., Department of Environmental Protection and Energy, Office of Legal Affairs, CN 402, Trenton, NJ 08625. The written comment period ended May 5, 1993. The Department received comments from 17 individuals. The comments generally alleged that the proposed delayed entry system would not work to reduce participation in the fishery and questioned the constitutionality of the proposal. In an attempt to provide a more even-handed and workable proposal, the Department is now proposing a limited entry system with changes in the eligibility requirements in place of the delayed entry system. The Department is also proposing to institute pot limits for commercial crab potters and a crab potting season due to public comments received subsequent to the public comment period. These changes constitute a substantive change requiring additional public comment. The Department, therefore, is reproposing the crab management program as summarized below.

The purposes of the reproposed repeal, new rules and amendments are to stabilize user conflicts and harvest of crabs by limiting entry into the fishery; allow crab dredging in a section of Delaware Bay; define allowable dredges for crabs; change crab dredge seasons; close the Newark Bay complex to crab harvest; change the crab dredge license fee; institute an in-State landing requirement for harvested crabs; eliminate harvesting of organisms by crab pots and dredges other than crabs and conchs; increase the minimum width of creeks for pots and trot lines from 25 feet to 50 feet; eliminate crab pots and trot lines from man-made lagoons; institute a crab pot checking requirement; establish crab potting seasons; establish crab pot limits; increase the hard crab size limit; allow for the recreational harvest of crabs by bait seine; and limit recreational crab potters to three recreational pots in place of two commercial pots.

Under the reproposed new rules and amendments, limited entry systems for commercial crab potting and dredging will be implemented. Various types of limited and delayed entry systems regarding licensing for blue crabs have been implemented or are being considered in other coastal states. Delaware currently only issues a limited number of crab licenses. Maryland and Virginia currently have a two year delayed entry system. Florida, North Carolina and South Carolina are also considering limited or delayed entry systems. Under these reproposed new rules and amendments, anyone harvesting crabs for the purpose of sale or barter must possess a crab pot/trot line or crab dredge license. To be eligible for a 1994 crab pot/trot line license, the applicant must have purchased a crab pot/trot line license during 1991, 1992 or 1993 prior to July 9, 1993. To be eligible to purchase a 1994 crab dredge license, the applicant must have purchased a crab dredge license or an oyster dredge boat license or Delaware Bay Area 2 and 3 license during the above time frame. In subsequent years, the applicant must provide a copy of the previously valid crab pot or crab dredge license held by the applicant from the preceding year. Any person on active military service during any part of the period from January 1, 1991 through July 8, 1993 will also be eligible for a license for a 90 day period following completion of that active military service, upon submission of official documentation indicating duration of military service and date of discharge. Any applicant applying for a crab pot or dredge license between July 9, 1993 and 30 days after adoption of these new rules and amendments will be able to participate in a lottery to issue additional licenses. The number of additional crab pot licenses issued will not be more than 20 percent of the number of 1993 licenses issued. No additional crab pot licenses will be issued until the number of licenses issued in any calendar year decreases below the number issued in 1991. The number of additional crab dredge licenses issued will not be more than 20 percent of the number of 1993 licenses issued. No additional crab dredge licenses will be issued until the number of licenses issued decreases below the number issued in 1993 plus 20 percent. Commercial crab pot and crab dredge licenses can only be transferred to the license holder's spouse, son or daughter.

The reproposed new rules and amendments will allow crab dredging in a defined section of Delaware Bay with a maximum of two dredges. Maximum weight of each dredge will be 400 pounds in the Delaware Bay, Atlantic Ocean and in the bays north of Route 36 (Highlands Bridge). If two or fewer dredges are in possession, then the maximum weight of each dredge will be 500 pounds in the Atlantic Ocean and in the bays north of Route 36. Maximum length of each dredge tooth bar will be 54 inches in Delaware Bay and 75 inches in the Atlantic Ocean and in the bays north of Route 36. If two or fewer dredges are in possession, then the maximum length of each dredge will be 96 inches in the Atlantic Ocean and in the bays north of Route 36. Dredge seasons will be December 15 to April 15 in Delaware Bay and December 1 to March 31 in all other waters.

Resident crab dredging license fees will be $100.00 which replaces a variable fee scale based on vessel tonnage. The resident fee for a crab pot license remains at $100.00. Non-resident crab dredge and crab pot license fees will be the same as resident fees if a resident of New Jersey can obtain a license to harvest crabs by dredge or pots in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident fee will be five times the $100.00 New Jersey resident fee. All crabs harvested commercially must be landed in New Jersey.

Harvesting of any organisms other than conchs and crabs by crab dredges or crab pots will be illegal and all crab pots must be checked and emptied of all crabs and other organisms at least once every 72 hours. Setting of crab pots or trot lines will be illegal in any creek, ditch or tributary less than 50 feet wide and in all man-made lagoons. Crab pot limits will be set at 600 pots per license holder in Delaware Bay and 400 pots per license holder in all other waters. All crab pot buoys will be required to have fluorescent orange ends or reflectors and polypropylene line will be prohibited on all crab pot float lines. The hard crab size limit will be increased from four inches to four and three-quarters inches.

Under the reproposed amendments and new rules, crabs harvested by licensed bait seines can be retained, but cannot be sold or used for barter. A maximum of one bushel of crabs per day can be harvested by this method. In addition, the use of full size commercial crab pots by recreational crabbers will be phased out over a three year period. Recreational crabbers will be permitted to use three recreational pots with a valid recreational crab pot license.

Social Impact

One of the purposes of the reproposed new rules and amendments is to mitigate user conflicts and stabilize the harvest of crabs by establishing a limited entry system and pot checking requirement. Conflicts over fishing space, negative interaction between commercial crab potters and recreational boaters and fishing effort directed toward a limited resource have all increased during the last few years. By immediately stabilizing participants in the commercial crab fishery and possibly reducing participation in the future through attrition, a positive social impact will occur by providing fewer user conflicts and reducing fishing pressure on the resource. Reduction in user conflicts can be achieved by allowing law enforcement officers to remove all pots not checked at least once every 72 hours, establishing potting seasons and pot limits, increasing minimum creek width for pots and trot lines from 25 feet to 50 feet, prohibiting pots and trot lines in man-made lagoons, and prohibiting the use of commercial pots by recreational crabbers. No social impact is anticipated for those applicants currently eligible to participate in the fishery as their opportunity to harvest crabs will not change. Some social impacts may be incurred by those individuals not immediately eligible to participate in the fishery; however, provisions have been established to allow these individuals to participate in a lottery for an opportunity to purchase a license, thus minimizing this social impact. Any limited short term social impacts, however, are greatly outweighed by the public's long term gains by reducing conflicts between fishermen and recreational boaters and stabilizing fishing pressure on the resource.

The reproposed new rules and amendments also clarify the State's management of crabs throughout New Jersey's tidal waters. Establishing a crab dredge fishery in Delaware Bay and defining allowable gears will provide increased opportunities for all commercial fishermen to participate successfully in the fishery. Closure of the Newark Bay Complex to sale or consumption of crabs was established by Administrative Order No. E040-19. That portion of the amendment prohibiting harvest of crabs in the Newark Bay Complex closes a loophole that would have permitted someone to harvest crabs in this area provided they were not sold or consumed. Virtually no one harvests crabs without the specific intent of sale and/or consumption. Other amendments concerning license fee changes, in-State landing requirements, eliminating harvest of organisms by crab pots and dredges other than crabs and conchs, instituting a crab pot checking requirement, and allowing for the harvest of crabs by bait seine do not further restrict anyone from utilizing the crab resource and will allow for increased participation by bait seiners. In addition, these amendments largely reflect current practices in the fishery; therefore, no adverse social impact is anticipated. The in-State landing requirement will also ensure an effective and practical land-based enforcement program.

Economic Impact

Adoption of these amendments and new rules will have minimal adverse economic impact and in part will result in a positive economic impact. The vast majority of commercial crabbers immediately eligible for a commercial license will experience no economic impact as their ability to harvest crabs will not be affected. A small number of crab pot fishermen who use more than the 600 crab pots in the Delaware Bay or more than 400 crab pots in any other waters may experience some negative economic impact. The Marine Fisheries Council's blue crab advisory committee, composed of Council members, representatives from the commercial crab pot and crab dredge fisheries, rental boat liveries and recreational crabbers felt that number was reasonable, even for large scale operators. The average number of crab pots used by fishermen in 1993 was 157. No economic impacts will be incurred by those individuals not immediately eligible to participate in the fishery. These individuals have never experienced an economic gain from the fishery nor have they any investment in the fishery which would be lost due to these amendments and new rules.

Adoption of these amendments and new rules will have some positive economic impacts. Currently, the defined section of Delaware Bay is closed to crab dredging. It is believed that a considerable resource is present that can be harvested by crab dredgers. Allowing larger dredges in the Atlantic Ocean and in the bays north of Route 36 (Highlands Bridge) will have a positive economic impact by allowing gear more suited to the requirements of harvesting crabs in deep water. Closing the Newark Bay Complex to crab harvest, instituting an in-State landing requirement for commercially harvested crabs, establishing crab potting seasons and pot limits, eliminating harvest of organisms by crab dredges or crab pots other than crabs and conchs, instituting a crab pot checking requirement, increasing the minimum width of creeks for the use of pots and trot lines, and eliminating crab pots and trot lines from man-made lagoons, increasing the hard crab size limit, and allowing for the harvest of crabs by bait seine largely reflect current practices in the fishery and will result in few adverse economic impacts. Some commercial crab dredgers may experience a slight economic impact because of possible license fee increases. Current minimum resident license fees are $15.00 and maximum resident license fees are $50.00 based on vessel size. The impact of increasing the license fee to $100.00 will be slight as the maximum increase will be $85.00. Impacts to non-residents wishing to purchase a crab dredge license may be more severe. Current license costs range from $75.00 to $250.00 based on vessel size. Proposed license fees could be as high as $500.00. This impact could be eliminated, however, if a New Jersey fisherman can obtain a license to harvest crabs by dredge in the state of residence of the non-resident applicant for the same fee as a resident of that state, then the license fee for the non-resident will be $100.00, the same fee paid by a New Jersey resident; moreover, any increased non-resident fees will help offset the additional costs associated with managing the resource due to the participation of these non-residents.

Environmental Impact

The reproposed amendments will result in positive environmental impacts. The total amount of fishermen and fishing gear is increasing and, as a result, an increasing portion of the crab stock can be harvested each year. The number of young produced, that is, recruitment, is influenced by the number of adult spawners and by environmental conditions. High recruitment requires optimum spawning stock size and favorable environmental conditions. To protect the reproductive potential of crab stocks, appropriate fishing levels are needed. Although optimum fishing levels have not been established, stabilizing participants and the amount of gear used in the commercial fishery will help to stabilize fishing effort and the harvest of adult spawners and therefore protect future recruitment. Crab abundance can increase or decrease significantly from year to year. When cyclic populations are harvested, the potential exists for overexploitation during years of low abundance, thereby reducing the local availability of crabs to all harvesters. Increasing complaints of low crab abundance in recent years suggest that optimal levels of harvest may currently be exceeded. The possibility of overexploitation can be reduced by stabilizing participants in the fishery in addition to increasing the minimum, legal size of hard crabs allowed to be harvested.

The provisions concerning checking crab pots every 72 hours, increasing minimum creek width for pots and trot lines, and allowing no by-catch in crab pots are designed to prevent overharvesting of various resources by reducing the by-catch of marine species susceptible to capture in crab pots. In addition, the crab pot checking and potting seasons provisions will enable law enforcement authorities to remove lost or abandoned crab pots, thereby reducing the unintentional harvest of marine organisms by ghost pots.

No other environmental impacts are anticipated as a result of these amendments. Allowing crab dredging in a section of Delaware Bay will subject the Delaware Bay crab resource to the same types of fisheries as experienced by the crab resource in the rest of the State. Expansion of the crab dredge fishery to Delaware Bay may, in fact, divert fishing efforts from other areas of the State, thereby reducing fishing pressure in these areas. License fee changes, limiting commercial gear used by recreational crabbers, by-catch allowance in bait seines, closure of man-made lagoons to pots and trot lines, closure of the Newark Bay complex to crab harvest, and in-State landing requirements are either not environmental issues or simply reflect already established standard practices in the State; therefore, no environmental impacts are anticipated from these provisions.

Regulatory Flexibility Analysis

The reproposed amendments and new rules would apply to all bait seiners, recreational crab potters, commercial crab potters and dredgers and others intending to participate in the commercial fishery. Most of the commercial crab potters and dredgers are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and may be impacted to some degree. Although these small businesses will have to comply with the requirements set forth in the Summary above, including a small increase in license fees for crab dredgers, it is unlikely that additional professional services or capital costs will be required for compliance. In developing the amendments and rules, the Department has balanced its environmental responsibilities against the impacts to small businesses and has determined that to minimize the impact of the amendment and rules would adversely affect the environment and, therefore, no exemption from coverage is provided.

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

[7:25-7.13 Crab dredging in the Atlantic Coast section

(a) No crabs may be caught or taken in the Atlantic Coast section by dredges unless a valid crab dredge license is aboard the vessel. The crab dredges shall conform to the following specifications:

1. The maximum length of the tooth bar shall be 75 inches in Raritan and Sandy Hook Bays, but if only one dredge is in possession then the maximum length of the tooth bar shall be 96 inches in Raritan and Sandy Hook Bays, and 38 inches in all other waters.

2. The maximum weight of the dredge shall be 110 pounds in Raritan and Sandy Hook Bays, but if only one dredge is in possession then the maximum weight of the dredge shall be 200 pounds in Raritan and Sandy Hook Bays, and 60 pounds in all other waters.

3. The maximum length of the teeth shall be six inches in Raritan and Sandy Hook Bays and three inches in all other waters.

4. The minimum space between teeth shall be three inches, measured at the base.

5. The collecting bag of a dredge, if material, shall have mesh not less than two inches bar measure or four inches stretched measure; if wire, shall not be less than two inches bar mesh (inside measurement) or two and one-half inches inside diameter if circular; if metal, the O-rings shall not be less than two and one-half inches

diameter and be connected with no more than five "S" hooks that measure not less than two and one-half inches in length as measured to the inside of the "S" configuration.

6. Each dredge shall be independently and separately attached to the vessel by a single cable or tow line.

7. South of Route 36 (Highlands Bridge), no boat shall have more than four dredges working at the same time.

(b) No person shall catch, take, or attempt to take crabs by crab dredge from any of the marked leased grounds except the lessee or his employee; no person shall dredge or attempt to dredge crabs on any State oyster beds or grounds as defined in N.J.A.C. 7:25-19.1; and no person shall dredge or attempt to dredge crabs within 50 yards of any marked leased shellfish grounds.

(c) Any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish, which may be caught incidentally to the catching of the crabs by dredge, shall be redeposited immediately in the water from which such clams, oysters, scallops, mussels, other bivalve mollusks, or finfish are caught; nor shall any person, while engaged in the catching and taking of crabs by dredge, have in his boat or possession any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish obtained from any source.

1. The possession of clams, oysters, scallops, mussels, other bivalve mollusks, or finfish and dredges simultaneously in the boat of any person shall constitute prima facie evidence of the violation of this rule.

2. Harvesting of oysters by dredging from leased shellfish grounds by the lessee thereof shall be exempt from this section.

(d) No persons shall catch, take, or attempt to catch or take crabs from any of the lands of the Atlantic Coast section except from one-half hour after sunrise to one-half hour before sunset between November 15 and March 31 south of Route 40 (Black Horse Pike), and December 1 and March 31 north of Route 40, nor at any time on Sunday except in Raritan and Sandy Hook Bays.

(e) The license fee for New Jersey residents for the catching and taking of crabs by means of crab dredge shall be $1.00 per gross vessel ton. The minimum license fee for New Jersey residents shall be $15.00 and the maximum shall be $50.00. The license fee for non-residents will be the same as that for a resident if a New Jersey fisherman can obtain a license to harvest crabs by dredge in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be $5.00 per gross vessel ton with a minimum license fee of $75.00 and a maximum fee of $250.00.

(f) Any person who violates any of the provisions of this regulation shall be subject to the penalties set forth in N.J.S.A. 23:2B-14.

(g) All persons commercially licensed to take crabs by means of dredges in this State shall keep, on forms furnished by the Division of Fish, Game and Wildlife, accurate records which shall include the number of bushels of crabs and the areas fished. These records will be filed monthly with the Division of Fish, Game and Wildlife. Failure to file on or before the tenth of the month following the month of record may lead to suspension of license by the Division of Fish, Game and Wildlife. Prior to such suspension, a hearing shall be scheduled by the division and the violator notified of the date. Failure to appear at a scheduled hearing may result in suspension of license.]

SUBCHAPTER 14. CRAB [POTS] **MANAGEMENT**

7:25-14.1 [Crab pots and trot lines defined] **Definitions**

[(a) For the purposes of this subchapter, a crab pot shall mean a cube or rectangular shaped device not larger than 30 inches on a side with openings inward for the entrance of crabs. Any similar device may be approved by the division. The material of which the pot is constructed shall have a mesh not less than one inch across measured on its longest axis. The openings into the interior of the pot shall be oval and not larger than seven inches wide and four inches high.]

[(b) For the purposes of this subchapter, a trot line, also known as a trawl or layout line, shall mean a single length of anchored line no longer than 3,000 feet to which baits or baited barbless hooks are attached.]

[(c) Crab pots and trot lines which fail to comply with this section shall be deemed invalidly licensed and in violation of this subchapter.]

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

"Crab dredge area" means all marine waters of the State including the Atlantic Ocean with the exception of the Newark Bay Complex, the State oyster beds defined in N.J.A.C. 7:25-19.1, any marked shellfish grounds leased pursuant to N.J.S.A. 50:1-23 and the Delaware Bay north and west of a line:

1. Beginning at a point (Corner 1) on the shore line of Cape May County (Lat. 39 deg 04.35'N; Long. 74 deg (54.83'W) thence running 247 deg 38.08' (T) 21,127 feet to a point (Corner 2) where the Clam Line intersects the Brandywine-Dennis Creek Line (Lat. 39 deg 05.66'N; Long. 74 deg 58.96'W);

2. Thence running 221 deg 14.32' (T) 4,871 feet to a point (Corner 3) (Lat. 39 deg 05.06'N; Long. 74 deg 59.64'W) located on the Dennis Creek Range Line;

3. Thence running 319 deg 24.57' (T) 13,749 feet to a point (Corner 4) (Lat. 39 deg 06.77'; Long. 75 deg 01.54') located in the Delaware Bay;

4. Thence running 270 deg 50.95' (T) 40,487 feet to a point (Corner 5) (Lat. 39 deg 06.84'N; Long. 75 deg 10.10'W) in Delaware Bay;

5. Thence running 329 deg 27.45' (T) 25,825 feet to a point (Corner 6) (Lat. 39 deg 10.49'N; Long. 75 deg 12.90'W) on the Southwest Line; and

6. Thence running 235 deg 24.00' (T) 7,561.25 feet to the ruins of the former lighthouse known as Cross Ledge Shoal in Delaware Bay.

"Commercial crab pot" means a cube or rectangular shaped device not larger than 30 inches on a side with openings inward for the entrance of crabs. Any similar device may be approved by the Division. The material of which the pot is constructed shall have a mesh not less than one inch across measured on its longest axis. The openings into the interior of the pot shall be oval and not larger than seven inches wide and four inches high.

"Delaware Bay," for the purpose of this subchapter, consists of the marine waters under the jurisdiction of the State of New Jersey north and west of the COLREGS Demarcation Line which runs from the Cape May Point Lighthouse in Cape May, New Jersey to Fl 5sec Horn at Cape Henlopen, Delaware.

"Department" means the Department of Environmental Protection and Energy.

"Division" means the Division of Fish, Game and Wildlife.

"Land" means to transfer the catch of crabs from any vessel to any land, pier, wharf or dock.

"Newark Bay Complex" means the tidal Passaic River, the tidal Hackensack River, the Newark Bay, the Arthur Kill, and the Kill Van Kull.

"Recreational crab pot" means a cube or rectangular shaped device not larger than 30 inches on a side and 18 inches high with no more than two openings inward for the entrance of crabs. Any similar device may be approved by the Division. The material of which the pot is constructed shall have a mesh not less than one inch across measured on its longest axis. The openings into the interior of the pot shall be oval or square and not larger than seven inches wide and four inches high.

"Trot line" means a single length of anchored line no longer than 3,000 feet to which baits or baited barbless hooks are attached.

7:25-14.2 Use of crab pots and trot lines

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

(c) [All turtles and female crabs having eggs or spawn attached] **All other organisms other than crabs and conchs** shall be immediately released **to the waters from which such organisms were taken.**

(d) All crab pots must be checked and emptied of all crabs and other organisms at least once every 72 hours.

(e) No license holder shall fish more than 600 crab pots in Delaware Bay nor more than 400 crab pots in all other waters.

(f) No license holder shall set any crab pots except between April 16 to December 14 in Delaware Bay and between March 15 to November 30 in all other waters.

(g) All gear associated with crab potting must be removed from the water within three days of the end of the season.

7:25-14.4 Commercial licenses **for crab pots/trot lines and crab dredges**

(a) No person shall take or attempt to take crabs by any means for the purpose of sale or barter without having in his **or her** possession a valid commercial crab pot/trot line or crab dredge license issued by the Division [of Fish, Game and Wildlife] pursuant to N.J.S.A. 23:5-35.2.

1. To be eligible for a 1994 commercial crab pot license, the applicant must provide a copy of a previously valid New Jersey 1991, 1992 or 1993 commercial crab pot license issued in the applicant's name prior to July 9, 1993. In subsequent years, the applicant must provide a copy of a previously valid commercial crab pot license held by the applicant from the preceding year. Any person on active military service during any part of the period from January 1, 1991 through July 8, 1993, will also be eligible for a license for a 90 day period following completion of that active military service, upon submission of official documentation indicating duration of military service and date of discharge.

2. Any applicant applying for a commercial crab pot license between July 9, 1993 and 30 days after adoption of this amendment will be eligible to participate in a lottery to purchase a commercial crab pot license. The number of licenses issued pursuant to this lottery will not be more than 20 percent of the number of 1993 licenses issued.

3. No additional crab pot licenses will be issued until the number of licenses issued decreases below the number issued in 1991 (308 licenses).

4. To be eligible for a 1994 commercial crab dredge license, the applicant must provide a copy of a previously valid New Jersey 1991, 1992 or 1993 commercial crab dredge license, oyster dredge boat license or Delaware Bay Area 2 or 3 license issued in the applicant's name prior to July 9, 1993. In subsequent years, the applicant must provide a copy of a previously valid commercial crab dredge license held by the applicant from the preceding year. Any person on active military service during any part of the period from January 1, 1991 through July 8, 1993, will also be eligible for a license for a 90 day period following completion of that active military service, upon submission of official documentation of military service and date of discharge.

5. Any applicant applying for a 1994 commercial crab dredge license between July 9, 1993 and 30 days after adoption of this amendment will be eligible to participate in a lottery to purchase a commercial crab dredge license. The number of licenses issued pursuant to this lottery will not be more than 20 percent of the number of 1993 licenses issued.

6. No additional crab dredge licenses will be issued until the number of licenses issued decreases below the number issued in 1993 plus 20 percent.

7. Commercial crab pot and crab dredge licenses are non-transferable except that a license holder may transfer the license at any time to the license holder's spouse, son or daughter upon application to the Division.

[1.]**8.** The license fee for New Jersey residents shall be $100.00 **for a crab pot/trot line license and $100.00 for a crab dredge license. The license fee for non-residents will be the same as that for a resident if a New Jersey fisherman can obtain a license to harvest crabs in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be an amount equal to five times the $100.00 New Jersey resident license fee.** All licenses shall expire on December 31 of the **calendar** year **for which they were** issued.

[2.]**9.** [The] **For crab pots and trot lines, the** license number shall be displayed on both sides of the crabber's boat amidship, in numerals not less than 12 inches high and of a color contrasting with their background.

(b) (No change.)

7:25-14.5 Noncommercial licenses **for crab pots/trot lines**

(a) No person shall take or attempt to take crabs by means of **commercial or recreational crab** pots or trot lines without having in his **or her** possession a valid license issued by the Division [of Fish, Game and Wildlife].

1. The [division] **Division** will issue a noncommercial license for no more than two **commercial or three recreational crab** pots or two trot lines **up to January 1, 1997. After January 1, 1997, noncommercial crab pot licenses shall not be issued for commercial crab pots.** Trot lines shall not exceed 150 feet in length with a maximum of 25 baits attached. Pots and trot lines shall be marked with the license number. There is no fee for this noncommercial license. All licenses shall expire on December 31 of the **calendar** year **for which they were** issued.

2. (No change.)

7:25-14.6 Placement and marking of pots and trot lines

(a) Each crab pot shall be clearly and visibly marked with a buoy, stake or permanent identification tag bearing the license number of the owner. **All crab pot buoys must have fluorescent orange ends or reflectors. Polypropylene line shall not be used on any crab pot float lines.**

(b) (No change.)

(c) No pot or trot line shall be placed in a creek, ditch or tributary less than [25] **50** feet wide at mean low water unless approved by the [division,] **Division. No pot or trot line shall be placed in any man-made lagoon** or in any marked or charted channel, except noncommercially licensed pots fastened to a pier or other shore connected structure by a line no longer than twice the depth of the water at that point.

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

Agency Note: N.J.A.C. 7:25-14.7 and 14.8 are recodified with amendments as N.J.A.C. 7:25-14.12 and 14.13.

7:25-14.7 Use of crab dredges

(a) A person shall not catch or take crabs by dredges without having a valid crab dredge license in his or her possession. Crab dredges shall only be used in crab dredge areas and shall conform to the following specifications:

1. No boat shall have more than four dredges working at the same time, except in Delaware Bay where no boat shall have more than two dredges working at the same time.

2. The maximum length of each tooth bar shall be 75 inches north of Route 36 (Highlands Bridge) and in the Atlantic Ocean, but if two or fewer dredges are in possession north of Route 36 (Highlands Bridge) or in the Atlantic Ocean then the maximum length of each tooth bar shall be 96 inches. The maximum length of the tooth bar in Delaware Bay shall be 54 inches and in all other crab dredge areas shall be 38 inches.

3. The maximum weight of each dredge shall be 400 pounds north of Route 36 (Highlands Bridge) and in the Atlantic Ocean, but if two or fewer dredges are in possession north of Route 36 (Highlands Bridge) or in the Atlantic Ocean then the maximum weight of each dredge shall be 500 pounds. The maximum weight of each dredge in Delaware Bay shall be 400 pounds and in all other crab dredge areas shall be 60 pounds.

4. The maximum length of the teeth shall be six inches north of Route 36 (Highlands Bridge), in Delaware Bay and in the Atlantic Ocean and three inches in all other crab dredge areas.

5. The minimum space between teeth shall be two inches in Delaware Bay and three inches in all other crab dredge areas, measured at the base.

6. A chain or toothless bar shall be allowed in place of a tooth bar in all waters.

7. The collecting bag of a dredge, if material, shall have mesh not less than two inches bar measure or four inches stretched measure; if wire, shall not be less than two inches bar mesh (inside measurement) or two and one-half inches inside diameter if circular; if metal, the O-rings shall not be less than two inches in diameter

and shall be connected with no more than six "S" hooks that measure not less than two inches in length as measured to the inside of the "S" configuration.

8. Each dredge shall be independently and separately attached to the vessel by a single cable or tow line; except that two dredges can be towed by a single line in the Atlantic Ocean, north of Route 36 (Highlands Bridge) and Delaware Bay provided that the dredges are not solidly attached to each other in any way and are fastened to the tow line by a bridle that allows the dredges to act independently of each other.

(b) No person shall catch, take, or attempt to take crabs by dredge from any area except the "crab dredge area" as defined in the definitions section. No person shall dredge or attempt to dredge crabs on any marked leased shellfish grounds. No person shall dredge or attempt to dredge crabs within 50 yards of any marked leased shellfish grounds.

(c) Any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish, which may be caught incidentally to the catching of crabs by dredge, shall be redeposited immediately in the water from which such clams, oysters, scallops, mussels, other bivalve mollusks, or finfish are caught. No person, while engaged in the catching and taking of crabs by dredge, shall have in his or her boat or possession any clams, oysters, scallops, mussels, other bivalve mollusks, or finfish obtained from any source. Conchs may be retained in the crab dredge fishery as a by-catch only. The possesion of bivalve mollusks or finfish dredges and crabs simultaneously in the boat of any person shall constitute prima facie evidence of the violation of this section.

(d) No person shall catch, take or attempt to catch or take crabs by means of a crab dredge except from one-half hour after sunrise to one-half hour before sunset and within the following seasons:

1. From December 15 through April 15 in Delaware Bay; and

2. From December 1 through March 31 in all other waters.

(e) No person shall catch, take or attempt to catch or take crabs by means of a crab dredge at any time on Sunday except north of Route 36 (Highlands Bridge), in the Atlantic Ocean or in Delaware Bay.

7:25-14.8 Landing crabs

All crabs harvested commercially in State waters shall be landed in this State.

7:25-14.10 Size of crabs taken

(a) No person shall take from any tidal waters of this State or have in his **or her** possession any peeler or shedder crab measuring less than three inches across the back from the tip of the longest lateral spine to the other or a soft crab measuring less than three and one-half inches across the back from the tip of the longest lateral spine to the other, or hard crab measuring less than four **and three-quarters** inches across the back from tip to tip of spike.

1. (No change.)

7:25-14.11 Harvesting crabs

(a) Crabs may be taken by licensed bait seines authorized pursuant to N.J.S.A. 23:5-24.2 and N.J.A.C. 7:25-18.5. Crabs taken by bait seines shall not be sold or used for barter. The maximum harvest and/or possession of crabs taken by bait seines is one bushel per day per individual.

(b) No person shall take or attempt to take any crabs by any means in the Newark Bay Complex.

7:25-[14.7]**14.12** Filing of reports

(a) All persons commercially licensed to take crabs shall keep, on forms furnished by the Division of Fish, Game and Wildlife, accurate records of the number of bushels of hard crabs, peelers and soft crabs caught, the type of gear used and the area fished. These records shall be filed by the 10th day of each month with the Division of Fish, Game and Wildlife. If no crabs were harvested during the month, a report to that effect shall be provided. **Failure to file on or before the 10th of the month following the month of record may lead to suspension or revocation of said license by the Department according to the following schedule:**

1. First offense: 60 days suspension;

2. Second offense: 120 days suspension; and

3. Third offense: permanent revocation.

(b) All license suspensions shall be imposed during the open season for the respective fishery; any period of suspension not occurring during the existing season shall be applied during the next open season even if such season falls in a different calendar year. Prior to suspension or revocation of the license, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:25-[14.8] **14.13** Penalties

(a) (No change.)

(b) Any person not having a valid license in possession or failing to exhibit same for inspection by an authorized law enforcement officer while tending a pot or trot line **or dredging crabs**, or violating the provisions of N.J.A.C. 7:25-14.5 or 14.6 shall be liable to a penalty of $20.00 for the first offense and $40.00 for each subsequent offense.

(c) Any person failing to check crab pots at least once every 72 hours pursuant to N.J.A.C. 7:25-14.2(d) shall be liable to a penalty of $20.00 for each pot in violation.

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

(a)

AIR QUALITY REGULATION PROGRAM
AIR POLLUTION CONTROL

Notice of Extension of Public Comment Period
Operating Permits
Emission Statements
Air Penalties

Proposed New Rules: N.J.A.C. 7:27-22
Proposed Amendments: N.J.A.C. 7:27-1, 8, 18 and 21; N.J.A.C. 7:27A-3

Take notice that, in response to requests from the public, the Department of Environmental Protection and Energy is extending the public comment period for the above referenced proposed new rules and amendments. The proposed new rules and amendments were published in the September 7, 1993 New Jersey Register at 25 N.J.R. 3963 (DEPE Docket Number 46-93-08/156), 25 N.J.R. 4033 (DEPE Docket Number 48-93-08/156), and 25 N.J.R. 4045 (DEPE Docket Number 47-93-08/156), respectively. The extended deadline for the receipt of comments is 5:00 P.M., November 23, 1993.

Submit written comments, identified by the appropriate Docket Number, to:

Janis E. Hoagland, Esq.
DEPE Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

(b)

DELAWARE AND RARITAN CANAL COMMISSION

Delaware and Raritan Canal State Park Review Zone

Proposed Readoption with Amendments: N.J.A.C. 7:45

Authorized By: Delaware and Raritan Canal Commission, Benjamin B. Kirkland, Chairman.
Authority: N.J.S.A. 13:13A-12, 13 and 14.
Proposal Number: PRN 1993-596.
DEPE Docket Number: 53-93-10/66.

Submit written comments by December 1, 1993 to:

James C. Amon
Delaware and Raritan Canal Commission
P.O. Box 539
Stockton, NJ 08559

The agency proposal follows:

Summary

The "Delaware and Raritan Canal State Park Law of 1974," N.J.S.A. 13:13A-1 et seq., (the "Act") created the Delaware and Raritan Canal State Park (the "Park") and established the Delaware and Raritan Canal Commission (the "Commission") to plan for and protect the Park. The Act authorizes the Commission to prepare and adopt a master plan for the development and protection of the Park and to delineate a review zone within which the Commission will review public and private projects that might adversely affect the Park to determine their conformity with the master plan.

New Delaware and Raritan Canal State Park Review Zone Rules were proposed on January 4, 1988 at 20 N.J.R. 23(a). The proposal specified the procedures, standards and scope of review by the Commission to implement its responsibility under the Act to review public and private projects that might have an adverse affect on the Park. The proposed rules consisted essentially of a readoption of rules that had expired on January 11, 1985 pursuant to Executive Order No. 66(1978) and an expansion of the Commission's scope of review of major public and private projects to include stream corridor impact and traffic impact. The Department of Environmental Protection (the "Department") adopted the new rules effective February 6, 1989 at 21 N.J.R. 324(a), but because of the substantive changes made in response to comments received, the Department did not adopt the proposed rules pertaining to stream corridor impact and traffic impact.

New rules pertaining to stream corridor impact, N.J.A.C. 7:45-6, and traffic impact, N.J.A.C. 7:45-9 were proposed on April 3, 1989 and the Department adopted these new rules effective February 5, 1990.

Subchapter 1 of the rules proposed for readoption serves as an introduction. It asserts the purpose of the rules, defines necessary words and terms, and explains the scope of the Commission's review. This subchapter also includes an excerpt from the Canal Park Master Plan which states the objectives for the Delaware and Raritan Canal State Park.

Subchapter 2 of the rules details the application requirements and the Commission's procedures for reviewing applications. The Commission's review of private projects must lead to action within 45 days from the receipt of a complete application. Although this review period cannot begin until the applicant has received municipal approval, applicants are urged to work with the Commission staff from the earliest convenient time. The Commission's review of governmental projects or permits can, however, begin as soon as a complete application has been submitted.

Subchapter 3 of the rules explains the Commission's Certificate of Approval. The Certificate of Approval may be issued with or without conditions and is valid for three years.

Subchapter 4 of the rules explains the procedure for interested parties who wish to appeal a decision by the Commission.

Subchapter 5 of the rules addresses the Commission's review of projects for stormwater runoff impact on the Canal Park. The subchapter establishes the submission requirements and the Commission's review procedures. Any new development with one acre or more of new impervious surface must include stormwater management facilities that meet the Commission's standards. These standards are designed to protect the Canal Park from the threat of damage from floods and other water pollution.

Subchapter 6 of the rules establishes standards and procedures for the review of detention basins proposed for construction in flood hazard areas. Since basins in flood hazard areas could be filled with floodwater when they are needed to detain runoff from the site, stricter standards are established for their design.

Subchapter 7 of the rules explains the procedures and standards for projects sited along major streams that enter the Canal Park. This subchapter defines and locates stream corridors along these streams and establishes prohibited, conditional, and permitted uses for stream corridors. The subchapter is aimed at preserving natural corridors along streams that enter the park in order to protect the Canal Park's water and other natural resources.

Subchapter 8 of the rules establishes the Commission's submission requirements and standards of review for the visual and natural quality impact of new projects on the Canal Park. These rules apply only to projects that are located within 1,000 feet of the center line of the canal. The standards for review are variable, depending upon the location of the project, but generally try to maintain the existing character of the Canal Park through setbacks and the installation of landscape buffers.

Subchapter 9 of the rules establishes the Commission's submissions requirements and standards of review for the traffic impact of new projects on the Canal Park. These rules are directed toward protecting the Canal Park from having excessive traffic either next to it or on roads that cross through the park. New projects must include site planning techniques that will minimize their traffic impact.

Subchapter 10 of the rules establishes the procedures and standards for the Commission to waive strict adherence to the review procedure or to a specific requirement of this chapter. Waivers granted pursuant to this subchapter are intended to provide relief where strict adherence to the review procedure or to a specific requirement of this chapter will create a hardship or where a specific impact review is not necessary.

Subchapter 11 of the rules asserts that if any portion of this chapter is adjudged unconstitutional or invalid by a court, the remainder of the chapter is unaffected.

The new Delaware and Raritan Canal Park Review Zone Rules presently being proposed consist essentially of a readoption of those rules that were adopted in 1989 and 1990 by the Department. Changes proposed at this time are intended to clarify, correct minor errors, or to increase efficiency of the administration of the previous rules.

The proposed amendment to N.J.A.C. 7:45-1.2 (definition of "stream corridor") is made in order to clarify the Commission's meaning of this term.

The proposed amendment to N.J.A.C. 7:45-2.4 eliminates the provision for peremptory review procedures for private projects in municipalities or counties that had adopted standards for the review of projects that were determined by the Commission to be equivalent to its own standards. This provision is proposed to be eliminated because it has been included in the regulations since 1981 and has not once been used.

The proposed addition of N.J.A.C. 7:45-2.7 will establish procedures for the Commission to review general development plans. There have been a few recent situations in which the Commission has been asked to review and approve general development plans, but the Commission does not have any adopted standards or procedures for this action. The proposed rule calls for the same submission requirements, review procedures, and standards for review, as for other private projects. The Certificate of Approval for general development projects is proposed to be valid for up to 10 years, as opposed to three years for other private projects. Once a general development plan is approved, review of each phase of development by the Commission is proposed to be based upon the conformity of that phase with the approved plan.

The proposed amendment to N.J.A.C. 7:45-2.8 clarifies the Commission's review of governmental projects and changes the Commission's authority to conform with an Attorney General's opinion on this subject. The only change from the previous rule applies to governmental projects in the Review Zone but not in the Canal Park. Previously, the rules stated that the Commission would review and either approve, reject, or conditionally approve these projects. The amended rule proposes that, for these projects, the Commission shall review and approve upon being satisfied that the project conforms as nearly as possible to the Commissioner's Master Plan and relevant local plans or initiatives. By clarifying the Commission's authority and procedures for governmental projects or actions in N.J.A.C. 7:45-2.8, the current rule N.J.A.C. 7:45-2.10 can be eliminated.

The proposed addition of N.J.A.C. 7:45-3.1(h) requires holders of Certificates of Approval to notify the Commission 10 days before construction is started. This provision will assist the Commission's effort to monitor construction for compliance with the terms of approval.

The proposed amendment to N.J.A.C. 7:45-4.2 changes the process for hearings on contested cases. The changes establish the Commission (not the Department) as the body which reviews the request for a hearing and acts on these requests when they are granted. This change is in keeping with the Commission's authority under the Act. The proposed amendment also makes clear that the decision to grant a contested case hearing will be governed by the standards of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

The proposed elimination of N.J.A.C. 7:45-5.1(b) is made because the subsection is redundant. It states general aspects of the review standards which are more explicitly stated elsewhere.

The proposed amendment to N.J.A.C. 7:45-5.2 is a reflection of the decision to eliminate peremptory approval procedures. Submission requirements are no longer needed for a procedure that is not in effect.

The proposed amendment to N.J.A.C. 7:45-5.2(b) relaxes submission requirements for minor projects in the A portion of the Review Zone.

This amendment is made because the Commission's experience has proven that adequate review of minor projects can be made with less detailed information.

The proposed deletion of N.J.A.C. 7:45-5.6(a)4 is made because it is out of place as the rules are structured. Paragraph (a) refers to instances in which the storm drainage and water quality standards do not apply. Paragraph (a)4 refers to standards for stream corridors.

The proposed recodification of N.J.A.C. 7:45-6 as 7 and N.J.A.C. 7:45-7 as 6 is made because the proposed subchapter 6, Detention Facilities in Flood Hazard Areas, is more closely related to subchapter 5, Storm Drainage and Water Quality Impact Review, than is subchapter 7, Stream Corridor Impact.

The proposed addition of N.J.A.C. 7:45-7.4(a)7 is aimed at assuring that stream corridors are able to continue to function as protective buffers. This paragraph prohibits the removal or killing of native vegetation, which is essential to the ecological functioning of a stream corridor.

The proposed addition to N.J.A.C. 7:45-7.5(a)5 of "roads that cross the corridor as directly as practical" as a conditional use in stream corridors is a way of making explicit what was implied in the previous rules.

The proposed addition of N.J.A.C. 7:45-7.6 makes it clear that once an approval is granted, measures such as conservation easements or deed restrictions will be required where necessary to ensure the preservation of the stream corridor.

The proposed amendment to N.J.A.C. 7:45-9.1 eliminates the restriction to "on-site" planning techniques aimed at reducing the traffic impact of a project on the Canal Park. The Commission's experience with administering this rule since its adoption in 1990 has shown that applicants, either alone, or with the affected municipality and county, have proposed off-site as well as on-site planning techniques that effectively reduce traffic impact on the Canal Park.

The proposed amendment to N.J.A.C. 7:45-10.7(a) adds the preservation of natural terrains, soils and vegetation to the list of issues considered by the Commission when it considers a request for waiver of visual and natural quality impact for governmental and private projects.

The proposed recodification of subchapter 11 in the existing rules as subchapter 10 in the proposed rules is made because there is no reason to continue reserving subchapter 10. With this proposed change, existing subchapter 12 is recodified as subchapter 11.

The proposed repeal of N.J.A.C. 7:45-11.9 is made because it states conditions for the Commission to consider in waiving review for economic hardship, and these conditions are fully stated in N.J.A.C. 7:45-10.3.

Social Impact

The proposed readoption of the rules and amendments will allow the Commission to continue to encourage consideration of the natural and recreational resources of the Canal and the Park and to promote cooperation between the Commission, municipal, county and State reviewing agencies and private landowners and developers.

Economic Impact

The proposed readoption of the rules will continue the economic impact associated with the rules adopted in January, 1989 and February, 1990. These proposed rules do not apply to any area that was not included in the earlier rules. They do not apply to any different category of projects. Nor do they establish any type of review that was not included in the earlier rules. Economic impact of these proposed rules, therefore, continue to include administrative costs to the Commission and the costs to applicants of conformity with the Commission's master plan, that is, project costs associated with compliance with standards addressing storm damage and water quality, visual and natural qualities, traffic, and stream corridor preservation. In most instances, compliance will require the construction of a detention facility for stormwater runoff, which is slightly more costly than basins required by the municipality. For projects that are in Zone A of the review zone, compliance may require set-backs from the park, landscape buffers, or special architectural features to assure a harmonious relationship between the Park and adjacent development. In assessing the economic impact of these rules, however, aspects of that impact other than the cost to developers of compliance must be considered.

Approximately one million citizens of New Jersey have some canal water in their home water supply. They are helped by these rules, which strive to assure that the water companies will not lose the canal water supply to flooding and that the water will not be polluted from stormwater runoff. Industry and agriculture throughout central New Jersey will also be affected by these regulations since much of the sale of canal water to these sectors of the community. Protection of their supply of water is of great importance to the region's economy.

The Canal Park is demonstrated to have a strong, positive effect on the economic value of real estate in the central New Jersey region. Homes near the Park are of greater value than comparable homes distant from the Park. Sales of recreation equipment are boosted because of the availability of recreational resources in the Park. Restaurants, inns and hotels, and other shops prosper from customers who are drawn to the region by the Park. To the extent that these regulations protect the qualities of the Park that draw people, they are affecting the entire region.

Environmental Impact

The proposed readoption of the rules will continue the environmental impact associated with the rules adopted in January, 1989 and February, 1990, that is, preservation of the natural and recreational resources of the Park by requiring project sponsors to give adequate consideration to those values.

Regulatory Flexibility Statement

The proposed readoption of the rules and amendments would apply to any person or governmental agency proposing to undertake construction within the review zone. It is estimated that for most of the years since the Commission has been administering its regulatory program, approximately 75 percent of the applications received by the Commission have been from "small business" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. That condition is likely to be true for the proposed readoption. In order to comply with these rules and amendments, small businesses will have to comply with the requirements as outlined in the "Summary" above. In order to comply with the proposed readoption, it is likely that small businesses will need the services of professional engineers and environmental consultants. The costs to small businesses of complying with these proposed rules will vary greatly, depending upon the scale of the proposed project. At one end of the scale, small projects can comply with these regulations with no costs other than the cost of reproducing building plans. Developers of larger projects, on the other hand, may have to hire engineers, lawyers, architects, landscape architects, traffic consultants, or other professionals in order to comply. However, small businesses will need the same services in order to comply with the requirements of the appropriate municipal and county reviewing agencies. It is expected that compliance with the proposed readoption will result in an increase in the cost of construction. In developing the proposed readoption, the Commission has balanced the need to protect the environment of the Delaware and Raritan Canal State Park against the economic impact of the proposed readoption and has determined that to minimize the impact of the proposed readoption would endanger the environment, public health and public safety, and, therefore, no exemption from coverage is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:45.

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

SUBCHAPTER 1. REVIEW ZONE OF THE DELAWARE AND RARITAN CANAL STATE PARK

7:45-1.2 Definitions

As used in this chapter, the following words and terms shall have the following meanings:

...

"Department" means the Department of Environmental Protection **and Energy.**

...

"Major project" means:

1. If no part of the project site falls within Zone A, but some of it falls within Zone B, the project is "major" if it:

i. Will cover one acre of land with impervious surfaces; or

ii. Involves any of the land uses itemized in 2iii below.

[(a)]**2.** If any part of a project site falls within Zone A, the entire project is "major" if it:

[1.]**i.** Involves construction, development, or redevelopment of four or more dwelling units; or

[2.]**ii.** Involves no dwelling units, but will cover with impervious surfaces 10,000 square feet or more of previously uncovered land; or

[3.]**iii.** Involves any of the following uses:

[i.](**1**) Livestock pens, corrals, or feed lots;

[ii.](**2**) Pipelines, storage or distribution systems for petroleum products or chemicals;

[iii.](**3**) Liquid waste, storage, distribution or treatment facilities (excluding home septic systems);

[iv.](**4**) Solid waste storage, disposition, incineration, or landfill;

[v.](**5**) Hazardous waste treatment, storage or disposal;

[vi.](**6**) Quarries, mines or borrow pits; or

[vii.](**7**) Land application of sludge or effluents.

(b) If no part of the project site falls within Zone A, but some of it falls within Zone B, the project is "major" if it:

1. Will cover one acre of land with impervious surfaces; or
2. Involves any of the land uses itemized in (a)3 above.

"Master Plan" means the Delaware and Raritan Canal State Park Master Plan consisting of the following five planning documents adopted by the Commission as the Master Plan including any modification, revision or amendment thereof subsequently adopted by the Commission pursuant to N.J.S.A. 13:13A-13:

1. Master Plan ([May, 1977] **May, 1989**)

2.-5. (No change.)

"Minor projects" means:

[(a)]**1.** Regarding Zone A, a project which is not a major project.

[(b)]**2.** Regarding Zone B, projects other than major projects are not subject to review in Zone B.

"Municipal approving agency" means any body or instrumentality of the municipality responsible for the **approval of private projects or the** issuance of permits, which shall include, but not be limited to, building permits, zoning variances, and excavation permits[; or the approval of private projects, which]. **"Municipal approving agency"** shall include, but not be limited to, governing bodies, planning and zoning boards, **construction officials,** building inspectors, and municipal engineers.

...

"Review Zone" means that region designated by the Commission appertaining to and including the Park in which proposed projects may cause an adverse drainage, aesthetic or other ecological impact on the Park. The Review Zone and its subzones designated as Zone A (being the area within one thousand feet on either side of the center line of the Canal) and Zone B (being the balance of the review zone) are delineated on maps available for review at the Commission's office in Stockton, New Jersey. [and at the offices of the] **The** following counties and municipalities [whose boundaries encompass part of] **are included in** the Review Zone:

In Hunterdon County: Delaware, East Amwell, Franklin, Kingwood, Lambertville, Raritan, Stockton, West Amwell.

In Mercer County: East Windsor, Ewing, Hamilton, Hightstown, Hopewell Borough, Hopewell Township, Lawrence, Pennington, Princeton Borough, Princeton Township, Trenton, Washington, West Windsor.

In Middlesex County: Cranbury, Monroe, New Brunswick, North Brunswick, Plainsboro, South Brunswick.

In Monmouth County: Millstone.

In Somerset County: Franklin, Hillsborough, Manville, Millstone, Montgomery, Rocky Hill, South Bound Brook.

["Stream corridor" means a stream designated in N.J.A.C. 7:45-6.1(a), including any tributary from the point where it feeds into the designated stream up to the point where the tributary drains 50 acres, all of the land within the 100 year flood line on either side of the designated stream and any tributary to the extent included in the stream corridor, and all of the land within a 100 foot wide buffer around the 100 year flood line on either side of the designated stream and any tributary to the extent included in the stream corridor from the point where the designated stream feeds into the Park up to the point where the designated stream drains 50 acres.]

"Stream corridor" includes a stream that is designated in N.J.A.C. 7:45-6.2(a) from the point where the stream feeds into the Canal Park up to the point at which the stream drains less than 50 acres. "Stream corridor" also includes any tributary to a stream designated in N.J.A.C. 7:45-6.2(a) from the point at which it feeds into the designated stream up to the point at which the tributary drains less than 50 acres. "Stream corridor" further includes all of the land within the 100 year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor and all of the land within a 100 foot wide buffer around the 100 year flood line on either side of that portion of the designated stream or tributary that is in the stream corridor.

7:45-1.3 Scope of review

(a) (No change.)

(b) In each case, the scope and depth of review will depend upon the size and location of the land-use activity.

1. In Zone A:

i. (No change.)

ii. Minor projects are reviewed for storm drainage and water quality impact, and visual and natural quality impact. Submission requirements **and stormwater management measures** are significantly less [detailed] **rigorous** for minor projects than for major projects. They are, however, expected to comply with the general standards in N.J.A.C. 7:45-5 for water quality impact review and N.J.A.C. 7:45-8 for visual and natural quality impact.

2. (No change.)

7:45-1.4 Master Plan of the Delaware and Raritan Canal State Park

(a) The objectives of the Master Plan of the Delaware and Raritan Canal State Park are as follows:

1. The Delaware and Raritan Canal is a water supply system.

i. (No change.)

ii. The quality of the water than enters the Canal—whether from a point source, overland flow of storm water runoff, or from groundwater exchange—must be suitable for a source of drinking water.

iii. (No change.)

2.-5. (No change.)

SUBCHAPTER 2. APPLICATION FOR PROJECT REVIEW **AND REVIEW PROCEDURES**

7:45-2.2 Application for review of a private project

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

(c) [All] **The applicant or the municipal approving agency shall submit** applications [shall be submitted,] to the Commission [by the municipal approving agency] after [it] **the municipal approving agency** has approved the project, unless an application for the proposed project has been previously made to the Commission.

(d) No application shall be reviewed by the Commission until it has been determined **by the staff** to be a complete application which, in addition to the pertinent submission requirements in this chapter, shall include a resolution of approval of the proposed project by the appropriate municipal approving agency.

7:45-2.3 Application for review of governmental projects

State departments or agencies, counties, municipalities and any other governmental entity shall submit plans for reviewable projects prior to undertaking them and are encouraged to discuss proposed projects with the Commission **staff** at the earliest planning stages.

7:45-2.4 Review of private projects

[(a) The Commission has established a peremptory review procedure to eliminate the overlap of governmental review of private projects under the following conditions:

1. If a county adopts and implements standards which are determined by the Commission to be the equivalent of those of the Commission, the Commission may approve the private project without further review upon receiving notice from the county approving agency that the private project is in compliance with its standards. However, in cases where those standards are relaxed by the county so as to grant approval without full compliance, the notice shall describe in detail the reasons for the relation of each standard and, in such cases, the Commission may determine that the private project is not eligible for peremptory review but is subject to full review as provided in (b) below.

2. Where the county has not adopted standards determined by the Commission to be the equivalent of its standards, or where the

county does not review the project, but where the project is reviewed by a municipal approving agency which has adopted and implements such standards, the Commission may approve the project without further review upon notification from the municipal approving agency that the project is in compliance with its standards. However, in the cases where those standards are relaxed by the municipal approving agency so as to grant approval without full compliance, the notice shall describe in detail the reasons for the relaxation of each such standard, and, in such cases, the Commission may determine that the project is not eligible for peremptory review but is subject to full review as provided in (b) below.

(b) Private projects which are not eligible for peremptory approval:]

[1.](**a**) At any time before applying for Commission approval, an applicant may **submit preliminary planning documents or may** request a pre-application conference to discuss the project with the Commission **staff**. The purpose of this **submission or** conference is to enable the applicant to plan economically for conformity with the Master Plan and its policies and standards, and those of this chapter. No requirements are imposed by this chapter as to plans, documents, or data to be **submitted or** presented for discussion at a pre-application conference. However, this chapter contains a list of materials and data required as part of any [any] application for review of each specific impact. It would be advisable that the applicant provide the Commission with as much of this information as practicable for the pre-application conference.

[2.](**b**) A report [of] **on** the **preliminary submission or** pre-application conference shall be prepared by the Commission **staff** and may include:

[i.]**1.** A summary of the strengths and weaknesses of the project as related to the policies and standards of the Master Plan and this chapter.

[ii.]**2.** A recommendation to the applicant and the reviewing municipal agency or official.

[3.](**c**) The Commission's [pre-application] **staff** report shall, upon completion, be mailed to the applicant, the county planning board, and the municipal approving agency.

[4.](**d**) Comments, findings, conclusions, and recommendations of the Commission's [pre-application] **staff** report [and statements made during the pre-application conference] are for guidance only and shall not be binding upon the applicant or the Commission.

[(c) Submission procedures for private projects eligible for peremptory approval are established in (a) above in N.J.A.C. 7;45-5.2.

(d) For private projects not eligible for peremptory approval, the municipal approving agency shall transmit a copy of the resolution of approval by the municipal approving agency to the Commission. All other forms, documents, and data required for the Commission's review pursuant to N.J.A.C. 7:45-2 may be submitted by the applicant either prior to approval by the municipal approving agency or forthwith upon such approval.]

7:45-2.6 Project review and decision

(a) Within 20 days after the date that an application for project review is received in the [Office of the Commission] **Commission's office,** the Commission staff shall review the application to determine if all the items required for a complete application have been submitted and take one of the following actions:

1. Notify the applicant [by certified mail] **in writing** of any missing items required for a complete application; or

2. Notify the applicant [by certified mail] **in writing** that the application is complete and notify the appropriate municipal approving agency.

(b) If no action is taken by the Commission staff within a period of 20 days from the date that an application for project review is received in the [Office of the Commission] **Commission's office,** the application shall be deemed to be complete.

(c) Within 45 days from the date when an application has been declared complete, the Commission shall take one of the following actions:

1. Approve the application and advise the appropriate municipal approving agency that the project can proceed as proposed, **subject to conditions in N.J.A.C. 7:45-3;**

2. Reject the application and so advise the appropriate municipal approving agency and the governing body of the municipality; or

3. Approve the application subject to conditions and [return the application to] **notify** the appropriate municipal approving agency which shall be responsible for assuring that the conditions are satisfied before issuing a permit.

(d) (No change.)

7:45-2.7 Review of general development plan approvals

(a) The Commission shall review and approve, reject, or modify any general development plan upon receipt of a complete application.

(b) All submission requirements and review procedures shall be the same for general development plan applications as for other private project applications.

(c) A Certificate of Approval issued for a general development plan shall remain valid for a period determined by the Commission but not less than three years nor more than 10 years.

(d) In the event that a complete application cannot be made because details of the project that are necessary for the Commission's review have not been approved by the municipal reviewing agency, the Commission shall deny review of the application.

(e) The Commission's review procedure and criteria for review of general development plan applications shall be the same as described in this chapter for other private projects.

(f) If the Commission has granted a Certificate of Approval for a general development plan, the applicant or his successors shall be responsible for submitting to the Commission all plans and calculations on phases of the project as these phases receive municipal site plan approval. In reviewing these phases of a project, the Commission shall be guided by the conformity of each phase to the approved general development plan.

(g) When the Commission has granted a Certificate of Approval to the first phase of a general development plan, but has not approved the full general development plan, the Commission is not committed to approving any other phases of that plan.

7:45-[2.7]**2.8** Review of governmental projects

(a) The Commission shall review [and either approve, reject or conditionally approve] any project in the Review Zone proposed by a [State department or agency, county, municipality or any other governmental entity] **governmental agency, including, but not limited to, agencies of the State, county, municipality, school boards, and sewer authorities to insure that these actions conform as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives. The Commission shall take action as follows:**

1. For projects sponsored by State agencies in the Review Zone, but not in the Canal Park, the Commission shall approve the project upon being satisfied that it conforms as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives.

2. For any governmental project in the Canal Park, the Commission shall review and either approve, reject or conditionally approve the project.

3. For any project in the Review Zone sponsored by a governmental agency other than a State agency, the Commission shall review and either approve, reject or conditionally approve the project.

4. For State permits or other actions in the Review Zone, but not in the Canal Park, the Commission shall approve the action upon being satisfied that it conforms as nearly as possible to the Commission's Master Plan and relevant local plans or initiatives.

(b) Any [State department or agency, county or municipality] **governmental agency** planning to undertake a [governmental] project in the Review Zone:

1.-2. (No change.)

3. Shall submit its plans to the Commission for its review and approval[, rejection, or conditional approval] not less than 60 days before advertising for bids for the construction of a project or execution of a contract [therefore] **for a project,** whichever is sooner.

7:45-[2.8]**2.9** Notice of decision

(a) (No change.)

(b) For all private projects, the Commission shall notify [the applicant of its final decision by certified mail, shall notify the appropriate municipal and county approving agencies, shall publish notice of the decision in the DEP Bulletin, and shall notify all affected persons who specifically requested notice] **the following in writing of its final decision: the applicant, the appropriate municipal and county approving agencies, and all affected persons who specifically requested notice**.

(c) (No change.)

7:45-[2.9]**2.10** (No change in text.)

[7:45-2.10 Review of State actions

(a) The Commission shall approve all State actions within the Review Zone that impact on the Park, and insure that these actions conform as nearly as possible to the Master Plan and relevant local plans or initiatives. The State actions which the Commission shall review include:

1. Actions by the New Jersey Water Supply Authority concerning the improvement, maintenance and operation of the Canal as a water supply facility;

2. Actions by the Division of Parks and Forestry in the Department in the development of the Park for recreational purposes; and

3. Actions by any other state department or agency that impacts on the Park.]

7:45-2.11 Private projects exempt from project review

Any private project which has received preliminary site plan or preliminary subdivision approval from the appropriate municipal approving agency prior to [the effective date of this section] **February 5, 1990** shall be exempt from review by the Commission under N.J.A.C. 7:45-[6]**7** and 9.

SUBCHAPTER 3. CERTIFICATE OF APPROVAL

7:45-3.1 Certificate of approval

(a) Construction shall not begin on any project [nor shall any project be undertaken] prior to issuance of the Commission's Certificate of Approval which shall be issued within 10 days of the decision granting approval or conditional approval and receipt of the proof of filing set forth in (g) below.

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

(g) [As a condition precedent to the Commission's issuance of a Certificate of Approval, the applicant shall provide proof of filing to the Commission in order to demonstrate that a properly executed Conservation and Maintenance Easement has been filed in the Office of the County Clerk or Registrar of Deeds. The Certificate of Approval shall not be issued proof of filing is received at the Commission's office. The easement shall incorporate and implement the condition of approval set forth by the Commission in the Notice of Decision on the proposed project.] **When the Commission's Notice of Decision requires a Conservation and Maintenance Easement affecting some or all of the property in question, a Certificate of Approval shall not be issued until the wording of the Easement has been approved by the Commission or its delegate and until proof is submitted to the Commission or its delegate of the recording of such Easement in the Office of the appropriate County Clerk or Registrar of Deeds.**

(h) The holder of the Certificate of Approval shall notify the Commission at least 10 days prior to start of construction.

SUBCHAPTER 4. ADJUDICATORY HEARINGS

7:45-4.1 Request for an adjudicatory hearings

(a) When the Commission denies or approves with conditions a project, [the notice of decision shall advise] **it shall notify** the applicant, municipality, municipal reviewing agency and those affected parties who specifically[,] requested notice of the Commission's decision of **the decision. This notice shall include information on** the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. The notice shall include the following:

1.-3. (No change.)

(b) Within 30 calendar days following the service of the notice of decision under N.J.A.C. 7:45-2.8 or N.J.A.C. 7:45-[11.2(g)] **10.2(c)**, the applicant, municipality, municipal approving agency or affected party may submit a request to the Commission for an adjudicatory hearing to contest the denial or approval with conditions of a project under N.J.A.C. 7:45-2.8 or a waiver request under N.J.A.C. 7:45-[11]**10.**

(c) The hearing request shall contain:

1. (No change.)

2. [A clear and concise factual statement of the nature and scope of the] **Demonstration of the particular** interest of the requester;

3.-7. (No change.)

7:45-4.2 Action on request for hearing

(a) The [Department] **Commission** shall determine whether a request for a contested case hearing should be granted. In making such determination, the [Department] **Commission** shall evaluate the request to determine whether the matter constitutes a contested case, as defined by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.[, exists and whether there are issues of fact which, if assumed to be true, might change the Commission's decision. Where only issues of law are raised by a request for a hearing, the request will be denied.]

(b) If the Commission determines that the matter constitutes a contested case, the hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

[(b)]**(c)** If the [Department] **Commission** grants a request for an adjudicatory hearing, the [Department] **Commission** shall identify those contested conditions for which an adjudicatory hearing has been granted. The [Department] **Commission** shall set forth these conditions in writing and serve notice in accordance with N.J.A.C. 7:45-4.3. Conditions which are not contested or for which the [Department] **Commission** has denied the hearing request shall not be considered at the hearing.

[(c)]**(d)** If the [Department] **Commission** grants a request for a hearing, in whole or in part, in regard to a notice of decision, then any other request for a hearing in regard to the notice shall be treated as a request to be a party and the [Department] **Commission** shall grant any such request which meets the requirements of N.J.A.C. [&]7:45-4.1(c).

[(d)]**(e)** If a request for a hearing is denied in whole or in part, the [Department] **Commission** shall briefly state the reasons. Such denial shall constitute the final action of the [Department] **Commission.**

[(e)]**(f)** The [Department] **Commission** may, upon request and for good cause shown, stay the issuance of the Certificate of Approval under N.J.A.C. 7:45-3 pending a final decision on the appeal.

SUBCHAPTER 5. STORM DRAINAGE AND WATER QUALITY IMPACT REVIEW

7:45-5.1 Purpose and scope of review

[(a)] The Commission shall review projects that produce stormwater runoff that will drain into the Park, either directly or indirectly through a stream. All projects within Zone A and Zone B of the Review Zone, except those projects expressly exempted by this chapter or waived by the Commission, shall be subject to review for their drainage impact on the Park.

[(b) This subchapter requires a degree of detention storage which will provide a positive reduction in runoff from small to moderate sized storms. The Commission will accept, however, as an alternative, municipal or county requirements under which required stormwater detention will control all storms of up to 100 year frequency so that there will be no increase in the maximum rate of runoff which would have occurred from such a storm without the development. In this case, it will not be necessary to provide for a reduction in any storm below that which would have occurred without the development. The retardation of runoff by detention must encourage the holding of storm water runoff on the project's site, as close as practicable to its source. This detention may be accomplished by detention basins, or by equipment alternative methods, as explained in N.J.A.C. 7:45-5.4.]

7:45-5.2 Submission requirements

[(a) Projects may be eligible for peremptory approval as described in N.J.A.C. 7:45-2.4. For projects in Zone B which are eligible for peremptory approval, submission materials will be limited to a completed copy of the form supplied by the Commission and the data described in (b), (e), (f)1 and (f)3 below. Projects in Zone A shall comply with all submission requirements regardless of their eligibility for peremptory approval.]

[(b)]**(a)** [Except for minor projects which are additions or alterations to existing structures,] **For all major projects** the applicant shall submit to the Commission a topographic base map of the site prior to improvement at a scale of one inch = 200 feet or greater, showing two feet contour intervals for slopes of 10 percent or less, and five foot contour intervals for slopes greater than 10 percent. Where such information is not available, the applicant may request Commission approval of some other contour interval. The map shall indicate at least the following:

1.-8. (No change.)

[(c)]**(b)** [Applicants] **For all major and minor projects the applicant** shall submit a map at a scale of one inch = 400 feet or greater to reflect current conditions, showing the relationship of the proposed development to significant features in the general surroundings. The map shall indicate the following:

1.-10. (No change.)

[(d)]**(c)** [The] **For all major projects the** applicant shall submit a written and graphic description of the natural and man-made features of the **project site** and its environs. This description shall include a discussion of soil conditions, slopes, wetlands, and vegetation on the site. Particular attention shall be given to unique, unusual, or environmentally sensitive features and to those that provide particular opportunities or constraints for development.

[(e)]**(d)** [Except for minor projects which are additions or alterations to existing structures, the applicant] **For all major projects the applicant** shall submit a project description and site plan map (or maps) at the scale of the topographic base map showing changes proposed and written description of the site plan with a justification of proposed changes in natural conditions. The map shall include:

1.-6. (No change.)

[(f)]**(e)** [For minor projects, details of the proposed plan to control and dispose of surface water shall be submitted.] For major projects that will include facilities for stormwater detention, the following information, including a map or maps of a suitable scale, shall be provided:

1.-4. (No change.)

5. Maximum discharge and total volume of runoff which would occur from each of the storms described at [(f)]**(e)**4i and ii above after complete construction of the proposed improvement and the proposed detention provisions; and

6. (No change.)

[(g)]**(f)** [The] **For all major projects the** applicant shall submit a statement from a licensed engineer of the State of New Jersey that he has reviewed or prepared the plans for the detention facility and the proposed provisions are satisfactory from a dam safety viewpoint and in accordance with any criteria or rules established by the State.

[(h)]**(g)** [The] **For all major projects the** applicant shall submit any other information expressly requested by the Commission which may show the extent to which the project is in accord with the standards of review established in this chapter.

[(i)]**(h)** Applicants for minor projects [need not comply with (c), (d), and (g), above] **shall submit details of the proposed plan to control and dispose of surface water runoff.**

7:45-5.4 Specific storm drainage and water quality standards

(a) Each project subject to this chapter shall include facilities for detention of storm runoff through any feasible combination of **basins,** impoundments, rooftop storage, swales, dry wells, or any other reliable engineering approaches satisfactory to the Commission.

(b) The detention facilities shall provide retention of site runoff for any storm up to and including the two, 10 and 100 year storm. Runoff greater than that for a 100 year storm shall be passed over an emergency spillway. The construction sequence shall show the detention pond constructed in advance of any other soil disturbance. The pond shall act as a sedimentation basin [thereafter] **during construction.** Sediment shall be removed from the pond after construction of the project is complete.

(c) The outlet from the detention facility shall require [90 percent of] the runoff from 1.25 inches of rainfall, falling in two hours, to be retained so that no more than 90 percent will be evacuated in less than 36 hours. The following exceptions to this subsection will be acceptable:

1.-4. (No change.)

(d)-(h) (No change.)

(i) The [retention site] **stormwater** runoff **retained** as required by this chapter will result in the accumulation in the detention basin of considerable amounts of sediment, including particulate polluting substances and debris. Provisions shall be made for periodic removal and disposal of accumulated solid materials in accordance with law. Computations for storage capacity shall include estimates for one year's accumulation of solid materials.

(j)-(l) (No change.)

7:45-5.6 Applicability of storm drainage and water quality standards

(a) The storm drainage and water quality standards do not apply in the following instances:

1. General Standards: Zone B minor projects;

2. Standards for stormwater retention: Minor projects in both Zones A and B; **and**

3. Alternative standards for certain watersheds: Minor projects in both Zones A and B[; and].

[4. Standards for stream corridors: Minor projects in both Zones A and B.]

Agency Note: N.J.A.C. 7:45-6 is recodified as N.J.A.C. 7:45-7.

SUBCHAPTER [7.]**6.** DETENTION FACILITIES IN FLOOD HAZARD AREAS

Recodify existing N.J.A.C. 7:45-7.1 and 7.2 as **6.1 and 6.2** (No change in text.)

SUBCHAPTER [6.]7. STREAM CORRIDOR IMPACT

7:45-[6.1]**7.1** Scope of review

(a) Except for specific projects expressly waived by the Commission pursuant to N.J.A.C. 7:45-[11]**10**, all major projects within Zone A or Zone B, or both, of the Review Zone shall be subject to review by the Commission for stream corridor preservation if the project includes a portion of any of the stream corridors of the following designated streams within the Review Zone:

[1. Alexauken Creek;
2. Beden's Brook;
3. Duck Pond Run
4. Fiddler's Creek;
5. Heathcote Brook;
6. Jacob's Creek;
7. Little Shabakunk Creek;
8. Lockatong Creek;
9. Millstone River
10. Moore's Creek;
11. Shabakunk Creek;
12. Shipetauken Creek;
13. Simonson Creek;
14. Six Mile Run;
15. Stony Brook;
16. Swan Creek;
17. Ten Mile Run; and
18. Wickecheoke Creek.]

1. Lockatong Creek;
2. Wickecheoke Creek;
3. Alexauken Creek;
4. Swan Creek;
5. Moore's Creek;
6. Fiddler's Creek;
7. Jacob's Creek;
8. Shabakunk Creek;
9. Little Shabakunk Creek;
10. Shipetauken Creek;
11. Duck Pond Run;
12. Stony Brook;
13. Millstone River;
14. Heathcote Brook;
15. Beden's Brook;
16. Simonson Creek;
17. Six Mile Run;
18. Ten Mile Run;

7:45-[6.2]**7.2** Submission requirements

(a) For all major projects within Zones A, or Zone B, or both, of the Review Zone and which include a portion of the stream corridor of any designated stream under N.J.A.C. 7:45-[6.1]**7.1**(a), the applicant shall submit to the Commission a map of the project site delineating the stream corridor at a scale of one inch equals 200 feet and containing the following:

1.-3. (No change.)

7:45-[6.3]**7.3** Permitted uses within designated stream corridors

(a) In addition to preserving land in its natural state and only to the extent not prohibited [at] **by** N.J.A.C. 7:45-[6.4]**7.4**(a), only the following uses shall be permitted within the stream corridor of a stream designated in N.J.A.C. 7:45-[6.1]**7.1**(a):

1.-3. (No change.)

7:45-[6.4]**7.4** Prohibited uses within stream corridors of designated streams

(a) The following uses shall be prohibited within a stream corridor of a stream designated in N.J.A.C. 7:45-[6.1]**7.1**(a) if a permit from or determination by a municipal agency is required;

1.-4. (No change.)

5. Barns, stables, feedlots, barnyards, poultry buildings, and farm waste disposal facilities; [and]

6. Parking facilities and roads that are parallel with the stream[.]; **and**

7. Removal of native vegetation or actions which result in the death of native vegetation.

7:45-[6.5]**7.5** Conditional uses within stream corridors of designated streams

(a) The following uses shall be permitted within a stream corridor of a stream designated in N.J.A.C. 7:45-[6.1]**7.1**(a) if the applicant demonstrates to the satisfaction of the Commission that the proposed use complies with the Master Plan and this chapter:

1.-4. (No change.)

5. Dams, culverts, [and] bridges **and roads that cross the corridor as directly as practical, and** that have received approval from the appropriate municipal, county and State agencies having such authority;

6.-8. (No change.)

9. Structures[, buildings and retaining walls] comprising part of a regional flood retention project[, water supply impoundments, culverts, or bridges]; and

10. (No change.)

7:45-7.6 Preservation of stream corridor

The applicant shall take whatever measures are necessary to assure that areas designated as stream corridors will be preserved and to prevent additional encroachments in the stream corridor likely to occur as a result of the approval granted. Such measures may include easements, deed restrictions, or other measures satisfactory to the Commission.

7:45-[6.6]**7.7** (No change in text.)

SUBCHAPTER 8. VISUAL AND NATURAL QUALITY IMPACT

7:45-8.2 General standards of review for visual and natural quality impact

(a) The Commission shall review all projects in Zone A to determine if the project is in accord with the goals for the Park as defined in the Park's Master Plan. The visual and natural quality impact review is intended to assure that development within Zone A is not harmful to the character of the environmental types identified in the Master Plan as comprising the Park. The environmental types are:

1.-4. (No change.)

5. Transportation: Park squeezed between roads, railroads, and river **or stream**.

6. Special Node: Small areas with unique characteristics.

7:45-8.3 Review of visual and natural quality impact of major projects within Zone A

(a) (No change.)

(b) In those cases where the far banks of [the Delaware River,] the Raritan River[,] and Lake Carnegie are closer than 1000 feet to the center line of the Canal, those banks shall be the limit of Zone A.

7:45-8.4 Design standards for review of visual and natural quality impact

(a) Except as provided in N.J.A.C. 7:45-8.3, major and minor projects in Zone A shall be set back from the Park sufficiently far so that the visual and natural quality of the Park is not adversely affected. The following setbacks, all of which are from the nearest boundary of the Canal Park, are required unless the Commission approves an alternative:

1.-3. (No change.)

4. In any area where existing vegetation does not provide adequate screening, the project shall include landscaping, or a greater setback, or both, to [project] **protect** the Park's visual environment.

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

(d) For major and minor projects in Zone A, other visual and natural quality impact standards are as follows:

1. (No change.)

2. Exposed storage areas, out-buildings, exposed machinery service areas, parking lots, loading areas, utility buildings, and similar ancillary areas and structures shall either be completely concealed from view from the Park or designed according to **the standards in** this chapter **that are** applied to other structures.

3. All commercial signs and outdoor advertising structures in excess of two square feet surface area shall comply with the following standards:

i. (No change.)

ii. In natural or rural environments, no sign shall be visible from the Park;

iii. (No change.)

iv. No free standing sign or other advertising **device** or part thereof visible from the Park shall be more than 200 feet above ground level.

4. Wherever possible, natural terrains, soils, **stones,** and vegetation should be preserved. New vegetation, **stones,** and soils should be native to the environment in which they are placed.

5. (No change.)

SUBCHAPTER 9. TRAFFIC IMPACT

7:45-9.1 Review of major projects for traffic impact

The Commission shall review major projects in Zone A of the Review Zone, or major projects in Zone B of the Review Zone that are within one mile of any portion of the Park and have direct access to a road which enters Zone A, for their traffic impact on roads that enter the Park or any part of Zone A. The applicant shall submit a traffic impact study which shows the amount of additional traffic generated by the project and the directions in which this traffic will move. If the Commission determines that the additional traffic will have an adverse impact on the Park, the applicant shall use any feasible [on-site] planning techniques that will direct any additional traffic away from the Park. If the Commission is satisfied that there are no feasible [on-site] planning techniques other than as set forth in the project proposal that can direct any additional traffic away from the Park, the project shall be approved for traffic impact review.

7:45-9.2 Review of road construction, road improvements, and new traffic loads

(a) The Commission shall not approve projects that include new vehicular crossings of the Canal unless the applicant demonstrates to the satisfaction of the Commission that the project conforms with the following goals:

1. (No change.)

2. Any new local vehicular crossing shall [eliminate] **be accompanied by the elimination of** an existing local vehicular crossing;

3.-6. (No change.)

(b) Proposals for new or improved roads in Zone A and Zone B of the Review Zone that are within one mile of any portion of the Park that will substantially increase vehicular traffic to roads adjacent to the Canal will not be approved unless the applicant can demonstrate to the satisfaction of the Commission that:

1. Recreational access to the Park [is] **and recreational use of the Park are** not impeded;

2.-4. (No change.)

[SUBCHAPTER 10. (RESERVED)]

SUBCHAPTER [11.]**10.** WAIVER OF GOVERNMENTAL AND PRIVATE PROJECTS REVIEW

7:45-[11.1]**10.1** (No change in text.)

7:45-[11.2]**10.2** Procedure

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

(c) The notice of decision shall advise the applicant[, municipality] and municipal reviewing agency and those affected parties who specifically requested notice of the Commission's decision of the right to request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The request for a hearing shall be submitted and acted on pursuant to N.J.A.C. 7:45-4.

7:45-[11.3]**10.3** Waiver of governmental and private project review due to extreme economic project hardship or compelling public need

(a) **The** Commission may waive review or waive any requirement of this chapter, upon a clear and convincing demonstration by the applicant that strict adherence to the review procedure, or to a specific requirement of this chapter, would result in extreme economic hardship or extraordinary and unjustified expense, or would conflict with a compelling public need, and that the project will not impair the intent and purpose of the Master Plan or this chapter.

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

7:45-[11.4]**10.4** (No change in text.)

7:45-[11.5]**10.5** Waiver of traffic review for private and governmental projects

Private and governmental projects otherwise subject to review by the Commission for traffic impact will be waived [for] **from** such review if the applicant establishes to the satisfaction of the Commission that the project will not have a direct traffic impact on the Park.

7:45-[11.6]**10.6** (No change in text.)

7:45-[11.7]**10.7** Waiver of visual and natural quality impact review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for visual and natural quality impact may be waived from such review if the applicant establishes to the satisfaction of the Commission that visual screening will continue to exist in the future, and:

1. Wherever possible, natural terrains, soils and vegetation are to be preserved, and new vegetation and soils are to be native to the environment in which they are placed; and

[1.]**2.** The topography of the land screens the entire project; or

[2.]**3.** Existing structures screen the entire project; or

[3.]**4.** Vegetation screens the entire project during the winter season.

7:45-[11.8]**10.8** Waiver of reconstruction or minor alteration review for governmental and private projects

(a) Governmental and private projects otherwise subject to review by the Commission for reconstruction or minor alterations may be waived from such review if the applicant establishes to the satisfaction of the Commission that:

1. The project consists solely of the reconstruction of a previously existing structure which was partially destroyed by fire, flood, or other natural disaster, and that the reconstruction will not increase the use or the exterior dimensions of the structure. Structures which are totally destroyed by such natural disasters are not eligible for waiver and remain [eligible] **subject** for review; or

2. The project consists solely of alterations to an existing structure and will not increase the use or the exterior dimensions of the structure.

[7:45-11.9 Hardship waiver for governmental and private projects

The Commission, may at its discretion, waive review or waive any requirement of this chapter, upon a clear and convincing demonstration by the applicant that application of the review procedure or of a specific requirement of this chapter, would result in extreme economic hardship or extraordinary and unjustified expense, and that the project will not impair the intent and purpose of the Master Plan or this chapter.]

7:45-[11.10]**10.9** (No change in text.)

SUBCHAPTER [12]**11.** SEVERABILITY

7:45-[12.1]**11.1** (No change in text.)

HEALTH

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Proposed Amendments: N.J.A.C. 8:71

Authorized By: Drug Utilization Review Council, Henry T. Kozek, Secretary.
Authority: N.J.S.A. 24:6E-6(b).
Proposal Number: PRN 1993-604.

A **public hearing** concerning these proposed amendments will be held on Monday, November 29, 1993, at 2:00 P.M. at the following address:

Room 804, Eighth Floor
Department of Health
Health-Agriculture Bldg.
Trenton, New Jersey 08625-0360

Submit written comments by December 1, 1993 to:

Mark A. Strollo, R.Ph., M.S.
Drug Utilization Review Council
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

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

For example, the proposed terfenadine 60 mg tablets could be used as a less expensive substitute for Seldane, a branded prescription medicine. Similiarly, the proposed cimetadine 200 mg, 300 mg, 400 mg, and 800 mg tablets, could be substituted for the more costly branded product, Tagamet.

The Drug Utilization Review Council is mandated by law to ascertain whether these proposed medications can be expected to perform as well as the branded products for which they are to be substituted. Without such assurance of "therapeutic equivalency," any savings would accrue at a risk to the consumer's health. After receiving full information on the proposed generic products, including negative comments from the manufacturers of the branded products, the advice of the Council's own technical experts, and data from the generics' manufacturers, the Council will decide whether any of these proposed generics will work just as well as their branded counterparts.

Every proposed manufacturer must attest that they meet all Federal and State standards, as well as having been inspected and found to be in compliance with the U.S. Food and Drug Administration's regulations.

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by these amendments because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the precriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the ecomomies occasioned by these amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was $7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Analysis

The proposed amendments impact many small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq: specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or record keeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

Adenosine phosphate inj 25mg/ml	Steris
Albuterol sulfate inh. soln 0.083%, 0.5%	Warrick
Albuterol syrup 2mg/5ml	Warrick
Albuterol tabs 2 mg, 4mg	Novopharm
Allopurinol tabs 300 mf	Geneva
Alprazolam tabs 0.25mg, 0.5mg, 1mg, 2mg	Mylan
Alprazolam tabs 0.25mg, 0.5mg, 1mg, 2mg	Purepac
Amiloride HC1 tabs 5 mg	Par
Amiodarone tabs 200 mg	Alphapharm
Ascorbic Acid inj 222mg/ml	Steris
Atenolol tabs 25 mg	Danbury
Auralgan otic soln substitute	Hi-tech
B Complex 100 inj	Steris
B Complex with C & B-12 inj	Steris
Betamethasone sod. phosphate inj 4mg/ml	Steris
Bromocriptine mesylate tabs 2.5 mg	Danbury
Brompheniramine maleate inj 10mg/ml	Steris
Bumetanide tabs 0.5mg, 1mg, 2 mg	Zenith
Buspirone HC1 tabs 5 mg, 10 mg	Danbury
Calcitonin-salmon inj 200iu/ml	Arcola
Carbidopa/levodopa 10/100, 25/100, 25/250	Purepac
Cefaclor caps 250 mg, 500 mg	Zenith
Chlorpheniramine maleate inj 10mg/ml	Steris
Chlorpromazine HC1 inj 25mg/ml	Steris
Chlorzoxazone tabs 250 mg	Par
Chlorzoxazone tabs 250 mg, 500 mg	Ohm
Chorionic gonadotropin 5,000u, 10,000u	Steris
Cimetidine tabs 200mg, 300mg, 400mg, 800mg	Mylan
Clemastine fumarate syrup 0.67mg/5ml	Lemmon
Clemastine fumarate tabs 1.34 mg, 2.68mg	Geneva
Clindamycin phosphate topical soln 1%	Barre-Nat'l
Clotrimazole cream 1%	Taro
Desipramine 10mg, 25mg, 50mg, 75mg, 100mg, 150mg	Danbury
Dexamethasone NaP04 inj 4mg/ml, 10mg/ml	Steris
Dexamethasone acetate susp. inj 8mg/ml	Steris
Dexpanthenol inj 250mg/ml	Steris
Diazepam inj 5mg/ml	Steris
Dicyclomine HC1 inj 10mg/ml	Steris
Diltiazem HC1 tabs 30mg, 60mg, 90mg, 120mg	Bristol
Dimenhydrinate inj 50mg/ml	Steris
Dimetane DX liq substitute	HiTech
Diphenhydramine HC1 inj 10mg/ml, 50mg/ml	Steris
Dyphylline GG liquid	Hi-Tech
Edetate disodium inj 150mg/ml	Steris
Erythromycin topical soln 2% pledgette	Syosset
Estradiol cypionate inj 5mg/ml	Steris
Estradiol valerate inj 20mg/ml, 40mg/ml	Steris
Ethosuximide syrup 250mg/5ml	Copley
Fiorinal tabs substitute	Danbury
Fluphenazine HC1 tabs 1mg, 2.5mg, 5mg, 10mg	Danbury
Glyburide tabs 1.25 mg, 2.5 mg, 5 mg	Hoechst
Indomethacin caps 25 mg, 50 mg	Par
Isosorbide dinitrate tabs 20mg, 30mg, 40mg	Danbury
Levothyroxine tabs 88mcg, 112mcg, 137mcg	Rhone Poulenc
Methazolamide tabs 25 mg, 50 mg	Lederle
Methylprednisolone tabs 4 mg, 16 mg	Danbury
Metoclopramide HC1 tabs 5 mg	Danbury
Metoprolol tartrate tabs 50 mg, 100mg	Ciba-Geigy
Metoprolol tartrate tabs 50 mg, 100mg	Mylan
Metoprolol tartrate tabs 50 mg, 100mg	Purepac
Metronidazole tabs 250 mg, 500 mg	Par
Nadolol tabs 160 mg	Bristol
Nadolol tabs 20mg, 40mg, 80mg, 120mg, 160mg	Zenith
Nadolol tabs 40mg, 80mg, 120mg	Danbury
Naproxen sodium tabs 275mg, 550 mg	Mylan
Naproxen tabs 250mg, 375mg, 500 mg	Mylan
Nortriptyline caps 10mg, 25mg, 50mg, 75mg	Mylan
Pindolol tabs 5 mg, 10 mg	Mutual
Poly-Vi-Flor/Iron liq 0.5mg substitute	HiTech
Primidone tabs 250 mg	Linnett
Propoxyphene/APAP tabs 100/650	Danbury
Robitussin AC liq substitute	HiTech
Robitussin DAC liq substitute	Barre-Nat'l
Robitussin DAC liq substitute	HiTech
Rynatuss Ped. Susp. substitute	Ferndale
Rynatuss tabs substitute	Ferndale
Spironolactone/HCTZ tabs 50/50	Danbury
Terfenadine tabs 60 mg	Geneva
Trazodone HC1 tabs 150 mg	Danbury
Triamterene/HCTZ caps 50/25	Zenith
Triazolam tabs 0.125 mg, 0.25	Alphapharm

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Clinical Case Management Standards

Proposed New Rules: N.J.A.C. 10:37C

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:9A-10.

Proposal Number: PRN 1993-581.

Submit comments by December 1, 1993 to:
Raymond M. Deeney, Esq.
Administrative Practice Officer
Division of Mental Health and Hospitals
CN 727
Trenton, New Jersey 08625-0727

The agency proposal follows:

Summary

These proposed new rules govern the provision of adult clinical case management services funded by the Division of Mental Health and Hospitals. Clinical case management services are individualized clinical support services for clients who need consistent professional contact to maintain stability and to access or receive necessary medical, social, educational and other services. The purposes of these rules is to promote the efficient and effective use of State funds by providers and to ensure that quality services are delivered to clients.

Currently, programmatic standards for adult clinical case management services do not exist as rules, since these services have begun to be funded by the Division relatively recently. Current providers of such services are required to deliver the services in accordance with their individual service contracts with the Division. The Division initiated a process to develop uniform standards for these services about two years ago, with significant input from service providers, consumers, family members and advocates for persons with mental illness. This proposal is the result of that initiative. The Department believes that uniform standards for these services promulgated through the rulemaking process will produce the most appropriate and comprehensive standards.

Presently the Division funds 23 agencies with more than six million dollars to provide these services to a total of nearly 3,000 clients yearly and over 1,000 clients on average at specific points in time throughout the year.

N.J.A.C. 10:37C-1.1 describes the scope and purpose of these proposed new rules. N.J.A.C. 10:37C-1.2 provides definitions for the words and terms used in this chapter. N.J.A.C. 10:37C-1.3 sets requirements for the development and implementation of written policies and procedures by provider agencies. N.J.A.C. 10:37C-1.4 establishes priorities amongst the types of clients to be served by provider agencies. N.J.A.C. 10:37C-1.5 establishes requirements regarding various aspects of service delivery and service planning by provider agencies. N.J.A.C. 10:37C-1.6 establishes requirements regarding the staffing levels, qualifications and duties for provider agencies. N.J.A.C. 10:37C-1.7 establishes the requirement that provider agencies coordinate clinical case management services with other community mental health and non-mental health programs. N.J.A.C. 10:37C-1.8 establishes requirements regarding the maintenance of individual client records by provider agencies.

Social Impact

These services are designed to target adults with serious and persistent mental illness who are at high risk of hospitalization because they may not accept or engage in other community mental health programs, despite the fact that they have multiple service needs or require extensive service coordination. These rules positively impact clients eligible to receive clinical case management services by establishing standards designed to promote the effective delivery of appropriately prioritized quality services. Implementation of these services and standards are expected to promote greater independence and improved quality of life, as well as reduced hospitalizations, among the clients receiving the services by providing more opportunities to access, appropriately use and continue in community programs.

Additionally, the standards contained in these proposed new rules assist provider agencies to attain their goal of providing high quality and well focused services. The Division benefits from the promulgation of these standards because they provide an appropriate measure to use in determining whether service delivery meets basic minimum requirements.

Economic Impact

The funding of, and the establishment of standards for, the services which are the basis for these rules have a positive economic impact on clients with limited incomes because they are generally made available to them at no cost. The Department believes that provider agencies can comply with these rules without expenditures in addition to the funding received from the Division or other sources in relation to these services. The promulgation of these standards is not intended or expended to impact the amount of Division funding available to agencies to provide these services in the future. The Department also believes that taxpayers throughout the State ultimately benefit from the effective delivery of these services, because the services reduce the need for expensive psychiatric hospitalizations.

Regulatory Flexibility Analysis

Some providers of Division-funded clinical case management services may be small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed new rules require provider agencies to develop written policies and procedures (N.J.A.C. 10:37C-2.1), client assessments and service plans (N.J.A.C. 10:37C-2.3) and written affiliation agreements with other community mental health and non-mental health programs (N.J.A.C. 10:37C-2.5), and maintain individual client records (N.J.A.C. 10:37C-2.6).

The reporting, recordkeeping and other compliance requirements imposed upon such provider agencies must be uniformly applied, regardless of the size of the provider agency, to ensure that individuals with mental illness receiving these services throughout the State do so in accordance with basic minimum standards of quality. These standards are important because many consumers of these community services would be at risk of more restrictive and expensive hospitalization, unless these services are competently and effectively provided. Additionally, these agencies are individually funded by the Division to be able to meet these requirements, and it is not anticipated that compliance will require the employment of professional services by providers.

Full text of the proposed new rules follows:

CHAPTER 37C
CLINICAL CASE MANAGEMENT

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS.

10:37C-1.1 Scope and purpose

(a) The rules in this chapter shall apply to all Division-Funded clinical case management (CCM) services.

(b) The purpose of CCM services is to assist clients 18 years of age or older in gaining access to needed medical, social, educational, and other services. Within the continuum of community mental health case management, CCM services have the capability to offer the most comprehensive range of services to enrolled clients and provide varying degrees of service intensity based on the clients' changing needs. These rules provide a description of the clients for whom the services are targeted, services to be provided, the requirements and responsibilities of the PAs and their staff, and the procedures required to provide the services.

10:37C-1.2 Definitions

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

"Advocacy" means the ongoing process of assisting the client in receiving all benefits to which he or she is entitled by working toward the removal of barriers to receiving needed services.

"Assessment" means the ongoing process of identifying and reviewing a client's strengths, deficits, and needs based upon input from the client, significant others, family members and health professionals. The assessment process continues throughout the entire length of service and the assessments are updated periodically based upon the availability of client information.

"Clinical case management" (CCM) means the provision of individualized clinical support services for a client who needs consistent contact to help that client maintain stability and to assist the client in accessing or receiving needed services. Provided primarily offsite, CCM services include, but are not limited to, assessment, service planning, service coordination, service linkage, ongoing monitoring, ongoing support services and advocacy.

"Division" means the Division of Mental Health and Hospitals in the Department of Human Services.

"Ongoing monitoring" means the ongoing review of the client's status and needs and the routine follow-up with the client's service providers to assess if services are provided as planned and if they meet the client's needs.

"Ongoing support services" means the provision of face-to-face individualized clinical support services for a client who needs such contact.

"Provider agency" (PA) means a public or private organization which has a contract with the Division to provide CCM services.

"Risk assessment" means an assessment that concludes with the assignment of a risk category.

"Risk category" means the three levels of CCM involvement, based upon assessed risk of hospitalization, functional level and willingness or ability to access needed services. The three risk categories are: high-risk, or intensive case management; at-risk, or supportive case management; and low-risk, or maintainance level case management.

"Service coordination" means communication among multiple service providers regarding services offered to clients, and the use of communicated information in CCM service planning.

"Service linkage" means the referral to and enrollment with other appropriate service providers to address the needs identified in the assessment.

"Service planning" means the process of organizing the outcomes of the assessment in collaboration with the client, significant others, potential service providers, including providers of medication monitoring, and others as designated, to formulate a written service plan that addresses the client's needs, planned services to address these needs, and plans to motivate the client to utilize services. The service planning process shall continue throughout the client's receipt of CCM services.

SUBCHAPTER 2. PROGRAM OPERATION

10:37C-2.1 Written policies and procedures

(a) The PA shall develop and implement written policies and procedures to ensure that the services provided comply with the rules in this chapter.

1. The PA shall have written and implemented policies and procedures which support the concept of offsite, community-based service provision and intensive outreach to clients in their own environment.

2. The PA shall have written and implemented policies and procedures requiring the assessment of risk and methods of identifying risk. Such assessment shall be used to prioritize and plan CCM services. Such policies and procedures shall have been approved by the Division.

3. The PA shall have written and implemented policies and procedures regarding the use of mental health and other community services by clients appropriate for such services. Particular emphasis shall be placed, in this regard, on liaison services, screening center services and short term care facility services.

4. The PA shall have written policies and procedures to monitor the CCM services provided and describe how these are integrated with the overall agency QA plan.

5. The PA shall have written policies and procedures to assure that there is client input into all aspects of the program and that there is individualized client goal setting. Policies should emphasize accommodating client preferences, whenever possible.

6. The PA shall have written policies and procedures to monitor each client's wait for service and the prioritization of clients for service.

10:37C-2.2 Population priorities

(a) The PA shall give priority to providing services to clients most in need of the services because they suffer from a serious mental illness, pose a risk to their own welfare in the absence of such services and exhibit two of the following criteria:

1. The client has repeated admissions to inpatient services. Priority will be given to persons with two or more admissions to inpatient psychiatric services within a 12 month period, or two or more uses of emergency/screening services within a 30 day period;

2. The client participates in mental health services, but is not receiving additional services which meet the individual's multiple needs, and requires extensive service coordination (for example, individuals who are dually diagnosed as mentally ill and chemical abusing or children involved with DYFS and school systems);

3. The client has a recent history of being a danger to self or others within a time period of three months;

4. The client has a history of resistence or non-compliance in use of medication, resulting in a pattern of decompensation and hospitalization;

5. The client is in another service system and in need of assessment and possible treatment prior to linkage to case management (for example, residential, drug and alcohol programs, or shelters for homeless); or

6. The client resides with family, in a boarding home, or other residential setting and is not receiving needed mental health services.

(b) The PA's discharge criteria shall include at least one of the following:

1. The client has been successfully engaged in needed mental health and non-mental health services; or

2. The client is low risk and has remained at the same low risk status for six months and has had no record of crisis services use, hospitalization or involvement with the criminal justice system for the previous six months; or

3. Agreement between the client and the PA that CCM services are no longer of benefit to the client; or

4. The client refuses repeated offers of service; or

5. The client leaves the county and the PA makes attempts to engage the client with the receiving county.

10:37C-2.3 Service requirements

(a) The PA shall provide services that assist clients to reach and maintain their individual optimal level of functioning in the community.

1. The PA shall provide the following concrete services to enrolled clients: assessment, support, service planning, service monitoring, risk assessment, support to family or significant others, coordination and integration of services in the client's support system, client and system advocacy, service linkage and education.

2. The intake and initial assessment process shall identify the factors that result in the client's admission to or the rationale for non-admission to the CCM services.

3. Face-to-face clinical support contacts shall be provided primarily offsite, at the client's location, including, but not limited to, hospitals, homes, boarding homes, shelters, jails, neighborhood restaurants and streets, based on functional level and risk of hospitalization of the client. Such support shall be available on a crisis basis as needed.

4. A preliminary service plan shall be entered in each client's record within 10 working days of their admission to CCM services which provides a basis for clinical intervention. The initial risk assessment shall be completed within the same time period.

5. The service plan addressing the client's functional level, resources, skills and supports shall be completed and implemented within three months of the first community contact. Based on a comprehensive assessment, the service plan shall document specific strategies to engage the client and proposed clinical interventions.

6. The comprehensive assessment, which shall address the following aspects of the client's life: physical health, finances, family, legal, functional skills, mental health and non-mental health needs, client's choices and goals, reason for referral, client's natural support system, overall resources and previous history, and when available, information from current and prior service providers. The assessment process shall continue throughout the entire length of service. Assessments shall be updated periodically, based upon the availability of client information.

7. Service plans shall be updated every 90 days during the first year of service and every six months thereafter.

8. The intensity of service shall be based on the client's assessed risk status and needs. The PA shall develop and implement procedures so that the assigned status reflects the client's current condition.

9. The service planning process shall address client relationships with family, significant others and pertinent service providers.

10. Record documentation shall reflect that the efforts or referrals of the PA link clients to mental health or non-mental health programs as appropriate.

11. The PA shall maintain contact and follow-up with other service providers as needed to effect linkage and to make adjust-

ments in service provision that may be indicated by such information.

12. The PA shall assist the client in receiving all concrete services and benefits to which he or she is entitled.

13. The PA shall advocate for enrolled clients within the mental health and non-mental health systems to enhance access to existing services.

10:37C-2.4 Staff requirements, qualifications and duties

(a) The PA shall employ sufficient numbers of qualified staff to provide required services.

(b) The PA shall develop a written description and rationale for the PA's caseload size. The rationale shall include consideration of geographic and service area variables, program design, nature of referrals, type of population, age, and outcome expectations.

(c) The CCM supervisor shall have a master's degree, or the equivalent, in social work, psychology, counseling or a related field; three years postgraduate work experience in a related field; and supervisory experience. A bachelor's degree in a related field plus three years experience as a clinical case manager may be substituted for the above requirements provided such an individual is actively enrolled in a master's degree granting program in social work, psychology, counseling or a related field.

(d) The CCM supervisor shall be responsible for the following:

1. Service availability through regular staff scheduling or provision of on-call or other back-up services, as appropriate;

2. Adequate levels of clinical staff supervision, skill development, and support;

3. Organization of the CCM staff to assure continuity of services, range of available staff skills, including skills with mentally ill chemical abusers, and sufficient staff backup;

4. Development and appropriate documentation of the various CCM functions;

5. Active participation in the Quality Assurance activities;

6. Identifying system resource gaps in service delivery;

7. Active participation in the area's System Review Committee;

8. Appropriate completion of and monitoring of affiliation agreements with other mental health, social and health service providers;

9. Participation of the PA in the local mental health, health, and human services planning activities, and identification of resource gaps in these areas;

10. Documentation of staff training and development activities; and

11. All other activities necessary to access or directly provide client support services.

(e) The clinical case managers shall have a master's degree in social work, psychology, counseling, or a related field with clinical training; or a bachelor's degree in a related field and two years relevant experiences, (two additional years of relevant experience may be substituted for a bachelor's degree) or an associate's degree in a direct care field (including, but not limited to, psychosocial rehabilitation or nursing of the seriously mentally ill) and two years of relevant experience.

(f) The duties of the clinical case manager shall include the following:

1. Responsibility to establish and maintain the ongoing therapeutic relationship;

2. Provision of intensive community-based services to maximize the client's access to services and ability to function adequately and integrate into the community;

3. Development and implementation of a treatment plan and completion of other documentation as required;

4. Facilitation of access to appropriate services, including transportation to services, and activities as necessary and application for and receipt of all applicable public entitlements;

5. Facilitation of the client's service linkage in the community mental health and non-mental health systems through provision of ongoing individualized clinical support and monitoring;

6. Coordination and integration of services from multiple providers until the client is discharged from the CCM services. This responsibility may include coordination of meetings of the client's service providers in the community;

7. Monitoring of service delivery to meet a client's changing needs and advocacy as necessary;

8. Identification of client resource gaps and problems of service delivery; and

9. Provision of direct service support to the client's natural support system, including family, friends, employers and self-help groups.

10:37C-2.5 Service coordination

(a) The PA shall coordinate CCM services with other community mental health and non-mental health programs.

1. The PA shall develop written affiliation agreements where necessary to facilitate access to services.

2. The PA shall provide service coordination for all clients served. Evidence of service coordination shall be reflected in the clinical record.

3. PA staff shall participate in the System Review Committee meetings and activities and so document.

4. The PA shall define and refer problems which are systemic and cannot be resolved at the agency level to the System Review Committee by an identified process.

10:37C-2.6 Records

(a) The PA shall maintain individual records in an up-to-date organized manner. The records shall contain all relevant client information and shall be maintained to preserve confidentiality. The records shall contain the following:

1. An intake summary;

2. An assessment;

3. A service plan; and

4. Progress notes.

(b) Services shall be related to documented client needs and stated through clear goals, objectives and interventions.

(c) The service plan shall:

1. Relate to the comprehensive assessments;

2. Contain goals and timeframed and measurable objectives, which shall be stated in behavioral and measurable terms;

3. Delineate specific interventions to implement objectives and reach goals;

4. Be based on the client's expressed goals;

5. Identify and address all resource needs of the client as contained in the assessments;

6. Be completed and implemented within three months of the first community contact;

7. Reflect changes in service provision and be updated every three months for the first year and every six months thereafter;

8. Identify the staff person or other party responsible for implementation of interventions; and

9. Be properly authenticated with a signature, date, and title of the clinical case manager, and approved and signed by the CCM supervisor.

(d) Attempts shall be made to have the client sign the service plan to indicate client's involvement in the development or revision of the service plan. If the client is unwilling to participate or if such participation is clinically contra-indicated, it shall be so documented.

(e) When the client consents, the service plan shall include family involvement, or if clinically contra-indicated, family non-involvement.

(f) Progress notes shall reflect the client's course of treatment, as follows:

1. A summary of services shall be documented for each face-to-face contact;

2. Progress notes shall make reference to the service plan and reflect client's status, interventions provided, client's response to interventions, and change in service provision;

3. Progress notes shall reflect any significant event that impacts on the client's status or service provision;

4. Progress notes shall reflect collateral contacts and communication with persons other than the client on behalf of the client which impact on the client's status or service provision; and

5. Progress notes shall be properly authenticated with a signature, date and title at the end of each entry.

(g) A discharge summary shall be completed for all clients, as follows:

1. The discharge summary shall be completed within 15 working days of discharge.

2. The discharge summary shall include the following:

i. Presenting problem at admission;

ii. Client's status and diagnosis at discharge;

iii. Client's clinical course of treatment;

iv. Client's response to treatment, including where possible client's self assessment of progress and further program needs;

v. Medication prescribed at discharge, including dosage, frequency, prescribing physician and adverse reactions, if known; and

vi. Recommendations, plans or linkages for further services.

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Accounts
Group Deposits and Deductions
Proposed Amendments: N.J.A.C. 10A:2-2.2

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

Authority: N.J.S.A. 30:1B-6; 30:1B-10; 2C:46-1; and P.L. 1992, c.169.

Proposal Number: PRN 1993-607.

Submit comments by December 1, 1993 to:
William H. Fauver, Commissioner
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

When an inmate is sentenced to pay an assessment imposed pursuant to N.J.S.A. 2C:43-3.1; a fine, or penalty imposed pursuant to N.J.S.A. 2C:35-15; a forensic laboratory fee imposed pursuant to N.J.S.A. 2C:35-20; or to make restitution, the inmate, in addition, must pay a transaction fee pursuant to P.L. 1992, c.169, and N.J.S.A. 2C:46-1. Transaction fees will be paid on each occasion the inmate makes a payment or an installment payment. Pursuant to the recently adopted statutes at N.J.S.A. 2C:46-1, the proposed amendment at N.J.A.C. 10A:2-2.2(e) authorizes correctional facility Business Managers to deduct revenue collection transaction fees not to exceed $1.00 on each occasion a payment or installment payment is made from the accounts of inmates who have committed an offense on or after February 1, 1993. The transaction fee schedule for use in connection with installment payments shall be as follows:

$1.00 for payments in the amount of $10.00 or more;

$0.50 for payments between $3.01 and $9.99; and

No transaction fee if the payment is $3.00 or less.

The proposed amendment at N.J.A.C. 10A:2-2.2(d) will add the references to N.J.S.A. 2C:46-1 and N.J.S.A. 2C:46-4.

Social Impact

The addition of the proposed amendments will bring N.J.A.C. 10A:2-2.2 into compliance with N.J.S.A. 2C:46-1 and P.L. 1992, c.169. The imposition of a transaction fee not to exceed $1.00 each occasion a payment or installment payment for court imposed penalties, assessments, restitution, fines or other revenue is made may have a negative impact upon adult inmates sentenced to pay these assessments; however, a negative reaction is not anticipated from the public.

Economic Impact

Transaction fees collected pursuant to N.J.S.A. 2C:46-1 shall be deposited in the Department of Corrections' Computerized Collection Fund, which is established as a separate fund in the General Fund and dedicated to the development, establishment, operation and maintenance of a computerized system for tracking and collecting adult inmate court ordered assessments, restitutions, penalties, fees and fines or other revenue obligations imposed. Although the increase in these fees may impose an economic burden on adult inmates sentenced to pay assessments, the intent of the Department of Corrections is to comply with the law.

Regulatory Flexibility Statement

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

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

10A:2-2.2 Group deposits **and deductions**

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

(d) Deductions from inmate accounts may be made by the Business Manager to pay court ordered penalty assessments, restitution, fines or other revenue obligations as permitted by N.J.S.A. 30:4-91.4, N.J.S.A. 2C:43-3.1, **N.J.S.A. 2C:46-1, N.J.S.A. 2C:46-4,** or N.J.S.A. 30:4-92.

(e) Pursuant to N.J.S.A. 2C:46-1, deductions from inmate accounts shall be made by the Business Manager to pay a transaction fee not to exceed $1.00 on each occasion a payment or installment payment is made by an inmate who committed an offense on or after February 1, 1993. The transaction fee schedule shall be as follows:

1. $1.00 for payments in the amount of $10.00 or more;

2. $0.50 for payments between $3.01 and $9.99; and

3. No transaction fee if the payment is $3.00 or less.

INSURANCE

(b)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Qualifications for Licensing; Broker and Broker-salesperson
Proposed Amendment: N.J.A.C. 11:5-1.3

Authorized By: New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-6 and 45:15-9.

Proposal Number: PRN 1993-599.

Submit written comments by December 1, 1993 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN-328
Trenton, New Jersey 08625-0328

The agency proposal follows:

Summary

An amendment is required to bring N.J.A.C. 11:5-1.3 into conformity with the revised licensure requirements imposed by N.J.S.A. 45:15-9, which will become effective July 1, 1994 (see P.L. 1993, c.51, §7). The New Jersey Real Estate Commission has interpreted this provision as requiring that applicants applying for licensure as brokers have made a commitment to the real estate brokerage business as their primary occupation. The statutory amendment eliminates the reference to an "apprenticeship" to be completed by broker license applicants and increases the required period of full-time employment as a real estate salesperson preceding the application from two to three years, which is reflected in the proposed amendment. The amendment also restricts the maximum hours of non-real estate employment to 25 hours per week, which the Commission believes will better assure that applicants are committed to real estate brokerage as their primary occupation than the current standard of a maximum of 35 hours per week of non-real estate employment.

The Commission also seeks to simplify the application process and recognizes that a salesperson's full-time, active participation in the real estate industry over a three-year period strongly suggests that the salesperson has acquired an adequate knowledge of the methods, techniques and terminology of the business, as well as the pitfalls to be avoided.

Therefore, in order to provide more efficiency in the application process, the proposed amendment does not require from each and every applicant proof of the specific kinds of transactions engaged in by the applicant, although the Commission still retains the option to require such proof. Under the proposed new application procedure, certified statements from the supervising brokers with whom the applicant was licensed must be submitted to the Commission. The proposed amendment also explicitly provides that experience which consists solely of making referrals to other licensees is not considered full-time, active involvement in the brokerage business for purpose of fulfilling the experience requirement for licensure as a broker.

The proposed amendment makes reference to the increased prelicensure education requirements for brokers adopted by the Legislature in N.J.S.A. 45:15-10.1 (see P.L. 1993, c.51, §9), the details of which are dealt with more comprehensively in proposed amendments to N.J.A.C. 11:5-1.27 published elsewhere in this issue of the New Jersey Register. The proposed amendment also specifies that no applications for approval of an applicant's experience as a salesperson may be made until the applicant has successfully completed the 150-hour general broker prelicensure education course.

Social Impact

The proposed amendment will have a favorable impact on the entire real estate industry and will afford greater protection to the public. The public will receive an overall benefit from having a greater pool of more experienced and knowledgeable brokers. It is anticipated that fewer problems resulting from brokers' lack of experience will occur. This should result in a decrease in the number of disputes involving licensees and in the number of complaints filed with and administrative actions taken by the Commission.

Economic Impact

The proposed amendment will have a favorable economic impact on the entire real estate industry. There will be a minimal burden on salespersons seeking licensure as brokers, who will be required to fulfill one additional year of full-time employment in the industry. However, that burden will be significantly outweighed by the overall benefit of having a greater pool of more experienced and knowledgeable brokers who will be able to better serve the needs of the public. As the number of satisfied sellers and buyers increase, there will necessarily be less lawsuits, decreasing the costs of litigation, and resulting in an overall economic savings to the public and to licensees.

By eliminating the requirement that all applicants submit detailed transaction data with their applications for experience approval, qualified applicants will get approval more quickly, enabling them to proceed with their efforts to obtain a broker's license. The simplification of the experience approval application process may also decrease administrative costs to the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment only applies to individuals seeking licensure by the State as real estate brokers and broker-salespersons and does not impact on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

11:5-1.3 Qualifications for licensing; broker and broker-salesperson

[(a) The Commission defines the word "apprenticeship", as used in N.J.S.A. 45:15-9 to require a broker-salesperson relationship wherein an adequate knowledge of the methods, techniques and terminology of the business, as well as the pitfalls for the public and licensees alike, has been engendered by intimate, intensive and successful contact with diverse aspects of the real estate business under the guidance and direction of a licensed broker. In order to satisfy the above requirement, an applicant must have been so employed on a full time basis as a salesperson during the two year apprenticeship period. The said full time employment may be satisfied by a showing that the applicant has worked under the supervision of his or her broker during the hours of approximately 9:00 A.M. to 5:00 P.M. during any five of the seven days in each week of the two year apprenticeship, and that the applicant has not been employed on a full time basis in any other occupation during the apprenticeship period. For the purposes of this limitation upon an applicant's non-real estate employment, the term "full time basis" is construed by the Commission to mean thirty-five or more hours per calendar week. In addition, the applicant and the broker under whom he or she serves his or her apprenticeship shall see to it that the apprenticeship includes practices and experiences in all aspects of the real estate business as set forth in N.J.S.A. 45:15-3.

(b) Approval of an applicant is not based rigidly upon the number of hours worked, number of sales, number of rentals or number of mortgage transactions, nor on the dollar value, but rather is based upon the combined weight and variety of these elements. In addition, applicants may be required to appear and answer interrogatories relating to their general background and experience, or supply evidence of extensive experience in a specialized field of real estate activity with the time and transactions.

(c) The Commission shall give due consideration to the following as guides in reviewing the qualifications of an applicant:

1. Evidence of having applied oneself fully with time equivalent to 40 hours a week over a period of two years devoted to the business.

2. Evidence of diversified experience in the field of sales, rentals and mortgages, with participation approximating six transactions a year in each of three aforementioned categories.]

(a) All references in this section to "brokers" shall include broker-salespersons. The experience requirement for licensure as a broker imposed by N.J.S.A. 45:15-9 is construed to require a demonstration by the applicant of their commitment to real estate brokerage as their primary vocation, as evidenced by their involvement in the real estate brokerage business on a full-time basis.

1. With the exception of persons licensed as brokers in other states, all applicants for licensure as a broker must have been continuously licensed and employed on a full-time basis as a real estate salesperson during the three years immediately preceding their application. Such full-time employment shall be demonstrated by a showing that:

i. The applicant has worked as a salesperson under the authority of the broker(s) with whom they were licensed for at least 40 hours per week and during the hours of approximately 9:00 A.M. to 5:00 P.M.;

ii. Such work in (a)1i above was performed during any five days in each week of the three year period; and

iii. If the applicant was employed in any other occupation during the three year period, such other employment was on a part-time basis and did not exceed 25 hours per calendar week.

2. No applications for approval of an applicant's experience to qualify for licensure as a broker shall be made until an applicant:

i. Has been continuously licensed as a salesperson for at least the three years immediately preceding such application;

ii. Has completed the 90-hour general broker's prelicensure course and the two 30-hour courses referred to in N.J.A.C. 11:5-1.27(g).

(b) The Commission shall give due consideration to the following in reviewing the experience of an applicant:

1. Evidence of having been actively involved in the real estate brokerage business as a real estate salesperson on a full-time basis during each year of the three year period. Written statements by the brokers with whom the applicant was licensed during the three year period which certify the applicant's activity as a salesperson while licensed through those brokers must be submitted.

2. Applicants and/or brokers may also be required to submit supporting documentation relating to the closed transactions on which the applicant received compensation as a salesperson from the broker, or to supply other evidence of full-time activity, such as extensive involvement in a specialized field of real estate brokerage.

3. In no event will an applicant whose brokerage activity was limited to solely making referrals to other licensees be deemed to have fulfilled the full-time, active involvement in the brokerage business requirement for licensure.

[(d)](c) Broker-salespersons shall meet the same qualifications as [real estate] brokers, including the qualifications as set forth in (a) [through (c)] **and (b)** above. A person licensed as a broker-salesperson must be employed by and act under the supervision of a duly licensed real estate broker and shall not **independently** maintain an office or escrow account[, except that a]. **A** broker-salesperson may be authorized to serve as an office supervisor or a branch office in accordance with the provisions of N.J.S.A. [11:5-1.14]**45:15-12.**

[(e)](d) Every applicant for licensure as a broker or broker-salesperson shall present with [his] **his or her** application for licensure examination a certificate of satisfactory completion of [a course of education] **courses** in real estate and related subjects at a school [approved] **licensed** by the Commission **or offered by another approved provider** [as prescribed under] **pursuant to** N.J.S.A. 45:15-10.1(b) and N.J.A.C. 11:5-1.27 and N.J.A.C. 11:5-1.28, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2 **and N.J.A.C. 11:5-1.27.**

(e) An applicant must pass the State broker license examination and apply for and request the issuance of a license as a broker or broker-salesperson not later than one year after successful completion of the 150-hour broker prelicensure education requirements. Any person who fails to apply for the issuance of a license as a broker or broker-salesperson within the said one year time period shall be required to retake and successfully complete all prescribed courses and the examination and must submit evidence of having again fulfilled the experience requirement during the three years immediately preceding the new application.

[(f) An applicant must apply for and request the issuance of a license as a broker or broker-salesperson not later than one year after successful completion of the education requirements. Any person who fails to apply for the issuance of a license as a broker or broker-salesperson within the one year period shall be required to retake and successfully complete the prescribed course in real estate and related subjects and the examination and must submit evidence of having served a two year apprenticeship immediately preceding the date of the new application.]

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Qualifications for Licensing; Broker and Broker-Salesperson

Proposed Amendment: N.J.A.C. 11:5-1.10

Authorized By: New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-3 and 45:15-6.

Proposal Number: PRN 1993-600.

Submit written comments by December 1, 1993 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN-328
Trenton, New Jersey 08625-0328

The agency proposal follows:

Summary

Pursuant to newly amended N.J.S.A. 45:15-3 (see P.L. 1993, c.51, §3), no person claiming to be entitled to compensation as a salesperson, broker-salesperson or broker may bring or maintain an action for collection of compensation unless that person was duly licensed at the time the alleged cause of action arose. The proposed amendment to N.J.A.C. 11:5-1.10 reflects the Commission's interpretation of this licensure requirement. The amendment identifies the point in time at which an individual must be licensed in order to meet the statutory requirement. The Commission interprets the statutory language to mean that the individual making the claim must have been licensed at the time that the services which form the basis for the suit were provided. In the case of a claim based upon a property having been listed for sale or rental by the claimant, the claimant would have to establish that he or she was properly licensed at the time the listing was secured.

The proposed amendment also incorporates by reference the statutory prohibition in N.J.S.A. 45:15-3 which bars salespersons and broker-salespersons from attempting to sue members of the general public for unpaid compensation for brokerage services. Such licensees may only bring or maintain an action against the licensed broker with whom they were employed at the time the alleged cause of action arose. The amendment also makes it clear that the rule covers other forms of compensation besides commissions, such as salaries and referral fees.

Social Impact

The proposed amendment will have a positive social impact by permitting individuals uncompensated for real estate services which they have rendered to actively pursue payment through the courts. By clarifying the point in time when licensure is required in order to maintain an action, the Commission believes that any confusion that may have existed in the past regarding this issue will be eliminated, and that all licensees and past licensees will be able to bring actions for services rendered, regardless of the form or timing of the commission payments allegedly owed.

The amendment will assist courts in applying the law, since judges will be aware of the Commission's interpretation of the law. In this way, the amendment will eliminate an obstacle that may have existed for individuals no longer licensed at the time payments become due. By clarifying the law the amendment will reduce the number of disputes between salespersons and their employing brokers.

Economic Impact

The proposed amendment will have a minimal economic impact since it merely clarifies the law rather than create an additional cause of action. However, to the extent that the amendment will help previously licensed individuals maintain actions for payment of compensation and recover commissions legitimately owed to them, the amendment will eliminate uncertainty in the real estate industry. The amendment will enable both past and present licensees to have access to the courts, where they may pursue payment more successfully than might be the case were courts called upon to apply the statutory language without the benefit of knowing the Commission's interpretation of the provision in question. To the extent that there will be a decrease in the number of disputes between salespersons and their employing brokers, the number of complaints filed with and administrative actions taken by the Commission will likewise be reduced.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose additional reporting, recordkeeping or other requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the contrary, the proposed amendment will help small business by enabling both past and present licensees to maintain actions for payment of compensation, regardless of their licensing status when payment is allegedly due, so long as at the time they rendered the services in question they were, in fact, duly licensed and meet the other requirements of the law.

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

11:5-1.10 Employment agreements; commissions; accounting to salesperson

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

(i) Broker and salesperson licensees may only bring or maintain actions in the courts of New Jersey for the payment of compensation due them for brokerage services performed as provided in N.J.S.A. 45:15-3.

1. The Commission interprets the language "at the time the alleged cause of action arose" as used in N.J.S.A. 45:15-3 to mean at the time that the brokerage services which form the basis for the alleged claim to compensation were rendered. For example, at the time when a property was listed for sale or rental by a licensee.

2. The Commission does not interpret the language "at the time the alleged cause or action arose" as requiring that the licensee must have been actively licensed at the time that the compensation allegedly due was to have been paid. For example, the Commission does not construe this language as requiring licensure at the time of the renewal of a lease to enable a claimant to sue for compensa-

tion based upon a promise, made or in effect when the lease was originally executed, to pay additional consideration to the claimant in the event that the lease was renewed.

[(i)](j) All references to "salesperson" in this section shall be construed to also include individuals licensed as broker-salespersons. **All references to "non-payment of a commission" in this section shall be construed to include the non-payment of other forms of compensation.**

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Educational Requirements for Salespersons and Brokers in Making Application for Licensure Examination

Proposed Amendment: N.J.A.C. 11:5-1.27

Authorized By: New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.

Authority: N.J.S.A. 45:15-10, 10.1 and 10.2.

Proposal Number: PRN 1993-601.

Submit written comments by December 1, 1993 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN-328
Trenton, New Jersey 08625-0328

The agency proposal follows:

Summary

1. Waiver of the Education Requirements

The proposed amendments to N.J.A.C. 11:5-1.27 are necessary to implement the increased education requirements for licensure as a New Jersey real estate broker set forth in the recent amendments to the license law (see P.L. 1993, c.51). The proposed amendments establish the curriculum for the additional 60 hours of broker pre-licensure education required under the amended law. Under the proposed amendments, 30 of those hours are to be devoted to instruction on ethics and agency relationships in real estate and the remaining 30 additional hours are to be devoted to instruction on office management and related topics.

Under the Commission's authority to waive some or all of the educational requirements for applicants whose education and experience is, in the judgment of the Commission, substantially equivalent to the education requirements required by the statute, the Commission determined to clarify and in some cases revise the current rules governing who may be exempt from the educational requirements for licensure as a broker or salesperson.

The proposed amendments permit disabled veterans to fulfill the education requirements to become either a licensed salesperson or broker by completing a program of studies offered by a provider other than a licensed school. However, the program must consist of at least 75 hours of real estate education in the case of an applicant for a salesperson's license, and 225 hours of real estate education in the case of an applicant for a broker's license and must have been offered by an accredited college or university for credit.

Under the current rule, applicants for licensure as salespersons who, within three years of making application for the waiver, have completed 75 or more classroom hours in real estate and related subjects provided by an accredited institution of higher education and who have earned a college degree from that institution, qualify for a waiver of the educational requirements. Those applicants who have not completed 75 or more real estate related hours before earning their degree may qualify for the salesperson's education waiver if they have satisfactorily completed at least 45 hours of instruction on real estate as part of a post-graduate program within three years of making application for the waiver, and they have completed a total of at least 30 other hours of college-level instruction in real estate and related matters.

Under the proposed amendments, an individual who has earned a bachelor's or associate's degree in real estate would also qualify for a waiver of the saleperson's course regardless of how long prior to their application they received their real estate degree. The Commission believes that the typical curriculum covered as part of a degree program in real estate exceeds the subject matter covered in the 75-hour salesperson's licensure course.

The proposed amendments also provide an educational waiver to individuals who are actively licensed in another state or who have been actively licensed as a salesperson within three years of applying for the waiver. However, the applicant must have completed a prelicensure real estate course of at least 75 hours sanctioned by that state and the applicant must have qualified for licensure in that state by examination.

Applicants for licensure as salespersons who are attorneys at law admitted in New Jersey or in other states would, under the amended rule, qualify for a salesperson's education waiver. The Commission believes that the typical law school curriculum and bar admission requirements exceed the general real estate-related material covered in the 75-hour salespersons course and that attorneys are uniquely trained to independently study and understand New Jersey's licensing law and the Commission's rules so as to prepare to challenge the salesperson license examination.

Attorneys at law admitted in New Jersey may apply for a waiver of the 90-hour general broker's course; however, the Commission believes that because of the complex topics covered in the 90-hour broker's course, including specific issues unique to New Jersey real estate practice, the waiver should not extend to attorneys licensed out-of-State. These attorneys are still required to fulfill all the educational requirements before challenging the broker license examination.

While the rule permits a waiver to applicants for brokers' or salespersons' licenses who have been licensed as brokers in other states and actively engaged in real estate brokerage in another state, the proposed amendment reflects the new three-year experience requirement found in N.J.S.A. 45:15-9 (see P.L. 1993, c.51, §7). Non-New Jersey brokers who have been actively engaged in the brokerage business for the three-year time period will not, under the amended rule, be required to complete the salesperson's course in order to qualify to challenge the salesperson license examination nor the 90-hour general broker's course in order to qualify to challenge the broker's license examination.

2. Cycling of Courses

Recognizing the financial needs of the real estate schools and the time constraints which many prelicensure course students operate under, the proposed amendments permit teaching the salesperson's and the 90-hour general broker's course in modules or blocks. The maximum number of modules permitted is the number of subject matter areas identified in the rules establishing the syllabi for the respective courses, specifically, a maximum of 10 modules for the salesperson's course and 23 for the 90-hour general broker's course. Schools may include more than one subject matter area in a given module. No school may allow a student to start a module other than on its starting date and all students must receive instruction on all of the subject matter areas, and then pass a comprehensvie final exam in order to be certified by a school as having successfuly completed the course.

3. Additional Curriculum for Applicants Seeking Licensure as Brokers

The proposed amendments set forth in detail how the additional educational hours for applicants for brokers' licenses, required by the amendment to N.J.S.A. 45:15-10.1(b), are to be administered. Individuals will be required to complete two additional 30-hour courses after they have completed the general 90-hour broker pre-licensure course. The 90-hour course will continue to cover the subject matter specified in the current rule at subsection (g). The two 30-hour courses may not be cycled or taught in modules.

One of the 30-hour courses is to be devoted to ethics and agency relationships in real estate. In providing this instruction, schools will be required to do so in a manner which maximizes the use of case studies of actual disciplinary action cases recently decided by the Commission. Consistent with the new comprehensive legislative scheme designed to enhance the regulation of brokers' escrow and trust accounts, the other 30-hour course covers office management and related topics, including supervision responsibilities of brokers and extensive coverage of escrow account recordkeeping requirements.

Those individuals seeking licensure as brokers must complete the 90-hour general broker's course and the two 30-hour courses within a period of two years. If all three courses are not completed within this two-year timeframe, the candidate must again successfully complete all courses he or she has previously taken, as well as all courses not previously taken, so that all courses are completed within two years.

The proposed amendments also eliminate any confusion about whether individuals may receive credit toward the salespersons' course by attending some of the brokers' course class sessions, and whether persons may receive credit toward fulfilling the broker education requirements by attending some of the salespersons' course class sessions. It has been the position of the Commission that the current language of N.J.A.C. 11:5-1.27(f) and (g) proscribes this practice. The proposed amendment merely serves to clarify this prohibition.

Social Impact

The proposed amendments will have a positive social impact on the educational process for salespersons and brokers and will benefit the entire real estate industry. By permitting education waivers for candidates who have completed the substantial equivalent to the education requirements established by statute, the Commission anticipates that more individuals will be encouraged to enter the real estate brokerage industry. The public will receive an overall benefit from having a greater pool of more experienced and knowledgeable licensees.

Facilitating the entry of persons who have earned college degrees into the brokerage field will have a positive impact upon the level of professionalism in the brokerage business and upon the level of services offered by licensees to the public. Requiring all individuals who have completed a prelicensure course in another state to have passed the examination in that state and to have been actively licensed at some point in time during the three years preceding their application for the education waiver assures the public that these individuals have demonstrated a working knowledge of the brokerage business. This is true because by passing the state license exam and actually having been licensed, such persons have demonstrated that they have made a commitment to the real estate brokerage business and that they have practically applied what they have learned from the prelicensure course in that state.

The two additional 30-hour courses in ethics and business management will foster a greater awareness of the kinds of problems that brokers may encounter in the industry, and therefore will have the effect of raising the level of service in the brokerage business. More intensive education in these areas will reduce the number of complaints filed with and administrative actions taken by the Commission.

Allowing real estate schools to teach the salesperson's course and the general 90-hour broker's course in cycles or modules will better accommodate the needs of the prelicensure course students, and encourage greater attendance. Cycling courses will allow more individuals to enroll in these classes, possibly including those who desire to refresh their knowledge in a particular subject matter area.

Economic Impact

The proposed amendments will have a positive economic impact on the entire real estate industry. There will be a minimal burden on individuals seeking licensure as brokers by requiring them to complete an additional 60 hours of study. However, this burden will be significantly outweighed by the overall benefit of having a greater pool of more knowledgable brokers who will be better able to serve the needs of the public and to better protect their interests. As the number of satisfied sellers and buyers increase, there will necessarily be fewer lawsuits, decreasing the cost of litigation, and resulting in an overall economic savings to the public, licensees, and the Commission, by reducing the number of complaints filed with and administrative actions taken by the Commission.

Cycling of courses will allow real estate schools to operate more efficiently. These schools will be able to enroll more students who wish to begin their studies immediately, rather than requuiring these individuals to wait until an entire licensing course begins anew. Allowing the real estate schools more flexibility in scheduling these courses also permits students to allocate their time more efficiently.

Permitting certain individuals to waive the education requirements where they have completed the substantial equivalent to the statutory requirements will reduce the time and expense otherwise spent had these individuals been required to complete again the subject matter areas previously covered elsewhere. Because the proposed amendment clarifies the current rule, the amendment should decrease the administrative costs to the Commission associated with answering questions about who may obtain a waiver.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for the proposed amendments concerning licensure educational requirements because they only apply to individuals seeking licensure as salespersons, broker-salespersons, and brokers and does not impact on small businesses, as the term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

There are currently 71 real estate schools licensed by the Commission, approximately one-half of which may be considered small businesses. To the extent that the additional 60 hours of classroom education required under the amended rule might impose a compliance requirement upon these schools, the additional requirement will benefit rather than burden the real estate schools by increasing the volume of students and classroom time for which they may charge tuition. Real estate schools may, of course, choose not to offer the additional classes at all. The potential for economic benefit to the schools due to the amendments is discussed in the Economic Impact above.

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

11:5-1.27 Educational requirements for salespersons and brokers in making application for licensure examination

(a) [To establish an applicant's satisfactory completion of the educational requirements prescribed in N.J.S.A. 45:15-10.1, all] **All** applicants [who apply] for a salesperson's or broker's license shall present with their **license** application evidence of **their** satisfactory completion of a course of education in real estate subjects **taught** in accordance with [the requirements of said Act and within the meaning of the rules and regulations applicable thereto] **N.J.S.A. 45:15-10.1 and as required by this section.**

1. This requirement shall also apply to disabled veterans making application for licensure pursuant to N.J.S.A. 45:15-11. However, the Commission shall approve a program of studies in real estate completed by such a veteran offered by a provider other than a licensed school if the program consisted of at least 75 hours in the case of an applicant for a salesperson's license, or 225 hours in the case of an applicant for a broker's license and the program was offered by an accredited college or university for credit.

2. No person shall receive credit toward the fulfillment of the salesperson prelicensure education requirement for attendance at a broker's prelicensure course and no person shall receive credit toward the fulfillment of the broker's prelicensure education requirements for attendance at a salesperson's prelicensure course.

(b) [The course of education in real estate subjects to qualify an applicant for licensure examination for a salesperson's license shall consist of a minimum of 75 hours and for a broker's license a minimum of 90 hours in the areas of study at a school approved by the Commission as meeting the standards of responsible ownership, administration, curriculum, instruction and physical facilities specified hereinafter.] **To qualify to challenge the real estate salesperson license examination, a candidate must first successfully complete a course of study in real estate at a school licensed by the Commission pursuant to N.J.S.A. 45:15-10.4 consisting of a minimum of 75 hours as specified in (f) below. To qualify to challenge the real estate broker's license exam, a candidate must first successfully complete courses of study in real estate consisting of a minimum of 150 hours as specified in (g) below, offered by a licensed school or, with respect to those certain courses specified in (g)5 below, offered by some other Commission-approved provider.**

(c) No person **with the exception of qualified disabled veterans** shall receive credit for satisfactory completion of the prescribed [90 hours] **150 hours of** broker's [course,] **courses** unless that person was the holder of a salesperson's license at the time of enrollment in said course.

(d) (No change.)

(e) The [educational provisions of this rule] **requirements that broker license candidates complete the general 90 hour broker prelicensure education course and that salespersons license candidates complete the 75 hour salesperson prelicensure education course** shall not apply to [the following persons]:

[1. Applicants for licensure examination for either a salesperson's or broker's license made by certain disabled veterans pursuant to the provisions of N.J.S.A. 45:15-11;]

[2.]**1.** Applicants for licensure as a broker or salesperson who have held a real estate broker's license issued by another state and who were actively engaged in the real estate **brokerage** business for [two] **three** years or more immediately preceding the date of application [, provided, that the Commission shall determine that the applicant's experience is substantially equivalent to the current educational requirements for licensure (N.J.S.A. 45:15-9, N.J.S.A. 45:15-10B and N.J.A.C. 11:5-1.3)];

[3.]**2.** Applicants for licensure as a broker [or salesperson] who are attorneys at law admitted to the practice in the State of New Jersey **and applicants for licensure as a salesperson who are attorneys at law admitted to practice in New Jersey or in any other state** at the time of making application;

[4.]**3.** Applicants for licensure as a salesperson who have [satisfactorily completed a course of education in real estate subjects in any accredited institution of higher education provided, however, that the total number of classroom hours devoted to real estate and related subjects is 75 or more, that the real estate related courses were completed within three years of making application, and that the courses were taken as part of a program of studies, the successful completion of which resulted in the receipt by the applicant of an associates or bachelors degree.

5. Applicants for licensure as a salesperson who have satisfactorily completed 75 or more classroom hours of course work in real estate or related subjects at an accredited college or university, at least 45 hours of which consisted of instruction on real estate conducted as part of a post-graduate program offered by such an accredited college or university, and provided that such post-graduate studies were completed within three years of making application.] **earned a college degree from any accredited institution of higher education, provided that:**

i. The total number of college level classroom hours devoted to real estate and related subjects was 75 or more, and such courses were completed within three years of making application;

ii. The applicant received a bachelor or associate degree in real estate regardless of how long prior to their application for a waiver they received that degree; or

iii. The applicant satisfactorily completed 75 or more classroom hours of course work in real estate or related subjects, at least 45 hours of which consisted of instruction on real estate conducted as part of a post-graduate program and that such post-graduate studies were completed within three years of making application.

[6.]**4.** Applicants for licensure as a salesperson who [have satisfactorily completed a prelicensure course of real estate education at a proprietory school, college or university in another state, provided however that the said course was, at the time of its being completed by the applicant, sanctioned by the real estate licensing authority of the state in which it was given, that the total number of classroom hours included in the course was 75 or more, and that the course was completed within one year of making application. Where such a course was not completed within one year of making application, the applicant shall be eligible for a waiver of the salesperson education requirements if he or she holds or held a real estate license issued by the state in which the course was taken and was actively engaged in the real estate business for at least one year within the three years immediately preceding application.] **hold or held a real estate license issued by another state, provided that:**

i. The applicant has satisfactorily completed a prelicensure course of real estate education at a proprietory school, college or university in that other state;

ii. The prelicensure course was sanctioned by the real estate licensing authority of that state;

iii. The total number of classroom hours included in the course was 75 or more;

iv. The applicant qualified for licensure in that state by examination; and

v. The applicant was actively licensed in that state within three years of applying for the waiver.

[7.]**5.** Applicants for licensure as a salesperson who previously held a license as a New Jersey real estate broker and whose last license expired more than two but less than five years prior to making application.

(f) **The salesperson's prelicensure course may be taught in blocks or modules of material. The maximum number of modules into which the course may be divided is 10, with their content corresponding to the 10 subject matter areas identified in the syllabus below. Schools offering courses in modules may include more than one subject matter area in a given module. No student may commence a course which is offered in modules on a date other than the starting date of any module. No student shall be given credit for the successful completion of a salesperson's prelicensure course unless and until they have received instruction in all of the subject matter areas identified below for approximately the number of hours indicated, and passed a comprehensive final examination.** The salesperson's course of 75 hours shall include:

1.-11. (No change.)

(g) The 150 hours of prelicensure education required of candidates for licensure as a broker or broker-salesperson by N.J.S.A. 45:15-10 shall be acquired as provided in this subsection. A 90 hour general broker's prelicensure course shall first be completed in accordance with the following syllabus and directives. Thereafter, two 30 hour broker courses as described in (g)5, 6 and 7 below shall be completed. All three courses, totalling 150 hours of instruction, must be successfully completed within a period of two years. Where the three courses are not so completed, a candidate must again successfully complete any previously taken course and all courses not previously taken within the two year time frame, and again fulfill the experience requirement established at N.J.S.A. 45:15-9 and N.J.A.C. 11:5-1.3 in order to qualify to challenge the broker license examination.

1. The 90 hour general broker's prelicensure course may be taught in blocks or modules of material. The maximum number of modules into which the course may be divided is 23, with their content corresponding to the 23 subject matter areas identified in the syllabus below. Schools offering courses in modules may include more than one subject matter area in a given module. No student may commence a course which is offered in modules on a date other than the starting date of any module. No student shall be given credit for the successful completion of a 90 hour general broker's prelicensure course unless and until they have received instruction in all of the subject matter areas identified below for approximately the number of hours indicated, and passed a comprehensive final examination. The 90 hour **general** broker's prelicensure course [prescribed by N.J.S.A. 45:15-10.1(b)] shall be conducted in accordance with the following syllabus and directives[:]**.** [1.] Substantive instruction shall be provided on the following topics for approximately the number of hours indicated:

i.-xxiii. (No change.)

2. [Instruction] **Within the 90 hour general broker prelicensure course instruction** will also be provided on the following topics for the hours indicated. **These topics shall be taught** in such a manner as to familiarize students with [their] **the** basic elements **of the listed topics and** to impart to students an awareness of their scope and effect[,]**. The coverage on these topics will also** [to] inform students of the sources which can be contacted in order to obtain additional general information and/or specific data concerning [their] **the topics'** applicability **to** or impact upon particular locations, and to educate students on their obligations and responsibilities as licensees to ascertain and disclose such information. **The topics to be taught are:**

i.-vi. (No change.)

3. Instructors conducting **90 hour general** broker[s] prelicensure courses shall provide general information to their students concerning the procedures through which students can arrange to sit for the State license examination and through which licenses are issued by the Commission, and shall give at least two spot quizzes and a comprehensive final exam on the material covered in the course (four hours).

4. In addition to classroom instruction and assigned reading from a general textbook, **in the 90 hour broker course** students shall also be assigned additional outside reading on various topics which shall include, but not be limited to, informational publications of the New Jersey Department of Environmental Protection **and Energy** on the

various environmental topics covered, those sections of the New Jersey Law Against Discrimination which directly relate to the activities of real estate professionals, and other topics as directed by the New Jersey Real Estate Commission.

5. After having successfully completed the 90 hour broker course, all candidates for licensure as a broker or broker-salesperson must successfully complete a 30 hour prelicensure course on brokers' ethics and agency law and relationships, and a second 30 hour prelicensure course on office management and related topics.

i. All such agency/ethics and office management courses shall be taught by licensed instructors at licensed schools.

ii. All such agency/ethics courses shall be taught utilizing methods which maximize the use of case studies of recent Commission decisions in disciplinary actions, demonstration models and other non-lecture techniques.

iii. A final examination of not less than one hour shall be administered in all such courses on which students must receive a passing grade in order to be deemed to have successfully completed such courses.

iv. No school shall allow students to commence any 30 hour agency/ethics course or office management course at a time other than the starting date of the complete course.

6. The 30 hours of instruction in the ethics/agency course shall be devoted to:

i. The fiduciary duties owed by agents to their principals;

ii. Disclosed and undisclosed dual agency;

iii. Conflicts of interest and self-dealing;

iv. The risks and benefits of sub-agency to the principal and the agent;

v. Restrictions on and disclosure requirements regarding acting for more than one party to a transaction, including those pertaining to licensees providing mortgage services;

vi. Disclosure requirements to non-principals;

vii. Issues raised by licensees involved in transactions as non-agents; and

viii. The obligations to properly qualify or pre-qualify prospective purchasers and related issues.

7. The 30 hours of instruction in the office management and related topics course shall be devoted to:

i. Office management requirements imposed upon supervising brokers of main and branch offices;

ii. Recordkeeping requirements, with particular emphasis upon and extensive coverage of escrow account records;

iii. The importance of adequate supervision and training of other licensees to assure their compliance with the license law and the rules of the Commission;

iv. Instruction on proper qualification and pre-qualification techniques, including requiring demonstrations by the students, and with emphasis upon the significance of training and oversight of other licensees;

v. Statutory and rule requirements pertaining to contracts, leases and listing agreements and to broker advertising;

vi. Closings; and

vii. Environmental concerns.

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

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Prelicensure Schools and Real Estate Instructors; Requirements

Proposed Amendment: N.J.A.C. 11:5-1.28

Authorized By: New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Authority: N.J.S.A. 45:15-6, 45:15-10.3 and 45:15-10.14.
Proposal Number: PRN 1993-603.

Submit written comments by December 1, 1993 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN 328
Trenton, NJ 08625-0328

The agency proposal follows:

Summary

The proposed amendment implements the newly enacted licensure requirements for real estate instructors and schools established by N.J.S.A. 45:15-10.5 (see P.L.1993, c.51, §48). The amendment also establishes a new continuing education requirement for instructors, pursuant to the Commission's authority in N.J.S.A. 45:15-10.7 (see P.L.1993, c.51, §50).

Under the recently amended license law, all real estate prelicensure course instructors and schools are required to be licensed by the Commission. The proposed amendment provides that the two-year license terms established by the amended law will commence on March 1 and terminate on the last day of February in the second following year. Since the new licensing law takes effect on July 1, 1994, the first licensee issued under the new law would all have a July 1, 1994 issuance date and a February 28, 1997 expiration date. All licenses which are renewed thereafter will have issuance dates of March 1 of the year in which they are renewed.

The proposed amendment also establishes a requalification requirement for individuals formerly licensed as real estate instructors who have failed to renew their license or obtain a new license for two consecutive years or more. The provision contains an exception for real estate instructors who have allowed their license to lapse because they have assumed employment with a public agency dealing with real estate matters. The amendment and its exception parallel the requalification provisions for real estate brokers and salesperson established in N.J.S.A. 45:15-9.

Qualifications for Inititial Licensure

Under the proposed amendment, each applicant for licensure as a real estate instructor would be required to be at least 18 years old, have a background of good moral character, and hold a bachelor's degree from an accredited college or university. Exceptions to the bachelor's degree requirement would be granted to New Jersey brokers who have been actively licensed as such for the two years before application is made for the instructor's license and to out-of-State brokers who have been continuously licensed as such for three years immediately preceding the application.

Not more than one year prior to passing the instructor examination and applying for the instructor license, each applicant must successfully complete all the education requirements for licensure as a New Jersey broker, which consist of the 90-hour general broker course and the two 30-hour courses set forth in proposed amendments to N.J.A.C. 11:5-1.27 published elsewhere in this issue of the New Jersey Register. However, New Jersey broker licensees may receive a full waiver of this requirement if they have been licensed as such at least two years immediately preceding the application and have completed the full 150 hours of broker prelicensure courses. New Jersey brokers meeting the two-year licensure requirement who have not completed that 150 hours of course work, and out-of-State brokers who have been continuously licensed as such for the three years preceding the application, would receive a waiver of the requirement that they complete the 90-hour general broker course, but would have to attend the two new 30-hour broker prelicensure courses referred to in N.J.S.A. 11:5-1.27.

Pursuant to N.J.S.A. 45:15-10.5(b), after July 1, 1994, all real estate instructor license applicants must have passed a comprehensive examination conducted under the auspices of the Commission in order to qualify for the license. The examination will test general real estate knowledge and teaching methods. To enable applicants to properly prepare for the examination, the proposed amendment recommends that applicants engage in independent study and/or take courses offered by independent providers on teaching methods. Upon successful completion of the examination, all applicants, as a prerequisite to becoming licensed as an instructor, would be required to attend a seminar which would cover Commission and licensing procedures.

Conditions for Relicensure

Under the revised statute, all real estate instructors will pay $50.00 renewal fee in order to be remain licensed for an additional two-year term, while the renewal fee for schools will be $200.00 for the first licensed location and $100.00 for each additional licensed location.

Because recent market changes have made the number of available real estate teaching positions scarcer, the Commission has determined that the current provision that approved real estate instructors must teach a minimum of 60 hours in two years to remain approved to conduct prelicensure courses should be repealed. In its place, the proposed amendment establishes a continuing education requirement to be administered by means of a biannual seminar, conducted by the Commission, updating licensed instructors on recent developments affecting New Jersey real estate practice. Attendance at the seminar would be a prerequisite for the renewal of their instructor licenses.

Requalification Requirements for Lapsed Instructors' Licenses

A real estate licensee who fails to renew or reinstate his or her license for two or more years after the expiration date of the last license held must again fulfill all statutory qualifications for original licensure before another license may be issued to that person. However, the Legislature recognized that licensees who assume employment with a public agency dealing with real estate matters are in many cases required to relinquish their licenses to comply with the ethical requirements of such public agencies. Accordingly, the Legislature created an exception from the requalification requirement for those persons reentering the real estate brokerage business as real estate licensees after having been employed by such a public agency. This exception is set forth in N.J.S.A. 45:15-9. In light of the public policy considerations underlying this statutory scheme, the Commission has determined to establish a similar requalification requirement for individuals formerly licensed as real estate instructors and a corresponding exception for persons who do not keep their instructor licenses active due to their employment by a public agency which deals in matters related to real estate. With regard to that exception, the Commission believes that individuals so employed will be sufficiently exposed to the real estate industry, including new developments and changes in the law, so as to permit their relicensure as instructors upon the termination of their public employment without requiring that they be reeducated and reexamined.

Moreover, the Commission seeks to distinguish between instructors who allow their licenses to expire because they have exited the real estate education field and those who have relinquished their license in order to comply with the ethical standards imposed upon public employees. The legislative intent underlying the pertinent provisions in N.J.S.A. 45:15-9 was that such persons should not be penalized for accepting such employment in the absence of clear evidence which establishes that it is in the public interest to do so, which is not the case in the situation addressed by the law and by this amended rule. The amendment deals with individuals who train license candidates in a manner which is consistent with the way in which licensees themselves are dealt with by the statute, both in imposing the requalification requirements as well as in providing an exemption for certain public emloyees.

Social Impact

The proposed amendment will have a positive social impact on real estate schools and instructors and benefits the real estate industry as a whole. Requiring all applicants for licensure to be at least 18 years of age and to hold a bachelor's degree from an accredited college or university will have a positive impact on the level of professionalism of real estate instructors and enhance the overall quality of teaching in the schools. At the same time, permitting education waivers for real estate brokers who have practical experience in the field will encourage these individuals to lend their expertise as instructors. Overall, broker and salesperson candidates will benefit from a greater pool of more experienced and knowledgeable instructors and an enhanced learning environment. Ultimately, the public will benefit from having better informed and more knowledgeable brokers and salespersons with whom they do business.

The biannual seminar to be held for licensed real estate instructors will help insure that real estate instructors remain apprised of recent developments in real estate brokerage in New Jersey so that they, in turn, may advise their students of such developments and of many pitfalls to be avoided. In that way, real estate brokers and salespersons will be better trained and better able to serve the public and to protect themselves from potential claims.

The requalification provisions in N.J.S.A. 45:15-9 for brokers and asalespersons who have failed to renew their licenses for two or more years assuure the public that such former real estate licensees have familiarized themselves with recent developments in the real estate field before being relicensed to again engage in brokerage activity. Clearly, such licensees are better equipped to deal with the public than would be the case were they not required to requalify prior to the reissuance of their licenses. A similar rationale exists with respect to instructor licensees. It is imperative that instructors stay informed of the latest developments in the real estate industry in order that they can properly train their students.

Without the requalification requirement, problems could result from instructors lacking awareness of recent developments in the industry and of changes in the real estate licensing law and the Commission's rules. Proper training of salespersons and brokers requires instructors to remain abreast of these changes and trends. License candidates are entitled to the assurance that the licensed instructors teaching them are current in their knowledge of the subject matter of the course. Without such assurance license candidates may not receive the quality of instruction they need to adequately prepare for the license exam and to perform the functions of real estate salespersons or brokers in a competent and legal manner. In addition, the members of the public with whom new licensees do business will be better served if those licensees have completed prelicensure courses taught by more knowledgeable instructors.

Creating an exception for individuals reentering the private sector after employment with a public agency with real-estate responsibilities will not compromise the overall quality of real estate education, since these individuals will have been exposed to real estate matters as part of their public employment.

Economic Impact

The proposed amendment will have a positive economic impact on the entire real estate industry. Ultimately, the amendment will help create better trained real estate brokers and salespersons through raising the level of professionalism of prelicensure instructors and schools. As a result, real estate licensees will be better able to serve the needs of the public and to protect their interests. As the number of satisfied sellers and buyers increases, there will necessarily be fewer lawsuits, decreasing the cost of litigation, and resulting in an overall economic savings to the public, licensees, and the Commission itself, by reducing the number of complaints filed with and administrative actions taken by the Commission.

Permitting an educational waiver where an applicant either has sufficient practical experience as a real estate broker or has previously completed all or part of the curriculum required for licensure as a broker, or both, will reduce the time and expense otherwise spent completing the entire broker's course. Requiring all applicants, upon successful completion of the exam, to attend a brief seminar covering Commission and licensing procedures will allow newly admitted instructors to convey this information to their students, reducing the cost to the Commission of individually responding to questions from new instructors and their students and of resolving misunderstanding on the part of the license applicants that could otherwise have been avoided.

The requalification provision for real estate instructors will have a minimal economic impact. However, to the extent that it will impose additional costs on those seeking requalification as a real estate instructor, such as the cost of reenrolling in a real estate instructor course and of retaking the instructor's exam, the Commission believes that these costs are substantially outweighed by the public interest served by assuring that real estate licensees are well-trained and well-qualified.

Regulatory Flexibility Analysis

To the extent that the proposed amendment addresses individuals seeking initial licensure as real estate instructors, a regulatory flexibility analysis is not required because the amendment does not impact on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Biannual seminar, the attendance at which would be required of all instructors seeking relicensure, may impose a minimal burden on prelicensure schools, the directors of which may have to schedule classes in such a way so as to accommodate instructors attending the seminars. However, the Commission believes that considering the relative brevity and infrequency of the seminars, as well as the fact that the seminars will be offered at various times and locations, the administrative costs involved would be truly minimal. In any event, this cost is substantially outweighed by the need for licensed instructors to remain informed of current developments in the real estate industry and the law so that they may effectively teach these issues to their students.

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

11:5-1.28 [Approved] **Licensed** schools **and instructors;** requirements

(a) The following regulations are applicable to schools [seeking approval] **and instructors licensed** to conduct [a course] **courses** of education in real estate subjects [as prescribed under N.J.S.A. 45:15-10.1(A) and (B) and N.J.A.C. 11:5-1.27] **pursuant to N.J.S.A. 45:15-10.4 and 10.5 and to applicants for such licenses.**

(b) The original license term for pre-licensure course instructors and schools shall begin on July 1, 1994 and terminate on February 28, 1997. Thereafter, each two-year license term for school and instructor licenses shall run from March 1 to the last day of February of the second following year.

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

(l) No person, other than a guest lecturer, shall teach real estate education courses, the attendance and successful completion of which shall constitute the fulfillment of the educational prerequisites for licensure established under N.J.S.A. 45:15-10.1, unless that person is licensed as an instructor pursuant to N.J.S.A. 45:15-10.5 and this section.

[(k)] **1.** Each applicant for [approval] **licensure** as a real estate instructor **shall be 18 years of age or older and** shall have a background of good moral character, including the absence of any conviction for certain crimes or other like offenses referred to in N.J.S.A. 45:15-12.1, subject to the applicant's ability to affirmatively demonstrate his or her rehabilitation from such conviction. In order to confirm the absence of any such conviction, the Commission shall require all non-attorney [and non-license] applicant to submit with [his or her] **their** application for instructor [approval] **licensure** a New Jersey State Police Request for Criminal History Record Information Form and a certified check or money order in the amount established by the New Jersey State Police as the processing fee for such forms.

2. Each applicant for licensure must hold a bachelor's degree from an accredited college or university, except for the following applicants:

i. New Jersey licensed brokers who have been continuously licensed as such for the two years immediately preceding their application; and

ii. Licensed brokers from other states who have been continuously licensed as such for the three years immediately preceding their application.

3. Except as provided in (l)3i and ii below, all instructor license applicants must successfully complete all of the education requirements for licensure as a New Jersey broker established at N.J.A.C. 11:5-1.27, totalling 150 hours, not more than one year prior to passing the instructor license examination and applying for an instructor license.

i. New Jersey broker licensees who have been licensed as such for at least the two years immediately preceding the application and who have completed the full 150 hours of broker prelicensure courses established at N.J.A.C. 11:5-1.27 shall be deemed to have fulfilled the education requirements for licensure as an instructor.

ii. The following individuals will not be required to take the 90-hour general broker course but must successfully complete the two 30-hour broker prelicensure courses referred to in N.J.A.C. 11:5-1.27 in order to fulfill the instructor prelicensure education requirements:

(1) New Jersey broker licensees who have been licensed as such for the two years preceding their application for an instructor license but who have not previously completed those two courses; and

(2) Licensed brokers from other states who have been licensed as such for the three years immediately preceding application.

4. All instructor license applicants shall successfully complete an instructor license examination as established by the Commission. The examination shall extensively test the applicant's general real estate knowledge and shall include questions on teaching methods. Applicants are advised to engage in independent study and/or to take courses offered by independent providers on teaching methods.

5. Subsequent to passing the instructor license examination, as a prerequisite to being issued an instructor license, all applicants must attend a seminar conducted by or under the direction of the Commission staff covering Commission and licensing procedures. Such seminars shall not exceed one day in length.

[1. To qualify for approval by the Commission as a real estate instructor, an applicant must fulfill one or more of the following criteria:

i. Be a member of the faculty or adjunct faculty of an accredited college or university, and have previously taught at least one course of at least 30 hours in duration in real estate or related subjects offered by such an accredited college or university;

ii. Have actively practiced as a licensed attorney at law of the State of New Jersey for a minimum of three years immediately preceding his or her application for approval as a real estate instructor, with substantial experience in real estate;

iii. Hold a bachelor's degree issued within three years of application as evidence of having majored in real estate from an accredited college or university;

iv. Hold a bachelor's degree from an accredited college or university and possess a minimum of 225 classroom hours or 15 credit hours from an accredited college or university in real estate or related subjects, and hold a teaching certificate issued by this or any other state;

v. Have been licensed as a real estate broker in the State of New Jersey for at least two years immediately preceding application and possess a minimum of five years total experience as a New Jersey real estate licensee immediately preceding application; or

vi. Otherwise demonstrate the knowledge and ability, based upon any combination of the factors noted in (k)1i through v above, to effectively teach real estate subjects.

NOTE: The above requirements shall not apply to any guest speaker as heretofore provided. Individuals qualifying as set forth in (k)1 above shall file a Form "E", together with evidence of past experience in the area of study proposed to be taught.

2. Prior to any individual being certified by the New Jersey Real Estate Commission as an approved real estate instructor, the applicant must attend an instructional seminar conducted under the auspices of the Commission. Such seminars shall be offered as frequently as the Commission shall deem necessary, but in no event less than twice each year.

3. All individuals certified as approved real estate instructors on December 1, 1988 must, within 12 months thereof attend an instructional seminar conducted under the auspices of the Commission. In the event that such persons do not attend such a seminar, their status as approved real estate instructors shall be revoked by the Commission and they shall be ineligible for reinstatement as such until they have attended such a seminar.

4. The Commission may require all approved real estate instructors to periodically attend informational seminars which the Commission in its discretion determines are necessary in order to familiarize such instructors with recent developments in the real estate field including but not limited to changes in licensing or examination procedures and statutory or rule amendments. The failure of an approved instructor to attend such informational seminars may subject that person to sanctions, including, but not limited to, the suspension or revocation of their certification as an approved real estate instructor.]

[(1) In the event that an approved instructor fails to teach a minimum of 60 hours of instruction in pre-licensure courses offered by Commission-approved real estate schools during any two-year period, his or her approval shall automatically terminate and he or she shall be required to re-apply for approval.]

(m) Regulations applicable to the renewal of school and instructor licenses are as follows:

1. Pursuant to N.J.S.A. 45:15-10.7, the fee for the renewal of a real estate instructor license for an additional two-year license term shall be $50.00. The fee for the renewal of a real estate school license shall be $200.00 for the first teaching location licensed and $100.00 for each additional licensed location to be renewed.

2. As a prerequisite for the renewal of an instructor license, an instructor must attend a Commission-sponsored seminar updating them on recent developments affecting the real estate brokerage

business in New Jersey. Such seminars shall be offered on three dates, each in a different location throughout the state, during the second year of each two-year license term. Persons initially licensed as instructors in the last six months of the two-year license term are exempt from this seminar attendance requirement for the first renewal of their instructor license.

3. In the event that any person to whom an instructor's license has been or shall have been issued shall fail to renew such license or obtain a new license for a period of two consecutive years or more after the expiration of the last license held, the Commission shall require such person to again fulfill all the qualifications for initial licensure as an instructor prior to issuance of a further instructor's license. This requirement shall not apply to a person reapplying for an instructor's license who was a licensed instructor and who allowed their license to expire due to subsequent employment in a public agency in this State with responsibility for dealing with matters relating to real estate if the person reapplying does so within one year of termination of that employment.

Recodifying existing (m)-(w) as **(n)-(x)** (No change in text.)

[(x)]**(y)** The purpose of this subsection is to assure that there is a total separation between instructional activity conducted by approved schools and any solicitation of students, which, as defined in [(x)2ii]**(y)2ii** below, means any recruiting efforts or brokerage activity directed at students. These provisions will be construed in a manner consistent with that regulatory objective. A violation of any of these provisions will be considered by the Commission as conduct demonstrating unworthiness for licensure, thereby subjecting the offending licensee to sanctions pursuant to N.J.S.A. 45:15-17(e) and (r). The Commission may also impose sanctions for a violation of these provisions pursuant to N.J.A.C. 11:5-1.28[(w)] **(x)**. Requirements regulating the involvement of approved schools in soliciting students to become salepersons for particular real estate brokers are as follows:

1. At the beginning of the first class session of all salesperson prelicensure courses, all approved schools shall distribute to all students in attendance in writing the following:

NOTICE
TO: ALL SALESPERSON COURSE STUDENTS
FROM: NEW JERSEY REAL ESTATE COMMISSION
RE: SOLICITATION OF SALESPERSON LICENSE CANDIDATES AT PRELICENSURE SCHOOLS:

It is the policy of the New Jersey Real Estate Commission that there be a complete and total separation between the instruction you receive in your prelicensure education course and any efforts by brokers to recruit you to join the firm and/or to secure listings or offers on listed properties from you. This policy is reflected in Commission rule N.J.A.C. 11:5-1.28[(x)](y), which is reproduced in its entirely below.

If you are subjected to any recruitment efforts or are solicited for listings or offers during class time you should immediately notify your instructor, the Director of your school, and the New Jersey Real Estate Commission by writing to:

New Jersey Real Estate Commission
20 West State Street, CN 328
Trenton, New Jersey 08625
Attn: Director, Real Estate Education

You are free to negotiate the terms of your employment with any broker. It is in your own best interest to talk to several prospective employing brokers before deciding which offers the best compensation plan, including post-termination payment provisions, and support package for you. You should also consider a prospective employer's professionalism and reputation for honesty and integrity when deciding which broker to work for.

In the event an enrolled student does not attend the first session of a salespersons course, a copy of the foregoing notice shall be delivered to that student at the commencement of the first class session which that student does attend.

2. (No change.)

3. With the exception of posting, distributing written materials as provided in [(x)5] **(y)5** below, no school director, instructor, guest lecturer or staff member shall, prior to, nor within seven days following, a student's successful completion of a course, solicit a student to become a salesperson for any particular real estate broker, nor shall any such person at any time accept any fee or other compensation for soliciting or recruiting students attending their school to apply for employment with a particular real estate broker.

4.-9. (No change.)

(a)

DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION

Expediting of Licensing Issuance and Transfer Procedures

Proposed Amendment: N.J.A.C. 11:5-1.31

Authorized By: New Jersey Real Estate Commission, Micki Greco Shillito, Executive Director.
Authority: N.J.S.A. 45:15-6 and 45:15-14.
Proposal Number: PRN 1993-602.

Submit written comments by December 1, 1993 to:
Robert J. Melillo
Special Assistant to the Director
New Jersey Real Estate Commission
CN-328
Trenton, New Jersey 08625-0328

The agency proposal follows:

Summary

An amendment to N.J.S.A. 45:15-14, which becomes effective July 1, 1994 (see P.L. 1993, c.51, §16), enables the Commission to establish by rule a license transfer procedure as an alternative to the current procedure established in the law whereby licenses are required to be returned to the Commission upon the termination of the employment of a licensee with a broker. To minimize the time period during which licensees who transfer from the employ of one broker to the employ of another are unlicensed, and therefore legally barred from engaging in the brokerage business, the Commission has determined to propose an amendment to N.J.A.C. 11:5-1.31 which will establish such an alternative license transfer procedure.

The proposed amendment permits transferring licensees to request that their license be delivered to them personally instead of to the Commission. The new procedure is designed to streamline the transfer process and to enhance the Commission's ability to accurately and on a timely basis record the termination date and new employment date of the transferring licensee. Under the proposed alternative transfer procedure, brokers will be required to sign and date the termination confirmation section of the departee's license and to then mail that section to the Commission and a copy of it to the licensee. The remainder of the license, with an indication of the termination date on it, will be delivered to the departing licensee who can then take it to the new employing broker for that broker's signature. Thereafter, the license is to be mailed to the Commission with a transfer fee, with the new employing broker retaining the detachable 45-day temporary license portion of the license document.

Before the transferring licensee can begin work under the new broker, the broker must detach the temporary license stub portion from the main license, then mail to the Commission the license dated with the commencement of employment with the new employing broker and signed by that broker with the required transfer fee required by N.J.S.A. 45:15-14. In this way, the Commission will be able to track transfers from one broker to another by recording the effective termination by one broker and subsequent reemployment by another for each licensee.

Social Impact

The proposed amendment will have a positive social impact on the industry by minimizing the disruption of a licensee's real estate practice caused when their license certificate is returned to the Commission. When that occurs, the license can only be reactivated through the submission of a transfer application. The alternative procedure proposed allows licensees to move more freely from one broker to another, making salespersons more available to prospective buyers and sellers, benefitting the public as a whole. In addition, the new procedure will better assure the accuracy of the Commission's licensing records.

Economic Impact

The proposed amendment will have a positive impact on the industry as a whole by limiting the "down time" between termination and reactivation of licenses, thereby promoting more productivity and, presumably, more earnings for licensees. Improving the accuracy of the Commission's licensing records will reduce uncertainty and increase the efficiency of the Commission's operations.

Regulatory Flexibility Analysis

A regulatory flexibility statement is not required because the proposed rule only applies to individuals seeking licensure by the State and does not impact upon small business.

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

11:5-1.31 Expediting of license **issuance and transfer** procedures

(a) For the purpose of expediting the right of licensees to engage in real estate activities, where license certificates cannot be issued without delay after all conditions have been fulfilled, the Commission directs that a certificate of authority in the form of a letter to the licensee be sent to serve as a temporary license for a limited period of time.

(b) In cases where a licensee who is transferring from one broker to another requests that their current broker deliver their license to them, rather than return it to the Commission, so as to expedite the transfer process, the license shall be so delivered, provided that:

1. The rear of the license certificate is signed and dated by the terminating broker in the appropriate location prior to the delivery of the license to the departing licensee;

2. At the time of the delivery of the license to the departing licensee, the termination confirmation section of the license, reflecting the effective date of the licensee's separation from that broker, has been completed, signed and retained by the terminating broker; and

3. Within five business days of the delivery of the license to the departing licensee, the terminating broker shall mail to the Commission the completed and signed termination confirmation section of the license and send a copy of it to the departing licensee at their last known residence address.

(c) A transferring licensee who receives their license from the terminating broker after that broker has signed the license and entered the date of termination on it may then take that license to their new employing broker. Prior to the transferring person commencing work as a licensee for the new employing broker, that broker shall:

1. Enter on the license in the appropriate location the effective date of the individual's employment with that broker and sign the license as the new employing broker;

2. Detach the temporary license stub portion from the main license document and place it with the licenses of the other persons licensed with that broker; and

3. Mail to the Commission the dated and signed license of the transferring individual with the required transfer fee (see N.J.S.A. 45:15-14) in the form of a certified or cashiers check or money order of broker's business account check. See N.J.A.C. 11:5-1.20.

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Standards and Procedures Governing Withdrawals of Small Employer Carriers From the Small Employer Health Benefits Plans Market

Proposed New Rules: N.J.A.C. 11:21-16

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

Authority: N.J.S.A. 17:1C-6(e) and 17B:27A-23.

Proposal Number: PRN 1993-606.

Submit comments by December 1, 1993 to:

Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 17B:27A-17 et seq. (the "Act") provides for the establishment of a Small Employer Health Benefits Plans Program ("SEH Program"). These proposed new rules implement N.J.S.A. 17B:27A-23 which provides for the withdrawal of carriers from the small employer market only after notice is provided to the Commissioner of Insurance ("Commissioner").

The Department of Insurance ("Department") is promulgating these rules in accordance with P.L. 1993, c.162, section 16, which provides a special procedure whereby the Commissioner may adopt certain actions. Pursuant to this procedure, the Department is required to publish notice of its intended actions in three newspapers of general circulation, which shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views. Notice of the intended action is additionally required to be provided by mail or other means to affected trade and professional associations, carriers subject to the provisions of N.J.S.A. 17B:27A-27 et seq. and such other interested persons or organizations which may request notification.

Concurrently, the Department is further required to forward the notice of its intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. P.L. 1993, c.162, section 16 further provides a minimum 15-day comment period for all interested persons to comment in writing on the intended action. Following the expiration of the comment period, the Department may adopt the intended action and the adopted action is submitted to OAL for publication in the New Jersey Register. The adopted action becomes effective on the date of the submission or on such later date as the Department may establish. The Department is modifying this adoption procedure by extending the 15-day comment period beyond the date of publication of these rules in the New Jersey Register. The Department is extending the comment period in order to provide interested persons additional time in which to submit comments prior to the adoption of the rules.

Within a reasonable time following the submission of the comments, the Department is required to prepare a report for public distribution which lists all parties who provided comments, summarizes the content of the comments, and provides the Department's response to the data, views and arguments contained in the comments. A copy of this report is also filed with the OAL for publication in the New Jersey Register.

In accordance with these special procedures the Department proposes these new rules to implement procedures by which carriers may withdraw from the small employer market in New Jersey pursuant to N.J.S.A. 17B:27A-23. In accordance with the Act, health insurance companies, health service corporations, hospital service corporations, medical service corporations and health maintenance organizations which elect to transact business in, or continue to transact business in, the small employer market (hereinafter collectively the "carriers") must offer standardized health benefits plans established by the SEH Program Board to small employer groups on a guaranteed issue basis. Additionally, current small employer contracts must be converted to comply with the standardized health benefits plans and program guidelines developed by the SEH Program Board. In the absence of further action by the Legislature, authorized by N.J.S.A. 17B:27A-25a(4), as of 1997 all small employer health benefits plans must be community rated and rating band restrictions apply between 1994 and 1997.

The Act also provides for the establishment of a mechanism to spread the cost and risk of covering high-risk groups and individuals under the standard health benefits plans on a guaranteed issue basis. The SEH Program is, therefore, designed to make coverage available for any small group which seeks to purchase it, to make comparison of coverage easier and more meaningful and to bring greater stability to the pricing and underwriting of small group coverage.

However, carriers are not required to issue or to continue issuing small employer health benefits plans. The Act provides that carriers which are doing business pursuant to N.J.S.A. 17B:27A-17 et seq. may cease doing business in the small employer market in accordance with the conditions set forth at N.J.S.A. 17B:27A-23e. This subchapter implements that provision of the Act and applies to all small employer carriers issuing or renewing policies or contracts after November 30, 1992. This subchapter is designed to minimize the adverse effects of eliminating coverage to small employers by requiring withdrawing carriers to provide sufficient notice to both the Commissioner and affected employers, that coverage will be terminated and by further requiring carriers to wind down their business in this market in an orderly fashion.

These rules do not supersede any other notice requirements applicable to group health coverage in accordance with other New Jersey statutes or rules, nor do they contravene the rights of policyholders to any cancellation or termination provisions contained in contracts or policies issued or renewed either before or after November 30, 1992. The notice requirements set forth in the Act and this subchapter are in addition to any other notice requirements and obligations applicable to the carriers' contracts.

Any small employer carrier which may have submitted a notice to the Commissioner of its intent to withdraw from the small employer market prior to the effective date of this subchapter must fulfill the requirements set forth in this subchapter. Such small employer carriers shall file with the Commissioner the information required by this subchapter no later than 60 days from the effective date of this subchapter. Where a carrier files this information in accordance with the procedures set forth in this subchapter, the carrier's notice to the Commissioner shall relate back to the date of the original submission. However, where a carrier fails to supplement its notice within the prescribed time, but thereafter files the required information, the notice will not relate back to the date of the initial submission. Notice to the Commissioner will be deemed to have been given on the date all of the required information has been filed.

Notwithstanding the date of notice to the Commissioner, carriers shall provide small employers with at least six months notice prior to the cancellation on a date certain or termination on the anniversary date of any policy or contract. Carriers are restricted to one of these methods of terminating policies in order to prevent small employer health carriers from retaining their most profitable business for a longer period, through nonrenewals, while cancelling less desirable policies on six months notice. Such a manipulation of business may overburden the remaining small employer health carriers with less desirable policies.

N.J.A.C. 11:21-16.1 sets forth the purpose and scope of these rules.

N.J.A.C. 11:21-16.2 defines the relevant terms which are used in this subchapter.

N.J.A.C. 11:21-16.3 sets forth to whom the small employer carrier must provide notice of its intent to withdraw; the time frames in which notice must be provided; and the information which must be filed in connection with the notices of withdrawal.

N.J.A.C. 11:21-16.4 establishes the restrictions upon a small employer carrier's writings once the carrier has withdrawn from the small employer market.

N.J.A.C. 11:21-16.5 establishes that penalties will be imposed for failure to comply with the requirements of the subchapter.

N.J.A.C. 11:21-16.6 provides that this subchapter does not contravene any policyholder rights concerning cancellation requirements or obligations set forth in a policy or contract issued by a small employer carrier.

Social Impact

These new rules formalize the procedures and requirements to be fulfilled by a small employer carrier when withdrawing from business in the small employer market. The rules provide clear notice to carriers of the specific steps which must be taken to effectuate a withdrawal, including the information which must be filed with the Commissioner and the notice of the withdrawal which must be given to covered employers.

The procedures established by these rules will enable a carrier to withdraw from the small employer market in this State wthout causing undue disruption in the marketplace or causing a negative impact on a carrier's current policyholders or the general public.

Economic Impact

These new rules will not result in an adverse economic impact upon carriers. The rules merely implement the provisions of the Act which enable a carrier to withdraw from the small employer market in New Jersey. These rules require that carriers comply with certain procedural and notice requirements. Any costs which may be generated as a result of these requirements should be offset by the benefits which may inure to the carrier from being permitted to withdraw from the small employer market in this State. Any compliance costs will be minimal and are, nevertheless, necessary to fulfill the statutory requirements.

Regulatory Flexibility Analysis

These new rules may apply to "small businesses" as that term is defined in the New Jersey Regulatory Flexibility Act at N.J.S.A. 52:14B-17. These rules apply uniformly to all carriers regardless of size and there are no exemptions or different compliance requirements based on a carrier's size.

The Department has determined that uniform compliance with this subchapter is necessary to accomplish the dual objectives of permitting carriers to withdraw from the small employer market and preventing undue disruption in the marketplace.

The Department does not anticipate that the notice and compliance requirements contained in these rules will necessarily require additional staffing or additional capital. The rules, however, impose procedural requirements that may have a proportionally greater impact on smaller carriers. Nonetheless, the Department does not anticipate any significant burden on smaller carriers because the compliance requirements are minimal and the information required should be readily available to the carriers.

Full text of the new rules follows:

SUBCHAPTER 16. STANDARDS AND PROCEDURES GOVERNING WITHDRAWALS OF SMALL EMPLOYER CARRIERS FROM THE SMALL EMPLOYER HEALTH BENEFITS PLANS MARKET

11:21-6.1 Purpose and scope

(a) The purpose of this subchapter is to establish the requirements and procedures by which carriers may cease doing business in the small employer market in this State. The subchapter applies to all small employer carriers issuing or renewing policies or contracts after November 30, 1992. Pursuant to the provisions of N.J.S.A. 17B:27A-17 et seq., every policy or contract issued to a small employer in this State shall be renewable with respect to all eligible employees or dependents at the option of the policy or contract holder or small employer, except under the circumstances prescribed by N.J.S.A. 17B:27A-23(a) through (g). One of the circumstances delineated therein is where a carrier ceases to do business in the small employer health benefits plans market in New Jersey pursuant to N.J.S.A. 17B:27A-23e.

(b) This subchapter applies to all small employer carriers as defined in this subchapter that seek to cease doing business in the small employer market.

11:21-16.2 Definitions

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

"Affiliate" or "affiliated company" means a carrier that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the carrier that initiates a withdrawal.

"Board" means the board of directors of the New Jersey Small Employer Health Benefits Program.

"Carrier" means any insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefits plans in this State. For purposes of this subchapter, carriers that are affiliated companies shall be treated as one carrier, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in New Jersey or any health maintenance organization located in New Jersey that is affiliated with an insurance company, health service corporation, hospital service corporation, or medical service corporation shall treat the health maintenance organization as a separate carrier.

"Cease doing business" for purposes of these rules means withdraw or withdrawal.

"Commissioner" means the Commissioner of the Department of Insurance of the State of New Jersey.

"Department" means the New Jersey Department of Insurance.

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed at least two but no more than 49 eligible employees, the majority of whom are employed within the State of New Jersey. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer. Subsequent to the issuance of a health benefits plan to a small employer pursuant to the provisions of N.J.S.A. 17B:27A-17 et seq., and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, provisions of N.J.S.A. 17B:27A-17 et seq. which apply to a small employer shall continue to apply until the anniversary date of the health benefits plan next following the date the employer no longer meets the definition of a small employer.

"Small employer carrier" means any carrier that offers health benefits plans covering eligible employees of one or more small employers.

"Small employer health benefits plan" means a health benefits plan for small employers established by the SEH Program Board and approved by the Commissioner pursuant to N.J.S.A. 17B:27A-33.

"State" means the State of New Jersey.

"Withdraw" or "withdrawal" means the cancellation on a date certain or the termination on the anniversary date of all in force health benefits plans issued to small employers without offering replacement with a small employer health benefits plan except where such action is taken pursuant to N.J.S.A. 17B:27A-23a through d, f and g.

11:21-16.3 General provisions

(a) No small employer carrier shall cancel, nonrenew, or terminate, except in accordance with N.J.S.A. 17B:27A-23a through d, f and g, or refuse to issue any small employer health benefits plan unless the small employer carrier withdraws from the small employer market in New Jersey in accordance with the provisions of this subchapter.

(b) Any small employer carrier which seeks to withdraw from the small employer market in this State shall provide the Commissioner with written notification of its intent to withdraw not later than eight months prior to either the cancellation of all of its in force policies or contracts on a date certain or the termination on the anniversary date of each in force policy or contract. The carrier shall choose only one of these methods and shall specify in the notice which method of withdrawal it chooses.

1. Until such time as the withdrawal shall be completed, the withdrawing carrier shall continue to be governed by N.J.S.A. 17B:27A-17 et seq. and all rules promulgated thereunder.

2. A withdrawing carrier shall cease issuing new policies no more than two months after filing a notice of intent to withdraw with the Commissioner.

(c) The notice of withdrawal to the Commissioner shall be sent to the attention of: SEH Withdrawal Notice, Division of Financial Solvency, New Jersey Department of Insurance, Trenton, NJ 08625, and shall include an original and two copies of the following information:

1. The carrier's percentage market share in the small employer market, if known, including its most recent policy or contract count and annual amount of direct premium earned and written;

2. A statement, describing with specificity, the reasons for which the carrier is withdrawing from the small employer market in this State;

3. A statement indicating whether the carrier has any affiliates writing any health lines in this State, the names of such affiliates and the lines of insurance written and a statement indicating whether any such affiliates will continue to write small employer health benefits plans;

4. A statement indicating whether the carrier is withdrawing from other lines of business in this State, and if so, the lines from which it is withdrawing;

5. A statement specifying the date or dates upon which the carrier shall terminate its small employer health benefits plans which shall be either:

i. The specific date upon which the carrier shall cancel all in force policies or contracts; or

ii. The dates upon which all in force policies or contracts shall be terminated, which shall be the anniversary dates of the policies or contracts of each policyholder;

6. The date upon which the carrier shall cease writing any new health benefits plans or small employer health benefits plans, as applicable, which shall be no later than two months after the date the carrier has filed its notice with the Commissioner; and

7. A copy of the form of notice required pursuant to (e) below, which is to be mailed to each small employer to be effected by the carrier's withdrawal.

(d) The Commissioner shall review the notice of withdrawal to determine whether it complies with (c) above and whether sufficient notice will be provided to policyholders. The Commissioner shall notify, in writing, the small employer carrier of any deficiencies and shall advise the carrier of the requirements which are necessary to bring it into compliance with N.J.S.A. 17B:27A-23 and this subchapter.

1. A carrier which has submitted a notice to the Commissioner pursuant to N.J.S.A. 17B:27A-23(e) prior to the effective date of this subchapter shall file the information requested in (c) above, within 60 days of the effective date of this subchapter.

i. Where the carrier complies with (d)1 above, the carrier's notice to the Commissioner shall relate back to the date of the carrier's original submission to the Commissioner. Notwithstanding the date of notice to the Commissioner, a carrier shall provide at least six months written notice to a small employer that its contract or policy shall be cancelled on a date certain or terminated on the anniversary date.

ii. Where a carrier fails to file the supplemental information as required by (d)1, the date of notice to the Commissioner shall be deemed to be the date upon which the carrier has filed with the Department all of the items set forth in (c) above. Dates for all other notices required by this subchapter shall be calculated from this new date.

2. A carrier which has submitted its notice of intent to withdraw prior to the effective date of this subchapter shall comply with the notice requirements set forth at (e), (f), (g) and (h) below, to which all other carriers must similarly comply, unless the Commissioner authorizes or specifies otherwise, to prevent undue hardship to either the carrier, the policyholders, or both.

(e) Any small employer carrier which seeks to withdraw from the small employer market shall, not later than two months following the date of notification to the Commissioner, nor less than six months in advance of the effective date of the cancellation on a date certain or termination on the anniversary date of the policy or contract, mail a notice to every small employer insured by the carrier, informing the small employer that the policy or contract will be cancelled on a date certain or terminated on the anniversary date. This initial notice to each small employer shall be sent by certified mail and shall include the following information:

1. The date upon which the policy or contract shall be cancelled or terminated;

2. That the policy or contract is being cancelled or terminated under the authority of N.J.S.A. 17B:27A-23(e) and this subchapter;

3. The name, address and telephone number of the employee or agent of the carrier who may be contacted for assistance and information regarding the withdrawal;

4. A statement that the small employer may contact its broker for additional information regarding the withdrawal;

5. A notice that, on or after January 1, 1994, a list of active small employer carriers and examples of their rates may be obtained by writing to the New Jersey Department of Insurance, Division of

Public Affairs, CN 325, Trenton, NJ 08625-0325, or by calling (609) 633-3955, and requesting the Small Employer Health Benefits Plans Comparison Guide; and

6. A statement that pursuant to N.J.S.A. 17B:27A-19, all carriers offering small employer health benefits plans must issue coverage to any small employer group which requests coverage under a small employer health benefits plan, meets the participation requirements of the carrier, and pays the required premium for the coverage.

(f) A withdrawing small employer carrier shall provide at least one copy of its notice of intent to cancel on a date certain or termination on the anniversary of each policy or contract, to the producer of record for each policy or contract. The notice shall be sent by certified mail, no less than six months prior to the effective date of withdrawal.

(g) Simultaneous with its notice to the Commissioner, a withdrawing small employer carrier shall submit a notice to the Plan Administrator of the Small Employer Health Board, which:

1. Indicates that the carrier shall withdraw from the State of New Jersey;

2. States whether the carrier shall either cancel all of its in force policies or contracts on a date certain or shall terminate its in force policies or contracts on their anniversary date; and

3. Sets forth the date or dates upon which (g)1 and 2 above shall occur.

(h) Following the initial notice to the small employer, a small employer carrier shall submit subsequent notices to the small employer of the cancellation on a date certain or the termination on the anniversary date of the contract and the date upon which the cancellation or termination shall occur. Such notice shall be included with each monthly premium bill or premium notice issued prior to the date of cancellation or termination. Where no monthly premium statement is transmitted, a small employer carrier shall provide a small employer with no fewer than three notices, which notices shall be sent at minimum on the sixth, third and last month prior to the date of cancellation or termination.

11:21-16.4 Restrictions on writings

(a) Any small employer carrier that ceases to do business pursuant to this subchapter shall be prohibited from writing new business in the New Jersey small employer market for a period of five years from the date it provides notice to the Commissioner of its planned withdrawal.

(b) Any carrier which has withdrawn from the small employer market in this State shall be prohibited from issuing any small employer health benefits plans until it has complied with N.J.A.C. 11:21-14, and has been approved or deemed approved by the Commissioner, if appropriate, to issue such policies.

(c) Any small employer carrier which withdraws from the small employer market shall cancel on a date certain or terminate on the anniversary date all of its in force small employer health benefits plans in accordance with N.J.A.C. 11:21-16.3.

11:21-16.5 Penalties

Failure to comply with the requirements of this subchapter shall result in the imposition of penalties pursuant to N.J.S.A. 17B:27A-43 and any and all other penalties provided by law.

11:21-16.6 Other policyholder rights unaffected

Nothing in this subchapter shall be construed to contravene any rights of policyholders concerning cancellation requirements or obligations set forth in a policy or contract issued by a small employer carrier.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

Patient Record Rules
Permissible Charges for Copies
Proposed Amendment: N.J.A.C. 13:35-6.5

Authorized By: State Board of Medical Examiners, Charles A. Janousek, Executive Director.
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1993-579.

Submit written comments by December 1, 1993 to:
Charles A. Janousek, Executive Director
State Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

The State Board of Medical Examiners is proposing an amendment to the rules governing patient records to establish the fee that licensees may charge for reproduction of patient records, thereby eliminating uncertainty in the profession concerning the reasonableness of such charges. The amendment which follows the fee guidelines of the Department of Health, provides that the fee shall be no greater than $1.00 per page or $100.00 for the entire record, whichever is less. (The rule would allow for a charge of $10.00 for those records which are less than 10 pages, so as to permit the recoupment of costs associated with postage and record retrieval.) If the licensee elects to provide a summary report in lieu of the actual, as he or she is permitted to do, the charge for that report shall not exceed the fee that could be charged for the actual record. There is no change in the requirement that a licensee must provide at no cost to the patient or subsequent treating health care professional, a transcription of a treatment record that is illegible or is prepared in a language other than English.

Social Impact

In proposing this amendment the Board of Medical Examiners is continuing to fulfill its mandate to make and adopt rules and regulations concerning the practice of medicine in this State. Complying with patient and other authorized requests for records has become a daily office function for licensees. Through issuance of this proposed amendment, reasonable charges to accomplish those requests are set, thus providing licensees with appropriate guidance and adequate reimbursement and providing the requester of the records with standard costs associated with reproduction.

Economic Impact

Fees charged for the reproduction of patient treatment records have varied significantly across the State. While practitioners have generally sought to determine and charge reasonable costs, the lack of uniformity has at times caused significant discrepancies in the amounts billed. To the extent licensees have been charging fees in excess of the proposed $1.00 per page or $100.00 for the entire record for reproduction of patient records, the rule may impact negatively on copying income received. Given, however, the frequent, if not universal, presence of photocopying machines on premises where records are kept, as well as the existence of many document duplication businesses across the State, the maximum charge of $1.00 per page is reasonable. It is anticipated that actual copying costs will fall below the proposed allowable charges, and, therefore, no detrimental economic impact will ensue.

Regulatory Flexibility Analysis

If, for the purpose of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., Board licensees are deemed "small businesses" within the meaning of the statute, the following statements are applicable:

The Board of Medical Examiners currently registers approximately 30,000 physicians, 1,200 podiatrists, 150 certified nurse/midwives, and 340 bioanalytic lab directors. The proposed amendment will apply to all licensees. By these rules practitioners will be obligated to comply with certain limitations on charges for copying of patient records. No additional recordkeeping, however, is contemplated. The Board does not anticipate that additional professional providers will be needed in order to satisfy these proposed requirements although office staff may be called upon to perform more tasks relating to the copying process. It is not possible to estimate either the initial costs or the annual costs of compliance since it is unknown how many practitioners are exceeding the limitations on reasonable charges as set forth herein. The Board believes, however, that the proposed requirements and any expenses that may be attendant are well justified by the goals to be achieved. Because the proposed new rules impose conditions upon individual practice, the rules must uniformly be applicable to all licensees without differentiation as to size of practice.

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

13:35-6.5 Preparation of patient records, computerized records, access to or release of information; confidentiality, transfer or disposal of records

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

(c) Licensees shall provide access to professional treatment records to a patient or an authorized representative in accordance with the following:

1. (No change.)

2. [The] **Unless otherwise required by law, a** licensee may elect to provide a summary of the record **in lieu of providing a photocopy of the actual record**, so long as that summary adequately reflects the patient's history and treatment[, unless otherwise required by law]. **A licensee may charge a reasonable fee for the preparation of a summary which has been provided in lieu of the actual record, which shall not exceed the cost allowed by (c)4 below for that specific record.**

3. (No change.)

4. [The Licensee] **Licensees** may require a record request to be in writing and may charge a [reasonable] fee for the reproduction of records, which shall be no greater than [an amount reasonably calculated to recoup the cost of copying or transcription] **$1.00 per page or $100.00 for the entire record, whichever is less. (If the record requested is less than 10 pages, the licensee may charge up to $10.00 to cover postage and the miscellaneous costs associated with retrieval of the record.) If the licensee is electing to provide a summary in lieu of the actual record, the charge for the summary shall not exceed the cost that would be charged for the actual record.**

5.-6. (No change.)

(d)-(h) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF REAL ESTATE APPRAISERS

Fees; Temporary Licenses

Proposed Repeal: N.J.A.C. 13:40A-3.5
Proposed Amendment: N.J.A.C. 13:40A-6.1

Authorized By: Board of Real Estate Appraisers, Kevin B. Earle, Executive Director.

Authority: N.J.S.A. 45:14F-8(n).

Proposal Number: PRN 1993-608.

Submit written comments by December 1, 1993 to:
Kevin Earle, Executive Director
State Board of Real Estate Appraisers
Post Office Box 45032
Newark, New Jersey 07101

The agency proposal follows:

Summary

The New Jersey State Board of Real Estate Appraisers is proposing to repeal N.J.A.C. 13:40A-3.5, Temporary licenses, and to amend N.J.A.C. 13:40A-6.1, Fee schedule. The repeal of N.J.A.C. 13:40A-3.5 is proposed because the rule involves a specified timeframe, which is no longer applicable. In particular, the rule was effective for no more than 420 days from September 17, 1991, by which time individuals who fulfilled the requirements of N.J.A.C. 13:40A-3.2 needed to have filed their applications with the Board in order to be permitted to take the licensure examination prior to meeting the educational requirements.

The amendments to N.J.A.C. 13:40A-6.1, Fee schedule, are proposed so that the annual Federal registry fee will be collected biennially. This change will permit the Board to have the Federal registry funds available to remit each year as the Federal registry list is submitted to the Appraisal Subcommittee in Washington, D.C., and will negate the present need for a separate billing to licensees in the second year of the biennial cycle, a process that is administratively unwieldy. (As used herein, licensees includes both licensed and certified real estate appraisers.)

In addition, the amendments to N.J.A.C. 13:40A-6.1 eliminate fees that are not utilized, clarify certain fee names, and add a new fee. Eliminated are the Duplicate Certificate and License Fees and the Temporary License Fee. "Endorsement Fee" has been renamed "Reciprocity Application Fee" and "Change of Address Fee" has been renamed "Change of Name or Address Fee." The new fee is the Duplicate Registration Certification Fee, which covers the pocket-size non-calligraphed certificate.

Social Impact

Since the proposed amendments merely adjust the Board's existing fee schedule by incorporating minor deletions and clarifications, as well as by creating a biennial cycle for the Federal registry fee, the amendments will have no social impact either on licensees or on the general public.

Economic Impact

The proposed amendments to the Board's fee schedule will affect licensees in need of a duplicate, pocket-size certificate for they must pay the Duplicate Registration Certificate Fee established to cover the Board's expenses in producing that certificate. Otherwise, the proposed amendments will have an economic impact only in generating administrative savings for the Board due to the revised, biennial Federal registry fee schedule, with no accompanying increase in the fees being paid by licensees. The proposed amendments will have no economic impact on consumers.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., licensees of the Board are deemed to be "small businesses," then the following statement is applicable:

The proposed amendments will apply to all of the approximately 2,600 licensees of the Board of Real Estate Appraisers but the single substantial amendment involves the Duplicate Registration Certificate Fee, which will apply only to those licensees who wish to have a duplicate, pocket-size certificate. The amendments do not contain either reporting or recordkeeping requirements, nor are any professional services required. Since the single new fee has been set at the lowest amount that will cover the Board's operating expenses, the intent of the Regulatory Flexibility Act to minimize adverse economic impact has been implemented.

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

13:40A-3.5 [Temporary licenses] **(Reserved)**

[(a) An individual who meets the requirements of N.J.A.C. 13:40A-3.2 and who files his or her application with the Board prior to September 17, 1991, shall be permitted to take the examination prior to meeting the educational requirements.

(b) Upon the applicant's successful completion of the examination and payment of the temporary license fee, the Board shall issue a temporary license.

(c) A temporary license shall be effective for no more than 420 days and shall not be renewable.

(d) If, during the temporary license term, the temporary licensee completes the educational requirements as set forth in N.J.A.C. 13:40A-3.3, the Board may issue to the temporary licensee a license as a State licensed real estate appraiser.]

13:40A-6.1 Fee schedule

(a) Charges for credentialing, certification, licensure and other services are as follows:

1.-9. (No change.)

[10. Duplicate certification fee, general real estate appraiser: $120.00
11. Duplicate certification fee, residential real estate appraiser: $110.00
12. Duplicate license fee: $100.00
13. Temporary license fee: $100.00]
[14.]**10.** Temporary visiting registration fee: $50.00
[15. Endorsement fee:]
11. Reciprocity Application fee: $75.00
[16.]**12.** Reinstatement fee: $150.00
[17.]**13.** Duplicate wall certificate fee: $40.00
14. Duplicate registration certificate fee: $25.00
[18.]**15.** Change of **name or** address fee: $25.00
[19.]**16.** Verification of certification/licensure: $40.00
[20.]**17.** Verification of continuing education credits: $40.00
[21.]**18.** Federal surcharge, [annual: $25.00] **biennial: $50.00**
[22.]**19.** Apprentice permit fee; annual: $60.00

STATE

(a)

DIVISION OF ELECTIONS

Notice of Public Hearing and Extension of Public Comment Period

Certification of Electronic Voting Systems

Proposed New Rules: N.J.A.C. 15:10-8

Take notice that the New Jersey Division of Elections and the Department of State is extending the public comment period for the above referenced proposed new rules, notice of which was published in the October 4, 1993 New Jersey Register at 25 N.J.R. 4587(a). The extended deadline for the receipt of comments is December 3, 1993.

A **public hearing** will be held at 10:00 A.M. on Friday, December 3, 1993 at:

Office of Administrative Law
Quakerbridge Plaza Building #9
First Floor
Quakerbridge Road
Mercerville, New Jersey

Submit written comments by December 3, 1993 to:

Department of State
Division of Election
C/o Sharon Shinkle
CN 300
Trenton, NJ 08625-0300

OTHER AGENCIES

(b)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Disability Discrimination Complaint Procedure

Proposed New Rules: N.J.A.C. 19:30-7

Authorized By: New Jersey Economic Development Authority, Richard L. Timmons, Assistant Deputy Director.

Authority: N.J.S.A. 34:1B et seq., specifically N.J.S.A. 34:1B-5(1), 42 U.S.C. §12101 et seq. and 28 C.F.R. §35.107.

Proposal Number: PRN 1993-578.

Submit comments by December 1, 1993 to:

Richard L. Timmons, Assistant Deputy Director
New Jersey Economic Development Authority
CN 990
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rules establish a procedure the New Jersey Economic Development Authority ("Authority") to follow when someone wishes to complain that the agency has done something that violates the Americans with Disabilities Act, also known as the ADA (42 U.S.C.A. §12101 et seq.). The ADA prohibits a public entity, including the Authority from discriminating against a qualified individual with a disability, or from excluding that person from participation in, or denying the person the benefits of, the services, programs or activities of the agency. Regulations of the United States Justice Department (found at 28 C.F.R. Part 35) require that such governmental agencies maintain and publish a procedure to be followed when someone wishes to complain of a violation of the law. Under this procedure anyone, including an employee or applicant for employment, who believes he or she has been discriminated against in any program, service or activity of the Authority, may require the agency to review and, if appropriate, to investigate the complaint. These rules set a 45 day objective for the completion of the inquiry by the agency and the issuance of a written determination by the head of the agency or a designee; they also set a 20 day limit following the incident complained of in which the individual may file the complaint. The rules also identify by title, with address and telephone number the ADA coordinator of the Authority who will be the person to receive the complaints in the first instance. These rules also contain a form for filing a complaint and a Notice of ADA Procedure, a copy of which will be made available to interested persons.

Social Impact

Because the injustice of discrimination continues to be visited upon the disabled members of our society solely on account of their disabilities, Congress passed the ADA, which attack that injustice on many fronts and with many methods. One of these fronts is public entities and one of the methods is the requirement that such public entities undertake an examination of complaints that they have violated the substantive provisions of the ADA. The disabled are sometimes excluded from the programs, services or activities of government agencies out of ignorance on the part of the non-disabled and sometimes out of the lack of an available established mechanism whereby those barriers to participation or enjoyment of benefits can be removed. This proposed complaint procedure will provide the disabled one means to correct such lingering discrimination and to eliminate persisting barriers. The procedure will also assist the Authority to eliminate such discrimination by bringing to the Authority's attention instances where such discrimination continues to exist and providing the agency the necessary insight and opportunity to correct them. Both the society at large, the government in particular, and the disabled individuals will benefit from the enactment of these rules, as barriers to access are removed and the programs, services and activities of the Authority are made available in a nondiscriminatory manner, thereby enabling the disabled fuller and more equal participation in all aspects of life. It is in the nature of the proposed procedure that it be informal and expeditious, but still effective; thus the remediation of discriminatory conditions will be facilitated quickly and without the cumbersome and sometimes counterproductive formalities of other methods of complaint resolution.

Economic Impact

Although the proposed complaint procedure will result in some minor additional expense to the Authority, the result of the inquiries and investigation precipitated by the use of the procedure may have significant economic impacts, both as additional expenses are incurred by the agency in remediating instances of discrimination or eliminating barriers, and as the resulting nondiscriminatory access to the Authority's programs, services and activities results in additional gains for the disabled that have economic value to them.

Regulatory Flexibility Statement

The proposed new rules impose no requirements on small businesses as defined under the Regulatory Flexibility Act N.J.S.A. 52:14B-16 et seq. Requirements are imposed on the Authority, and persons complaining that the Authority has failed to comply with the ADA must provide certain information in their complaint. A regulatory flexibility analysis is not, therefore, required.

Full text of the proposed new rules follows:

SUBCHAPTER 3. DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

19:30-7.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

"Authority" means the New Jersey Economic Development Authority.

"Designated decision maker" means the Executive Director of the Authority or his or her designee.

19:30-7.2 Purpose

(a) These rules are adopted by the Authority in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the Authority pursuant to N.J.A.C. 19:30-7.

19:30-7.3 Required ADA Notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the Authority's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Authority.

AUTHORITY NOTICE OF ADA PROCEDURE

The Authority has adopted an internal complaint procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal complaint procedure can be found in the New Jersey Administrative Code, N.J.A.C. 19:30-7. As those rules indicate, complaints should be addressed to the Authority's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator
New Jersey Economic Development Authority
200 South Warren Street
CN 990
Trenton, New Jersey 08625

1. A complaint may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator.

2. A complaint should be filed promptly within 20 days after the complainant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis).

3. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the Authority's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

4. In most cases a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the Designated Decision Maker and a copy forwarded to the complainant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the Authority relating to the complaints filed.

6. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the agency complies with the ADA and implementing Federal rules.

19:30-7.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the Authority is:

ADA Coordinator
New Jersey Economic Development Authority
200 South Warren Street
CN 990
Trenton, NJ 08625

(b) All inquiries regarding the Authority's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Authority should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 19:30-7.5.

19:30-7.5 Complaint procedure

A complaint alleging that the Authority has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in writing or orally to the designated ADA coordinator identified in N.J.A.C. 19:30-7.4(a).

19:30-7.6 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 19:30-7.7

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or alternate contact person designated by the complainant to receive communication or provide information for the complainant;

2. The address and telephone number of the complainant or alternate contact person; and

3. A description of manner in which the ADA has not been complied with or has been violated, including times and locations of events and names of witnesses if appropriate.

19:30-7.7 Complaint form

The following form may be utilized for the submission of a complaint pursuant to this subchapter:

Americans with Disabilities Act Complaint Form

Date: ____________

Name of complainant: ______________________________

Address of complainant: ____________________________

____

Telephone number of complainant: ____________________

____

Disability of complainant: ______________________________

____

Name, address and telephone number of alternate contact person (if applicable):

____

____

Incident or barrier:
Please describe the particular way in which you believe you have been denied the benefits of any service, program or activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of Authority employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident.

____

____

____

____

____

____

Proposed access or accommodation:
If you wish, describe the way in which you feel access may be had to the benefits described above, or what accommodation could be provided to allow access.

____

____

____

A copy of the above form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 19:30-7.4(a).

19:30-7.8 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 45 days from the date of receipt of the complaint, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the Designated Decision Maker for the Authority. The Designated Decision Maker shall render a written decision within 45 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.

(a)

CASINO CONTROL COMMISSION

General Provisions
Definitions
Communications; notices
Hearings
Casino Licensees
Internal Controls
Persons Doing Business with Casino Licensees
Taxes

Proposed Amendments: N.J.A.C. 19:40-1.2 and 3.3, 19:42-1.1, 19:43-13.1, 19:45-1.1, 19:51-1.1 and 19:54-1.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c and 69a.
Proposal Number: PRN 1993-582.

Submit written comments by December 1, 1993 to:
Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendments update and streamline regulatory definitions in Title 19. The proposal eliminates provisions that reiterate definitions provided in the Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq. Definitions that are used in multiple chapters are recodified into Chapter 40, General Provisions. Consistent with legislative amendments, the definitions of "temporary casino permit" and "work permit" are deleted, and a reference to operation of a simulcasting facility is added in the definition of "operation certificate." Also, a citation is corrected in the definition of "parimutuel window."

The proposed amendments to N.J.A.C. 19:40-3.3 codify agency practice regarding the mailing of notices and other communications to licensees and applicants. Unless otherwise specified, such communications are sent by either ordinary mail or certified mail or, in the case of a casino licensee, by depositing for pickup in the mail slot designated for each casino licensee in the Commission mailroom.

Social Impact

The proposed amendments are not anticipated to have any significant social impact, since the proposed amendments to N.J.A.C. 19:40-3.3 reflect current practice and the other proposed amendments are simply technical modifications to Commission rules.

Economic Impact

The proposed amendments are not anticipated to have any significant economic impact, since the proposed amendments to N.J.A.C. 19:40-3.3 reflect current practice and the other proposed amendments are simply technical modifications to Commission rules.

Regulatory Flexibility Statement

The proposal has no substantive impact, in that the proposed amendments to N.J.A.C. 19:40-3.3 reflect current practice and the other proposed amendments are simply technical modifications to Commission rules. Since there is no impact on any small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required.

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

19:40-1.2 Definitions

(a) [All] **The following** words and terms [which] are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) **and** are used in these rules [and regulations] as defined in that Act[.]**:**

"Applicant"
"Application"
"Authorized game" or "authorized gambling game"

"Casino"
"Casino employee"
"Casino hotel employee"
"Casino hotel security employee"
"Casino key employee"
"Casino license"
"Casino security employee"
"Casino service industry"
"Commission"
"Complimentary service or item"
"Conservator"
"Creditor"
"Debt"
"Director"
"Division"
"Encumbrance"
"Equal employment opportunity"
"Equity security"
"Family"
"Game" or "gambling game"
"Gaming" or "gambling"
"Gaming device" or "gaming equipment"
"Gross revenue"
"Hearing examiner"
"Holding company"
"Hotel" or "approved hotel"
"Intermediary company"
"Junket"
"Junket enterprise"
"Junket representative"
"License"
"License or registration fee"
"Licensed casino operation"
"Licensee"
"Operation"
"Party"
"Person"
"Principal employee"
"Property"
"Publicly traded corporation"
"Registrant"
"Registration"
"Regulated complimentary service account"
"Resident"
"Respondent"
"Restricted casino areas"
"Security"
"Slot machine"
"Statement of compliance"
"Subsidiary"
"Transfer"

(b) The following words and terms, when used in these rules [and regulations], shall have the following meanings, unless the context clearly indicates otherwise.

"Act" **or "Casino Control Act"** means the New Jersey Casino Control Act (P.L. 1977, c.110, as amended).

...

["Applicant" means any person who on his own behalf or on behalf of another has applied for permission to engage in any act or activity which is regulated under the provisions of the Act.

"Application" means a written request for permission to engage in any act or activity which is regulated under the provisions of the Act.

"Authorized game" or "authorized gambling game" means roulette, baccarat, blackjack, craps, big six wheel slot machines, minibaccarat and any variations or composites of such games, provided that such variations or composites are found by the Commission suitable for use in the casino or casino simulcasting facility after an appropriate test or experimental period under such terms and conditions as the Commission may deem appropriate; and any other game which is determined by the Commission to be compatible with the public interest and to be suitable for use in the casino or casino simulcasting facility after such appropriate test or experimental period as the Commission may deem appropriate. "Authorized game" or "authorized gambling game" includes gaming tournaments in which players compete against one another in one or more of the games listed herein or in approved variations or composites thereof if the tournaments are authorized by the Commission.

"Casino" means a single room of at least 15,000 square feet in which casino gaming is conducted pursuant to the provisions of the Act.

"Casino employee" means any natural person employed in the operation of a licensed casino or a casino simulcasting facility, including, without limitation, boxmen; dealers or croupiers; floormen; machine mechanics; casino security employees; count room personnel; cage personnel; slot machine and slot booth personnel; collection personnel; casino surveillance personnel; casino simulcasting facility personnel involved in wagering-related activities in a casino simulcasting facility; and data processing personnel; or any other natural person whose employment duties predominantly involve the maintenance or operation of gaming activity or equipment and assets associated therewith or who, in the judgment of the Commission, is so regularly required to work in a restricted casino area that licensure as a casino employee is appropriate.

"Casino hotel employee" means any natural person employed to perform services or duties in the conduct of the business of an approved hotel but who is not included within the definition of casino employee or casino key employee as stated in this section.

"Casino key employee" means any natural person employed in the operation of a licensed casino or a casino simulcasting facility in a supervisory capacity or empowered to make discretionary decisions which regulate casino or casino simulcasting facility operations, including, without limitation, pit bosses; shift bosses; credit executives; casino cashier supervisors; casino or casino simulcasting facility managers and assistant managers; managers or supervisors of casino security employees; or any other natural person empowered to make discretionary decisions which regulate the management of an approved hotel, including, with limitation, hotel managers; entertainment directors; and food and beverage directors; or any other employee so designated by the Commission for reasons consistent with the policies of the Act.

"Casino license" means any license issued pursuant to the Act which authorizes the holder thereof to own or operate a casino.]

"Casino licensee" or "licensed casino" means the holder of any license issued pursuant to the Casino Control Act, that authorizes the ownership or operation of a casino or casino simulcasting facility.

["Casino security employee" means any natural person employed by a casino or its agent to provide physical security in a casino hotel.

"Casino service industry" means any form of enterprise which provides casino applicants or licensees with goods or services regarding the realty, construction, maintenance, or business of a proposed or existing casino hotel or related facility on a regular or continuing basis, including, without limitation, junket enterprises, security businesses, gaming schools, manufacturers, distributors and servicers of gaming and casino simulcasting devices or equipment, hub facilities, in-State and out-of-State sending tracks as defined in N.J.S.A. 5:12-192, garbage haulers, maintenance companies, food purveyors, and construction companies. Notwithstanding the foregoing, any form of enterprise engaged in the manufacture, sale, distribution or repair of slot machines within New Jersey, other than antique slot machines as defined in N.J.S.A. 2C:37-7, shall be considered a casino service industry for the purposes of the Casino Control Act regardless of the nature of its business relationship, if any, with licensed casinos in this State. For purposes of this section, "casino applicant" includes any person required to hold a casino license pursuant to section 82 of the Act who has applied to the Commission for a casino license or any approval required under the Act.]

...

["Commission" means the New Jersey Casino Control Commission.

"Complimentary service or item" means a service or item provided at no cost or at a reduced price. The furnishing of a complimentary service or item by a casino licensee shall be deemed to constitute the indirect payment for the service or item by the casino licensee, and shall be valued in an amount based upon the retail price normally charged by the casino licensee for the service or item. The value of complimentary service or item not normally offered for sale by a casino licensee or provided by a third party on behalf of a casino licensee shall be the cost to the casino licensee of providing the service or item as determined in accordance with the rules of the Commission].

"Contested case" means a proceeding, including any licensing proceedings, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing.

["Director" means the Director of the Division of Gaming Enforcement.

"Division" means the Division of Gaming Enforcement.

"Equal employment opportunity" means equality in opportunity for employment by any person licensed pursuant to the provisions of the Act.

"Equity security" means:

1. Any voting stock of a corporation, or similar security;
2. Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security;
3. Any such warrant or right; or
4. Any security having a direct or indirect participation in the profits of the issuer.]

"Establishment" means [any premises wherein or whereon any gaming is done] **a casino hotel complex, meeting the requirements of the Casino Control Act, wherein gaming is conducted or gaming devices are used in connection with gaming.**

["Family" means spouse, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews, nieces, fathers-in-law, mothers-in-law, daughters-in-law, sons-in-law, brothers-in-law and sisters-in-law, whether by the whole or half blood, by marriage, adoption or natural relationship.

"Game" or "gambling game" means any banking or percentage game located within the casino or casino simulcasting facility played with cards, dice or any electronic, electrical, or mechanical device or machine for money, property, or any representative of value.

"Gaming" or "gambling" means the dealing, operating, carrying on, conducting, maintaining or exposing for pay of any game.]

...

["Gaming device" or "gaming equipment" means any electronic, electrical, or mechanical contrivance or machine use in connection with gaming or any game.

"Gross revenue" means the total of all sums, including checks received by a casino licensee pursuant to section 101 of the Act, whether collected or not, actually received by a casino licensee from gaming operations, less only the total of all sums paid out as winnings to patrons and a deduction for uncollectible gaming receivables not to exceed the lesser of a reasonable provision for uncollectible patron checks received from gaming operations or four percent of the total of all sums including checks, whether collected or not, less the amount paid out as winnings to patrons. "Gross revenue" shall not include any amount received by a casino licensee from casino simulcasting pursuant to the Casino Simulcasting Act. For purposes of this section, any check which is invalid and unenforceable pursuant to subsection 101(f) of the Act shall be treated as cash received by the casino licensee from gaming operations.

"Hearing examiner" means a Commissioner or other person authorized by the Commission to conduct hearings.

"Holding company" means any corporation, association, firm, partnership, trust or other form of business organization not a natural person which, directly or indirectly, owns, has the power or right to control, or has the power to vote any significant part of the outstanding voting securities of a corporation which holds or applies for a casino license. For the purpose of this section, in addition to any other reasonable meaning of the words used, a "holding company" indirectly has, holds or owns any such power, right or security if it does so through any interest in a subsidiary or successive subsidiaries, however many such subsidiaries may intervene between the holding company and the corporate licensee or applicant.

"Hotel" or "approved hotel" means a single building located within the limits of the city of Atlantic City as said limits were defined as of November 2, 1976, and containing not fewer than 500 sleeping units, each of at least 325 square feet measured to the center of perimeter walls, including bathroom and closet space and excluding hallways, balconies and lounges; each containing private bathroom facilities; and each held available and used regularly for the lodging of tourists and convention guests and conforming in all respects to the facilities requirements contained in the Act. For the purpose of exceeding the maximum casino size specified in section 83 of the Act, an approved hotel may, by means of physical connection, annex additional buildings or facilities to increase the amount of its qualifying meeting, exhibition, dining, entertainment, sports and kitchen support facilities space, but not to increase its number of qualifying sleeping units.]

...

"Interested person" means any person whose specific legal rights, duties, obligations, privileges, benefits or other specific legal relations are affected by the adoption, amendment or repeal of a specific regulation or by any decision, order or ruling of the Commission.

["Intermediary company" means any corporation, association, firm partnership, trust or any other form of business organization other than a natural person which:

1. Is a holding company with respect to a corporation which holds or applies for a casino license; and
2. Is a subsidiary with respect to any holding company.

"Junket" means an arrangement, the purpose of which is to induce any person, selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble or on any other basis related to his propensity to gamble, to come to a licensed casino hotel for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging, entertainment and other services and items of value for said person is directly or indirectly paid by a casino licensee or employee or agent thereof.

"Junket enterprise" means any person who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed casino, regardless of whether or not those activities occur within the State of New Jersey.

"Junket representative" means any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the participants in, any junket to a licensed casino regardless of whether or not those activities occur within the State of New Jersey.

"License" means any license required by the Act.

"License or registration fee" means any moneys required by law to be paid for the issuance or renewal of a casino license, or any other license or registration required by the Act.

"Licensed casino operation" means any casino licensed pursuant to the provisions of the Act.

"Licensee" means any person who is licensed under any of the provisions of the Act].

...

["Operation" means the conduct of gaming as defined in the Act.]

"Operation certificate" means a certificate issued by the Commission which certifies that operation of a casino **and, if applicable, of a casino simulcasting facility** conforms to the requirements of the Act and applicable regulations and that its personnel and procedures are efficient and prepared to entertain the public.

...

"Pari-mutuel window" is defined in N.J.A.C. 19:45-1.14A [(d)1]**(b)1.**

["Party" means the Commission, or any licensee, registrant, or applicant, or any person appearing of record for any licensee, registrant or applicant in any proceeding before the Commission or in any proceeding for judicial review of any action, decision or order of the Commission.

"Person" means any corporation, association, operation, firm, partnership, trust or other form of business association, as well as a natural person].

...

"Pit" means the area enclosed or encircled by the arrangement of gaming tables in which casino personnel administer and supervise the games played at the tables by the patrons located on the outside perimeter of the area.

["Principal employee" means any employee who, by reason of remuneration or of a management, supervisory or policy-making position or such other criteria as may be established by the Commission by regulation, holds or exercises such authority as shall in the judgment of the Commission be sufficiently related to the operation of a licensee so as to require approval by the Commission in the protection of the public interest.

"Publicly traded corporation" means any corporation or other legal entity, except a natural person, which:

1. Has one or more classes of security registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. section 781); or

2. Is an issuer subject to section 15(d) of the Securities Exchange Act of 1934 as amended (15 U.S.C. 780); or

3. Has one or more classes of securities traded in any open market in any foreign jurisdiction or regulated pursuant to a statute of any foreign jurisdiction which the Commission determines to be substantially similar to either or both of the aforementioned statutes.

"Registrant" means any person who is registered pursuant to the provisions of the Act.

"Registration" means any requirement other than one which requires a license as a prerequisite to conduct a particular business as specified by the Act.

"Regulated complimentary service account" means an account maintained by a casino licensee on a regular basis which itemizes complimentary services and includes, without limitation, a listing of the cost of junket activities and any other service provided at no cost or reduced price].

...

["Resident" means any person who occupies a dwelling within the State, has a present intent to remain within the State for a period of time, and manifests the genuineness of that intent by establishing an ongoing physical presence within the State together with indicia that his presence within the State is something other than merely transitory in nature.

"Respondent" means any person against whom a complaint has been filed or a written request for information served].

...

["Security" means any instrument evidencing a direct or indirect beneficial ownership or creditor interest in a corporation, including but not limited to, stock, common and preferred; bonds; mortgages; debentures; security agreements; notes; warrants; options and rights].

...

["Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or any thing of value whatsoever, whether the payoff is made automatically from the machine or in any other manner whatsoever, except that:

1. No merchandise or thing of value shall be offered as part of a payoff of any slot machine unless such merchandise or thing of value has a cash equivalent value of at least $5,000; and

2. The cash equivalent value of any merchandise or other thing of value, as defined by N.J.A.C. 19:45-1.40A(b), shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenues as defined by section 24 of the Act or be included in determining the payout percentage of any slot machine.

"Statement of compliance" means a statement by the Commission which may be issued to an applicant indicating satisfactory completion of a particular stage or stages of the license consideration process, and which states that unless there is a change of any material circumstance pertaining to such particular stage or stages of licenses consideration involved in the statement, such applicant has complied with requirements mandated by the Act and by the Commission and is therefore approved for license qualification to the stage or stages for which the statement has been issued.

"Subsidiary" means:

1. Any corporation, any significant part of whose outstanding equity securities are owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company; or

2. A significant interest in any firm, association, partnership, trust or other form of business organization, not a natural person, which is owned, subject to a power or right of control, or held with power to vote, by a holding company or an intermediary company.

"Transfer" means the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise. The retention of a security interest in property delivered to a corporation shall be deemed as transfer suffered by such corporation.

"Work permit" means an authorization granted to a casino licensee for the employment of a particular casino hotel employee, casino employee or casino key employee in a particular capacity by a casino licensee].

19:40-3.3 Communications; notices

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

(c) Except as otherwise **specifically** provided by law **or Commission regulations**, notices and other communications from the Commission or Division will be sent to an applicant or licensee by **either** ordinary mail [at] **or certified mail to** the address shown in the **most recent** application or [license] **change of address notice received from such person; or, in the case of a casino licensee, by depositing such notices and other communications in the appropriate mail slot designated for each casino licensee in the Commission mailroom. Such notices and communications will be available for pickup by casino licensees from 9:00 A.M. to 5:00 P.M. in the Commission mailroom located at:**

Arcade Building, 1st Floor
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

(d) Notices shall be deemed to have been served upon their deposit, postage prepaid, in the United States mails, **or upon their deposit in the Commission mailroom in the designated mail slot for each casino licensee,** and the time specified in any such notice shall commence to run from [the] **that** date [of such mailing].

(e) Any applicant or licensee who desires to have notices or other communications mailed to an address other than that specified in the application [or license] shall file with the Commission and the Division a specific request for that purpose, and notices and other communications will, in such case, be sent to the applicant or licensee at such address.

(f) An applicant or licensee will be addressed under the name and style designated in the application [or license], and separate notices or communications will not be sent to individuals named in such application [or license] unless a specific request for that purpose is filed with the Commission and the Division. In the absence of such a specific request, a notice addressed under the name or style designated in the application [or license] shall be deemed to be notice to all individuals named in such application [or license].

(g) Applicants and licensees shall immediately notify the Commission and the Division of any change of address, and shall specifically request that all notices or other communications be sent to the new address.

19:42-1.1 Definitions

[As used in this chapter, the term:] **The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.**

["Contested case" means a proceeding, including any licensing proceedings, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing.

"Interested person" means any person whose specific legal rights, duties, obligations, privileges, benefits or other specific legal relations are affected by the adoption, amendment or repeal of a specific regulation or by any decision, order or ruling of the commission].

...

19:43-13.1 Definitions

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

"Casino license" means any license issued pursuant to this Act which authorizes the holder thereof to own or operate a casino. The term "casino license" shall not include a "temporary casino permit".

"Conservator" means a fiduciary appointed pursuant to the Article concerning casino license conservatorship in the Casino Control Act.

"Conservatorship action" means an action brought pursuant to the Article concerning casino license conservatorship in the Casino Control Act for the appointment of a conservator.

"Creditor" means the holder of any claim, of whatever character, against a person, whether secured or unsecured, matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

"Debt" means any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

"Encumbrance" means a mortgage, security interest, lien or charge of any nature in or upon property.

"Property" means real property, tangible and intangible personal property, and rights, claims and franchises of every nature.

"Temporary casino permit" means a permit issued pursuant to the Act which authorizes the holder thereof to operate temporarily a casino pending a final determination on a casino license application.

"Transfer" means the sale and every other method, direct or indirect, of disposing of or parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise; the retention of a security interest in property delivered to a corporation shall be deemed a transfer suffered by such corporation].

The following words and terms are defined in the New Jersey Casino Control Act (P.L. 1977, c.110, as amended) and are used in this subchapter as defined in that Act:

"Conservatorship action"

19:45-1.1 Definitions

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

...

["Casino" means a single room of at least 15,000 square feet wherein gaming is conducted pursuant to the Casino Control Act and where gaming devices are used in connection with such gaming.]

...

["Casino Control Act" means the State of New Jersey Casino Control Act, approved June 2, 1977, as amended.

"Casino licensee" means the holder of any license issued pursuant to the Casino Control Act, that authorizes the ownership or operation of a casino or casino simulcasting facility.]

...

["Chairman" means the Chairman of the New Jersey Casino Control Commission.]

...

["Commission" means the New Jersey Casino Control Commission.]

...

["Division" means the Division of Gaming Enforcement of the New Jersey Department of Law and Public Safety.]

...

["Establishment" means a casino hotel complex, meeting the requirements of the Casino Control Act, wherein gaming is conducted or gaming devices are used in connection with gaming.]

...

["Pit" means the area enclosed or encircled by the arrangement of gaming tables in which casino personnel administer and supervise the games played at the tables by the patrons located on the outside perimeter of the area.]

...

["Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value, whether the payoff is made automatically from the machine or in any other manner whatsoever.]

...

"Verbalize" means to orally express something in words. [In construing the provisions of this regulation, except where otherwise declared or clearly apparent from the context:

1. Words in any tense shall include other tenses;
2. Words in the masculine shall include the feminine and neuter genders; and
3. Words in the singular shall include the plural and the plural shall include the singular;
4. No provisions in this regulation shall be construed to limit the functions of representatives of the Commission and the Division in executing their responsibilities as authorized by law.]

...

19:51-1.1 Definitions

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

...

["Junket enterprise" is defined in N.J.S.A. 5:12-29.1 and N.J.A.C. 19:49-2.2.]

...

19:54-1.2 Definitions

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

...

["Gaming day" is defined in N.J.A.C. 19:45-1.1A.]

...

(a)

CASINO CONTROL COMMISSION

Casino Licensees
Employment Requirements
Obligation to Terminate, Suspend or Refuse Employment; Form of Notice

Proposed New Rule: N.J.A.C. 19:43-9.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63c, 69a, 70a, 94 and 107d.
Proposal Number: PRN 1993-583.

Submit written comments by December 1, 1993 to:
Antonia Z. Cowan, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed new rule sets forth a casino licensee's obligation to terminate or suspend the employment of, or to refuse to hire, any person whose license or registration has been revoked or suspended by the Commission or whose application for licensure has been denied, if such license or registration is required for such employment by the Casino Control Act ("Act"), N.J.S.A. 5:12-1 et seq., or Casino Control Commission (Commission) regulations.

N.J.S.A. 5:12-106b provides that "A casino licensee shall, within 24 hours of receipt of written notice thereof, terminate the appointment or employment of any person whose license or registration has been revoked or has expired." In order to respond appropriately, casino licensees must receive information concerning any Commission act taken to suspend, revoke, prohibit or deny any application, license, or registration pursuant to the Act. Proposed new rule N.J.A.C. 19:43-9.2 addresses the means employed to satisfy the requirement of written notice.

Previously this type of notice was provided only by hard (printed) copy. The availability of the faster, easily accessed electronic means will enable regulators to notice casino licensees sooner and more efficiently. Notice via electronic data transfer could be available and accessed by the day after Commission action while printed notice, which may be mailed the day after, is delayed at least another day. The proposed rule also provides for notice by printed communication in order to provide an alternative or backup system should that be necessary.

The new rule requires that the Commission issue notice weekly by 3:00 P.M. Thursday, unless that day is a State or Federal holiday, in which case notice will be provided by 3:00 P.M. on the first weekday thereafter that is not a holiday. The rule establishes a presumption of receipt by the second weekday following issuance of the notice, unless that weekday is a Friday or a State or Federal holiday, in which case notice is deemed received on the first weekday thereafter that is not a State or Federal holiday. The specificity for the time of receipt is necessary to allow the enforcement of the required action within the 24 hour period after notice.

Social Impact

The proposed new rule impacts on any individual who applies for or holds any license or registration under the Act. The Commission may take action to suspend, revoke, prohibit or deny any application, license or registration based on failure to demonstrate qualifications required pursuant to N.J.S.A. 5:12-89 or 90. Casino licensees must take action against any employee whose license, registration or application is affected only after the required notice and the 24 hour period.

Economic Impact

The proposed new rule can be expected to benefit both the regulatory agencies and those who require this notice by providing more accessible, more current information that is easy to process and therefore more economical and more efficient.

Regulatory Flexibility Statement

The proposed new rule affects notice concerning restrictions on natural persons which is given to casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is thus not required.

Full text of the proposed new rule follows:

19:43-9.2 Obligation to terminate, suspend or refuse employment; form of notice

(a) Each casino licensee shall terminate or suspend the employment of, or shall refuse to employ, any person whose license or registration has been revoked or suspended by the Commission or whose application for licensure or registration has been denied if such licensure or registration is required for such employment by the Act and the Commission's regulations. Any casino licensee required to terminate or suspend the employment of any such person, pursuant to N.J.S.A. 5:12-106b, shall do so within 24 hours of receipt of notice from the Commission as defined in (b) below.

(b) The Commission shall, on a weekly basis, notify each casino licensee of the name, date of birth, and license, registration or application number of each person whose license, registration or application has been revoked, suspended or denied by the Commission.

1. This notice shall be provided to each casino licensee by hard copy (printed) communication or electronic data transfer by no later than 3:00 P.M. each Thursday, unless Thursday is a State or Federal holiday, in which case notice shall be provided by no later than 3:00 P.M. on the first weekday thereafter that is not a State or Federal holiday.

2. Notwithstanding N.J.A.C. 19:40-3.3(b), this notice shall be deemed received by the casino licensee at 9:00 A.M. on the second weekday following the issuance of the notice, unless that weekday is a Friday or State or Federal holiday, in which case notice shall be deemed received at 9:00 A.M. on the first weekday thereafter that is not a State or Federal holiday.

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Complimentary Services or Items; Procedures for Complimentary Cash and Noncash Gifts
Direct Mass Marketing Complimentary Programs

Proposed Amendments: N.J.A.C. 19:45-1.9 and 1.9B

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 1993-584.

Submit written comments by December 1, 1993 to:
David C. Missimer
Assistant General Counsel
Casino Control Commission
Tennessee Avenue at the Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission recently adopted a series of amendments to N.J.A.C. 19:45-1.9 and 1.9B concerning the manner in which casino licensees are required to control and report the issuance of complimentary services and items (see 24 N.J.R. 4570(a), 25 N.J.R. 1520(a) and 1521(a), and 25 N.J.R. 4619(a)). The more recent amendments adopted by the Commission have recognized that certain types of complimentary programs operated by casino licensees possess certain characteristics which justify their being excepted from the regulatory requirements otherwise imposed by N.J.A.C. 19:45-1.9 and 1.9B. Thus, the Commission has adopted separate standards for the regulation of complimentary incentive programs for table games and slot machines (N.J.A.C. 19:45-1.9(f)) and complimentary programs for invited guests (N.J.A.C. 19:45-1.9(g)).

Numerous casino licensees suggested in their comments to the proposal concerning N.J.A.C. 19:45-1.9(g) that the Commission should create an additional exception for direct mass marketing complimentary programs which offer complimentaries of minimal value to a large number of patrons. (See 25 N.J.R. 4619(a)). The current proposal is being published by the Commission in response to these comments. It would add a new subsection (h) to N.J.A.C. 19:45-1.9 which would specify the standards for direct mass marketing programs and establish specific regulatory requirements for complimentary services or items issued pursuant to such programs. Similar to the requirements contained in N.J.A.C. 19:45-1.9(f) and (g), new subsection N.J.A.C. 19:45-1.9(h) would provide that any complimentary issued pursuant to a direct mass marketing complimentary program would be regulated pursuant to the requirements of N.J.A.C. 19:45-1.46 and would not be subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) if the complimentary and the program complied with the requirements of N.J.A.C. 19:45-1.9(h)1, 2 and 3. Any complimentary which did not meet these requirements, even if issued in conjunction with the operation of a direct mass marketing complimentary program, would be required to comply with the general requirements governing complimentaries which are set forth in N.J.A.C. 19:45-1.9 and 1.9B, including the annual limitation on cash complimentaries.

In order to qualify as a direct mass marketing complimentary program, the program would: have to be submitted for review pursuant to N.J.A.C. 19:45-1.46, provided that advance submission of internal controls would not be required if the casino licensee already had a generic set of internal controls for such programs approved by the Commission; be limited to offers of complimentary services or items having a value of $100.00 or less per day; be offered to at least 500 persons within 30 days of implementation of the program; and require the preparation and maintenance of a record, available to the Division upon request, which identifies the information specified in N.J.A.C. 19:45-1.9(h)3.

The proposal also includes various amendments to N.J.A.C. 19:45-1.9 and 1.9B which are necessary to clarify that the regulation of direct mass marketing complimentary programs is excepted from the general regulatory requirements of those sections.

Social Impact

The proposed amendments are not anticipated to have any social impact beyond the rules governing 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 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, it is anticipated that these costs will be more than offset by the ability of casino licensees to continue to make use of complimentary programs which have been previously authorized.

It is not anticipated that the amendments will have any significant economic impact on the Commission or the Division of Gaming Enforcement.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments 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:

1. (No change.)

2. Any complimentary service or item, including a cash or noncash gift, which is issued pursuant to:

i. (No change.)

ii. A complimentary program for invited guests regulated by (g) below; [or]

iii. A direct mass marketing complimentary program regulated by (h) below; or

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

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

(h) Any complimentary service or item, including a complimentary cash or noncash gift, which is issued to a patron as part of a direct mass marketing complimentary program shall be subject to the requirements of N.J.A.C. 19:45-1.46 and this subsection and shall not be included on the daily complimentary report required by (e) above or subject to the annual limitation on cash complimentaries established by N.J.A.C. 19:45-1.9B(g) 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; provided, however, that detailed procedures controlling a direct mass marketing complimentary program which is subject to the provisions of N.J.A.C. 19:45-1.46(b) and which includes complimentary cash, slot tokens or simulcast wagering shall not have to be submitted to the Commission 15 days prior to implementation of the program, but may instead be prepared prior to implementation of the program and maintained as an accounting record by the casino licensee if:

i. The casino licensee has previously submitted and the Commission has previously approved generic internal control procedures governing direct mass marketing complimentary programs; and

ii. No material element of the direct mass marketing complimentary program varies from the generic internal control procedures previously approved by the Commission;

2. The complimentary services or items offered pursuant to the program do not exceed $100.00 per person per day and are offered to at least 500 persons within 30 days from the implementation of the program;

3. A record, which shall be available to the Division upon request, is maintained identifying:

i. The date the program was implemented;

ii. The value and type of the complimentary services or items offered pursuant to the program;

iii. The number of persons to whom the complimentary services or items were offered and the date that the offer was made;

iv. The source of the names of the persons to whom the complimentary services or items were offered; and

v. If the casino licensee has possession of the data, the names and addresses of the persons to whom cash complimentaries were offered, which data shall be maintained in accordance with the requirements of N.J.A.C. 19:45-1.8(c)6.

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 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), N.J.A.C. 19:45-1.9(f), **19:45-1.9(h)** or 19:45-1.46. Complimentary cash gifts shall include, without limitation:

1.-5. (No change.)

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

(h) Notwithstanding the provisions of (g) above, complimentary cash gifts which are provided to persons pursuant to complimentary incentive programs regulated by N.J.A.C. 19:45-1.9(f), complimentary programs for invited guests regulated by N.J.A.C. 19:45-1.9(g), **direct mass marketing complimentary programs regulated by N.J.A.C. 19:45-1.9(h)** or complimentary distribution programs regulated by N.J.A.C. 19:45-1.46 shall be governed by any limitations contained in those respective rules and shall not be subject to the annual limits specified in (g) above.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Removal of Slot Drop Buckets and Slot Cash Storage Boxes; Meter Readings

Proposed Amendment: N.J.A.C. 19:45-1.42

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

Authority: N.J.S.A. 5:12-63(c) and 5:12-70(l).

Proposal Number: PRN 1993-585.

Submit written comments by December 1, 1993 to:
Barbara A. Mattie
Chief Analyst—Operations
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:45-1.42 sets forth controls intended to ensure the proper accountability of gross revenue funds when unsecured currency is found inside a bill changer. Specifically, the amendment is intended to codify the Commission's present requirements and delineate the procedures for the transportation of the funds to the cashiers' cage or count room, the personnel required to be involved and the necessary documentation to be completed. The amendment is being published in two alternatives. Alternative A would require a one part form to be prepared when unsecured currency is found, while Alternative B would require a two part form to be prepared.

Social Impact

The proposed amendment will have no social impact beyond helping to ensure the proper recording and reporting of gross revenue funds. The proposed amendment will codify the Commission's requirements and the procedures followed by casino licensees when unsecured currency is found inside a bill changer. Unsecured currency is gross revenue and, as such, subject to the eight percent gross revenue tax.

Economic Impact

There will be no perceivable economic impact on casino licensees, since the amendment merely codifies existing procedures and the Commission's requirements for the transportation of the unsecured currency to the cashiers' cage or soft count room, the personnel required to be involved and the necessary documentation to be completed. The amendment will help to ensure the proper recording and reporting of gross revenue funds.

Regulatory Flexibility Statement

This proposed amendment will only affect the operation of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is not required under these circumstances.

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

19:45-1.42 Removal of slot drop buckets and slot cash storage boxes; **unsecured currency;** meter readings

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

ALTERNATIVE A

(e) Whenever currency is found inside a bill changer but outside the slot cash storage box ("unsecured currency"), the unsecured currency shall be placed into a lockable container by a slot supervisor or casino accounting supervisor who shall then complete a form which includes the asset number of the bill changer from which the unsecured currency was removed, the date the unsecured currency was found and the total dollar amount of the unsecured currency. The slot supervisor or casino accounting supervisor and a member of the casino security department shall then sign the form as evidence of the total dollar amount being transported, lock the form and the unsecured currency in the container and transport the container directly to the cashiers' cage.

(f) Upon receipt of the locked container from the slot shift supervisor or casino accounting supervisor, a cage supervisor shall immediately prepare an Unsecured Bill Changer Currency Report.

(g) Unsecured Bill Changer Currency Reports shall be serially prenumbered forms. Each series of Unsecured Bill Changer Currency Reports shall be used in sequential order and shall be accounted for by employees independent of the cashiers' cage and slot department. All original and duplicate void Unsecured Bill Changer Currency Reports shall be marked "VOID" and shall require the signature of the preparer. All copies of void Unsecured Bill Changer Currency Reports shall be forwarded to the accounting department at the end of the gaming day.

(h) For establishments in which Unsecured Bill Changer Currency Reports are manually prepared, the following procedures and requirements shall be observed:

1. Each series of Unsecured Bill Changer Currency Reports shall be a three-part form, at a minimum, and shall be inserted into a locked dispenser that will permit an individual slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Unsecured Bill Changer Currency Reports, placing Unsecured Bill Changer Currency Reports in the dispensers, and removing from the dispensers the triplicates remaining therein.

(i) For establishments in which Unsecured Bill Changer Currency Reports are computer prepared, each series of Unsecured Bill Changer Currency Reports shall be a two-part form, at a minimum, and shall be generated by a computer system that will: simultaneously print an original and duplicate and store, in machine-readable form, all information printed on the original and duplicate; and discharge the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of the Unsecured Bill Changer Currency Report.

(j) On the original, duplicate and triplicate or, if applicable, in stored data, the cage supervisor shall record, at a minimum, the following information:

1. The date and time of preparation;

2. The asset number of the bill changer from which the unsecured currency was removed;

3. The denomination(s) of unsecured currency;

4. The total dollar amount of the unsecured currency; and

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

(k) The original and duplicate copies of the Unsecured Bill Changer Currency Report shall be presented to the slot shift supervisor or casino accounting supervisor and the casino security representative for signature. Upon meeting the signature requirements, the cage supervisor shall transport the unsecured currency along with the original and duplicate copies of the Unsecured Bill Changer Currency Report to the main bank. The main bank cashier shall sign the original and duplicate copies of the Unsecured Bill Changer Currency Report and retain the original and the unsecured currency. The total dollar value of the unsecured currency shall be added to the main bank's accountability. The duplicate shall be returned to the cage supervisor who shall attach the form references in (e) above to the duplicate and expeditiously deposit the duplicate with the attached form into the locked accounting box located in the cashiers' cage.

(l) At the end of the gaming day, at a minimum, the original and duplicate copy of the Unsecured Bill Changer Currency Report shall be forwarded as follows:

1. The main bank cashier shall forward the original directly to the accounting department for agreement with the triplicate or stored data; and

2. The duplicate with the attached form shall be forwarded directly to the accounting department for recording on the Slot Cash Storage Box Report and Slot Win Sheet, and agreement with the triplicate or stored data.

(m) The duplicate copy of the Unsecured Bill Changer Currency Report shall be attached to the Slot Cash Storage Box Report as supporting documentation. A notation shall be made on the duplicate Unsecured Bill Changer Currency Report indicating that the dollar amount of the unsecured currency has been added to the Slot Cash Storage Box Report and Slot Win Sheet.

(n) Notwithstanding the requirements of (e) through (m) above, a casino licensee may transport unsecured currency directly to the soft count room. If the unsecured currency is to be transported directly to the soft count room, the procedures required by (e) above shall be performed by a casino accounting supervisor and a member of the casino security department. The locked container shall be transported directly to and secured inside the count room. The unsecured currency shall be counted and recorded with the contents removed from the corresponding slot cash storage box. The form prepared pursuant to (e) above shall be forwarded to the accounting department with the Slot Win Report.

Recodify existing (e)-(g) as (o)-(q) (No change in text.)

ALTERNATIVE B

(e) Whenever currency is found inside a bill changer but outside the slot cash storage box ("unsecured currency"), the unsecured currency shall be placed into a lockable container by a slot supervisor or casino accounting supervisor who shall then complete a two part form which includes the asset number of the bill changer from which the unsecured currency was removed, the date the unsecured currency was found and the total dollar amount of the unsecured currency. The slot supervisor or casino accounting supervisor and a member of the casino security department shall then sign the original and duplicate form as evidence of the total dollar amount being transported, lock the original form and the unsecured currency in the container and transport the container directly to the cashiers' cage. The security department member shall maintain and control the duplicate and forward the duplicate to the accounting department for agreement with the original.

(f) Upon receipt of the locked container from the slot shift supervisor or casino accounting supervisor, a cage supervisor shall immediately prepare an Unsecured Bill Changer Currency Report.

(g) Unsecured Bill Changer Currency Reports shall be serially prenumbered forms. Each series of Unsecured Bill Changer Currency Reports shall be used in sequential order and shall be accounted for by employees independent of the cashiers' cage and slot department. All original and duplicate void Unsecured Bill Changer Currency Reports shall be marked "VOID" and shall require the signature of the preparer. All copies of void Unsecured Bill Changer Currency Reports shall be forwarded to the accounting department at the end of the gaming day.

(h) For establishments in which Unsecured Bill Changer Currency Reports are manually prepared, the following procedures and requirements shall be observed:

1. Each series of Unsecured Bill Changer Currency Reports shall be a three-part form, at a minimum, and shall be inserted into a locked dispenser that will permit an individual slip in the series and its copies to be written upon simultaneously while still locked in the dispenser, and that will discharge the original and duplicate while the triplicate remains in a continuous, unbroken form in the dispenser; and

2. Access to the triplicates shall be maintained and controlled at all times by employees responsible for controlling and accounting for the unused supply of Unsecured Bill Changer Currency Reports, placing Unsecured Bill Changer Currency Reports in the dispensers, and removing from the dispensers the triplicates remaining therein.

(i) For establishments in which Unsecured Bill Changer Currency Reports are computer prepared, each series of Unsecured Bill Changer Currency Reports shall be a two-part form, at a minimum, and shall be generated by a computer system that will: simultaneously print an original and duplicate and store, in machine-readable form, all information printed on the original and duplicate; and discharge the original and duplicate. The stored data shall not be susceptible to change or removal by any personnel after preparation of the Unsecured Bill Changer Currency Report.

(j) On the original, duplicate and triplicate or, if applicable, in stored data, the cage supervisor shall record, at a minimum, the following information:

1. The date and time of preparation;

2. The asset number of the bill changer from which the unsecured currency was removed;

3. The denomination(s) of unsecured currency;

4. The total dollar amount of the unsecured currency; and

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

(k) The original and duplicate copies of the Unsecured Bill Changer Currency Report shall be presented to the slot shift supervisor or casino accounting supervisor and the casino security representative for signature. Upon meeting the signature requirements, the cage supervisor shall transport the unsecured currency along with the original and duplicate copies of the Unsecured Bill Changer Currency Report to the main bank. The main bank cashier shall sign the original and duplicate copies of the Unsecured Bill Changer Currency Report and retain the original and the unsecured currency. The total dollar value of the unsecured currency shall be added to the main bank's accountability. The duplicate shall be returned to the cage supervisor who shall attach the original form referenced in (e) above to the duplicate and expeditiously deposit the duplicate with the attached form into the locked accounting box located in the cashiers' cage.

(l) At the end of the gaming day, at a minimum, the original and duplicate copy of the Unsecured Bill Changer Currency Report shall be forwarded as follows:

1. The main bank cashier shall forward the original directly to the accounting department for agreement with the triplicate or stored data; and

2. The duplicate with the form attached pursuant to (k) above shall be forwarded directly to the accounting department for recording on the Slot Cash Storage Box Report and Slot Win Sheet, and agreement with the triplicate or stored data.

(m) The duplicate copy of the Unsecured Bill Changer Currency Report shall be attached to the Slot Cash Storage Box Report as supporting documentation. A notation shall be made on the duplicate Unsecured Bill Changer Currency Report indicating that the dollar amount of the unsecured currency has been added to the Slot Cash Storage Box Report and Slot Win Sheet.

(n) Notwithstanding the requirements of (e) through (m) above, a casino licensee may transport unsecured currency directly to the soft count room. If the unsecured currency is to be transported directly to the soft count room, the procedures required by (e) above shall be performed by a casino accounting supervisor and a member of the casino security department. The locked container shall be transported directly to and secured inside the count room. The unsecured currency shall be counted and recorded with the contents removed from the corresponding slot cash storage box. The original form prepared pursuant to (e) above shall be forwarded to the accounting department with the Slot Win Report.

Recodify existing (e)-(g) as (o)-(q) (No change in text.)

(a)

SOUTH JERSEY TRANSPORTATION AUTHORITY

Rules of Operation

Proposed Readoption with Amendments: N.J.A.C. 19:75

Proposed New Rules: N.J.A.C. 19:75-10, 11, and 12

Proposed Repeal and New Rule: N.J.A.C. 19:75-2.3

Authorized By: South Jersey Transportation Authority, Walter A. DeAngelo, Executive Director.

Authority: N.J.S.A. 27:25A-7(q) and 27:25A-22(a) and (c).

Proposal Number: PRN 1993-598.

A **public hearing for oral comments** will be held on Wednesday, November 17, 1993 at 1:00 P.M. at the South Jersey Transportation Authority Administrative Building, Farley Service Plaza, Hammonton, New Jersey.

Submit written comments by December 1, 1993 to:

Walter A. DeAngelo, Executive Director
South Jersey Transportation Authority
Farley Service Plaza
P.O. Box 351
Hammonton, New Jersey 08037

The agency proposal follows:

Summary

With the advent of casino gaming in Atlantic City, beginning in 1978, Atlantic County has experienced a substantial influx of motorized traffic. A major component of this growth is derived from the large volume of daily visitors that arrive by bus. In 1992, approximately 30 million visitors came to Atlantic City, of which 10.3 million, or 33 percent, arrived by bus.

On October 1, 1992, the Atlantic County Transportation Authority ("ACTA") was consolidated into the South Jersey Transportation Authority (the "Authority"). The Authority was created in 1991 and operated pursuant to the South Jersey Transportation Authority Act, Chapter 252 of the Laws of the State of New Jersey of 1991, as amended and supplemented (the "Act"), as a public body corporate and politic and an instrumentality of the State of New Jersey (the "State"). Pursuant to Executive Order No. 66(1978), N.J.A.C. 19:75 expires January 13, 1994. This proposed readoption with amendments contains rules of the previous ACTA with amendments precipitated by the authority granted under the Act.

The jurisdiction of the Authority encompasses the counties of Atlantic, Camden, Cape May, Cumberland, Gloucester and Salem. As described below, the Authority is, by operation of the Act, the successor to the New Jersey Expressway Authority ("NJEA") and ACTA. The purpose of the Authority is to coordinate South Jersey's transportation system including addressing the highway network, aviation facilities and the transportation problems of Atlantic County. These goals are to be accomplished through the acquisition, construction, maintenance, operation and support of the Authority's projects including, without limitation, the Atlantic City Expressway, and the acquisition, construction and maintenance of transportation projects, such as the enlargement and improvement of the Atlantic City International Airport and the operation of ACTA's facilities and economic development facilities related to transportation projects.

Under the previous legislation, ACTA had been devoid of the ability to approve bus repair and maintenance facilities in addition to the ability to implement a bus assignment program. Additionally, the legislation impeded ACTA's ability to effectively assign buses to assist in conforming to clean air, congestion management, and other Federal and State mandated programs. The Act establishing the Authority, however, provides for licensing and regulation of bus repair and maintenance facilities. In addition, these amended rules include a systematic bus parking assignment plan to assist the Authority in eliminating secondary bus movements which conflict with sound transportation system management. The Act also gives the Authority the ability to have more input regarding site capacity at activity centers, approval of bus parking lots, and the imposition of penalties for violations.

Subchapter 1 includes the definitions section, which includes several amended definitions, as well as the addition of new definitions such as "bus assignment," "bus management program," "certificate of site capacity," "load or unload location," "maintenance facility," "motorbus charter service," "motorbus regular route service," "para-transit service," "South Jersey Transportation Authority Service Area," "transportation project" and "variance." This subchapter also requires bus owners or operators to file with the Authority a notice of proposed routes of travel and destinations within Atlantic County.

Subchapter 2 sets forth routes of travel for all buses operating in Altantic County. The amended rules contain routes of travel to and from the Atlantic City Convention Hall, Atlantic City International Airport, the Atlantic City Rail Terminal and New Convention Center.

Subchapter 3 sets forth the bus intercept procedure. The amended rules provide that any activity center authorized to intercept and dispatch must submit an intercept and dispatch plan to the Authority for review and approval prior to authorization. Additionally, any activity center that does not require the physical interception of buses at an Authority operated facility, must request a waiver from the Authority.

Subchapter 4 pertains to the discharge and loading of passengers. The Authority shall, on its own initiative, or upon submission of an application by an activity center, designate the number of buses which may be present at any given time at each activity center. The amended rules set forth information which must be included in the application.

Subchapter 5 sets forth the procedure to be utilized by buses upon discharging of passengers. The amended rules provide that upon discharge of all passengers, buses shall proceed to an authorized bus parking facility in accordance with the Authority's bus assignment program.

Subchapter 6 pertains to bus parking and provides that all buses shall park in lots approved by the Authority unless otherwise exempted. The amended rules require all bus parking lots to submit an application for approval to the Authority within 45 days after adoption of these rules. The rules set forth the criteria for Authority approval including the requirement that an impact statement be filed, participation in the Authority's Bus Management Program, and the ability to demonstrate a precise inherent benefit to the Authority's program. This subchapter also contains the exemption as contained in the Act.

Subchapter 7 pertains to the bus management fee and has been amended to reflect the current fee of $2.00, plus the required handling fee for each bus which enters Atlantic City. The rules further provide that the fee will be adjusted annually in accordance with the CPI. The amended rules also require each activity center to participate in the Authority's computerized/electronic manifest program.

Subchapter 8 sets forth the various violations and penalties for these violations. New violations have been added in accordance with the amended rules. The minimum penalty for a first offense has been increased to $150.00, $300.00 for a second offense, and $500.00 for a third offense. Additionally, in accordance with the Act, any violations of these rules shall be prosecuted in the municipal court in the municipality in which the violation occurs.

Subchapter 9 contains the procedure for variance application as well as the hearing procedure for issues relating to the Authority's Bus Management Program, major variances, bus parking lot and maintenance facility approvals, additional activity center on-site approvals, and other hearings.

Subchapter 10 is a new section which pertains to the Authority's Emergency Management Program. When an emergency situation is declared, the Authority shall initiate an emergency management plan which includes notifying all casino hotels and bus parking lot operators of such emergency, and if necessary, participating in the coordination of the evacuation of casino patrons from Atlantic City.

Subchapter 11, entitled "Bus Maintenance Facilities," consists of a new section which requires all bus maintenance facilities not exempt under the Act to submit an application for approval to the Authority to participate in the Authority's bus management and maintenance program. The rules set forth the criteria for Authority approval, including the filing of an impact statement.

Proposed new subchapter 12 sets forth the Authority's fee schedule. This schedule contains the various application fees to be charged by the Authority for approvals of activity centers, site capacity, variances, bus parking lots, and bus maintenance facilities. In addition, all activity centers, approved bus parking facilities not owned or operated by the Authority, and approved bus maintenance facilities must participate in the Authority's Bus Management Program and will be charged a fee by the Authority for the cost of the operation and maintenance of the program. The fee is to be adjusted annually with the cost allocated proportionately to all such activity centers and facilities.

Subchapter 15, Severability, is a recodification, without changes, of the current Subchapter 10.

Social Impact

The existing rules of the Authority provide established procedures for the orderly flow of bus traffic, minimizing the negative effects of increasing bus volumes. Specifically, the rules provide for designated bus routes throughout Atlantic City and Atlantic County. To the extent possible, buses are routed away from residential areas. Each casino, and other popular destinations designated "activity centers" by the rules, have been assigned by the Authority a given number of buses which may be on site at any one time. The bus intercept program established by the rules insures that buses do not proceed to an activity center unless there is space available at that destination. The provisions with regard to idling of bus engines, particularly with respect to travel to and from casinos in Atlantic City, have significantly improved traffic, environmental and neighborhood conditions in Atlantic City. The Authority has recognized, however, that there are a number of additional programs which would augment traffic flow and have a favorable impact on residential neighborhoods, congestion management and clean air requirements.

The key amendments that will have a social impact deal with the broadening of certain definitions to allow for the creation of a comprehensive plan for bus parking to provide for the orderly management of bus traffic throughout Atlantic County. This plan is designed to minimize the impact of bus traffic on residential neighborhods, improve air quality and have a positive impact on traffic flow within the City of Atlantic City. Through amendments to the rules, the Authority has created a comprehensive program to regulate all casino related bus activities in Atlantic County, including, but not limited to, bus intercept, bus parking, bus maintenance, bus assignment, site capacities, traffic management, computerized/electronic permit validation and maintenance of daily manifests.

The impact statement which is required by the rules to be submitted for Authority approval of bus parking lots, bus maintenance facilities and on-site capacity will include such facts and analysis necessary for the Authority to evaluate the benefits and adverse effects of the proposed facility on the community and the Authority's Bus Management Program. This statement must include an environmental assessment, the anticipated impact on existing and authorized facilities, as well as a statement indicating the precise inherent benefit to the Bus Management Program as to mitigation of traffic and improvement of air quality.

The cumulative effect of the rules is manifold. Traffic tie ups will be greatly reduced from the period prior to the adoption of the rules, despite the growth in bus volume. Residential areas will be free of bus traffic and bus parking lots. Air and noise pollution will be greatly reduced, having a positive impact on the residents of Atlantic City.

Economic Impact

The readoption with amendments of these rules will impact on motorbus owners and operators, as well as owners and operators of bus parking lots, bus maintenance facilities, and activity centers in Atlantic City.

The bus management fee is currently $2.00 and the amended rules reflect this cost, plus the required handling fees for each bus which enters Atlantic City. The amended rules provide that the fee will be adjusted annually in accordance with the Consumer Price Index. Bus management fee revenues assist the Authority in administering its various programs.

Subchapter 12 of the amended rules provides a fee schedule which contains the various application fees to be charged by the Authority for approvals of activity centers, site capacity, variances, bus parking lots, and bus maintenance facilities. Such application fees range from $75.00 for certain approvals to an application fee of $400.00 for approval of activity centers, bus parking lots and bus maintenance facilities. The Authority will charge a fee of $100.00 for pre-application conferences for activity center approval, bus parking lot approval and bus maintenance facility approval. Additionally, the actual cost incurred by the Authority for any professional consultants necessary to review the applications will be allocated to each applicant. The Executive Director of the Authority may waive the payment of fees for any charitable, philanthropic, fraternal or religious non-profit organization holding a tax exempt status under the Internal Revenue Code.

The requirements regarding the submission of intercept and dispatch plans for activity centers (N.J.A.C. 19:75-3.2); the submission of plans for on-site capacity at activity centers (N.J.A.C. 19:75-4.2); the application procedures for bus parking lots approvals (N.J.A.C. 19:75-6.2); and the application procedures for bus maintenace facility approval (N.J.A.C. 19:75-11.1) established by the amended rules may impose additional costs of doing business on the motorbus industry serving Atlantic City casinos and activity centers. For example, there may be a cost associated with the preparation of the impact statement which is a necessary part of the application process. Additionally, in order to meet the criteria as set forth in the amended rules, the various facilities may have to make certain capital improvements.

The requirement that all activity centers, approved bus parking lot facilities not owned or operated by the Authority and approved bus maintenance facilities participate in the Authority's bus management program (N.J.A.C. 19:75-12.6) and pay a fee, will have varying economic impacts on those centers and facilities. This fee will be adjusted annually with the cost allocated proportionately to all such activity centers and facilities. The fee will represent the Authority's cost of operation and maintenace of the program, with activity centers, approved bus parking lot facilities not owned or operated by the Authority, and approved bus maintenance facilities each assessed a portion of this cost. For activity centers, the portion will be allocated among the various centers according to the number of site capacities. For bus parking lots, the portion will be divided in accordance with the number of parking spaces. For bus maintenance facilities, the portion of the cost will be divided in accordance with the number of bays at the facilities.

The violations and penalties section of the rules (N.J.A.C. 19:75-8.1) assist the Authority with enforcing the Rules, and provide penalties ranging from $150.00 to $500.00

The Authority's bus assignment program will require buses upon discharging of all passengers to park in an Authority approved lot in a specific corridor. The impact that this will have on bus parking lot owners/operators is a function of the casinos that the various bus companies serve. The purpose of the program is to provide for orderly management of bus traffic throughout Atlantic City and to minimize the impact of bus traffic on residential neighborhoods as well as to improve air quality. It is not anticipated that the bus assignment program will affect all of the contracts now in existence between bus parking lots and the various bus owners for parking. Quite possibly the program could generate additional business for some of the bus parking lots.

Regulatory Flexibility Analysis

These proposed new and amended rules impose application and compliance requirements, as described in the Summary above, for owners/operators of activity centers, bus parking lots, and bus maintenance facilities. The impact will vary among owners/operators, but some of those subject to the rules set forth in this chapter may incur additional costs of compliance.

These rules will affect small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and apply to four types of small businesses. They include: bus parking lots, bus maintenance facilities, motorbus carriers, and non-casino activity centers. For example, bus parking lots and bus maintenance facilities must file an application for approval to the Authority. The application must include an impact statement comprising such facts and analysis necessary to evalute the benefits and adverse effects of the proposed facility. Preparing the impact statement may require the assistance of environmental and/or planning professionals.

Reporting requirements for bus parking lots and bus maintenance facilities include monthly activity reports. No professional services are required for the preparation of such reports.

With respect to small business bus carriers, the items of compliance are payment of the $2.00 bus management fee; parking in approved lots; traveling on approved routes only; limitations on the bus engine idling times; and regulation of excessive peak hour bus volumes. No reporting or recordkeeping is required and no professional services are necessary.

For small business parking lots and maintenance facilities additional capital costs may be necessary for compliance in order to gain approval. The rules as proposed for readoption with amendments allow the Authority to charge fees to help offset the program management costs incurred by the Authority. A $100.00 fee is charged for a pre-application conference and a $400.00 fee plus all costs, fees and expenses incurred by the Authority in operating the Bus Management program.

For small business bus carriers, there are no additional costs of compliance.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:75.

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

SUBCHAPTER 1. GENERAL PROVISIONS

19:75-1.1 Definitions

The following terms shall have the following meanings, unless the context clearly indicates otherwise:

...

"Authority" means the [Atlantic County] **South Jersey** Transportation Authority.

"Bus" means [all multi-passenger vehicles engaged in motor bus regular route service, motor bus charter service and motor bus regular route in the nature of special operation or casino bus operation as defined by N.J.S.A. 40:35B-3(h) and (j) and 48:4-1 et seq.

respectively, which vehicles include but are not limited to vehicles known as buses, minibuses and vans] **any motor vehicle or motorbus operated over public highways or public places in this State, for the transportation of passengers for hire in intrastate business, as defined in N.J.S.A. 48:4-1, whether used in regular route, casino, charter or special bus operations, notwithstanding that such motor vehicle or motorbus may also be used in interstate commerce.**

"Bus assignment" means a comprehensive plan for bus parking to provide for the orderly management of bus traffic throughout Atlantic County, and designed to minimize the impact of bus traffic on residential neighborhoods, improve air quality and have a positive impact on traffic flow within the City of Atlantic City.

"Bus management program" means a comprehensive program and/or plan developed by the Authority to regulate all casino related bus activities in Atlantic County, including, but not limited to, bus intercept, bus parking, bus maintenance, bus assignment, site capacities, traffic management, computerized/electronic permit validation, and maintenance of daily manifest.

"Bus parking lot" means [any off street] **a** facility **authorized by the Authority** on which buses subject to these regulations remain stationary during the period between discharge and loading of passengers at an activity center. [A bus shall not be considered parked during a reasonable period of time actually required to effectuate necessary repairs or maintenance.]

"Certificate of site capacity" means a certificate effective for a period of one year, issued to each activity center, setting its on-site bus capacity and designating all day bus and overnight bus discharging and loading areas.

"Combination bus" means a bus subject to this chapter and [entering] **destined for one or more activity centers within** the City of Atlantic City [having, in the same trip more than one destination or point at which passengers are loaded or discharged].

"Completed application" means an application for bus parking lot discharge/loading, major/**minor** [variance approval containing all information required by N.J.A.C. 19:75-4.4(a) or 19:75-6.2(b) and declared to be complete by the Authority] **variances, site capacity, and bus maintenance facility approval containing all information required by N.J.A.C. 19:75-4.2(c), 6.2(b), 9.2(a), 9.3(a) or 11.1(a).**

"Impact statement" means a statement included with a bus parking lot **and/or bus maintenance facility** approval or on-site capacity application which includes such facts and analysis necessary to evaluate the benefits and adverse effects of the proposed facility. The statement shall include the following major sections:

1. (No change.)

2. Project description: a detailed [description] **operational plan** of what the applicant proposes to do with the lot, where and how, **marketing assessment identification, type of service(s) to be provided, and timetable.**

3. Environmental assessment: an assessment of the probable beneficial and adverse impacts of the facility. On site as well as off site impact **of the facility** shall be assessed. Impact shall be quantified wherever possible and shall address geology, soils, hydrology, traffic conditions, public safety, noise, [and] air quality, **neighborhood and community impact.**

4. Impact on existing and authorized facilities: an assessment of the probable beneficial and adverse impact of the facility on existing and authorized facilities, including divergence of traffic from existing facilities and economic impact.

5. Need: a statement indicating the precise inherent benefits to the bus management program, including increased traffic management efficiency, proximity to other approved Authority facilities, expected impact on existing approved Authority facilities, and other factors deemed necessary to improve air quality and mitigate traffic.

"Intercept" means the procedure of either [temporarily] holding **or staging** buses at [off-street facilities or employing some other approved method] **Authority approved locations/facilities** for the purpose of regulating the flow of bus traffic to activity centers.

"Load or unload location" means certain locations for the loading or unloading of passengers as designated by the Authority, in accordance with the provisions of this chapter.

"Maintenance facility" means a facility authorized in accordance with this chapter by the Authority to maintain buses and high occupancy vehicles used to transport passengers to and from activity centers.

"Manifest" means a record of daily bus arrivals by an activity center which includes, at a minimum, bus company names, bus numbers, arrival and departure times, origins, [destination points and] **destinations,** the Authority permit number, **combinations, number of passengers, and trip type.**

"Motorbus charter service" means subscriptions, tour and other special motorbus services.

"Motorbus regular route service" means the operation of any motorbus or motorbuses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers, for hire or otherwise, within South Jersey or between points within South Jersey and points without South Jersey.

"Para-transit service" means any service, other than motorbus regular route service and motorbus charter service, including, but not limited to, dial-a-ride, non-regular route, jitney or community minibus, and shared-ride services such as vanpools, limousines, or taxi-cabs which are regularly available to the public. Para-transit services shall not include limousine or taxi-cab service reserved for the private and exclusive use of individual passengers.

...

["Secondary access routes" means all such streets, roads and/or routes depicted on Diagram B which shall be utilized only for bus access to bus parking lots as described by N.J.A.C. 19:75-6.1(a), Authority operated or approved bus intercept facilities, non-casino hotel activity centers and alternate access to activity centers when same is authorized by the Authority.]

"South Jersey Transportation Authority Service Area" means the area encompassing the counties of Atlantic, Camden, Cape May, Cumberland, Gloucester and Salem.

"Transportation project" means the acquisition, construction and maintenance of an airport, public transportation facility or other transportation facility, established by N.J.S.A. 27:25A-1 et seq. or which may be hereafter established by law and may include related facilities and activities which may consist of public transportation services, public transportation facilities, including, but not limited to, rail and bus stations and terminals, noise abatement projects, parking facilities, public highways and feeder roads related to or connected with the project, and any economic development facilities as defined in this section. Transportation project includes any planning necessary to develop a comprehensive, efficient, convenient or economical transportation system in South Jersey, any planning or marketing necessary or desirable for the execution of any transportation project, and any planning, acquisition, construction, or operation of economic development facilities related to, connected with or in the vicinity of the project.

"Variance" means permission to depart from the literal requirements of any provision of this chapter.

19:75-1.2 Bus itinerary

(a) The owners or operators of all **casino or activity center oriented** regular route motorbuses, **or casino or activity center oriented** charter motorbuses [regular route in the nature of special motorbuses entering or] **preparing to enter** or operating in Atlantic County, unless specifically exempted elsewhere in this Chapter, [may] **shall** be required within seven days of the date of written demand by the Authority, to file with the Authority a notice indicating proposed routes of travel and [destination or] destinations within the county [and the bus parking lot at which such buses shall park]. All such proposed routes[,] **and** destinations [and bus parking lots] shall be in conformance with [this Chapter] **the Authority's bus management program.**

(b) The owners or operators of all **casino or activity center oriented** combination buses shall file the notice provided in (a) above prior to the operation of any combination buses in Atlantic County. Combination buses shall proceed in one direction only, either east to west or west to east, and shall travel on the most direct authorized route, from initial passenger discharge to final passenger discharge [at the activity centers on its itinerary] following entry into [the City of] Atlantic City. Combination buses shall proceed in the same manner when picking up passengers just prior to exiting [the City of] Atlantic City.

[(c) A copy of the combination bus itinerary shall be maintained in the possession of the driver of any combination bus, and shall be produced by the driver upon request by intercept personnel.]

19:75-1.3 Exempt buses

The provisions of this chapter shall apply to all motor bus charter services, motorbus [regular route in the nature of] special services, and motorbus regular route services in Atlantic County except those services operated under "The New Jersey Public Transportation Act of 1979," including, but not limited to, New Jersey Transit buses which operate solely from municipal bus termini approved by the Authority, [and such other] services specifically exempted herefrom by the New Jersey Department of Transportation, **and other special services where the primary destination includes, but is not limited to a school, recreation center, community center, or church with the exception of destinations to a casino or authorized activity center.** [A schedule of such exempted motorbus services shall be forwarded to the Authority, which thereafter shall serve such schedules on the police departments of the several municipalities in Atlantic County.]

SUBCHAPTER 2. ROUTES OF TRAVEL

19:75-2.1 Routes of travel[:]; generally

(a) All buses subject to the provisions of this chapter, while operating in Atlantic County, shall travel only on routes as [shown in Diagrams "A" and "B" below] **defined by the Authority. Routings may change or be altered at the discretion of the Authority, in accordance with the provisions of the Administrative Practice Act, N.J.S.A. 52:14B-1 et seq., and the Rules for Agency Rulemaking, N.J.A.C. 1:30.**

(b) Except for the City of Atlantic City, bus routes in Atlantic County are U.S. Route 30, U.S. Route 40/322 and the Atlantic City Expressway. All other routes are considered to be feeder routes to these major access roadways. The major access roadway is designed to enable the bus to enter the city [of Atlantic City in the zone] where its destination is located.

1.-3. (No change.)

i.-vii. (No change.)

19:75-2.2 Atlantic **County and Atlantic** City access routes

[(a) For the purpose of designating routes for bus entry thereinto and exit therefrom, the City of Atlantic City is hereby divided into four zones as shown on Diagram "B" below.] **All buses entering or exiting Atlantic County and Atlantic City shall do so on routes as prescribed by the Authority in accordance with N.J.A.C. 19:75-2.3.**

[(b) All buses entering or exiting the City of Atlantic City shall do so either on routes prescribed for the zone in which the bus destination is located or at the point for departure of such buses, as the case may be, as set forth below:

Zones	Entry/Exit Route
Zone 1	Route 40
Zone 2	Atlantic City Expressway
Zone 3	Route 30
Zone 4	Route 30

(c) All combination buses entering or exiting Atlantic City shall do so only on routes prescribed for the zone in which is located the initial destination of such bus, and shall exit only on such routes prescribed for the zone in which is located the final point of departure.]

[19:75-2.3 Routes of travel to and from casino hotels, Atlantic City Convention Center and Atlantic City Rail Terminal

(a) Routes to and from Bally's Grand:

1. Arrival: via Albany Avenue to Pacific Avenue to Providence or Boston Avenues and entry to the Bally's Grand Garage.

2. Departure: via the Bally's Grand Garage to Providence or Boston Avenues to Captain O'Donnell Parkway/Atlantic Avenue to Albany Avenue.

(b) Routes to and from Tropicana:

1. Arrival: via Albany Avenue to Atlantic Avenue to Brighton Avenue to the Transportation Center.

2. Departure: via Morris Avenue to Atlantic Avenue/Captain O'Donnell Parkway to Atlantic Avenue.

(c) Routes to and from Atlantis:

1. Arrival: via Albany Avenue to Atlantic Avenue to Missouri Avenue to Pacific Avenue to the Convention Hall entrance opposite Georgia Avenue or to Florida Avenue to the casino.

2. Departure: via Convention Hall West exit or Florida Avenue to Pacific Avenue to Mississippi Avenue to Atlantic Avenue/Captain O'Donnell Parkway to Albany Avenue.

(d) Routes to and from Caesar's:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to casino bus parking lot.

2. Departure: via Arkansas Avenue to the Atlantic City Expressway.

(e) Routes to and from Trump Plaza:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to casino bus lot.

2. Departure: via Mississippi Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(f) Routes to and from Bally's:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Ohio Avenue to Pop Lloyd Boulevard to Park Place to the casino.

2. Departure: via Park Place around Brighton Park to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(g) Routes to and from Claridge:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Ohio Avenue to the casino Transportation Center.

2. Departure: via Park Place to Pop Lloyd Boulevard to Michigan Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway. Alternate route: via Park Place around Brighton Park to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(h) Routes to and from Sands:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Atlantic Avenue to Dr. Martin Luther King, Jr. Boulevard to Pop Lloyd Boulevard to the casino.

2. Departure: via Pop Lloyd Boulevard to Indiana Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(i) Routes to and from Resorts:

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Pennsylvania Avenue to the casino.

2. Departure: via Pennsylvania to Route 30/Absecon Boulevard. Alternate route: via Pennsylvania Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(j) Routes to and from Harrah's:

1. Arrival: via Route 30/Absecon Boulevard to Huron Avenue to Brigantine Boulevard, over the Brigantine Bridge to the casino, via the turnaround on the Brigantine side of the Bridge.

2. Departure: via Brigantine Boulevard to Huron Avenue to Route 30/Absecon Boulevard.

(k) Routes to and from Trump's Castle:

1. Arrival: via Absecon Boulevard to Huron Avenue to the casino.

2. Departure: via Huron Avenue to Route 30/Absecon Boulevard.

(l) Routes to and from Showboat:

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Maryland Avenue to Pacific Avenue to the Transportation Center.

2. Departure: via Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route: via Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(m) Routes to and from Taj Mahal:

1. Arrival: via Route 30/Absecon Boulevard to Virginia Avenue to the Transportation Center. Alternate route (garage berths): via

Route 30/Absecon Boulevard to Virginia Avenue to Atlantic Avenue to Pennsylvania Avenue to garage.

2. Departure: via tunnel connection to Pennsylvania Avenue to Route30/Absecon Boulevard. Alternate route (garage berths): via Pennsylvania Avenue to tunnel connection to Virginia Avenue to Pacific Avenue to New Jersey Avenue to Atlantic Avenue to Pennsylvania Avenue to Route 30/Absecon Boulevard. Alternate route from tunnel connection or garage berths: proceed to Atlantic Avenue to Arkansas Avenue to the Atlantic City Expressway.

(n) Routes to and from Atlantic City Convention Center:

1. Arrival: via the Atlantic City Expresway to Missouri Avenue to Pacific Avenue to Mississippi Avenue to tunnel.

2. Departure: via tunnel exit to Pacific Avenue to Arkansas Avenue to the Atlantic City Expressway.

(o) Routes to and from Atlantic City Rail Terminal:

1. Arrival: via the Atlantic City Expressway to Missouri Avenue to Arctic Avenue to Michigan Avenue to the Atlantic City Rail Terminal.

2. Departure: via the Atlantic City Expressway. Alternate route: via Kirkman Boulevard to Michigan Avenue to Atlantic Avenue.]

19:75-2.3 Routes of travel to and from Casino hotels, Atlantic City Convention Hall or Center, Atlantic City International Airport, Atlantic City Rail Terminal, and other major traffic generators

(a) Routes to and from Bally's Grand:

1. Arrival: Via the Atlantic City Expressway to Exit 2 onto Albany Avenue (Route 40E) via Albany Avenue to Pacific Avenue, left to Providence Avenue, left and right into Bally's Grand Transportation Center.

2. Departure: Exit the Transportation Center, left onto Boston Avenue to Captain O'Donnell Parkway/Atlantic Avenue, right or left to approved bus parking, or left to Albany Avenue (Route 40W), right to Atlantic City Expressway West (Exit 2).

(b) Routes to and from Bally's Park Place:

1. Arrival: Via the Atlantic City Expressway, left into Missouri Intercept Lot, right out of lot (Baltic Avenue to Missouri Avenue, left to Atlantic Avenue, left to Ohio Avenue, right to Pop Lloyd Boulevard, left to Park Place, right up to Bally's Park Place bus area.

2. Departure: Via Park Place, go around Brighton Park to Indiana Avenue to Atlantic Avenue, right or left to aprpoved bus parking, or left to Arkansas Avenue, right to Atlantic City Expressway W.

(c) Routes to and from Caesar's:

1. Arrival: Via the Atlantic City Expressway, left into Missouri Intercept Lot, right out of lot (Baltic Avenue to Missouri Avenue, left to Caesar's Transportation Center, left into the Center.

2. Departure: Left onto Arkansas Avenue to Atlantic Avenue, right or left to approved bus parking, or straight to the Atlantic City Expressway W.

(d) Routes to and from Claridge:

1. Arrival: Via the Atlantic City Expressway, left into the Missouri Intercept Lot, right out of lot (Baltic Avenue to Missouri Avenue, left to Atlantic Avenue, left to Ohio Avenue, right to Claridge Transportation Center, left into Center.

2. Departure: Right onto Park Place to Pop Lloyd Boulevard, right turn to Michgan Avenue, right on Michigan Avenue to Atlantic Avenue, right or left on Atlantic Avenue to Authority approved bus parking lot, or left on Atlantic Avenue to Arkansas Avenue, right to the Atlantic City Expressway W.

(e) Routes to and from Harrah's:

1. Arrival: Via Route 30/Absecon Boulevard to Dr. Martin Luther King Boulevard Exit, then left onto Huron Avenue, left to Brigantine Boulevard, left and follow signs under Brigantine Bridge to Harrah's Transportation Center.

2. Departure: Via Brigantine Boulevard to Route 30, right or left on approved routes to approved bus parking or Brigantine Boulevard, right to Huron Avenue, right to Absecon Boulevard/ Route 30, right.

(f) Route to and from Merv Griffin's Resorts:

1. Arrival: Via the Atlantic City Expressway, left to Missouri Intercept Lot, right out of lot (Baltic Avenue) to Missouri Avenue, left to Atlantic Avenue, left to Pennsylvania Avenue, right on Pennsylvania Avenue to Merv Griffin's Resorts.

2. Departure: Via Pennsylvania Avenue down into tunnel, exit through tunnel onto Maryland Avenue to Route 30 W; or exit through tunnel onto Maryland Avenue to Atlantic Avenue, left to Authority approved bus parking or exiting the city via the Atlantic City Expressway.

(g) Routes to and from Sands:

1. Arrival: Via the Atlantic City Expressway, left to Missouri Intercept Lot, right out of lot (Baltic Avenue) to Missouri Avenue, left to Atlantic Avenue, left to Dr. Martin Luther King Boulevard, right to Pop Lloyd Boulevard, right to the Sands bus area.

2. Departure: Via Pop Lloyd Boulevard, right on Indiana Avenue to Atlantic Avenue, right or left to Authority approved bus parking or left to Arkansas Avenue, right to the Atlantic City Expressway W.

(h) Routes to and from Showboat:

1. Arrival: Via Route 30/Absecon Boulevard to North Carolina Avenue, right to Atlantic Avenue, left on Atlantic Avenue, right on Maryland Avenue, left on Pacific Avenue, right into Showboat Transportation Center.

2. Departure: Via Delaware Avenue to Route 30 W. or to Atlantic Avenue, left to Authority approved bus parking.

(i) Routes to and from Tropworld:

1. Arrival: Via the Atlantic City Expressway, to Atlantic Avenue, right to Brighton Avenue, left to the Tropworld Transporation Center, right into the Center.

2. Departure: Right onto Morris Avenue to Atlantic Avenue, right or left to Authority approved bus parking, or left on Atlantic Avenue onto Captain O'Donnell Parkway to Albany Avenue, right to the Atlantic City Expressway W.

(j) Routes to and from Trump Castle:

1. Arrival: Via Route 30/Absecon Boulevard, to Dr. Martin Luther King Boulevard Exit, then left to Huron Avenue, to Trump Castle Transportation Center. First left after Brigantine Boulevard to entrance of Transportation Center.

2. Departure: Via Huron Avenue, exit right to Route 30/Absecon Boulevard, or exit right to Brigantine Boulevard left to Route 30/ Absecon Boulevard to approved bus parking, following approved routes as indicated in this chapter.

(k) Routes to and from Trump Plaza:

1. Arrival: Via the Atlantic City Expressway, left into Missouri Avenue Intercept Lot, right out of lot (Baltic Avenue) to Missouri Avenue, left to Trump Plaza Transportation Center, right into Center.

2. Departure: Right onto Mississippi Avenue to Atlantic Avenue, right or left to Authority approved bus parking, or right to Arkansas Avenue, left to the Atlantic City Expressway W.

(l) Routes to and from Taj Mahal:

1. Arrival: Via Route 30/Absecon Boulevard, right on Pennsylvania Avenue into tunnel and exit tunnel onto Maryland Avenue, right into Taj Mahal Transportation Center.

2. Departure: Via Maryland Avenue to Route 30/Absecon Boulevard or Atlantic Avenue, right or left to approved bus parking.

3. Alternate Route;

i. Arrival: Via the Atlantic City Expressway to Atlantic Avenue, left to Pennsylvania Avenue, right into tunnel, exit tunnel onto Maryland Avenue, right into Taj Mahal Transportation Center.

ii. Departure: Via Maryland Avenue to Route 30/Absecon Boulevard, or (off hours) Maryland Avenue to Atlantic Avenue, left to Arkansas Avenue, right onto the Atlantic City Expressway W.

(m) Routes to and from Atlantic City Convention Hall:

1. Arrival: Via the Atlantic City Expressway left into Missouri Avenue Intercept Lot, right out of lot (Baltic Avenue) to Missouri Avenue, left to Pacific Avenue, right to Mississippi Avenue, left into tunnel, staying right to loading area.

2. Departure: Exit tunnel (Georgia Avenue) onto Pacific Avenue, right to Arkansas Avenue, left to the Atlantic City Expressway, or to Atlantic Avenue, right or left to Authority approved bus parking.

(n) Routes to and from Atlantic City International Airport:

1. Arrival: Atlantic City Expressway Eastbound to Exit 9, left turn on Delilah Road (Route 646) to Airport Circle to Airport terminal building.

2. Departure: Airport terminal building to Airport Circle, right to Delilah Road (Route 646) to Atlantic City Expressway Interchange 9, West to Camden/Philadelphia or East to Garden State Parkway and Atlantic City.

(o) Routes to and from Atlantic City Rail Terminal/New Convention Center:

1. Taj Mahal/Showboat Resorts:

i. Arrival: Exit Showboat via Delaware Avenue to Atlantic Avenue. Make a left onto Atlantic Avenue to Michigan Avenue, right on Michigan Avenue to Kirkman Boulevard. Make a left on Kirkman Boulevard to Rail Terminal.

ii. Departure: Kirkman Boulevard to Michigan Avenue, right on Michigan Avenue to Atlantic Avenue, left on Atlantic Avenue to Pennsylvania Avenue, right on Pennsylvania Avenue to approved load/unload area at Resorts International. After unloading at Resorts proceed through tunnel to Taj Mahal Transportation Center position, proceed to Maryland Avenue, right on Pacific Avenue to entrance of Showboat to load/unload area.

2. Harrah's Marina/Trump Castle:

i. Arrival: Exit Trump Castle to Brigantine Blvd., right on Brigantine Blvd., proceed under the Brigantine Bridge to Harrah's exit to load/unload area. Exit Harrah's Marina to Brigantine Blvd. to Huron Avenue, right on Huron Avenue to Dr. Martin Luther King, Jr., Blvd., bear left onto Dr. Martin Luther King, Jr., Blvd. to Atlantic Avenue, right on Atlantic Avenue to Michigan Avenue, right on Michigan Avenue to Kirkman Blvd., left at Kirkman Blvd., to Rail Terminal.

ii. Departure: Kirkman Boulevard to Michigan Avenue, right to Atlantic Avenue, left on Dr. Martin Luther King, Jr., Boulevard to Huron Avenue, bear right on Huron Avenue to Brigantine Blvd. Cross over Brigantine Blvd. to load/unload area at Trump Castle. Exit Trump Castle to Brigantine Blvd., go under Brigantine Bridge to Harrah's bus load/unload area.

3A. Brighton Park Casinos—Bally's Park Place and Claridge:

i. Arrival: Park Place around Park to Indiana Avenue, left on Indiana Avenue to Atlantic Avenue, make a left on Atlantic Avenue to Michigan Avenue, right on Michigan Avenue to Kirkman Blvd., left on Kirkman Blvd. to Rail Terminal.

ii. Departure: Kirkman Blvd. to Ohio Avenue, right on Ohio Avenue to approved load/unload area.

3B. Sands:

i. Arrival: Right on Indiana Avenue to Atlantic Avenue, left to Michigan Avenue, right to Kirkman Blvd. to Rail Terminal.

ii. Departure: Kirkman Blvd. to Michigan Avenue, right on Michigan Avenue to Atlantic Avenue, left on Atlantic Avenue to Dr. Martin Luther King Blvd., right to Pop Lloyd Blvd., right to approved load/unload area.

4. Caesars, Trump Plaza:

i. Arrival: Exit Transportation Center and return to Atlantic Avenue. Make a right on Atlantic Avenue to Michigan Avenue. Left on Michigan Avenue to Kirkman Blvd. Make a left onto Kirkman Blvd. to Rail Terminal.

ii. Departure: Kirkman Blvd. to Michigan Avenue, right on Michigan Avenue to Atlantic Avenue, right on Atlantic Avenue to Missouri Avenue, left on Missouri Avenue to Trump Plaza or Caesars bus center. Exit bus center.

5. Tropworld/Bally's Grand:

i. Arrival: Exit Transportation Center and return to Atlantic Avenue, right on Atlantic Avenue to Michigan Avenue, left on Michigan Avenue to Kirkman Blvd., left onto Kirkman Blvd., to Rail Terminal.

ii. Departure: Kirkman Blvd. to Michigan Avenue, right on Michigan Avenue to Atlantic Avenue, right on Atlantic Avenue to Brighton Avenue, left on Brighton Avenue, TropWorld Transportation Center or left on Providence Avenue to Bally's Grand Transportation Center.

SUBCHAPTER 3. BUS INTERCEPT

19:75-3.1 Conditions requiring intercept

Buses traveling to **Authority approved** activity centers [shall be] **are** subject to intercept.

19:75-3.2 Intercept procedure; **location approval; waiver**

(a) Buses subject to intercept at [off-street facilities] **Authority approved locations** and [when] so notified by the activity center and/or the Authority, shall proceed to the approved intercept facility designated by the activity center and/or the Authority, and shall be dispatched as and when on-site capacity permits, or as otherwise directed by the Authority **or its designee.** [Intercept and dispatch by other than Authority personnel shall be subject to review and modification by the Authority.]

(b) Any activity center authorized to intercept and dispatch must submit an intercept and dispatch plan to the Authority for review and approval prior to authorization. In evaluating plans submitted for Authority approval, the Authority shall consider site capacity, peak hour bus volumes, over-all impact on traffic, safety, staffing levels, corridor location and the various functions performed at the intercept facility.

[(b)]**(c)** Any [intercept procedure] **activity center** that does not require the physical interception of buses at an [off-street] **Authority operated** facility [shall be subject to prior approval by the Authority] **shall request an exemption/waiver from the Authority in writing. If such a request is made, an intercept plan shall be submitted for Authority review and approval prior to utilization. In evaluating the intercept plan and determining whether to issue an exemption/waiver, the Authority shall consider site capacity, peak hour bus volumes, over-all impact on traffic, safety, staffing levels, corridor location and the various functions performed at the intercept facility.**

[(c)]**(d)** Upon 30 days written notice from the Authority, all activity centers providing gratuities, incentives or premiums, to bus passengers shall [provide adequate personnel at approved intercept facilities to greet such passengers and dispense all such gratuities, incentives or premiums at the intercept facility] **submit a plan to the Authority for review and approval setting forth the procedure to be utilized by the activity center at the intercept facility to carry out these activities, to ensure that the activities do not adversely affect traffic flow at either the intercept facility or the activity center.**

SUBCHAPTER 4. DISCHARGE AND LOADING OF PASSENGERS

19:75-4.2 On-site [bus] capacity; designated discharging and loading area; certificate of on-site capacity; [established bus volumes; certificate of established bus volume; notice to exceed established bus volume] **requirements of application**

(a) The Authority **shall,** on its own initiative or upon **submission of an** application by an activity center or proposed activity center, [may] designate the number of buses which may be present at any given time at each activity center, which number shall constitute the "on-site bus capacity" for the activities center[s]. The Authority [may] **shall** also designate the specific area or areas on-site where buses may discharge and load passengers at the activity centers. Where appropriate or necessary, on-site capacity and designated areas [may] **shall** be allocated by the Authority between buses carrying:

1.-2. (No change.)

(b) The Authority shall issue to each activity center a certificate setting forth its on-site bus capacity and designating all day bus and overnight bus discharging and loading areas, a copy of which shall be filed with the police department of the municipality in which such activity center is located. Certificates shall be effective for a period of one [(1)] year **with periodic reviews and annual updates** unless earlier modified by the Authority pursuant to N.J.A.C. 19:75-4.3.

(c) [No] **Any** activity center [shall:

1. Exceed its specific on-site capacity; or

2. Permit any buses to be present on-site other than in designated discharging and loading areas; nor

3. Utilize overnight bus areas for day bus discharging and loading.] **which submits an application in accordance with (a) above shall include in the application a statement of physical capabilities, the type of service provided, and a traffic mitigation plan. Such activity center shall also participate in the Authority's Bus Management Program, in accordance with the provisions of this chapter.**

(d) [The Authority may, in consultation with any casino activity center, designate the number of buses which may be present at any casino activity center between the hours of 4 p.m. to 7:00 p.m. This number shall constitute the established bus volume for such casino activity center.] **Site capacity shall not be transferrable. A certificate of site capacity reverts back to the Authority upon change of ownership of the property or facility.**

(e) [The Authority shall issue to any casino activity center for which a bus volume has been established pursuant to (d) above a certificate setting forth the "established bus volume." The certificate shall be for a period of one (1) year unless earlier modified by the Authority pursuant to N.J.A.C. 19:75-4.3.] **A violation of this subchapter shall subject the affected activity center to penalties as provided for in N.J.A.C. 19:75-8.1.**

[(f) Each casino activity center shall give no less than 48 hours notice to the Authority whenever its bus volume is anticipated to exceed 120 percent of its established bus volume. Such notice shall include a plan by the casino activity center, to be approved by the Authority, for the management of such excess bus volume. The plan may include, but shall not be limitied to, provisions for additional staffing, reduction of the time such buses shall remain on site, greeting of passengers at intercept facilities and rescheduling of bus arrivals and departures. In the event such plan shall not be approved by the Authority, or if the affected casino activity center shall fail or refuse to comply with any amendment or amendments to the plan by the Authority, such casino activity center shall not be permitted to receive buses in excess of its established bus volume on the date for which notice has been given. A violation of this subchapter shall subject the affected casino activity center to penalties as provided for in N.J.A.C. 19:75-8.1.]

19:75-4.3 Modification of authorized on-site capacity or [established bus volume] **discharge and loading areas;** emergency procedures

(a) The Authority shall regularly monitor all bus operations at activity centers. When, in the opinion of the Authority, traffic conditions in the City of Atlantic City and Atlantic County require, the Authority shall notify any activity center of its intention to reduce or otherwise modify the on-site bus capacity [and/or the established bus volume] of such activity center or alter its discharging and loading areas.

1.-5. (No change.)

6. Failure to make timely written request for such hearing shall result in the proposed action taking effect on the date set forth in the notice of intention to reduce or modify, and the Authority shall issue a new certificate setting forth the specific reductions and/or modifications pursuant to N.J.A.C. 19:75-4.2(b) [and/or (e)].

(b) When, in the opinion of the Executive Director of the Authority **or his or her designee,** extraordinary traffic volumes or other circumstances create an imminent peril to the health, safety and welfare of the residents of the City of Atlantic City and Atlantic County, which peril may be reduced or avoided by the limitation of on-site bus operations at the activity centers, the Executive Director of the Authority **or his or her designee** may issue an emergency order reducing on-site capacity, [established bus volume] and/or modifying discharging and loading areas for any or all of the activity centers.

1. Such emergency order[s] shall be in writing, setting forth the specific reasons for such orders and shall become effective immediately upon service of the emergency order upon the affected activity center or centers, and the police department of the municipality in which the affected activity center[s] [are] **is** located.

2. Such emergency order[s] shall continue in effect until the imminent peril to health, safety and welfare has ceased, or for a period of seven days, whichever is shorter, unless extended by the [Board] **Executive Director or his or her designee** of the Authority at a duly scheduled hearing.

3. Written notice of such hearing shall be served upon the affected activity center[s] and the police departments of the municipalities in which the affected activity centers are located.

4.-5. (No change.)

6. Such emergency orders shall be in accordance with the Authority's Emergency Management Plan as set forth in N.J.A.C. 19:75-10.1.

7. Any emergency orders issued in accordance with (b) above shall be at the sole discretion of the Executive Director or his or her designee of the Authority.

19:75-4.4 Additional site approval; requests by activity centers to increase or modify on-site bus capacity or discharging or loading areas

(a) Additional sites may be approved at activity centers with on-site bus [capacities] **capacity** and designated discharging and loading areas by the Authority upon written application, containing, without limitation, the following:

1.-4. (No change.)

5. A traffic impact statement [where required by the Authority; and] **including impact on other activity centers, need, and physical capabilities.**

6. (No change.)

(b) All applications shall be submitted with an original and eight [(8)] copies. One additional copy of the application shall be served upon the police department of the municipality in which the proposed site is located and proof of such service by way of affidavit or certified mail, return receipt shall be filed with the Authority. Upon filing with the Authority, the application shall be acted upon in the manner and under the procedure set forth in N.J.A.C. 19:75-9.4, and thereafter the Authority shall issue a certificate, pursuant to N.J.A.C. 19:75-4.2(b).

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

(e) No discharging/loading site located in [the traffic or curb lanes of Pacific Avenue in the City of Atlantic City will be approved] **a traffic or curb lane, or similar area where the site impedes traffic flow, shall be utilized without prior Authority approval of a plan to mitigate the effect on traffic flow. Mitigation plans shall be submitted to the Authority in accordance with the requirement of (a) through (d) above.**

[(f) All activity centers in Atlantic County constructed subsequent to the effective date of this Chapter shall obtain the approval of the Authority for bus discharging/loading site capacity.

(g) Any existing activity center may apply to the Authority for additional on-site bus capacity or modified discharging and loading areas in the manner set forth in (a) through (e) above which request shall constitute a request for a major variance governed by N.J.A.C. 19:75-9.]

SUBCHAPTER 5. BUS OPERATIONS

19:75-5.1 Procedure following discharge of passengers

Upon [discharging] **discharge** of all passengers, buses shall forthwith proceed to an [approved] **authorized** bus parking [lot on the most direct approved route.] **facility in accordance with the Authority's bus assignment program and all traffic regulations, unless otherwise exempted.** Buses shall not be operated solely for the convenience of the driver between discharge and loading of passengers. **Buses picking up passengers shall not arrive more than 15 minutes prior to scheduled departure.**

19:75-5.3 Engine idling requirements

No buses shall be stopped with their engine running except as [otherwise provided herein. At such time as the bus reaches a parking lot, the engine shall be shut off except as] is specifically permitted by the New Jersey Department of Environmental Protection Idle Standard set forth in N.J.A.C. 7:27-14.3. **Bus parking lot owners and bus operators will be mutually responsible for compliance with this regulation.**

19:75-5.4 Dumping of Waste

Buses shall dump waste only at locations and into receptacles [approved] **designated** by the Authority.

SUBCHAPTER 6. PARKING

19:75-6.1 Approved parking lots[; exceptions]

(a) All buses subject to the provisions of this chapter shall park in lots approved by the Authority [with the exception that privately owned bus parking lots in existence as of February 1, 1983 which exclusively accommodate motorbuses owned by the owner of any such parking lot and are not rented or leased to any other motorbus may continue in operation whether or not approved by the Authority] **unless otherwise exempted, in accordance with N.J.A.C. 19:75-6.2(d) below.**

[(b) The requirement of Authority approval for bus parking lots shall nevertheless apply to the exceptions contained in this subchapter in the event that the licensed parking capacity of such exempted bus parking lot shall increase after February 1, 1983, or if the license for such exempted bus parking lot shall be transferred after February 1, 1983.]

[(c)](**b**) A list of approved bus parking lots is available from the Authority upon request.

19:75-6.2 Bus parking lot approvals

(a) All [proposed] bus parking lots [or bus parking lots commencing operation subsequent to February 1, 1983,] **shall submit an application for approval to operate to the Authority,** in addition to any and all other required municipal, county, state or Federal approvals. [shall obtain approval from the Authority.] **This application shall be submitted within 45 days after adoption of this subsection. Failure to do so shall result in rescission of approval to operate a bus parking facility.** [Approval by the] Authority **approval** shall be granted only if the proposed lot:

1. Has filed an impact statement acceptable to the Authority, which includes, but is not limited to the following factors: air quality, need, traffic circulation and neighborhood impact analysis.

[1.]**2.** Is within a [one-way] driving distance of five miles of that portion of Atlantic Avenue between Maine and Albany Avenues within the corporate limits of [the City of] Atlantic City;

[2.]**3.** Has a minimum of [50] **75** bus parking spaces, [all of which have] **with each space having a** minimum dimension[s] of 45 feet by 12 feet;

[3. Segregates bus and car parking, which shall require at a minimum separate exits and entrances and a physical barrier separation.]

4. Permits only bus parking at this site;

[4.]**5.** Has lighting and is attended during all hours of operation;

[5.]**6.** Contains signs conforming to the standards of the municipality in which the lot is located.

[6. Is located on bus routes approved by the Authority;]

7. Is located within a quarter mile along the major traffic corridors of Rt. 30, Rt. 40, and Atlantic City Expressway;

8. Participates in the Authority's Bus Management Program;

[7.]**9.** Possesses two-way radio or telephone equipment sufficient to participate in bus intercept and dispatch activity;

[9. Has filed an impact statement acceptable to the Authority, which includes without limitation air quality, traffic circulation and neighborhood impact analysis.]

[8.]**10.** Does not materially impair the intent and purpose of these regulations;

11. Demonstrates that it complements the Authority's bus management program, and does not adversely affect any portion of the program as contained in this chapter.

(b) Applicants for [approval of the] Authority **approval** of any [proposed] bus parking lot shall submit an original and eight copies of the application [on forms approved by] **to** the Authority, including any maps, [plats] **plans** or drawings required by the Authority [which shall contain] **containing,** and without limitation, the following:

1.-5. (No change.)

6. Impact statement as defined in [subchapter] **N.J.A.C.** 19:75-1.1 [(g)].

(c) (No change.)

(d) The requirement of Authority approval [for bus parking lots shall nevertheless apply to the exceptions contained in this subchapter in the event that the licensed parking capacity of such exempted bus parking lot shall increase after February 1, 1983, or if the license for such exempted bus parking lot shall be transferred after February 1, 1983.] **shall not apply to a privately owned parking, repair and maintenance facility in existence at a location in Atlantic City as of February 1, 1983, which exclusively accommodates motor buses owned by the owner of a parking facility and does not rent or lease the facility or its use to any other motorbus provided there is no increase in the capacity of the facility after August 9, 1991, except that any such facility located within the City limits of Atlantic City may provide repair and maintenance service to its motorbuses and other motorbuses and attendant storage and may expand its facility to an adjoining property, subject to municipal planning and zoning ordinances. The requirements for Authority approval shall also not apply to a privately owned parking, repair or maintenance facility located outside the City limits of Atlantic City in existence on February 1, 1983, and in continuous operation thereafter, which exclusively accommodates motorbuses, tractors, trailers and limousines owned directly or through a corporation by an owner or a contract purchaser of the facility, provided there is no increase in the land area of the entire facility after February 1, 1983, the number of buses parked at any one time does not exceed 85, and on or after January 1, 1992 this exemption shall not transfer with title to the facility.**

(e) All approvals shall be conditioned upon compliance with the following:

1.-3. (No change.)

4. Submission of [weekly] **monthly** reports on forms supplied by the Authority setting forth[, at a minimum, the number of buses parked] **arrival/departure times, the bus operator's name, bus number, point of origin, number of passengers and whether or not it is a combination bus.**

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

[(g)](**h**) All approvals granted by the Authority pursuant to this subsection shall be for [an effective] a period of one year. Any renewal or extension of any approval shall only be granted pursuant to the provisions of [(h)](**i**) below. Such approval may be earlier terminated by the Authority in the event that:

1. (No change.)

2. The approval by the Authority is withdrawn pursuant to [(f)] (**g**) above.

[(h)](**i**) Renewals: 120 days prior to the expiration of the approval period provided for [herein] **in this section**, the owner of a bus parking lot shall file with the Authority a written request for a one year renewal of the approval. Such written request shall contain certification by the owner that the bus parking lot complies with all the terms and conditions set forth in this subchapter governing the granting of bus parking lot approval, including any amendments to this subchapter taking effect prior to the expiration of the term of the original approval. The request for renewal shall be processed by the Authority pursuant to the provisions of N.J.A.C. 19:75-9.4. Failure to apply for renewal of a bus parking lot approval within the time period for herein shall result in the expiration of such approval at the end of one year from the date of issuance. The owner whose bus parking lot approval has expired may file a new application for approval pursuant to the provisions of (a) through [(g)] (**h**) above at any time.

[(i) The Authority is specifically empowered to consider the application of any amendment to this subchapter which will take effect prior to the expiration date of a bus parking lot approval when determining whether to grant or deny renewal thereof.]

SUBCHAPTER 7. BUS MANAGEMENT FEE

19:75-7.1 Mandatory payment of fees; proof of payment

(a) The owner/operators of any bus subject to the provisions of this chapter shall:

1. Pay a bus management fee to the Authority in the amount of [$1.00]**$2.00** for each bus which it owns or operates and which enters

a municipality within the district in which casino gambling is authorized. **This fee shall be adjusted annually by the Authority according to the percentage increase of the Consumer Price Index for the Philadelphia/New Jersey area for the preceding year, as determined by the Bureau of Labor Statistics.** Payment of the [aforesaid] **bus management** fee shall be for each such entry by any bus, **and applies to any and all buses not exempt carrying passengers to an approved activity center.**

2. Exhibit proof of such payment **by way of permit** in the [door right side window] **front windshield of the vehicle, which proof shall be visibly displayed and contain complete information to be considered valid, including the name of the company, bus number and month, day and year of entry.**

(b) Casino oriented buses that do not have a valid permit or do not purchase a valid permit are subject to a fine in accordance with N.J.A.C. 19:75-8.

19:75-7.2 Modes of payment

(a) All bus operators or owners required to pay the **bus management** fee [provided for in this subchapter] shall do so in accordance with the following:

1. Payment of [a] **the bus management** fee shall be made in advance by sending a check or money order payable to the [Atlantic County Transportation] Authority, at [Atlantic County Transportation Authority, 1625 Atlantic Avenue, Fourth Floor, Atlantic City, NJ 08401.] **South Jersey Transportation Authority, Farley Plaza Service Plaza, P.O. Box 351, Hammonton, NJ 08037.** Such advance payment including costs for postage and handling must be received no less than two weeks prior to the scheduled arrival date of any bus subject to this subchapter.

2. Payment of the fee shall be made in advance or at **all Authority-approved bus parking facilities and activity centers.** [the following locations prior to the discharge of any passengers at any activity center:

i. Albany Avenue (Two Guys) intercept lot;

ii. Missouri Avenue bus parking and intercept lot (Missouri Avenue and Baltic Avenue);

iii. Huron Avenue bus parking and intercept lot;

iv. All approved private bus parking facilities;

v. Such other locations as the Authority shall designate.]

3. The Authority, in its sole discretion, may authorize the purchase of a permit on an emergency basis at an Authority-approved activity center. The following conditions are considered emergency situations:

i. Motorbuses that operate on a limited basis traveling to Atlantic City (less than 10 trips per year);

ii. Motorbus companies that are unaware of Authority rules;

iii. Motorbuses that originate from distances to Atlantic City in excess of 300 miles;

iv. Unscheduled emergency trips to Atlantic City if the motorbus company has contacted the Authority prior to entry;

v. Motorbus drivers that encounter unusual or special circumstances and do not have a valid permit in their possession; and

vi. Motorbus drivers that have an invalid permit in their possession and need to purchase a replacement permit. The invalid permit must be turned into Authority representatives.

19:75-7.3 Proof of payment required at **Authority authorized** bus parking lots/activity centers

(No change in text.)

19:75-7.4 Activity center manifest

(a) The Authority [will] **shall** require each activity center to maintain a daily bus activity manifest, [such manifest to be completed and made available to the Authority on a weekly basis] **and participate in the Authority's computerized/electronic manifest program.**

(b) Any activity center which the Authority has determined has maintained or submitted a fraudulent manifest shall be subject to a penalty as contained herein, and/or revocation of their approval.

(c) Any activity center which fails to comply with this section may have its approval revoked by the Authority, after the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 8. VIOLATIONS AND PENALTIES

19:75-8.1 Specific offenses

(a) For any violation of the following provisions of this chapter, the violator shall be subject to minimum penalties as set forth below[:]

		[Fine]	
	[First Offense	Second Offense	Third Offense]
Traveling on unapproved routes Subchapter 2.	[$75.00	$200.00	$400.00]
Illegal bus parking Subchapter 6.	[75.00	200.00	400.00]
Non-payment of bus management fee Subchapter 7.	[75.00	200.00	400.00]
Failure to intercept when required Subchapter 3.	[75.00	200.00	400.00]
Failure to possess variance if required Subchapter 9.	[75.00	200.00	400.00]
Discharge/load passengers at non-approved location Subchapter 4.	[75.00	200.00	400.00]
Activity center exceeding capacity Subchapter 4.	[75.00	200.00	400.00]
Operating bus for driver's convenience Subchapter 5.	[75.00	200.00	400.00]
Failure to file combination bus itinerary Subchapter 1.	[75.00	200.00	400.00]
Combination bus traveling in violation of bus itinerary Subchapter 1.	[75.00	200.00	400.00]
[Failure to notify Authority of anticipated excess bus volume Subchapter 4.]	[75.00	200.00	400.00]
[Exceeding Established Bus Volume without Authority Approval Subchapter 4.]	[75.00	200.00	400.00]
Excessive Engine Idling Subchapter 5.	[75.00	200.00	400.00]

Failure to meet criteria for an approved bus parking lot, Subchapter 4.

Failure to meet criteria for an approved bus maintenance facility, Subchapter 11.

Failure to purchase a valid permit, Subchapter 7.

Failure of an activity center, bus parking lot, or bus maintenance facility to submit a manifest in accordance with the format determined by Authority, Subchapter 7.

Failure of an activity center to participate in Authority's computerized/electronic manifest program, Subchapter 7.

(b) For any violation of the above provisions of this Chapter, the violator will be subject to a minimum penalty in the amount of $150.00 for a first offense, $300.00 for a second offense, and $500.00 for a third or subsequent offense.

19:75-8.4 Prosecution of violations

Any violation of these rules and regulations shall be prosecuted in the municipal court in the municipality in which the violation occurred. All moneys collected as a result of the imposition of fines in cases prosecuted by the municipality shall be paid to the municipality. If in the judgment of the Authority, any municipality shall fail to enforce adequately the provisions of these rules and regulations, proceedings to enforce such rules and regulations in the municipality shall be prosecuted by the Authority, and moneys collected as a result of the imposition of fines shall be paid to the Authority.

SUBCHAPTER 9 VARIANCE; PROCEDURE

19:75-9.1 Variances; minor and major

(a) In particular cases and for special reasons, the Authority may grant a variance from the strict application of the provisions of this

Chapter. Such variances shall be designated as minor variances [and] **or** major variances.

1. (No change.)

2. A major variance, if granted, shall permit a permanent or long term deviation without penalty from all or any provisions of this chapter. The procedure for the application for and determination of a major variance is set forth in N.J.A.C. 19:75-[9.4]**9.3**.

19:75-9.2 Application for minor variance[; determination by Executive Director; appeal to board]

(a) (No change.)

(b) All applications for a minor variance shall be filed [with the Executive Director] **at the Operations Department** of the Authority, **25 South New York Avenue, Atlantic City, New Jersey 08401, or Farley Service Plaza, P.O. Box 351, Hammonton, New Jersey 08037,** no later than three business days prior to the date for which the variance is requested. **In approving or disapproving the application for a variance, the Authority shall consider the impact of such variance on all phases of the Bus Management Program, as contained in this chapter.**

(c) The [Executive] Director **of Operations** or **his or her** designee shall review all applications for minor variances. The application shall be approved upon a showing of special reasons and only if the variance can be granted without substantial detriment to the public good [nor] **or** substantial impairment to the intent and purpose of the provisions of this chapter.

(d) If the [Executive] Director **of Operations** or **his or her designee** shall grant any minor variance, he or she shall forthwith notify the applicant and the police department or departments affected in writing. Such notice must be in possession of the applicant and bus operator and displayed to any enforcement official upon request. Failure to possess and display the aforesaid notice of variance may result in the imposition of penalties under N.J.A.C. 19:75-8 notwithstanding the grant of a minor variance.

(e) If the [Executive] Director **of Operations or his or her designee** shall deny any minor variance, he or she shall forthwith notify the applicant in writing, setting forth the specific reasons for such denial. [, and advising the applicant that it may appear before the Board of the Authority at its next scheduled meeting and present testimony or other evidence on behalf of its application. At such board meeting, the Board of the Authority may affirm, reverse, or modify the decision of the Executive Director.]

19:75-9.3 Application for major variance

(a) An application for a major variance shall be in writing and set forth the following:

1.-3. (No change.)

4. Period for which variance is requested [if not permanent]; and

5. (No change.)

(b) All applications shall be filed in original and eight [(8)] copies with the [Board] **Director of Planning and Development of his or her designee** of the Authority, **25 South New York Avenue, Atlantic City, N.J. 08401, or Farley Service Plaza, P.O. Box 351, Hammonton, New Jersey 08037** and an additional copy with the police department of the municipality or municipalities affected by the variance. Proof of service of the application on the police department or departments so affected shall be filed with the Authority by way of affidavit or certified mail return receipt requested prior to a determination on the application.

19:75-9.4 Hearing procedure for **issues relating to the Authority's Bus Management Program,** major variances, bus parking lot **and maintenance facilities** approvals, additional activity center on-site approvals, and other hearings

(a) All applications for major variance (N.J.A.C. 19:75-[9.1(b)] **9.1(a)2** and 9.3), bus parking lot approvals (N.J.A.C. 19:75-6.2), **bus maintenance facility approvals (N.J.A.C. 19:75-11.1)** and additional site approvals (N.J.A.C. 19:75-4.3) shall be reviewed by the **Planning and** Development Division of the Authority.

1. Within [30] **45** days following receipt of application, the Authority, through the **Planning and** Development Division, shall notify the applicant in writing by certified mail regarding the completeness of the filing. The Authority may declare the application to be complete for filing or shall notify the applicant of specific deficiencies. The Authority shall, within [15] **30** days following the receipt of additional information to correct filing deficiencies, notify the applicant of the completeness of the amended filing, or shall specify the unaddressed deficiencies. An application shall not be considered duly filed until it has been declared complete by the Authority.

2. The **Planning and** Development Division of the Authority shall recommend approval or disapproval of all completed applications to the Executive Director who shall grant or deny the application within [15] **30** days of the recommendation of the **Planning and** Development Division. The determination of the Executive Director, setting forth the reasons for the grant or denial of the application, shall be forwarded [forthwith] to the applicant by certified mail, return receipt requested.

3. In the event of an adverse determination by the Executive Director, the applicant may request a hearing within 10 days of receipt of the determination, which request shall be in writing to the Executive Director sent registered mail, return receipt requested. [Such hearing shall be held within 45 days of the receipt of the request therefor and notice of the hearing shall be mailed to the applicant.]

4. The hearing shall be conducted [by a hearing officer appointed by Chairperson of the Board of the Authority. The applicant may appear in person, with or without counsel, and may present testimony or other evidence in support of the application. The Authority shall appear through the Executive Director or his designee. The New Jersey Rules of Evidence shall not apply at such hearing, but the hearing officer shall limit all evidence to that which is material and relevant to the application. The hearing shall be recorded and the tapes of each hearing shall be retained by the Authority for a period of one year following the hearing. A transcript of any hearing shall be prepared by the Authority upon written request and at the sole cost of the party requesting such transcript. The Authority may require payment in advance.

5. After the conclusion of any hearing held pursuant to this subchapter, the hearing officer shall render a written decision setting forth in detail all findings of fact and conclusions of law as shall be necessary to support the decision. The hearing officer's decision shall be filed with the applicant and the Secretary of the Board of the Authority within 30 days of the conclusion of the hearing. The applicant may file a written comment to the hearing officer's decision within 10 days of the date of such decision.

6. The Board of the Authority shall affirm, reverse or modify the hearing officer's decision no later than the second regularly scheduled Board meeting following the date of the hearing officer's decision. Failure by the Board to act within the time prescribed herein shall constitute an affirmation of the hearing officer's decision.] **in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

5. The applicant shall be notified in writing of the date, time and place of the Board meeting at which the Board shall act upon the decision of the hearing officer. [Except in the case of major variances under N.J.A.C. 19:75-9.3 the Authority shall affirm, reverse or modify the decision of the hearing officer by a vote of the majority of the Board pursuant to the By-Laws of the Authority. In the case of major variances, approval shall require an affirmative vote of five members of the Board of the Authority.]

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

SUBCHAPTER 10. EMERGENCY MANAGEMENT PROGRAM

19:75-10.1 Declaration of an emergency situation

(a) When an emergency situation is declared by a Federal, State, county, or local governmental entity or State police, and notification is made, the Authority shall initiate an emergency management plan. The Authority has identified three levels of response under which emergency management procedures would be initiated. These three levels are as follows:

1. Condition I: A basic state of preparedness when communication levels with other entities are initiated and when the need for

on-going communications exist in the anticipation of upgrading the response to Condition II.

2. Condition II: Under a declared emergency, the initial level of response (Condition I) has already been surpassed, and the Authority personnel are specifically assigned to participate in active interaction at emergency management control centers or designated locations to take specific action in response to changing conditions.

3. Condition III: This level of this action plan is the highest level of staffing and implementation of emergency procedures in response to a worsening condition up to and including evacuation. Full-time, 24 hour manning and full organizational participation is required during Condition III.

(b) In addition to actions taken by the Authority, similar response efforts are assumed to take effect by other public safety entities. Minimum extra staffing is initiated under Condition II, and Condition III requires full representation and participation, including emergent communication networking during a full state of declared emergency.

19:75-10.2 Operations during emergency situations

(a) Under emergency condititons at the Condition I level, the Authority Duty Supervisor will handle Condition I procedures and activities. The Supervisor shall interact with Authority headquarters to communicate conditions to management and to receive directions from the executive staff through the Director of Operations or his or her designee.

(b) Under Condition II situations, a second Authority Duty Supervisor is called in to be assigned to an emergency management control desk located at either the Atlantic City office or the County of Emergency Management Office in Northfield. This second Supervisor is assigned to the control desk for the duration of the emergency, or for 12 hour shifts as needed.

(c) The Authority Executive Director or his or her designee shall oversee all Authority procedures and coordinate casino patron transportation in conjunction with casino personnel.

(d) The Authority's Director of Operations or his or her designee shall execute directives from the Executive Director in consort with directives and advice from the emergency management offices.

(e) The Duty Supervisor shall initiate and receive communications with casino emergency management coordinators, private bus parking lot operators and local bus companies.

(f) The Authority Supervisors shall staff emergency management control desks as assigned and communicate with the Authority's Director of Operations or his or her designee for coordination of procedures and provision of status reports between the emergency management offices and the Authority.

19:75-10.3 Direction and control

(a) Under Condition I emergencies, the Authority shall initiate communication procedures, and notifications are made by Authority staff to all Atlantic City casino hotels and bus parking lot operators that emergency conditions exist or are anticipated.

(b) Under Condition II emergencies, the Authority personnel would initiate communiques to all casino hotels, non-casino hotels, private bus parking lots and other activity centers to inform appropriate contacts of emergency conditions and status reports, which shall be by telephone and facsimile. When Condition II is reached, the Authority shall assign a Duty Supervisor to the designated emergency management control center, and initiate up-dating reports as under Condition I above. Other public safety entities shall initiate actions and casino bus management departments should communicate pertinent information to client bus companies that operate bus equipment into Atlantic City. Casino staff at this time should have an assessment of the number of buses arriving at individual properties, and shall provide the Authority with an assessment of these numbers in order that a proper inventory of bus equipment can be made.

(c) Under a Condition III situation, the Authority shall coordinate bus equipment to central staging areas in anticipation of a dispatch for the transportation of casino patrons from Atlantic City. The Authority shall notify private bus lot operators and local bus companies to mobile motorbuses at this time. The Authority field personnel shall work in concert with the Atlantic City Police Department, and coordinate and establish the best marshalling area(s). Casino bus managers and casino emergency management offices shall participate in the coordinative assignment of buses to marshalling areas and communicate transportation requirements to the Authority Duty Supervisor desk. This dispatch of motorbuses shall be communicated by radio among the Authority field personnel and casino personnel.

SUBCHAPTER 11. BUS MAINTENANCE FACILITIES

19:75-11.1 Bus maintenance facility approval

(a) Any and all existing and proposed bus maintenance facilities not exempted under N.J.A.C. 19:75-6.2(d) shall submit an application to the Authority to participate in the Authority's bus management and maintenance program, in addition to any and all other required municipal, county, state or federal approvals. All applicants for a maintenance facility must meet the following criteria:

1. The facility must file an impact statement acceptable to the Authority, which includes air quality, emissions control, traffic circulation, neighborhood impact analysis and compliance with OSHA standards for safety and disposal of chemical, petrochemical, acids, adequate ventilation and related standards as dictated;

2. The facility must be within a driving distance of five miles of that portion of Atlantic Avenue between Maine and Albany Avenues within the corporate limits of Atlantic City;

3. The facility shall be full service and able to accommodate heavy maintenance, unit overhaul, dumping, routine service and inspection. Additionally, fuel, tires and washing capabilities shall also be available;

4. Buses shall not be parked overnight beyond the number of bus bays available to accommodate them;

5. The facility shall contain signs conforming to the standards of the municipality, county or state in which the facility is located;

6. The facility shall possess two-way radio or telephone equipment compatible with, and sufficient to participate in, the Authority's bus intercept and dispatch activities;

7. The facility shall demonstrate that it complements the Authority's bus management and maintenance program and does not adversely affect any portion of the program, as contained in this chapter.

8. The facility shall be located only along designated transportation corridors approved by the Authority;

9. The facility shall submit a monthly manifest in a format to be determined by the Authority; and

10. The facility shall submit to the Authority a detailed site plan, operating plan, and safety plan which addresses the criteria set forth in this section.

SUBCHAPTER 12. FEE SCHEDULE

19:75-12.1 Activity center

(a) A fee of $100.00 shall be paid for an activity center pre-application conference.

(b) An application fee of $400.00 shall be paid for the review of an activity center application plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals. The initial review includes the initial site capacity review, at no additional charge.

19:75-12.2 Site capacity

(a) An application fee of $75.00, plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals shall be paid for the annual renewal of the site capacity determination.

(b) An application fee of $150.00 plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals shall be paid for a request to modify or increase a site capacity determination.

(c) Any facility which accommodates overnight parking shall pay a fee to the Authority for each bus parked, based on the prevailing per day cash bus parking rate at an Authority bus parking facility.

19:75-12.3 Variances

An application fee of $250.00 shall be paid for each request for a major variance, plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals.

19:75-12.4 Bus parking lot

(a) A fee of $100.00 shall be paid for a bus parking lot pre-application conference.

(b) An application fee of $400.00, plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals, shall be paid for the review of an application for a bus parking lot.

(c) An application fee of $250.00, plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals, shall be paid for the renewal of a bus parking lot approval.

19:75-12.5 Bus maintenance facilities

(a) A fee of $100.00 shall be paid for a maintenance facility pre-application conference.

(b) An application fee of $400.00, plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals, shall be paid for the review of an application for any maintenance facility.

(c) An application fee of $250.00, plus all costs, fees and expenses incurred by the Authority for review by its staff and/or professionals, shall be paid for the renewal of a maintenance facility approval.

19:75-12.6 Bus management program

(a) All activity centers, approved bus maintenance facilities, and approved bus parking facilities not owned or operated by the Authority or under contract with the Authority, shall participate in the Authority's Bus Management Program and will be charged a fee by the Authority in accordance with (b) below for the annual cost of the Authority's operation and maintenance of the Program.

(b) The Authority estimates that the cost for this program for Fiscal Year 1993 is $1,000,000. Based on this figure and the current number of site capabilities, bus parking spaces and bus maintenance facility bays, the cost shall be allocated as follows:

1. Casinos shall pay 45 percent of this cost, or $450,000, which shall be allocated among the casinos at the rate of $2,866 per site-capacity space.

2. Non-casino activity centers shall pay 35 percent of this cost, or $350,000, which shall be allocated at the rate of $1,331 per site-capacity space.

3. Bus maintenance facilities shall pay 5 percent of this cost, or $50,000, which shall be allocated at the rate of $2,778 per bus maintenance bay.

4. Bus parking facilities not owned or operated by the Authority or under contract with the Authority shall pay 15 percent of this cost, or $150,000, which shall be allocated at the rate of $649 per bus parking space.

(c) The fee to be paid by the various activity centers and facilities in accordance with (b) above shall be paid to the Authority on a quarterly basis.

(d) The fee to be paid hereunder shall be adjusted annually by the Authority, based on the Authority's projected cost of operation of the Program. Each of the activity centers and facilities affected by this subchapter shall receive notice of any adjustment by certified mail, return receipt requested, 30 days prior to any adjustment being made.

19:75-12.7 General provisions

(a) The actual costs incurred for time spent by any professional consultants retained by the Authority for review of any application shall be allocated to each applicant in addition to the application fee set forth in this subchapter.

(b) Any application for an activity center, site capacity, variance, bus parking lot, bus maintenance facility or any other approval subject to the approval of the Authority shall be accompanied by such fee as shall be specified in this subchapter.

(c) An application shall not be deemed complete until the application fee required has been paid. Every approval granted and every certificate issued shall, whether or not expressly so conditioned, be deemed to be conditioned upon the payment of fees as required by this subchapter. The failure to fully pay any such fee, when due, shall be grounds for denying or revoking any permit, approval or certificate issued with respect to the use to which the unpaid fee pertains.

(d) Whenever a public hearing is required on an application by this chapter, the applicant shall pay the cost of such legal notices as shall be required to be given.

(e) Any single application which encompasses several uses will be subject to the several appropriate fees enumerated in this chapter.

(f) A full refund of fees shall be made by the Executive Director, provided that a written request to withdraw the application is received before the close of the second working day after receipt of the same.

(g) Upon written request from a charitable, philanthropic, fraternal or religious nonprofit organization holding a tax exempt status under the Federal Internal Revenue Code, the Executive Director shall waive the payment of fees required by N.J.A.C. 19:75-12.1 through 12.4.

SUBCHAPTER [10]**13.** SEVERABILITY

19:75-[10.1]**13.1** (No change in text.)

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Proposed Amendment: N.J.A.C. 9:11-1.4

Authorized By: Board of Directors of the Educational Opportunity Fund, Judith Cambria, Chairperson.

Authority: N.J.S.A. 18A:71-33 and P.L. 102-325 section 480(d).

Proposal Number: PRN 1993-593.

Submit comments by December 1, 1993 to:
Valerie Van Baaren, Esq.
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund (EOF) Program is open to all students from educationally and economically disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services for attending institutions of higher education in New Jersey.

The proposed amendment incorporates recent Federal changes authorized by the Higher Education Amendments of 1992 (P.L. 102-325 section 480(d)) as they relate to the definition, and thus eligibility, of applicants to claim independent student status when applying for New Jersey State Student assistance programs. The proposed amendment also maintains consistency in the definition of independent student status for both Federal and State student assistance programs, especially in light of the fact that all applicants for New Jersey State aid beginning in 1993-94 must complete the "Free Application For Federal Student Aid" which requests information in the determination of independent student status based on the new Federal definition.

The proposed amendment excludes a provision for single students under age 24 that previously allowed for self-support by demonstrating an income of at least $4,000 for the prior two years. This particular determination of independence was controversial and was thought to be abused by many applicants. However, the new definition continues to authorize financial aid administrators to use their own judgement in special circumstances.

Social Impact

The long standing policy of the EOF Board of Directors has been to maintain as much consistency as possible between the regulations and processing procedures governing New Jersey student assistance programs, particularly since the majority of EOF recipients are also eligible for Tuition Aid Grant (TAG) funding. Consistency in the definition of dependency status also promotes ease of administration, as individuals now apply for both Federal and State student assistance programs using the Free Application for Federal Student Aid.

In addition to streamlining the application process, the proposed amendment, in keeping with the Federal definition, specifically aims at tightening the eligibility criteria for independent student status. By applying the old definition, it was becoming increasingly easier over the years for students to claim their financial independence from parents thus effectively reducing the dollars available to low-income dependent students. To ascertain student status using previous definitions, past forms required applicants to respond to a complicated set of questions designed to probe total financial resources exclusive of parental support. These questions were confusing to students. By realigning the State's definition with Federal regulations, the student will now respond to a more simplified set of questions and in special circumstances, financial aid administrators are authorized to use their own judgment thus allowing for the fair treatment of those applicants who are legitimately financially independent.

Economic Impact

The Board is unable to estimate the number of EOF/TAG recipients who were treated as independent students in 1992-93 under the old definition and may revert to dependent status in 1993-94. However, recent amendments to the General Provisions for Tuition Aid Grant and Garden State Scholarship Programs at N.J.A.C. 9:7-2.6, Dependent/independent student defined (see 25 N.J.R. 1945(a) and 3464(a)) contain language that will permit an EOF student from a documented background of historical poverty as outlined in N.J.A.C. 9:11-1.5(e), Financial eligibility for undergraduate grants, to be considered an independent student.

The proposed amendment does not have a direct impact on the total number of awards or total costs associated with the program because the maximum enrollment is limited by the level of appropriations for the number of students funded by the program.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment incorporates recent changes in Federal regulations concerning the definition of an independent student for purposes of determining eligibility for student financial aid.

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

9:11-1.4 Dependent/Independent Student Defined

(a) (No change.)

(b) [Except as provided in (c) below,] **An** individual meets the requirements of this subsection if such individual:

1.-2. (No change.)

3. Is a graduate or professional student [who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year]; or

4. Is a married individual [who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year]; or

5. (No change.)

[6. Is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the two calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the two calendar years preceding the award year in which the initial award will be granted by demonstrating an annual total resource (including all sources of resources other than parents) of at least $4,000; or]

[7.]**6.** Is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances. For the purpose of receiving financial assistance under the EOF Program as an independent student due to unusual circumstances, at least one of the following criteria must be met;

i. (No change.)

[ii. The student is a recipient of either Aid to Families with Dependent Children (AFDC) or general assistance in his own name and complies with the provisions of (b)6 above except for the income requirement set forth therein;]

[iii.]**ii.** The student has been separated from his or her parents and comes from a documented background of historical poverty as set forth in N.J.A.C. 9:11-1.5, **and** is living with another relative who is providing support to the student[, and complies with the provisions of (b)6 above, except for the resource requirement set forth therein;]

[iv.]**iii.** The student's economic and personal circumstances are of such a unique or unusual nature that the denial of independent student status would create an unjust hardship upon the student. **Documentation of** [Eligibility] **eligibility** under this subparagraph is subject to the approval of the Executive Director of the Educational Opportunity Fund.

[(c) An individual may not be treated as an independent student pursuant to (b)3, 4, and 6 above if the financial aid administrator determines that such individual was treated as an independent student during the preceding award year, but was claimed as a dependent by any other individual (other than a spouse) for income tax purposes for the first calendar year of such award year.

(d) The financial aid administrator may certify an individual described in (b)3, (b)4, and (b)6 above on the basis of a demonstration made by the individual, but no disbursal of an award may be made without documentation.]

[(e)](**c**) A dependent student shall be any student who does not meet any of the eligibility criteria listed in (a) or (b) above for independent student status.

(a)

BOARD OF HIGHER EDUCATION

Rules Implementing the Higher Education Equipment Leasing Fund

Proposed New Rule: N.J.A.C. 9:17

Authorized By: Board of Higher Education,
Edward D. Goldberg, Chancellor and Secretary.
Authority: N.J.S.A. 18A:72A-3 and 5 and P.L. 1993 c.136.
Proposal Number: PRN 1993-597.

Submit written comments by December 1, 1993 to:
Valerie Van Baaren, Esq.
Administrative Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On June 5, 1993, P.L. 1993 c.136 was enacted. The law establishes a higher education equipment leasing fund in the New Jersey Educational Facilities Authority. The act authorizes the Authority to issue bonds in a total outstanding principal amount of $100,000,000 to finance the purchase of scientific, engineering, technical, computer, communications and instructional equipment for lease to New Jersey public and independent institutions of higher education.

The Educational Facilities Authority may enter into lease agreements with the institutions to finance the acquisition of the equipment by the institutions. The Board of Higher Education is required to approve all Equipment Leasing Fund purchases prior to the execution of a lease agreement between the college or university and the Authority. A brief summary of each section follows:

N.J.A.C. 9:17-1.2 consists of definitions pertinent to the rules.

N.J.A.C. 9:17-1.3 delineates the process for purchase of equipment under the Higher Education Equipment Leasing Fund and specifies the information that must be included in proposals to the Board of Higher Education.

N.J.A.C. 9:17-1.4 delineates how the principal and interest on bonds will be paid and specifies action that will be taken if an institution fails to pay the appropriate amounts due to the Authority.

N.J.A.C. 9:17-1.5 delineates the allocation of the first $200 million among the sectors and specifies how future allocations and reallocations will be determined. The section also specifies that the Chancellor will establish priority areas for the use of funds for emerging needs programs. Institutions may apply for emerging needs funds, and the Chancellor will make recommendations for funding approval to the Board of Higher Education.

N.J.A.C. 9:17-1.6 summarizes reporting requirements for the Authority and the Board of Higher Education.

Social Impact

In order to be prepared for careers in a world of rapidly changing technology, it is critically important that New Jersey students be educated using state of the art instructional equipment. The equipment leasing fund will be used to support instructional, computing or research requirements and to meet emerging technology needs. All public colleges and universities and independent institutions eligible to receive public funds under the Independent Colleges and Universities Assistance Act are eligible to purchase equipment through the Fund.

Economic Impact

Higher education plays a vital role in the economic development of the nation and of the State by providing the education and training of the workforce of the future and by advancing science and technology through research; over 300,000 students are enrolled in New Jersey colleges. New Jersey has an intense concentration of high technology industries and research facilities and the headquarters of some of the world's most productive corporations. As the State enters the last decade of the 20th century, it has become obvious that New Jersey's institutions of higher education will have to change and improve their educational equipment in order to not only prepare students to secure jobs in a "high-tech" world, but to create additional jobs as well. The Equipment Leasing Fund will provide a stable, ongoing mechanism to ensure that the need to upgrade equipment in response to technological advancements is met. The rules reflect the allocation of the authorized total outstanding principal amount of $100,000,000.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rules do not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules apply only to colleges and universities.

Full text of the proposed new rules follows:

CHAPTER 17
RULES AND PROCEDURES FOR IMPLEMENTATION OF THE HIGHER EDUCATION EQUIPMENT LEASING FUND ACT

SUBCHAPTER 1. GENERAL PROVISIONS

9:17-1.1 Purpose and authority

The following rules and procedures are established, pursuant to authority of N.J.S.A. 18A:72A-3 and N.J.S.A. 18A:72A-5, for carrying out the provisions of Chapter 136, P.L. 1993.

9:17-1.2 Definitions

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

"Authority" means the New Jersey Educational Facilities Authority or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

"Board" means State Board of Higher Education.

"Bond" means bonds or notes of the Authority.

"Chancellor" means the Chancellor of Higher Education.

"Emerging needs program" means a degree program, function or activity at one or more public or private institutions of higher education directed to meeting new and advanced technology needs or to supporting new academic programs in science and technology.

"Higher education equipment" means any property consisting of, or relating to, scientific, engineering, technical, computer, communications or instructional equipment.

"Institution" means public or private institution of higher education as defined in P.L. 1983, c.136.

9:17-1.3 Process for purchase of higher education equipment

(a) Upon approval by the institutional governing board, participating public and private institutions of higher education shall propose higher education equipment purchases to the Board of Higher Education. No institutional proposal shall be for less than 25 percent of the respective institution's total allocation pursuant to N.J.A.C. 9:17-1.5 or $1,000,000, whichever is less, unless it is for the final portion of an allocation. Proposals shall include information concerning:

1. How the proposed purchase relates to the current institutional mission and plans;

2. The program or function to be served by the equipment;

3. The useful life of the equipment;

4. The estimated cost of the equipment to be purchased;

5. The source of revenue to pay the institution's annual share of principal and interest; and

6. Other information as may be required by the Chancellor on a case-by-case basis and relating to a specific proposal.

(b) The institutions shall submit proposals in a format provided by the Chancellor.

(c) For the purposes of this section, brand names submitted in the proposal for purchase are illustrative, and may be changed as a result of the bidding processes, advances in technology or other reasons.

(d) Equipment to be purchased must be approved at a public meeting of the Board.

(e) The total dollar amount approved for any public or private institution of higher education shall not exceed the institutional allotment as approved by the Board.

(f) The Board shall forward to the Educational Facilities Authority requests for equipment purchases approved by Board resolution.

(g) The Authority shall enter into lease agreements with individual institutions for the equipment approved by the Board. Each lease agreement shall require the respective institution to pay to the Authority 25 percent of the principal and interest on the bonds or notes to be issued to finance the equipment purchase for the respective institution.

(h) The Authority, with the written consent of the State Treasurer, shall issue bonds or notes to finance the equipment purchases with terms not to exceed the useful life of the equipment to be purchased and in no instance exceeding 10 years.

(i) Proceeds from the sale of bonds and notes shall cover the cost of issuance and administrative costs.

(j) Institutions shall purchase the equipment, however, the Authority shall hold the title until the bonds or notes issued to finance the purchase have been repaid. At that time title shall be transferred to the institutions.

9:13-1.3 Payment of principal and interest

(a) The State Treasurer shall contract with the Authority to pay to the Authority the amount necessary to pay the principal and interest on all bonds and notes issued pursuant to P.L. 1993, c.136.

(b) The respective institutions shall pay the Authority 25 percent of such principal and interest in accordance with each lease agreement.

(c) Upon receipt, the Authority shall remit, as necessary, all institutional payments immediately to the State Treasurer.

(d) If an institution fails or is unable to pay to the Authority in full, when due, any obligation of the institution to the Authority, an amount sufficient to satisfy the deficiency shall be retained by the State Treasurer from State aid or an appropriation payable to the institution. As used in this section, "obligation of the institution" means any amount payable by the institution for equipment leasing pursuant to a lease agreement with the Authority. The Authority shall notify the State Treasurer of the amount to be retained to satisfy the obligation. A copy of such notification shall be submitted to the Chancellor.

9:13-1.4 Allocation of funds

(a) The monies deposited into the fund created pursuant to section 5 of P.L.1993, c.136 shall be allocated in the following manner:

1. $24,000,000 for the leasing of higher education equipment at the State colleges;

2. $19,440,000 for the leasing of higher education equipment at Rutgers, the State University;

3. $10,080,000 for the leasing of higher education equipment at the University of Medicine and Dentistry of New Jersey;

4. $6,480,000 for the leasing of higher education equipment at the New Jersey Institute of Technology;

5. $22,000,000 for the leasing of higher education equipment at the county colleges;

6. $10,500,000 for the leasing of higher education equipment at private institutions of higher education; and

7. $7,500,000 for the leasing of higher education equipment for emerging needs programs at public and private institutions of higher education.

(b) The Board shall, by resolution, allocate funds to individual State colleges, county colleges, and private institutions of higher education within the sector allocations above.

(c) The Board may reallocate to any institution or to the "emerging needs program" any balance in the amounts authorized if the amounts are not committed within 18 months of the effective date of P.L. 1993, c.136 (June 5, 1993) or within 18 months of subsequent allocations by the Board. Funds will be considered committed when under contract with the Authority.

(d) No reallocation shall be made pursuant to (c) above if:

1. The request for approval has been received by the Board within 15 months of the effective date of P.L. 1993, c.136 or within 18 months of subsequent allocations by the Board;

2. The facility in which the equipment will be housed is under construction or renovation;

3. Delays are the result of Federal, State, or local governmental approvals or regulatory requirements; or

4. Other compelling and documentable reasons exist.

(e) An institution's inability to secure the necessary funds to pay the 25 percent principal and interest payments shall not constitute good cause for not committing funds as required in (c) above.

(f) The Chancellor shall contact all institutions to which funds have been allocated 15 months following such allocation to determine what, if any, funds will become available for reallocation at 18 months.

(g) The Board shall determine the allocation of monies available from the authorization of new bonds by the Treasurer as a result of the retirement of bonds previously issued by the Authority for this program.

(h) The Chancellor shall periodically establish and notify institutions of priority areas for the use of funds for emerging needs programs to meet new and advanced technology needs or support new academic programs in science and technology. Institutions may submit an application for funds for a program within the priority areas. The Chancellor shall review applications on a case by case basis and make recommendations for Board approval to fund emerging needs programs.

9:13-1.5 Reporting requirements

(a) Annually, the Authority shall report to the Board which shall report to the Legislature and the Governor regarding the equipment purchases that have been financed through P.L. 1993, c.136.

TREASURY-GENERAL

(a)

DIVISION OF PURCHASE AND PROPERTY
COMMERCE AND ECONOMIC DEVELOPMENT

Division of Development for Small Business, and Women and Minority Business

Goods and Services Contracts for Small Businesses, Minority Businesses and Female Businesses

Proposed Amendments and New Rules: N.J.A.C. 12A:10-1 and 17:13

Authorized By: Barbara McConnell, Commissioner, Department of Commerce and Economic Development, and Samuel Crane, State Treasurer.

Authority: N.J.S.A. 52:18A-30(d), 52:25, 52:34-6 et seq., 52:32-17 et seq., 52:27H-6(f), 52:34-12, 10:5-36(k) and (o), 52:34-13, Executive Order No. 84(1993).

Proposal Number: PRN 1993-594.

Submit comments by December 1, 1993 jointly to:

Charles Jones, Director
Division of Development for Small Business, and Women and Minority Business
Department of Commerce and Economic Development
CN 835
Trenton, New Jersey 08625-0835

and

Lana Sims, Director
Division of Purchase and Property
Department of the Treasury
CN 230
Trenton, New Jersey 08625-0230

The agency proposal follows:

Summary

The purpose of the proposed amendments and new rules is to reflect the provisions for a minority business and female business set-aside program pursuant to Executive Order No. 84 (March 5, 1993) and N.J.S.A. 52:32-17 et seq. The identical and jointly promulgated rules of the Treasury Department and the Department of Commerce and Economic Development are effected by this rulemaking and they are currently found at N.J.A.C. 17:13 and N.J.A.C. 12A:10-1 respectively. Apart from the below described amendments and new rules, this proposal includes a recodification of N.J.A.C. 12A:10-1 to a new chapter N.J.A.C. 12A:10. These rules will apply to every agency and department of the State of New Jersey that is authorized to award goods and services contracts. These rules will require that each State contracting agency make a good faith effort to award at least 15 percent of its contracts and/or subcontracts to small businesses, at least seven percent of its contracts and/or subcontracts to eligible minority-owned businesses and at least three percent of its contracts and/or subcontracts to eligible female-owned businesses. These proposed rules also set forth the Department of Commerce and Economic Development's requirements and refined procedures for small, minority and female businesses to establish eligibility to compete for State contracting and subcontracting opportunities, including compulsory application for formal certification as a minority or female business within 60 calendar days following award of a State contract or subcontract.

In addition to the textual changes intended to clarify the set-aside program requirements and procedures, these proposed amendments delete the terms and concepts pertaining to "urban development enterprise" and "micro business" and contain a modified definition of a "minority business"; the term now restricts set-aside eligibility to only those minority groups for which documentation of discrimination has been recorded (African-Americans, Latinos or Asian Americans) as contained in the findings of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts. Further, these amended rules provide for more definitive set-aside program planning and reporting by the State contracting agencies.

Summarily and as presented, these proposed rules establish the purpose and scope of the rules and then describe the eligibility standards for small, minority and female businesses; the registration and approval procedures for small, minority and female businesses; the procedures for challenging a registered business; the procedures for the award of contracts, and portions of contracts, to fulfill the set-aside goal requirements; the requirements of bidders to perform and document special efforts to subcontract with small, minority and female businesses; the special circumstances under which a particular contract may be exempted from adherence to these rules; and the reporting requirements by which attainment of the goals can be measured and reviewed.

Social Impact

The amendments and new rules proposed are based on the compelling evidence of discrimination against the types of businesses eligible for set-aside contracts as presented in the Final Report of the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts issued on February 22, 1993 and Executive Order No. 84 (March 5, 1993) which established a narrowly tailored, remedial set-aside program to address the documented discrimination.

This program is intended to eradicate a pattern of prior discrimination. These rules are expected to have a positive social impact on the affected businesses and on the State as a whole.

Economic Impact

The rules affected by this proposal are expected to contribute to the long term economic growth of the State and to the health and vitality of the small business, minority business and female business communities which have historically been underutilized in the public and private sectors. The growth potential of the businesses taking part in the set-aside program should be enhanced and thereby create job opportunities and generate additional tax revenue.

Regulatory Flexibility Analysis

The proposed amendments and new rules establish additional paperwork requirements for firms bidding on State contracts, many of which are considered small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. For specified contracts, bidders will be required to submit a minimum of two additional forms listing small, minority and female companies being proposed as subcontractors. Those firms failing to meet the goals or targets will be required to document their outreach efforts detailing their solicitation of price quotes from small, minority and female subcontractors and/or suppliers. Small, minority and female businesses seeking to establish eligibility for participation in the set-aside program will be required to complete a simple registration form initially. However, all minority and female businesses must be certified in accordance with N.J.A.C. 12A:11 by January 1, 1995, in order to receive consideration after that date or must file all paper necessary to receive certification within 60 calendar days following the award of a contract or subcontract under these rules, whichever comes first.

It is anticipated that the additional time and cost of the paperwork required by non-set-aside bidders will be minimal and that the public benefits of this program will outweigh the cost. The time and cost associated with the certification process may be somewhat more than minimal for some minority and female businesses; however, the need to ensure that only those businesses owned by groups for which a factual finding of discrimination has been documented benefit from the set-aside program outweighs those costs. Therefore, no differing standards based on business size are offered.

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

CHAPTER 10
[SMALL BUSINESSES]
CHAPTER 13
[SUBCHAPTER 1.] GOODS AND SERVICES CONTRACTS FOR SMALL BUSINESSES, [URBAN DEVELOPMENT ENTERPRISES AND MICRO] **MINORITY BUSINESSES AND FEMALE BUSINESSES**

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

17:13-1.1 (12A:10-1.1) [Applicability] **Purpose** and scope

(a) The rules in this chapter are jointly promulgated by the Department of Commerce[, Energy] and Economic Development (hereinafter, "Department of Commerce") and the Department of **the** Treasury to implement [the Small Business Set-Aside Act, P.L. 1983, c.482, as amended and renamed the Set-Aside Act for Small Businesses, Female Businesses and Minority Businesses, P.L. 1985, c.384,] N.J.S.A. 52:32-17 et seq.**, and Executive Order No. 84, dated March 5, 1993, to** [These rules] establish **a set-aside program that requires State agencies with contracting authority to make a good faith effort to award** [goals of] 15 percent of State contracts [for] **to eligible** small [business] **businesses**, seven percent of State contracts [for urban development enterprise] **to eligible minority businesses** and three percent of State contracts [for micro business] **to eligible female businesses**[, exclusive of those contracts governed by N.J.S.A. 17:14-1 et seq.].

(b) These rules [require the Department of Commerce to establish and implement standards and procedures for registering vendors as small business, urban development enterprise and micro business. These rules require the Department of Treasury to establish contracting and purchasing procedures for implementing the goals of these rules] **apply only to State contracts for goods and services awarded by any State contracting agency and are not applicable to the award of State contracts for construction and construction related services.**

[(c) These rules are divided into two major parts. The first part, N.J.A.C. 17:13-1.3 (12A:10-1.3) to N.J.A.C. 17:13-1.8 (12A:10-1.8), describes the procedures for businesses to qualify under these rules and the penalties for filing false information under these rules. The second part, N.J.A.C. 17:13-1.9 (12A:10-1.9) to N.J.A.C. 17:13-1.16 (12A:10-1.16), describe the procedures for State agencies to implement these rules.]

[(d)]**(c)** Applications and questions regarding eligibility as a small business, [urban development enterprise and/or micro] **minority business and/or female** business should be addressed to:

[Division of Development for Small Businesses and Women and Minority Businesses]
Department of Commerce[, Energy] and Economic Development
Set-Aside and Certification Office
20 West State Street
CN 835
Trenton, New Jersey 08625**-0835**

Questions concerning the award of contracts under these rules should be directed to[:

Department of the Treasury
General Services Administration
Division of Purchase and Property
Attention: Purchase Bureau
135 W. Hanover St.
CN 230
Trenton, New Jersey 08625]

the State contracting agency issuing the particular contract.

[(e) These rules apply to every State agency with purchasing authority or contracting authority. The rules in this chapter apply to all contracts for the purchase of goods and services which are awarded by the State's various contracting agencies. The State contracting agencies whose purchases are governed by these rules include the following except where expressly inconsistent with statutory law:

1. DEPARTMENTS:
Agriculture
Banking
Personnel
Commerce, Energy and Economic Development
Community Affairs
Corrections
Education
Environmental Protection
Health
Higher Education
Human Services
Insurance
Labor
Law and Public Safety

Military and Veterans Affairs
Public Advocate
State
Transportation
Treasury
2. COLLEGES:
Glassboro State College
Jersey City State College
Kean College of New Jersey
Montclair State College
New Jersey Institute of Technology
Ramapo College of New Jersey
Richard Stockton State College
Rutgers, The State University
Trenton State College
Thomas A. Edison College
University of Medicine and Dentistry of New Jersey
William Paterson College of New Jersey
3. AUTHORITIES:
Board of Public Utilities
Casino Redevelopment Authority
Development Authority for Small Businesses, Minorities and Women's Enterprises
Expressway Authority
Health Care Facilities Financing Authority
Highway Authority
N.J. Economic Development Authority
N.J. Educational Facilities Authority
N.J. Health Care Facilities Financing Authority
N.J. Housing & Mortgage Finance Agency
N.J. Transit Corp.
N.J. Water Supply Authority
Public Broadcasting Authority
Sports and Exposition Authority
Turnpike Authority
Urban Development Corporation
4. COMMISSIONS
Beach Erosion Commission
Casino Control Commission
County and Municipal Government Study Commission
Election Law Enforcement Commission
Executive Commission on Ethical Standards
Hackensack Meadowlands Development Commission
N.J. Commission on Capital Budgeting & Planning
N.J. Racing Commission
North Jersey Water Supply Commission
Passaic Valley Sewer Commission
Pinelands Commission
State Commission of Investigation
Commission on Science and Technology
and all other departments, colleges, authorities and commissions as may be established in the future.]

17:13-1.2 (12A:10-1.2) Definitions

(a) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Bid threshold amount" means the dollar limit placed on all public contracting agencies pursuant to N.J.S.A. 52:34-7 to establish when public advertisement of bids is required.

"Certification" means the process whereby a minority-owned business or female-owned business is authenticated for participation in State programs requiring such certification, as judged and determined by the Set-Aside and Certification Office of the Department of Commerce and Economic Development.

"Commissioner" means the Commissioner of the Department of Commerce and Economic Development or his or her designee.

["Contracting agency" means any board, commission, committee, authority or agency of the State which possesses the legal authority to award and make contracts.]

"Contractor" means any party providing goods and/or services or performing or offering to perform under a contract issued by a State contracting agency.

"Cooperative purchasing" means an [award made] **extension of certain State contracts awarded** by the Division of Purchase and Property for the use of either local governing authorities, pursuant to N.J.S.A. 52:25-16.1 et seq., volunteer fire departments, volunteer first aid squads and rescue squads, pursuant to N.J.S.A. 52:25-16.2, county colleges, pursuant to N.J.S.A. 18A:64A-25.9(b), State colleges, pursuant to N.J.S.A. 18A:64-60, or quasi-State agencies, pursuant to N.J.S.A. 52:27B-56.1. Such an award is made as an adjunct to an award of a contract for State agency purchases.

"Delegated [Purchase] **Purchasing** Authority" means the authority of a State agency to award contracts [on its own] **below the bid threshold amount** pursuant to authority delegated by the Director, Division of Purchase and Property. (See N.J.S.A. 52:25-23.)

"Direct purchasing" means the issuance of a purchase order by a State agency for a specific [item of goods] **product** or service, for which a **term** contract [either] has already been awarded**.** [or is simultaneously being awarded. The term generally applied when a State agency issues a purchase order for goods or services available under either a contract awarded by the State agency pursuant to its own statutory contracting authority, a term contract awarded by the Division of Purchase and Property, or a line-item contract awarded by the State agency pursuant to purchasing authority delegated from the Division of Purchase and Property. (For line-item contracts awarded by the Division of Purchase and Property, a purchase order is issued by the Division of Purchase and Property.)]

"Division of Purchase and Property" means the State agency within the Department of **the** Treasury which provides [a] centralized purchasing [service] **of goods and services** for other State [agencies] **departments**, pursuant to N.J.S.A. 52:27B-56.

"Female business" means a business which has its principal place of business located in the State, is independently owned and operated and at least 51 percent is owned and controlled by women.

"Line-item contract" means an award in which a specific one-time purchase of goods or services is established.

"Minority business" means a business which has its principal place of business located in the State, is independently owned and operated and at least 51 percent of which is owned and controlled by persons who are African Americans, Latinos or Asian Americans, defined as follows:

1. African American: a person having origins in any of the black racial groups of Africa.

2. Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, Caribbean Island or other Spanish culture or origin, regardless of race.

3. Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asian, and Indian subcontinent, Hawaii or the Pacific Islands.

"Multi-source contract" means a term contract awarded by the Division of Purchase and Property [or other contracting agency] wherein more than one vendor is awarded a contract. The term is applicable in two situations, when defined in conjunction with the Division of Purchase and Property (see N.J.S.A. 52:34-12.1):

1. Where the volume of business is so large or the geographical distances are so great that more than one vendor is necessary to serve the State's needs; or

2. Where the differences between [various vendors'] **manufacturers'** versions of a product are so significant that it is [useful] **necessary** to have a contract with a vendor of each product.

["Purchase order" means the document which:

1. Implements the purchase of a specific item authorized by a line-item contract award, issued by the Division of Purchase and Property, and the using agency; or

2. Implements the purchase of items authorized by a term contract award, issued by the using agency only. (Purchases are made by the Division of Purchase and Property, for the using agency, or by the using agency, under delegated authority.)]

"Registration" means the process by which any business can have its eligibility for participation in small, minority and female set-aside contracts determined.

"Request for Proposals" or "RFP" means the document issued by [the Purchase Bureau of the Division of Purchase and Property or any other] **a State** contracting agency [which forms the basis of] **to initiate** an advertising bidding and **contract** award process [conducted by the contracting agency]. The RFP [defines] **establishes** the contract's basic terms and conditions, the **product and/or service** specifications, and [other] **the bidding** requirements[, such as] **which may include** a set-aside [requirement (restricting the] **provision that restricts** bidding **eligibility** to businesses qualified as small business, [urban development enterprise or micro] **minority business or female** business[)]. [RFP's are usually of two types, those for term contracts and those for line-item contracts.]

"Set-aside contract" means a contract**, or a portion of a contract when that portion is so allocated,** specifically designated by a contracting agency as exclusively being available for award to either a small business, [urban development enterprise and/or micro] **minority business or female** business.

"Small business" means a business which has its principal place of business in the State, is independently owned and operated, and has no more than 100 full-time employees.

"State contracting agency" means any board, commission, committee, authority or agency of the State which possesses the legal authority to award contracts for goods and services which include the following entities except where expressly inconsistent with statutory law:

1. DEPARTMENTS:

Agriculture
Banking
Commerce and Economic Development
Community Affairs
Corrections
Education
Environmental Protection and Energy
Health
Higher Education
Human Services
Insurance
Labor
Law and Public Safety
Military and Veterans' Affairs
Personnel
Public Advocate
State
Transportation
Treasury

2. COLLEGES:

Jersey City State College
Kean College of New Jersey
Montclair State College
New Jersey Institute of Technology
Ramapo College of New Jersey
Richard Stockton State College
Rowan College of New Jersey
Rutgers, The State University
Trenton State College
Thomas A. Edison College
University of Medicine and Dentistry of New Jersey
William Paterson College of New Jersey

3. AUTHORITIES:

Board of Regulatory Commissioners
Casino Reinvestment Development Authority
Development Authority for Small Businesses, Minorities and Women's Enterprises
N.J. Building Authority
N.J. Economic Development Authority
N.J. Educational Facilities Authority
N.J. Health Care Facilities Financing Authority
N.J. Highway Authority
N.J. Housing and Mortgage Finance Agency
N.J. Sports and Exposition Authority
N.J. Transit Corporation
N.J. Turnpike Authority
N.J. Water Supply Authority
Public Broadcasting Authority
South Jersey Transportation Authority
Urban Development Corporation

4. COMMISSIONS

Beach Erosion Commission
Casino Control Commission
County and Municipal Government Study Commission
Election Law Enforcement Commission
Executive Commission on Ethical Standards
Hackensack Meadowlands Development Commission
N.J. Commission on Capital Budgeting and Planning
N.J. Commission on Science and Technology
N.J. Racing Commission
North Jersey Water Supply Commission
Passaic Valley Sewer Commission
Pinelands Commission
State Commission of Investigation

5. All other departments, colleges, authorities and commissions that are established or may be established in the future.

"Subcontractor" means a third party that is engaged by a contractor to provide all or part of the goods and/or services included in a contract with the State.

"Term contract" means an award made by a **State** contracting agency in which a source of supply for a product **or service** is established for a specific period of time. A term contract is generally applied when a State **contracting** agency:

1. Establishes a fixed[,] unit price or discount for items to be purchased thereunder;

2.-3. (No change.)

"Treasurer" means the Treasurer of the State of New Jersey or his or her designee.

"Using Agency" means the State agency for which a contract or a purchase of goods or services is being made.

"Waiver" means an award process authorized by N.J.S.A. 52:34-9 and 52:34-10, which does not require public advertisement and which is [approved] **subject to approval** by the State Treasurer. Whenever possible, competition is sought prior to issuance of a waiver of advertising.

SUBCHAPTER 2. SET-ASIDE ELIGIBILITY REQUIREMENTS FOR SMALL BUSINESSES, MINORITY BUSINESSES AND FEMALE BUSINESSES

17:13-[1.3]**2.1**(12A:10-[1.3]**2.1**) Standards of eligibility for small businesses, [urban development enterprises and micro] **minority businesses and female** businesses

(a) A business may be eligible as a small business, [an urban development enterprise, a micro] **a minority business, a female** business or a **portion or** combination of the three.

(b) In order to be eligible as a small business, a business must [be independently owned and operated.] **satisfy all of the following criteria:**

1. [For purposes of these rules, a] **The** business [shall] **must** be [deemed to be] independently owned and operated [if]**, as evidenced by** its management [is] **being** responsible for both its daily and long term operation, and [if] its management [owns] **owning** at least 51 percent interest in the business.

[(c)]**2.** [In order to be eligible as a small business, a] **The** business must **be incorporated or registered to do business in the State and** have its principal place of business in New Jersey[.]**, defined as such**

[1. For purposes of these rules, a business shall be deemed to have its principal place of business in New Jersey:

i. When it has been either incorporated or registered to do business in New Jersey; and]

[ii. When] **when** either 51 percent or more of its employees work in New Jersey, as evidenced by the payment of New Jersey unemployment taxes, or 51 percent or more of its business activities take place in New Jersey, as evidenced by its payment of income or business taxes.

[(d)]**3.** [In order to be eligible as a small business, a] **The** business must be a sole proprietorship, partnership or corporation with 100 or fewer employees in full-time positions[.], **not including:**

[1. In determining its number of full-time employees, a business shall not include:]

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods and services which are the subject of the specific contract the business wants to be eligible as a small business.

[(e) In order to be eligible as an urban development enterprise (UDE), a business must be independently owned and operated.

1. For purposes of these rules, a business shall be deemed to be independently owned and operated if its management is responsible for both its daily and long term operation, and if its management owns at least 51 percent interest in the business.

(f) In order to be eligible as a urban development enterprise, a business must have its principal place of business in a municipality designated as being qualified under the New Jersey Urban Development Corporation Act pursuant to N.J.S.A. 55:19-3(f).

1. For purposes of these rules, a business shall be deemed to have its principal place of business in a municipality designated as being qualified under the New Jersey Urban Development Corporation Act:

i. When its incorporation or registration papers or latest New Jersey State Income Tax Form indicates a postal zip code assigned to a UDC qualified municipality; and

ii. When either 51 percent or more of its employees work in a UDC qualified municipality as evidenced by the payment of unemployment taxes, or 51 percent or more of its business activities take place in a UDC qualified municipality as evidenced by its payment of business taxes.

(g) In order to be eligible as a urban development enterprise, a business must be a sole proprietorship, partnership or corporation with 50 or fewer employees in full-time positions.

1. In determining its number of full-time employees, a business shall not include:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods or services which are the subject of the specific contract the business wants to be eligible as an urban development enterprise.

(h) In order to be eligible as a micro business, a business must be independently owned and operated.

1. For purposes of these rules, a business shall be deemed to be independently owned and operated if its management is responsible for both its daily and long term operation, and if its management owns at least 51 percent interest in the business.

(i) In order to be eligible as a micro business, a business must be a sole proprietorship, partnership or corporation with 20 or fewer employees in full-time positions.

1. In determining its number of full-time employees, a business shall not include:

i. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry; and

ii. Consultants employed under other contracts not related to the goods or services which are the subject of the specific contract the business wants to be eligible as a micro business.]

(c) In order to be eligible as a minority or female business, a business must satisfy all of the following criteria:

1. The principal place of business must be in the State; and

2. At least 51 percent of the ownership of the business must be by minority or female persons; and

3. Control over the daily and long-term operations of the business must be exercised by one or more of the minority or female owners.

(d) Eligibility is formalized by the Department of Commerce's certification and/or registration and approval processes.

17:13-2.2 (12A:10-2.2) Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible small business, minority business or female business on the basis of false information knowingly supplied by the business and the business has been awarded a State contract or a subcontract thereto, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, may:

1. Assess the business any difference between the contract amount and what the State's cost would have been if the contract had not been awarded in accordance with the provisions of N.J.S.A. 52:32-17 et seq.;

2. In addition, assess the business a penalty in the amount of not more than 10 percent of the amount of the contract or subcontract involved;

3. Order the business ineligible to transact any business with a State contracting agency for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a small business, minority business and/or female business shall immediately apprise the Department of any circumstances which might affect the eligibility of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any vendors list under these rules and may subject the business to adverse action by contracting agencies and/or the Attorney General.

SUBCHAPTER 3. CERTIFICATION AND REGISTRATION

17:13-[1.4]**3.1** (12A:10-[1.4]**3.1**) [Registration] **Certification and registration** procedures for small businesses, [urban development enterprises and micro] **minority businesses and female** businesses

(a) Certification procedures established by the Department of Commerce are as set forth in N.J.A.C. 12A:11. Businesses awarded contracts or subcontracts based on their eligibility as registered minority or female businesses must file an application for certification with the Department of Commerce no later than 60 calendar days after the award of the contract, or by January 1, 1995, the date established by the Department of Commerce when certification will be required for all minority and female businesses seeking set-aside contracts or subcontracts, whichever date comes first. In accordance with N.J.S.A. 52:27H-21.18, small businesses are not required to be certified.

(b) Registration procedures established by the Department of Commerce are as follows:

[(a)]**1.** Any business which seeks to register [under these rules] as a small business, [urban development enterprise and/or micro] **minority business and/or female** business must apply to the Department of Commerce **and pay any applicable fees**. For these purposes, the Department of Commerce shall prepare a Vendor Registration Form. This form shall be available from the Department of Commerce[, the Division of Purchase and Property] and the [State's other] **State** contracting agencies.

[(b)]**2.** As part of its application to the Department of Commerce, a business shall reasonably document its principal place of business and independent status, and, as appropriate, the number of its employees. Where available, this documentation should include appropriate forms or reports otherwise submitted to or issued by State and Federal agencies, such as employee or affirmative action reports filed with the New Jersey Department of Labor or certificates of incorporation issued by the New Jersey Department of State.

[1.]**i.** If an applicant fails to complete fully the Vendor Registration Form, [or to document its application, the application] **registration** may be delayed or [rejected] **denied.**

[2.]**ii.** If an applicant knowingly supplies incomplete or inaccurate information, the applicant shall be disqualified under these rules and may be subject to other penalties described in N.J.A.C. [17:13-1.8 (12A:10-1.8)] **17:13-2.2 (12A:10-2.2).**

[(c) In order to be registered under these rules, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency for whose contracts the business intends to bid.]

[17:13-1.5 (12A:10-1.5) Acceptance as a small business, urban development enterprise or micro business

(a) When a business is accepted as a small business, urban development enterprise and/or micro business, that business may bid on RFPs which are specifically set aside under these rules.]

[(b)]**3.** When [a business is accepted] **an application for registration as a small, minority or female business is approved** by the Department of Commerce [as a small business, urban development enterprise or micro business], the **Department will issue the newly registered** business [will be added by the Department of Commerce onto the set-aside vendors lists] **an approval notice and add it to the Department's small, minority or female vendor lists.** [These lists shall be used in determining whether the contracting agencies have fulfilled their contracting goals under these rules and shall be used by contracting agencies in soliciting bids or contracts set aside for small business, urban development enterprise and/or micro business and other purchasing and contracting situations. (See N.J.A.C. 17:13-1.9 (12A:10-1.9) and 17:13-1.12 (12A:10-1.12).) There will be no limits to the number of businesses on the various Small Business, Urban Development Enterprise and Micro Business bidders list. Each eligible applicant will be placed on that list or those lists for which it is qualified.]

4. State contracting agencies will utilize these lists in confirming eligibility for set-aside contracts and subcontracts and in reporting progress toward established goals.

17:13-[1.6]**3.2** (12A:10-[1.6]**3.2**) Time for application to register as a small business, [urban development enterprise or micro] **minority business or female** business

(a) A business may apply to the Department of Commerce at any time to be registered [under these rules] as a small business, [urban development enterprise or micro] **minority business or female** business and to be placed on **the** appropriate [set-aside vendors lists] **vendor list.**

(b) [Where a contract has been specifically set aside under these rules for small business, urban development enterprise and/or micro business, a business may apply to the Department of Commerce for purposes of registration as a set-aside business so as to bid on that specific contract no later than the bid opening date for that contract, and shall include the name of the contracting agency, the RFP number and the bid opening date along with its application to the Department of Commerce.] **If a business is to be considered as a small, minority or female contractor or subcontractor on a specific contract for the purposes of these rules, it must apply to the Department of Commerce for purposes of registration no later than one day prior to the deadline for bids being received and opened by the State contracting agency.**

17:13-[1.7]**3.3** (12A:10-[1.7]**3.3**) Procedures for challenging a business registered as a small business, [urban development enterprise or micro] **minority business or female** business

(a) The qualification under these rules of a business on a [bidders] **vendors** list as a small business, [urban development enterprise or micro] **minority business or female** business may be challenged by any other business on [the] **that** State [bidders] **vendors** list or [any advisory council or] **by** any of the State [departments or agencies covered under] **contracting agencies subject to** these rules. [The qualification of a business to bid on a contract set aside for small business, urban development enterprise and/or micro business may be challenged by any other bidder for the contract on the State bidders list.]

1. A registration challenge shall be made in writing [and received by] **to the Set-Aside and Certification Office of** the Department of Commerce [within 10 days of bid opening with copies simultaneously delivered], **setting forth the factual basis for the challenge. The Department shall provide a copy of the challenge and a notice granting the opportunity for a hearing** to the challenged business [and to the appropriate contracting agency when a specific contract is at issue]. **Where a particular contract is at issue, the Department shall also provide a copy of the challenge to the contracting agency.**

2. A registration challenge to the Department of Commerce may concern only the qualification of a business under these rules as a small business, [urban development enterprise or micro] **minority business or female** business. Any challenge to a business's qualifications to perform a contract shall be referred to the appropriate **State** contracting agency.

[3. The written challenge shall be accompanied and supported by documentation in support of its charges.

(b) In the case of a challenge to a bidder on a set-aside contract, except when the contracting agency requests the immediate implementation of an award, the State contracting agency making the award shall withhold the final award of the set-aside contract for 10 days from the date of receipt of the challenge, so that the Department may conduct a hearing if warranted.

1. In the event that a proposed awardee on a set-aside contract is disqualified under these rules by the Department of Commerce, the contracting agency shall proceed to award the contract as otherwise authorized by these rules and by its own enabling laws.

2. In the event that a proposed awardee is not disqualified by the Department within 10 days of the date of the challenge, the contracting agency may proceed with the proposed award.

3. The right to challenge a bidder's registration under these rules is in addition to any protest hearing rights which are afforded by a contracting agency, such as those provided by the Division of Purchase and Property in N.J.A.C. 17:12-3.]

[(c)]**(b)** When the Department of Commerce receives a challenge, upon request of the business whose [designation] **registration** is at issue, the Department shall conduct a hearing on the matter as follows:

1.-2. (No change.)

3. The hearing will be conducted by the designee of the Commissioner **of the Department of Commerce.** This designee will issue a written report to the Commissioner [of the Department of Commerce] within four working days [of] **following** the close of the hearing.

4. [Where time permits] **At the discretion of the Commissioner's designee,** participants at the hearing [will] **may** be permitted to file written exceptions to the hearing officer's report no later than two working days from the issuance of the report.

5. Thereafter, the Commissioner shall issue a final decision on the challenge and notify the parties by certified letter.

6. A challenge to a business's eligibility shall not stay the contract award process.

[17:13-1.8 (12A:10-1.8) Obligation to provide information and penalties for failure to provide complete and accurate information

(a) Applicants under these rules shall accurately and honestly supply all information required by the Department of Commerce.

(b) When a business has been approved as an eligible small business, urban development enterprise or micro business on the basis of false information knowingly supplied by the business and the business has been awarded a set-aside contract, the Commissioner of the Department of Commerce, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, may:

1. Require the business to pay to the State any difference between the contract amount and what the State's cost would have been if the contract had not been awarded as a set-aside contract;

2. Assess the business a penalty in an amount of not more than 10 percent of the amount of the contract involved; and

3. Order the business ineligible to transact any business with the State for a period of not less than three months and not more than 24 months.

(c) Any business approved by the Department of Commerce as a small business, urban development enterprise and/or micro business shall immediately apprise the Department of any circumstances which might disqualify the participation of the business under these rules.

(d) The failure of a business to report any such changed circumstances, or the intentional reporting of false information, shall disqualify the business for inclusion on any bidders list under these rules and may subject the business to adverse action by the contracting agency. (See N.J.A.C. 17:12-6.2 (12A:10-1.2) and N.J.A.C. 17:12-6.5 (12A:10-1.5).)

17:13-1.9 (12A:10-1.9) Purchase goals

(a) These rules establish goals for contracting agencies of awarding 15 percent of their contracts to small business, seven percent of their contracts to urban development enterprise and three percent of their contracts to micro business.

(b) In determining compliance with the goals, an agency may consider only businesses duly approved by the Department of Commerce as small business, urban development enterprise and micro business.

(c) In determining compliance with the goals, the Division of Purchase and Property, and any other contracting agency whose primary function is to award contracts for use by other agencies, may consider the total number of contracts it has awarded and the number it has awarded to small business, urban development enterprise and micro business. For those purposes, it may count the number of awards made under term contracts, in addition to the number of line-item contracts it has awarded, notwithstanding the dollar amounts of the contracts, and the number of purchase orders issued by using agencies under the contracts.

(d) In determining compliance with the goals, other contracting agencies, using agencies issuing purchase orders under contracts otherwise awarded and agencies awarding contracts under delegated purchasing authority shall consider separately the number and the dollar amount of purchase orders issued. In setting goals, the agency shall compute the total number of purchase orders issued and the total dollar amount expended by the agency through purchase orders. The agency shall attempt both to issue the appropriate percentage of purchase orders to businesses approved under these rules and to spend an appropriate percentage of money on these purchases.

(e) In determining the purchase goals, an agency shall not include any contract or purchase for which the application of the set-aside preferences, in-state preferences or other procedures established by these rules would jeopardize the State's participation in a program from which the State receives Federal funds or other benefits.

(f) Where an agency is otherwise unable to fulfill the goals under these regulations, the agency shall make a good faith effort to achieve its goals through specifically setting aside contracts and purchases for small businesses, urban development enterprise and/or micro business. A set-aside contract must be competitively awarded and may be awarded only after the receipt of bids from three qualified bidders.

(g) In determining compliance with the goals, the award of a contract or purchase order may be counted toward only one goal. For example, the award of a contract to a small business located in a municipality designated as being qualified under the New Jersey Urban Development Corporation Act and having no more than 20 full-time employees may be counted toward either the small business goal, urban development enterprise goal or micro business goal, but not towards more than one goal.

17:13-1.10 (12A:10-1.10) Set-aside plans

(a) On or before August 1 of each year for contracting or using agencies operating on the State's fiscal year and on or before February 1 of each year for agencies operating on the calendar fiscal year, each contracting agency and using agency shall prepare and submit to the Department of Commerce a set-aside plan for meeting the purchase goals for the current fiscal year.

(b) The set-aside plan shall include:

1. A general list and explanation of the goods and services and/or types of goods and services which are deemed appropriate for meeting the purchasing goals;

2. A consideration of the estimated dollar amounts and numbers of purchase orders expected for various contracts and types of contracts;

3. A list of those contracts and/or purchase orders it expects to award to small business, urban development enterprise and micro business, identifying those contracts it intends to set aside.

(c) After consultation with the Department of Commerce, the contracting agency or using agency shall begin implementing the current year's set-aside plan no later than October 1 for contracting or using agencies operating on the State's fiscal year and no later than March 1 for agencies operating on the calendar fiscal year. However:

1. The agency and the Department shall periodically review the plan's implementation and shall develop any revisions which may be necessary to achieve the goals; and

2. Where the agency and the Department disagree about the agency's plan or its implementation, the matter shall be submitted immediately for prompt resolution by the Commissioner of the Department of Commerce, Energy and Economic Development and the State Treasurer, or their designees.

17:13-1.11 (12A:10-1.11) Factors in establishing purchasing plans

(a) The following factors are to be considered by contracting and using agencies in determining whether a contract or purchase is appropriate for meeting the agencies' goals:

1. Small business, urban development enterprise or micro business do not currently obtain a significant percentage of State contracts, but wherein the price, quality of product and responsibility of small business, urban development enterprise or micro business are competitive with the general business community; or

2. The normal bidding process creates unnecessary obstacles against small business, urban development enterprise and micro business irrespective of any actual ability of these businesses to perform the contracts or fulfill the State's needs; or

3. Small business, urban development enterprise and micro business are not competitive with the general business community, but wherein the State would not suffer any disadvantage if a percentage of contracts and purchases were awarded to those businesses; or

4. The State's long term best interests in purchasing lie in developing small business, urban development enterprise and micro business in competitiom with the general business community; or

5. The State's long term best economic and social interests lie in developing small business, urban development enterprise and micro business; or

6. The practices of the contracting or using agency create unnecessary obstacles to the award of contracts to small business, urban development enterprise and micro business; or

7. Potential emergency conditions, public health and safety considerations, or the continued operation of vital State services, preclude setting the contract aside for bidding exclusively by small business, urban development enterprise and micro business.

17:13-1.12 (12A:10-1.12) Bidders list

(a) With the cooperation and coordination of the Department of Commerce, contracting agencies and using agencies shall maintain lists of small business bidders, urban development enterprise bidders and micro business bidders.

(b) For the convenience of using agencies making delegated purchases or issuing purchase orders, the Department of Commerce shall distribute available bidders lists to using agencies.

(c) On or about October 1 of each year, each contracting agency and using agency maintaining small business, urban development enterprise and/or micro business vendors lists shall submit such lists for review and approval to the Department of Commerce. The Department shall respond by December 15.

1. Unless and until disapproved by the Department, a State agency may continue to use any existing small business, urban development enterprise and micro business bidders lists.

2. Unless and until disapproved by the Department, the State agency may continue to count towards its purchasing goals contracts awarded to any business previously approved for inclusion on a designated bidders list.

3. Where a contract is specifically set aside for small business, urban development enterprise and/or micro business, and where no approved list is available from the Department, an agency may issue RFPs or other solicitations to businesses on any otherwise appropriate list of bidders so long as the RFPs and solicitations specify that only approved small business, urban development enterprise and micro business, as appropriate, may bid on the contract. The agency shall also include a New Jersey Vendor Registration Form with the RFP or other solicitation and shall include instructions on how to apply to the Department of Commerce for appropriate approval.

(d) The Department of Commerce shall prepare and distribute New Jersey Vendor Registration Forms to businesses and State agencies. State agencies shall distribute these forms to prospective bidders and suppliers and shall refer prospective bidders and suppliers to the Department for appropriate approval and inclusion on bidders lists.

17:13-1.13 (12A:10-1.13) Set-aside contracts

(a) Any contract specifically set aside for small business, urban development enterprise and micro business must be competitively bid, either through public advertising or through informal bidding, and may be awarded only if responsive bids from at least three qualified bidders are received.

(b) The RFP for a set-aside contract shall clearly and conspicuously state that an award may go only to a business duly approved by the Department of Commerce.

1. The RFP shall further state that a bidder who is not already approved, may submit a bid but then must apply to the Department of Commerce for approval as a small business, urban development enterprise or micro business as appropriate, no later than the bid opening date and, in order to be eligible for an award under that RFP, must be approved by the Department no later than five working days after the bid opening date. The RFP shall state that if, for whatever reason, the contracting agency does not receive approval of that bidder from the Department of Commerce no later than five working days from the bid opening date, the agency shall reject that bid without any obligation or recourse to the bidder.

(c) All bids may be rejected on a set-aside contract and the contract may be rebid as an ordinary contract where:

1. In evaluating the small business, urban development enterprise and/or micro business bids, the agency determines that acceptance of any of the bids would subject the State to an unreasonable expense, or to contract otherwise unacceptable pursuant to that agency's contracting and purchasing laws and rules; or

2. The agency does not receive at least three bids from qualified vendors approved as small business, urban development enterprise and/or micro business, as appropriate; and

3. The agency notifies the bidders and the Department of Commerce of the reasons for its action, and the agency maintains its records of the bidding process for seven years from the bid opening date.

(d) Immediately after rejecting all bids, the agency may, without any delay, rebid the contract as an ordinary award. Small business, urban development enterprise and micro business bidders may participate in this rebidding process.

17:13-1.14 (12A:10-1.14) Purchasing and contracting reports

(a) On or before October 1 of each year for contracting or using agencies operating on the State's fiscal year and on or before March 1 of each year for agencies operating on the calendar fiscal year, each contracting and using agency shall report to the Department of Commerce on the results of its purchasing and contracting performance for the previous respective fiscal year. The compilation of these reports shall be the sole responsibility of those Departments and contracting agencies required to report.

(b) The report shall include:

1. The total number of contracts awarded and/or purchase orders issued by the contracting or using agency.

2. The estimated total dollar amounts of contracts and/or purchase orders awarded by the contracting or using agency.

3. The number of set-aside contracts and/or purchase orders awarded by the contracting agency and by its using agencies.

4. The estimated dollar amounts of contracts and/or purchase orders awarded to small business, urban development enterprise and micro business by the contracting or using agency.

5. A breakdown of the types of contracts and/or purchase orders awarded generally and awarded to small business, urban development enterprise and micro business by the contracting or using agency.

6. An analysis of whether and how the previous year's goals were achieved by the contracting or using agency.

17:13-1.15 (12A:10-1.15) Consultation with industry

(a) The Department of Commerce shall conduct no less than two consultation sessions each year with bidders, vendors and industry representatives for the purpose of soliciting information and suggestions on implementing the goals in these rules.

(b) The consultation dates and times will be incorporated into a plan developed by the Department for each fiscal year.

(c) Bidders, vendors and industry representatives may call the Division of Development for Small Business and Women and Minority Businesses for the exact time, date and location of these sessions.

(d) Sessions shall be open to the public and any interested parties.

(e) Industry representatives may ask to be placed on an agenda if they wish to present comments.

(f) Challenges to individual bid awards will not be heard at these sessions.

(g) The Department of Commerce shall prepare a report of the results of the sessions, the attendees and their affiliations and any items which require the attention of the Department or any contracting agencies.

(h) Notice that the sessions have been held will be included in the annual reports of Departments on the implementation of these rules for small business, urban development enterprise and micro business.

17:13-1.16 (12A:10-1.16) Delegation of Treasurer's authority

For purposes of implementing these rules, the authority of the Treasurer under these rules is delegated to the Administrator of the General Services Administration.]

SUBCHAPTER 4. SET-ASIDE CONTRACTING AND SUBCONTRACTING PROGRAM

17:13-4.1 (12A:10-4.1) Set-aside program goals and procedures

(a) Each State contracting agency, consistent with its contracting authority, shall establish and administer a set-aside program which provides for at least 15 percent of its contracts to be awarded to eligible small businesses, at least seven percent of its contracts to be awarded to eligible minority businesses and at least three percent of its contracts to be awarded to eligible female businesses, which shall be measured by the total dollar value of all such set-aside contracts awarded by the State agency in comparison to the total dollar value of all contracts awarded by the agency within a fiscal year.

1. The State contracting agencies shall designate specific contracts for each of the three distinct and exclusive set-aside categories.

2. The State contracting agencies shall, when they deem it appropriate, designate subcontracting goals for specific contracts which have not been set aside in their entirety.

(b) Each State contracting agency shall establish written procedures and maintain records as necessary to define, document and report its good faith efforts to attain the established set-aside contracting goals, including contracts executed under its bidding threshold, as established by N.J.S.A. 52:34-7 et seq. The set-aside procedures shall include the following provisions:

1. The State contracting agency shall review its schedule of contracting opportunities and establish a method of determining which upcoming contracts will be offered as part of the agency's set-aside program.

i. A contract may be considered suitable for set-aside whenever the contracting agency can establish a reasonable expectation that bids may be obtained from at least three qualified eligible businesses capable of furnishing the specified products or services.

ii. The designation as a set-aside contract shall be made prior to public advertisement for bids.

(c) When a State contracting agency has made a determination that a contract in its entirety is suitable for set-aside purposes, the following provisions apply:

1. Public advertisement of the set-aside contracting opportunity shall be consistent with the contracting agency's standard bidding procedures and may be supplemented by special notification efforts to maximize participation.

2. Invitations for bids shall be confined to either small businesses, minority businesses or female businesses, and bids from other bidders shall be rejected.

3. The State contracting agency shall reject all bids and withdraw the designation as a set-aside contract when the agency determines that acceptance of the lowest responsive bid would result in the payment of an unreasonable price or in a contract that is otherwise unacceptable pursuant to that agency's contracting statutes and rules.

i. The State contracting agency shall notify all participating bidders of the bid cancellation, stating the reasons for the cancellation and the agency's intent to re-solicit bids on an unrestricted basis.

ii. Except in cases of emergency, the State contracting agency shall provide an opportunity for a hearing before contract award to address the reasons for the withdrawal of the set-aside designation. This hearing shall not be considered a contested case under the Administrative Procedures Act.

4. The award of any contract designated as a set-aside contract shall be made in accordance with the agency's contracting statutes, rules and procedures.

(d) When the State contracting agency has made a determination that a contract is suitable for subcontract set-aside designation, the following provisions apply:

1. The public advertisement shall include a notice to prospective bidders that set-aside goals must be met by any contractor receiving an award.

2. The RFP shall contain a detailed notice to bidders advising the following:

i. The RFP includes a set-aside form (or forms) considered a mandatory requirement to be completed and included as a part of the bidder's proposal.

ii. Failure to complete and submit the form(s) shall be sufficient basis to deem the bid proposal non-responsive and thus subject to mandatory rejection.

iii. The set-aside form(s) completed by the bidder shall convey information in sufficient detail to permit the contracting agency to effectively assess the bidder's plan for attaining the specified set-aside goal or documenting the bidder's good faith effort to meet the set-aside goal.

3. The award of any contract subject to set-aside goals shall be made, in accordance with the State contracting agency's applicable statutes, rules and procedures, to the bidder whose proposal meets or demonstrates a genuine effort to meet the set-aside goals.

17:13-4.2 (12A:10-4.2) Reasonable efforts of bidders; requirements

(a) The following actions shall be taken by a bidder in establishing a reasonable effort to solicit and award subcontracts to eligible small businesses, minority businesses or female businesses, as established in the RFP:

1. The bidder shall attempt to locate qualified potential small, minority or female business subcontractors;

2. The bidder shall request a listing of small, minority or female businesses from the State contracting agency if none are known to the bidder;

3. The bidder shall keep a record of its efforts, including the names of businesses contacted and the means and results of such contacts;

4. The bidder shall provide all potential subcontractors with detailed information regarding the specifications; and

5. The bidder shall attempt, wherever possible, to negotiate prices with potential subcontractors submitting higher than acceptable price quotes.

(b) Bidders shall maintain adequate records to document their efforts.

17:13-4.3 (12A:10-4.3) Exemptions from set-aside program

In those circumstances where Federal law or regulations permit or require a procurement procedure other than those prescribed herein, the State contracting agency may follow the Federal procedures notwithstanding the provisions of these regulations, provided that the State contracting agency issues a written declaration that such Federal laws are in effect.

SUBCHAPTER 5. PLANNING, REPORTING AND REVIEW

17:13-5.1 (12A:10-5.1) Planning

(a) No later than 60 calendar days prior to the close of its fiscal year, each State contracting agency shall submit to the Commissioner of the Department of Commerce a plan for complying with the set-aside program established by these rules. The Department of Commerce will assist any State contracting agency in the development of its plan, upon request.

1. The plan shall include a list of all known procurements and reprocurements scheduled to be bid during that fiscal year, including the following information:

i. The name of the products or services covered by the contract;

ii. The expiration date of the current contract and the estimated date of the public bid;

iii. The term or duration of the contract;

iv. The estimated dollar value of the contract or the amount expended to date on the current contract;

v. The contracts that the agency intends to set aside in each set-aside category, i.e., small business, minority business and female business;

vi. The contracts which have been identified as appropriate for set-aside subcontracting goals;

vii. In addition to the requirements in i through vi above, the Division of Purchase and Property shall identify those multi-source term contracts included in the Cooperative Purchasing Program and indicate which of the multi-source contracts will be set-aside in their entirety, entirely and which will contain select line items set aside for small businesses, minority businesses or female businesses.

2. Each State contracting agency, with the exception of the Division of Purchase and Property, shall include a list of those products and services typically purchased under the bidding threshold, identifying those deemed appropriate for inclusion in the set-aside program.

i. Each State department served by the Division of Purchase and Property shall provide the Department of Commerce with a list of those products and services typically purchased pursuant to its delegated purchasing authority, or with a list of those products and services purchased during the preceding fiscal year under that authority.

3. Each State contracting agency shall list contracts awarded as the result of Waivers of Advertising, i.e., contracts with sole source suppliers such as water companies, gas and electric companies.

4. Each State contracting agency shall quarterly update its set-aside plans with a list of line item contracts not included in its initial procurement schedules, containing the same information required by N.J.A.C. 17:13-5.1(a)1 (12A:10-5.1(a)1.).

5. Copies of contracting plans shall be available for review during normal business hours in the office of each State contracting agency.

(b) The Department of Commerce shall review the plan to determine whether it is reasonably designed to achieve the State contracting agency's goal of awarding 15 percent of its total contracting dollars to small businesses, seven percent of its total contracting dollars to minority businesses and three percent of its total contracting dollars to female businesses.

17:13-5.2 (12A:10-5.2) Reporting requirements

(a) Within 30 calendar days of the end of each State contracting agency's fiscal quarters, the agency shall file with the Department of Commerce a report containing the following information prescribed by the Department:

1. The total number and dollar value of all contracts advertised and awarded, delineating which of these contracts were advertised and awarded as small business, minority business or female business set-aside contracts;

i. The State contracting agencies, in determining compliance with the set-aside goals for the three categories, shall count only those contracts awarded as a result of set-aside designations and only for the categories designated. For example, if an agency sets aside a contract for small businesses and the contract is awarded to a small business owned by a minority woman that contract can be counted only as a small business award and not as a minority business or a female business award. If a small business, minority business or female business is awarded a contract that was not set aside, that contract cannot be counted as a set-aside award.

ii. The Division of Purchase and Property shall include a list of multi-source contracts which contain lines set aside for small business, minority business and female business, and those contracts extended through the Cooperative Purchasing Program.

2. The total number and dollar value of all advertised and awarded contracts which included subcontract requirements, setting forth the number and dollar value of subcontracts awarded to small businesses, minority businesses and female businesses, respectively.

3. Each State department served by the Division of Purchase and Property shall report the total number and dollar value of all purchases made under its delegated purchasing authority, delineating purchases made from small businesses, minority businesses and female businesses, respectively.

4. A description of efforts made by the State contracting agency to conduct outreach and educational programs for potential eligible small businesses, minority businesses and female businesses and any efforts made to assist the business community in achieving the objectives of these programs.

(b) Within 90 calendar days of the close of each State contracting agency's fiscal year, the agency shall file with the Department of Commerce, in a format prescribed by the Department, an analysis of actual contracting dollars paid to all contractors and, pursuant to the set-asides, the amount of contracts awarded to small businesses, minority businesses and female businesses.

(c) All reports required by this subchapter shall be considered public records for the purposes of N.J.S.A. 47:1A-1 et seq. and shall be retained as part of the permanent records of the State contracting agency and the Department of Commerce.

17:13-5.3 (12A:10-5.3) Annual Review

The Commissioner of the Department of Commerce and the Treasurer of the State of New Jersey shall undertake an annual review of the operation and continued need for the small, minority and female business set-aside programs contained in this chapter. This review shall be based upon the reports submitted to the Department and any other information deemed appropriate.

RULE ADOPTIONS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE
Soil and Water Conservation Project Cost-sharing
Adopted Amendments: N.J.A.C. 2:76-5.1, 5.2 and 5.3
Adopted New Rule: N.J.A.C. 2:76-5.4

Proposed: August 2, 1993 at 25 N.J.R. 3279(a).
Adopted: September 23, 1993 by the State Agriculture Development Committee, Arthur R. Brown, Chairperson.
Filed: October 5, 1993 as R.1993 d.521, **without change**.

Authority: N.J.S.A. 4:1C-5f.

Effective Date: November 1, 1993.
Expiration Date: July 31, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

2:76-5.1 Applicability

This subchapter identifies State Agriculture Development Committee rules which provide for a landowner, or a farm operator as an agent for the landowner, whose land is within a municipally approved farmland preservation program or other farmland preservation program, or is subject to a development easement conveyed pursuant to N.J.S.A. 4:1C-24a to apply for and receive grants for soil and water conservation projects. These rules shall be utilized in conjunction with N.J.A.C. 2:90-2 and 2:90-3, promulgated by the State Soil Conservation Committee, which prescribes procedures for development of conservation plans and approval of projects.

2:76-5.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-14 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-17.

...

"Fund" means the "Farmland Preservation Fund" created pursuant to the "Farmland Preservation Bond Act of 1981", P.L. 1981, c.276, and any future funds authorized for the purpose of providing grants to landowners for soil and water conservation projects.

...

2:76-5.3 Approved soil and water conservation projects

The State Soil Conservation Committee, pursuant to procedures established in N.J.A.C. 2:90-2, shall approve projects that are eligible for cost-sharing.

2:76-5.4 Eligibility for State soil and water conservation cost-share funds

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

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= $400.00/acre
From greater than 50 to 100 acres	= $20,000 + $100.00/acre above 50 acres
From greater than 100 to 516.7 acres	= $25,000 + $60.00/acre above 100 acres
Greater than 516.7 acres	= $50,000

1. The total eligible amount of cost-share funds determined shall remain in effect for the duration of the initial farmland preservation program or municipally approved program.

2. Upon renewal of the farmland preservation program or municipally approved program, the eligiblity of cost-share funds shall be based upon the formula current at the time of program renewal set forth in this section.

(b) On land that has had a development easement conveyed from it pursuant to N.J.S.A. 4:1C-24a, the Committee shall determine the total eligible State soil and water cost-share funds based on common deed ownership in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= $400.00/acre
From greater than 50 to 100 acres	= $20,000 + $100.00/acre above 50 acres
From greater than 100 to 516.7 acres	= $25,000 + $60.00/acre above 100 acres
Greater than 516.7 acres	= $50,000

1. The total eligible amount of cost-share funds determined shall remain in effect for a period of eight years from the date the development easement was conveyed to the board.

2. At the end of the eight-year period, the eligibility of cost-share funds shall be based upon the formula current at that time and set forth in this section for subsequent eight-year periods.

(c) Notwithstanding (a) and (b) above, if a governmental body or a not-for-profit corporation is the record owner of land enrolled in a farmland preservation program, municipally approved program or is subject to a development easement conveyed pursuant to the provisions of the Agriculture Retention and Development Act, the owner is eligible for State soil and water project cost-share funds on the basis of the acreage contained in each farm in accordance with the following formula:

Acres	Eligibility for State cost-share funds
From 0 to 50 acres	= $400.00/acre
From greater than 50 to 100 acres	= $20,000 + $100.00/acre above 50 acres
From greater than 100 to 516.7 acres	= $25,000 + $60.00/acre above 100 acres
Greater than 516.7 acres	= $50,000

(d) Upon State Soil Conservation Committee approval and recommendation for funding of an application for soil and water project cost-sharing in compliance with N.J.A.C. 2:76-5.7 and upon State Agriculture Development Committee approval, the State Agriculture Development Committee shall obligate funds as approved in the application for up to three years from the date of approval.

1. Approval of funds shall not exceed the amount determined in (a), (b) and (c) above.

2. The term of obligation may be extended due to seasonal constraints or other unavoidable delays only upon the approval of the local soil conservation district, the State Soil Conservation Committee and the State Agriculture Development Committee.

Recodify existing 2:76-5.4 through 5.8 as 5.5 through 5.9 (No change in text.)

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Fire Insurance

Adopted New Rule: N.J.A.C. 3:1-13.2

Proposed: August 16, 1993 at 25 N.J.R. 3585(b).
Adopted: September 21, 1993 by Jeff Connor, Commissioner, Department of Banking.
Filed: September 28, 1993 as R.1993 d.520, **without change.**
Authority: N.J.S.A. 17:1-8.1, 17:11A-54; 17:11B-13; and 17:13-125.
Effective Date: November 1, 1993.
Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The Department received comments from the following persons:

1. Greg C. Damell, Executive Vice President, Lakeland Savings Bank.
2. Eileen Kean, Executive Vice President, and Bruce Blum, President Elect, Independent Insurance Agents of New Jersey.
3. Frank P. Campion, CPCU, President, Professional Insurance Agents of New Jersey.
4. Samuel J. Damiano, President, New Jersey Council of Savings Institutions.

COMMENT: By requiring a fire insurance policy in excess of the replacement value of the covered premises, the mortgage lender is forcing the insurance consumer to purchase amounts of insurance from which he cannot receive any benefit. For that reason, the rule is supported.

RESPONSE: It is for this reason that the Department is adopting this new rule.

COMMENT: An additional rule should be proposed requiring lenders to accept an insurance binder or a mid-term policy transfer.

RESPONSE: The Department may consider such a proposal at a later time.

COMMENT: If this rule is adopted and a total fire loss occurs, lending institutions will incur losses if the loan amount exceeds the reproduction cost. In addition, low down-payment loans will not be made since institutions will be too concerned about being unprotected.

RESPONSE: In the event that a total fire loss occurs, the insurance company under N.J.S.A. 17:36-5.19 may only reimburse the borrower for the replacement cost of the home. Additional amounts of insurance will, therefore, not benefit the consumer or the lender. In the instance where the loan amount exceeds the replacement value of the home, the land value will provide additional security for the lender.

Full text of the adoption follows:

3:1-13.2 Amount of fire insurance required

(a) No mortgage lender shall, in connection with any application for a loan secured by a mortgage on real property located in New Jersey, require any mortgagor to obtain by purchase or otherwise a fire insurance policy in excess of the replacement value of the covered premises as permitted under N.J.S.A. 17:36-5.19 as a condition for granting such mortgage loan.

(b) For purposes of this section, the term mortgage lender means any bank, savings bank, savings and loan association, credit union, mortgage banker or broker, secondary mortgage loan licenses, or any other person who makes a loan secured by a first, second or subsequent mortgage on real property located in New Jersey.

(b)

DIVISION OF REGULATORY AFFAIRS

Repair and Improvement Loans; Maximum Interest Rates

Adopted Repeal: N.J.A.C. 3:31
Adopted Amendment: N.J.A.C. 3:28-4.7
Adopted New Rule: N.J.A.C. 3:28-4.12

Proposed: August 16, 1993 at 25 N.J.R. 3587(a).
Adopted: September 22, 1993 by Jeff Connor, Commissioner, Department of Banking.
Filed: September 27, 1993 as R.1993 d.517 **without change.**
Authority: N.J.S.A. 17:12B-197.
Effective Date: November 1, 1993.
Expiration Date: December 12, 1994, N.J.A.C. 3:28.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

3:28-4.7 Account loans; minimum requirements

A subsidiary record shall be maintained for each account loan which shall be balanced and proved at least monthly. In addition to the evidence of debt, the files for each loan shall contain the passbook and/or certificate or other evidence of membership pledged as collateral security for the loan. The files shall also contain any other documentation required by law or regulation.

3:28-4.12 Repair and improvement loans

In addition to the evidence of debt, the files for each property improvement loan made pursuant to N.J.S.A. 17:12B-157 shall contain an application, financial statement and/or credit report, a certified statement by the borrower or lender that repairs and/or improvements have been completed and other documentation required by law or regulation. The required documentation shall be the same as set forth in N.J.A.C. 3:27-1.4.

(c)

DIVISION OF REGULATORY AFFAIRS

Conversion of Associations

Adopted New Rules: N.J.A.C. 3:32

Proposed: July 6, 1993 at 25 N.J.R. 2799(a).
Adopted: October 1, 1993 by Jeff Connor, Commissioner, Department of Banking.
Filed: October 6, 1993 as R.1993 d.535, **without change.**
Authority: N.J.S.A. 17:12B-1 et seq.
Effective Date: November 1, 1993.
Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

N.J.A.C. 3:32 expired on October 3, 1993 pursuant to Executive Order No. 66(1978), and are therefore shown here as adopted new rules with an effective date of November 1, 1993, in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the rules proposed for readoption adopted herein as new can be found in the New Jersey Administrative Code at N.J.A.C. 3:32.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Notice of Administrative Correction
Hotels and Multiple Dwellings
Certificate of Inspection
N.J.A.C. 5:10-1.12

Take notice that the Department of Community Affairs has discovered errors in the text of N.J.A.C. 5:10-1.12 published in the September 20, 1993 update to the New Jersey Administrative Code. The text of paragraph N.J.A.C. 5:10-1.12(e) as included in the notices of proposal and adoption for the most recent amendments to the rule (see 25 N.J.R. 2627(a) and 4482(a)) was inadvertently omitted from the Code-incorporated text. In addition, the text of paragraphs (e)2 and 3, which was not affected by the most recent rulemakings, was inadvertently not mentioned in the rulemaking notices as "2. and 3. (No change.)," as was mistakenly deleted from the Code in this most recent update.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (addition indicated in boldface **thus**):

5:10-1.12 Certificate of inspection

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

(e) The following relates to Uniform Fire Code inspections:

1. (No change.)

2. The owner of a building subject to the Act, that is deemed a life hazard use pursuant to N.J.A.C. 5:18-2.4 through 2.4D, shall have a copy of the current certificate of inspection issued pursuant to the Uniform Fire Safety Act posted in a conspicuous location on the premises at all times.

3. No certificate of inspection shall be issued pursuant to N.J.S.A. 55:13A-13 for any building that is deemed a life hazard use pursuant to N.J.A.C. 5:18-2.4 through 2.4D, unless the owner of the building has a current certificate of inspection issued pursuant to the Uniform Fire Safety Act on the premises.

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

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development
Community Associations; Meetings
Adopted Amendment: N.J.A.C. 5:26-8.2

Proposed: August 16, 1993 at 25 N.J.R. 3693(b).

Adopted: September 20, 1993 by William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

Filed: September 29, 1993 as R.1993 d.522, **without change**.

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

Effective Date: November 1, 1993.

Expiration Date: February 7, 1996.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

5:26-8.2 Powers and duties

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

(d) All meetings of the association that are required by law to be open to all unit owners shall be held at a location within the development or, if there is no suitable meeting room within the development, at a suitable meeting room elsewhere in the municipality in which the development is located.

1. A meeting room shall not be deemed to be suitable if it is not large enough to accommodate a reasonable number of unit owners who might wish to attend an open meeting.

EDUCATION

(c)

STATE BOARD OF EDUCATION

School Facility Lease Purchase Agreements
Readoption with Amendments: N.J.A.C. 6:22A

Proposed: August 16, 1993 at 25 N.J.R. 3588(a).

Adopted: October 8, 1993 by State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: October 8, 1993 as R.1993 d.544, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:4-15 and 18A:20-4.2(f).

Effective Date: October 8, 1993, Readoption;
November 1, 1993, Amendments.

Expiration Date: October 8, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

The New Jersey State Board of Education was due to hold a public testimony session on June 16, 1993 at which the above captioned rule was on the agenda, however, that session was cancelled. A public testimony session was held on August 18, 1993 at which no one spoke.

Summary of Agency-Initiated Changes Upon Adoption:

In N.J.A.C. 6:22A-1.2(e) the agency changed the word "soon" to "sooner" to correct a typographical error.

In N.J.A.C. 6:22A-1.3(d) the agency corrected a typographical error by capitalizing the word "refinancing".

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

6:22A-1.1 Definitions

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

"Defeasance" means the process by which a district board of education completes an early buy out of a lease purchase agreement by obtaining the approval of the voters or board of school estimate to issue general obligation bonds to acquire ownership of the property prior to the expiration of the agreement.

"Effective interest cost" means the semiannual discount rate which equates future payments relating to the bonds, including the principal, interest and associated expenses to the net issue proceeds.

"Net issue proceeds" means the par amount of the bonds plus accrued interest and original issue premium, less any original issue discount, underwriting spread, costs of issuance, insurance premium and letter of credit fees.

"Net present value cost savings" means the current value of a future payment or series of payments discounted at the effective interest cost.

"Percentage of net present value cost savings" means the total net present value cost savings divided by the principal amount of the prepaid certificates of participation.

"Present value" means the current value of a future payment, or series of payments discounted at an appropriate discount rate.

"Refinance" means the process by which a district board of education sells new certificates of participation at lower interest rates to refund all or a portion of the existing certificates of participation, thereby lowering the annual rental payments under the lease purchase agreement.

"School building" means any educational facility or education support facilities necessary for a local district to achieve its goals and objectives pursuant to Chapter 212, Laws of 1975.

6:22A-1.2 Approval procedures for an original lease purchase agreement

(a) A district board of education plannning to acquire a site and to construct a school building and/or to make additions, alterations, renovations and improvements to existing buildings or to acquire a site and building by lease purchase agreement shall comply with the following:

1. The district board of education shall have the site approved by the Bureau of Facility Planning Services in accordance with N.J.A.C. 6:22-1.2.

2. The district board of education shall have the educational specifications, schematic plans, preliminary plans, and final plans for a new building and/or for additions, alterations, renovations and improvements to existing buildings approved by the Bureau of Facility Planning Services in accordance with N.J.A.C. 6:22 and the State Uniform Construction Code prior to any party obtaining a construction permit.

3. The district board of education shall have the educational specifications and schematic plans approved by the Bureau of Facility Planning Services prior to obtaining the Commissioner's approval of a lease purchase agreement in excess of five years.

4. The district board of education shall adopt a resolution on the projected maximum funding level.

(b) A district board of education planning to transfer or lease land or rights or interests therein, including any building thereon to any party as a part of a lease purchase transaction involving a lease purchase agreement in excess of five years, shall have such transfer or lease to a third party documented by a ground lease agreement, which shall be submitted to the Commissioner for approval.

(c) A district board of education may include the cost of related equipment and/or furniture in the overall project cost of a lease purchase agreement for a new school building, a renovated school building or additions made to an existing school building provided the cost of such equipment and/or furniture is amortized over the first five years of the lease purchase payment schedule in accordance with N.J.S.A. 18A:18A-42(f).

(d) A district board of education shall conduct two public hearings, prior to adoption of a resolution endorsing the lease purchase concept and approving the submission of an application to the Commissioner.

1. All provisions of the Open Public Meetings Act (N.J.S.A. 10:4-6 thru 21) shall be followed as well as:

i. The two public hearings shall be held at least 14 days apart;

ii. Notice of the public hearings shall be separately published at least once for each hearing in at least one newspaper published in the district and if no newspaper be published therein, then in at least one newspaper circulating in said district not less than seven days prior to the date fixed for each public hearing; and

iii. The notice shall fix a date, place and time for the holding of the public hearings and shall include a description of the proposed school building project, estimated cost and the proposed method of financing.

2. The public hearings shall provide the taxpayers and other interested persons an opportunity to present questions or other commentary to the district board of education with respect to the proposed school building project, estimated cost and the proposed method of financing.

(e) Not *[soon]* ***sooner*** than seven days after the second public hearing a district board of education may, by an affirmative vote of at least two-thirds of the full membership of the board, adopt a resolution endorsing approval of the lease purchase concept and authorizing the chief school administrator and/or board secretary to advertise and solicit proposals for the selection of a lessor and underwriter in connection with a lease purchase agreement and to request the approval of the Commissioner and the Local Finance Board in the Department of Community Affairs of a lease purchase agreement in excess of five years.

(f) A district board of education requesting the Commissioner's approval of a lease purchase agreement in excess of five years shall submit to the Commissioner and the Local Finance Board in the Department of Community Affairs an Application for Permission to Lease Purchase Facilities, Form 101A, prescribed by the Commissioner (this form is available at the Division of Financial Services, 225 East State Street, CN 500, Trenton, New Jersey), a copy of the ground lease agreement, if applicable, a lease with an option to purchase agreement or similar document, and an agent or trust agreement, if applicable.

(g) A district board of education shall also file with the Commissioner the following documents:

1. A board resolution authorizing submission of Form 101A to the Commissioner;

2. A narrative which clearly establishes the relationship of the proposed project to the district's goals and objectives for a thorough and efficient education established pursuant to N.J.S.A. 18A:7A-1 et seq.;

3. Copies of board minutes for the two public hearings, resolution and vote on the projected maximum funding level, and the resolution endorsing approval of the lease purchase concept and authorizing the chief school administrator or board secretary to advertise for proposals for the selection of underwriter/lessor;

4. The lease purchase agreement which shall contain the following provisions:

i. Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f);

ii. All construction contracts let by public school districts or let by developers or owners of property used for school purposes shall be competitively bid pursuant to N.J.S.A. 18A:20-4.2(f); and

iii. The district board of education at its sole discretion may refinance the lease purchase agreement or purchase the leased premises, by defeasance or otherwise, at any time during the lease period;

5. Evidence of clear title and appropriate title insurance to proposed building site(s) or any land stated in the ground lease;

6. A copy of the commitment or application for insurance or other credit enhancement for the proposed issuance of certificates of participation, if applicable;

7. Evidence the site can be serviced by all utilities necessary for the operation of the property;

8. Approval letters from the governmental agencies having jurisdiction over the development of the subject property, including, but not limited to the Department of Environmental Protection and Energy and the Pinelands Commission;

9. A copy of a letter from the Bureau of Facility Planning Services indicating:

i. Approval of the project's schematic plans, and educational specifications; or

ii. Conceptual approval of the proposed improvements, if approval of the schematic plans and educational specifications are not required;

10. Proposed credit ratings on the issue, and credit rating agencies;

11. A copy of a letter from the school district's county superintendent endorsing the lease purchase agreement and indicating the project's necessity for the school district to meet its goals and objectives for a thorough and efficient education;

12. A copy of the newspaper advertisement for the request for proposals;

13. The list of persons and/or firms to which the request for proposals was sent and the respondents to the request for proposals;

14. The comparative analysis of proposals showing the following:

i. The construction costs;

ii. The financing costs;

iii. The underwriting fees, legal fees and issuance expenses;

iv. If appropriate, the cost of insurance and/or a rating for the proposed issue;

v. The anticipated interest rate or methodology for calculating the interest rate at the time of issuance; and

vi. The proposal selected; and

15. If project is related to actual or anticipated overcrowding, documentation that the present educational facilities are or will be less than 80 percent adequate within five years and that the planned educational facilities will be fully utilized within 10 years.

(h) The Commissioner or a designee shall hold a conference prior to the Commissioner approving any request for approval of a lease purchase agreement in excess of five years. All documents required and the application must be submitted in duplicate and in final form and received at least 15 days prior to the scheduled conference. At the conference the district board of education shall be required to document and discuss at a minimum the following:

1. The newspaper advertisement for the request for proposals;

2. The list of persons and/or firms to which the request for proposals was sent;

3. The responses to the request for proposals; and

4. The comparative analysis of proposals .

(i) Within 15 days after the conference for approval of a lease purchase agreement in excess of five years, the Commissioner shall endorse his or her consent upon the application, if in accordance with N.J.S.A. 18A:20-4.2(f), as amended, the Commissioner shall be satisfied that the lease purchase agreement is in the best interest of the school district, and that the relationship of the proposed lease purchase project to the district goals and objectives pursuant to Chapter 212, Laws of 1975 has clearly been established and the documents and information presented at the conference support the request of the district board of education for the proposed lease purchase agreement.

(j) Lease purchase agreements in excess of five years shall be submitted to the Local Finance Board in the Department of Community Affairs for approval subsequent to approval by the Commissioner.

(k) A district board of education having entered into a lease purchase agreement shall include in its annual general fund budget the full rental payment attributable to a lease purchase agreement. The principal portion of the payment shall be reflected in the capital outlay section and the interest portion of the payment shall be reflected in the general current expense section of the annual budget consistent with generally accepted accounting principles (GAAP). The county superintendent of schools, acting as proxy for the Commissioner, shall not approve such budget in accordance with N.J.S.A. 18A:7D-27 when a district board of education does not include such rental payment in its annual general fund budget unless the Commissioner or his or her designee has consented in writing to such approval.

(l) A district board of education having entered into a lease purchase agreement in excess of five years shall not terminate, change or alter the approved lease purchase agreement and accompanying legal documents pertaining thereto, without first obtaining the written consent of the Commissioner.

(m) Upon completion of the transaction, counsel shall file with the Commissioner an opinion stating the following:

1. The transaction is in conformance with local, state and Federal law; and

2. The parties hereto are properly organized; are in good standing; have the requisite power and have been properly authorized to enter into this transaction.

(n) Upon completion of a lease purchase agreement in excess of five years, a district board of education shall file the Official Statement of the transaction with the Commissioner.

1. The Official Statement (Prospectus) is a document published by the issuer which generally discloses material information on a new issue of municipal securities including the purposes of the issue, how the securities will be repaid, and the financial, economic and social characteristics of the issuing government.

6:22A-1.3 Approval procedures to refinance a lease purchase agreement

(a) A district board of education proposing to refinance a lease purchase agreement shall adopt a resolution requesting the approval of the Commissioner and the Local Finance Board in the Department of Community Affairs for said transaction.

(b) A district board of education requesting approval to refinance a lease purchase agreement shall submit to the Commissioner and the Local Finance Board in the Department of Community Affairs an Application for Refinancing, Form 201, prescribed by the Commissioner. This form is available at the Division of Financial Services, 225 East State Street, CN 500, Trenton, New Jersey.

(c) A district board of education shall also file with the Commissioner the following documents:

1. A copy of the board resolution requesting approval of the refinancing and the board's vote;

2. An opinion of counsel assuring the Commissioner that the refinancing is permitted under the original or modified lease purchase agreement and is in conformance with local, Federal and state statutes;

3. The list of persons and/or firms which the board of education contacted concerning the refinancing, the one selected and the specific reasons for the selection;

4. A copy of the amended rent payment schedule;

5. A schedule of sources and uses of the lease purchase agreement refinancing proceeds;

6. An analysis of the escrow account under the proposed refinancing;

7. A copy of the documents in final draft form with amendments and modifications, if necessary, to the lease purchase, ground lease, trustee or agent and assignment agreements, in order to effect the refinancing;

8. A copy of the updated insurance or other credit enhancement commitment, modified to cover refinancing, if applicable;

9. Proposed credit ratings on the issue, and credit rating agencies;

10. A detailed analysis of the percentage of net present value cost savings to the school district of at least three percent using the effective interest cost method as the discount rate based on an analysis of the total refunding issue to include the following for each payment:

i. Date;

ii. Prior debt service;

iii. New debt service;

iv. Savings (prior debt service minus new debt service);

v. Present value factor;

vi. Present value savings (savings times present value factor);

vii. Cumulative present value savings; and

viii. Totals of items (c)10ii through vii above.

(d) Within 15 days after the receipt of the Application for *[refinancing]* ***Refinancing***—Form 201 and related documents, the Commissioner shall endorse his or her consent upon the application, if the Commissioner shall be satisfied that the refinancing is in the best interest of the school district.

(e) An application to refinance a lease purchase agreement shall be submitted to the Local Finance Board in the Department of Community Affairs for approval subsequent to approval by the Commissioner.

6:22A-1.4 Approval procedures for a defeasance of a lease purchase agreement

(a) A district board of education proposing to seek voter or board of school estimate approval for the defeasance of a lease purchase agreement through the issuance of general obligation bonds shall adopt a resolution requesting the approval of the Commissioner for said transaction.

(b) A district board of education requesting approval for the defeasance of a lease purchase agreement shall submit to the Commissioner an Application for Defeasance, Form 201A, prescribed by the Commissioner (this form is available at the Division of Financial Services, 225 East State Street, CN 500, Trenton, New Jersey) and the following documents:

1. A copy of the board resolution requesting the Commissioner's approval of the defeasance of the lease purchase agreement through the issuance of general obligation bonds and the board's vote;

2. An opinion of counsel assuring the Commissioner that the prepayment of the lease purchase agreement is permitted under the original or modified lease purchase agreement and is in conformance with local, state and Federal statutes;

3. A copy of the documents in final draft form with amendments and modifications, if necessary, to the lease purchase, ground lease, trustee or agent and assignment agreements, in order to effect the defeasance;

4. A schedule of sources and uses of bond issue proceeds;

5. A detailed analysis of the percentage of net present value cost savings to the school district using the effective interest cost method as the discount rate based on an analysis of the total new bond issue to include the following for each payment:

i. Date;

ii. Prior debt service;

iii. New debt service;

iv. Savings (prior debt service minus new debt service);

v. Present value factor;

vi. Present value savings (savings times present value factor);

vii. Cumulative present value savings; and

viii. Totals of items (b)5ii through vii above.

(c) The application shall support a net present value cost savings and will be reviewed strictly on the merits of the cost savings without consideration of any debt service aid to which the district board of education may be entitled.

(d) Within 15 days after the receipt of the Application for Defeasance—Form 201A and related documents, the Commissioner shall endorse his or her consent upon the application, if the Commissioner shall be satisfied that the defeasance of the lease purchase agreement is in the best interest of the school district. Such approval is contingent upon board of school estimate approval or voter adoption of the specific ballot question as applicable.

(a)

STATE BOARD OF EDUCATION

Marie H. Katzenbach School for the Deaf

Readoption with Amendments: N.J.A.C. 6:78

Proposed: August 16, 1993 at 25 N.J.R. 3592(a).

Adopted: October 8, 1993 by the State Board of Education, Mary Lee Fitzgerald, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: October 8, 1993 as R.1993 d.543, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-10 et seq., 18A:39-1, 18A:46-1 et seq., 18A:60-2 to 60-3 and 18A:61-1 et seq.

Effective Date: October 8, 1993, Readoption;
November 1, 1993, Amendments.

Expiration Date: October 8, 1998.

Summary of Public Comments and Agency Responses:

The Department received written comments from four commenters during the proposal comment period ending September 15, 1993. The following is a list of people who made written comments directly related to the proposed readoption with amendments:

David B. Harris, Deputy Public Advocate
New Jersey State Department of the Public Advocate

Jean Paashaus

Jeffrey V. Osowski, Director
Office of Special Education Programs
New Jersey State Department of Education

Jeffrey Reuter, Supervisor of Child Study Team
Atlantic and Burlington Counties

The New Jersey State Board of Education was due to hold a public testimony session on June 16, 1993 at which the above captioned rule was on the agenda, however, that session was cancelled. A public testimony session was held on August 18, 1993 at which no one spoke.

COMMENT: In the "Summary" of the code proposal reference is made to N.J.A.C. 6:78-1.3 establishing student eligibility for admittance of out-of-State pupils to the Katzenbach School. This would not be in compliance with N.J.S.A. 18A:61-3 which specifically gives the "privileges of the school" to legal State residents. It is felt that what appears as an initial advantage could turn out to deprive State residents of available places.

RESPONSE: Upon adoption, the department moves to correct an error in the proposal summary of the rule. The summary incorrectly included the provisions relative to admissions of out-of-State applicants as being in N.J.A.C. 6:78-1.3. However, N.J.A.C. 6:78-1.3 sets forth the procedures for transporting Katzenbach School pupils. Admissions requirements for out-of-State pupils into the Katzenbach School are found at N.J.A.C. 6:78-1.2(i).

The provision at N.J.A.C. 6:78-1.2(i) to permit for admissions to Katzenbach School out-of-State applicants when the number of placements available at the school are not filled by State residents is not new or being amended upon readoption. The Department disagrees that the provision at N.J.A.C. 6:78-1.2(i) may deprive State residents of available placement in the Katzenbach School. As written N.J.A.C. 6:78-1.2(i) serves as a safeguard in assuring that State residents are provided admissions at the Katzenbach School before out-of-State applicants may be considered for placement.

COMMENT: The proposed amendment to N.J.A.C. 6:78-1.1(a) provides that the services of the Katzenbach School be "at no expense to parents or guardians residing in the State." However, the proposed language does not appropriately achieve this result, and has the potential for excluding pupils who are entitled to attend New Jersey schools without cost.

Commenter further states that N.J.S.A. 18A:38-1 provides for two categories of persons to attend public schools free of charge: (a) any person who is domiciled within the school district and (b) any person who is kept in the home of another person domiciled within the school district and who is supported by such other person *gratis* as if he were such other person's own child, subject to compliance with certain procedural requirements. Since an adult pupil may acquire a domicile separate from that of his or her parents, and since a pupil whose parents reside out-of-State might qualify under the second statutory provision cited above, the proposed regulation would not permit the attendance of all pupils statutorily entitled to a free public education in New Jersey.

It is suggested that the proposed regulation be modified to more clearly state the categories of persons who may attend New Jersey public schools free of charge as per statute.

RESPONSE: The Department agrees. Language has been added to N.J.A.C. 6:78-1.1, at adoption to more clearly state the categories of persons who may attend the Katzenbach School, because it is a public school, free of charge.

COMMENT: The regulations at N.J.A.C. 6:78-1.1(e)1 should include the classification of preschool handicapped as eligible for application to the Katzenbach School.

RESPONSE: To correct an oversight, N.J.A.C. 6:78-1.2(e)1 has been changed upon adoption to include the classification of preschool handicapped. Such change brings N.J.A.C. 6:78-1.2(e)1 into conformity with N.J.A.C. 6:78-1.1(a)1 and 2 and clarifies that students eligible for special education and classified preschool handicapped pursuant to N.J.A.C. 6:28-3.5 may be considered for admission to the Katzenbach School.

COMMENT: The use of "suitable capacity for instruction" as a criterion for admissions to Katzenbach has the potential for being discriminatory by excluding pupils who may benefit by attending Katzenbach but are determined to be functioning below the suitable capacity of instruction.

RESPONSE: For clarity, the Department, upon adoption, has amended N.J.A.C. 6:78-1.2(e) to more clearly state that it is the potential of the Katzenbach program to provide appropriate instruction for each applicant that is being referred to, not the ability of the student.

Summary of Agency Changes Upon Adoption:

At N.J.A.C. 6:78-1.1(a), the reference to "no expense to parents or guardians residing in the State" has been eliminated upon adoption and reestablished in the new N.J.A.C. 6:78-1.1(b).

At N.J.A.C. 6:78-1.1 a new (b) has been added to clearly state the categories of persons who may attend the Katzenbach School free of charge.

The current (b) has been recodified to (c).

N.J.A.C. 6:78-1.2(e) has been changed upon adoption to reflect the changes at N.J.A.C. 6:78-1.2(e)2 having to do with the school's capacity to provide instruction.

At N.J.A.C. 6:78-1.2(e)1, a change has been made upon adoption to include preschool handicapped. The addition of language clarifies that the classification preschool handicapped as being eligible for application for admission to the Katzenbach School.

At N.J.A.C. 6:78-1.2(e)2, language has been changed upon adoption to avoid confusion surrounding the term "Suitable capacity for instruction." It has been pointed out by a commenter that the use of such a term has the potential for being discriminatory by excluding pupils who may benefit by attending Katzenbach but are determined to be functioning below the suitable capacity of instruction.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 6:78.

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

6:78-1.1 Function of the Marie H. Katzenbach School

(a) The function of the Marie H. Katzenbach School for the Deaf is to provide residential and day education facilities and instruction for auditorily handicapped children from birth through 21 years of age*[, at no expense to parents or guardians residing in the State,]* in the following areas:

1.-2. (No change.)

3. Vocational education.

***(b) The education is to be at no expense to auditorily handicapped children, their parents or guardians if:**

1. The parents or guardians of such children reside in the State;

2. The pupil is domiciled within the State; or

3. The pupil is kept in the home of another person domiciled within the State and is supported by such other person gratis as if he or she were such other person's own child, subject to compliance with the requirements of N.J.S.A. 18A:38-1(b).*

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

6:78-1.2 Admission requirements

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

(e) All applicants of suitable age and *[capacity for instruction and]* ***who are*** legal residents of the State shall be eligible for admission. The following criteria shall be utilized for admission:

1. All applicants***, ages three through 21,*** must be classified as auditorily handicapped***, preschool handicapped*** or multiple handicapped with an auditory deficit in accordance with N.J.S.A. 18A:46-1 et seq. and as defined in N.J.A.C. 6:28-3.5.

2. *[Suitable capacity for]* ***Potential of the Katzenbach program to provide appropriate*** instruction for each applicant shall be determined by the admissions committee assessing the applicant's communicative needs and the preferred mode of communication; linguistic needs; severity of hearing loss and the potential for using residual hearing; academic level and style of learning; social needs; placement preference; emotional needs; individual motivation; and Deaf cultural needs. Further assessment shall also be made on health status; self-help skills; physical education and recreation needs; and prevocational and vocational skills. This determination shall be made upon review of the completed application, the results of the on-site screening and the ability of the school program to fulfill the requirements of the applicant's individualized education program.

3. (No change.)

(f)-(i) (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

DIVISION OF FISH, GAME AND WILDLIFE
Fish and Game Council
1994-95 Fish Code
Adopted Amendments: N.J.A.C. 7:25-6

Proposed: July 19, 1993 at 25 N.J.R. 3053(b).

Adopted: September 21, 1993 by the Fish and Game Council, Cole Gibbs, Chairman.

Filed: October 5, 1993 as R.1993 d.526, **without change**.

Authority: N.J.S.A. 13:1B-29 et seq. and 23:1-1 et seq.

DEPE Docket Number: 38-93-06.

Effective Date: November 1, 1993.

Operative Date: January 1, 1994.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by mailing news releases to 72 newspapers of general circulation and approximately 50 outdoor writers and specialty publications.

A public hearing concerning the proposal was held before the Fish and Game Council on August 10, 1993, at the Assunpink Wildlife Conservation Center of the Division of Fish, Game and Wildlife (Division) located on Eldridge Road within the Assunpink Wildlife Management Area, Robbinsville, New Jersey. Notice of the hearing was filed with the Secretary of State on July 13, 1993, was posted on the Secretary of State's bulletin board and was delivered to the Newark Star-Ledger and Atlantic City Press. The hearing was attended by 14 members of the general public of which four presented verbal comment. Only one letter relevant to the proposal was received by the Division during the public comment period which closed on August 18, 1993, and the contents of that letter were stated by its author at the public hearing. Several phone calls relative to the proposal were made directly to the Chairman of the Fish and Game Council. A significant amount of mail was received on two items that were not mentioned in the proposal, but which may be considered in the proposed 1995 Fish Code. The record of the public hearing may be inspected or a copy obtained by contacting Roger McDowell, Director, New Jersey Division of Fish, Game and Wildlife, CN 400, Trenton, NJ 08625.

The commenters at the public hearing were:

1. Steve Colao
2. Agust Gudmundsson, Central Jersey Trout Unlimited
3. Shaun O'Rouke
4. Ed Szabo, Paradise Fishing Club

N.J.A.C. 7:25-6.4

COMMENT: The portion of the Musconetcong River currently regulated as a "No-kill" fishing area should be deleted from the Code and a new "No-kill" regulated area should be established in Stephens State Park.

RESPONSE: No changes were proposed for this section of the Code. Because the area proposed for the regulatory change by the commenter is heavily utilized by bait fishermen, it is anticipated that a proposal such as this would be highly controversial.

N.J.A.C. 7:25-6.6

COMMENT: Bungalow Brook should not have been deleted from the listing of "Wild Trout Streams" and the upper portion of Spruce Run Creek and Roaring Run (Rock) Brook should be considered for addition to the listing.

RESPONSE: No changes in the listing of "Wild Trout Streams" were proposed Bungalow Brook was never included in the listing. Inclusion on the list is made on the basis of scientific determination. While naturally produced (wild) trout have been found in both Spruce Run Creek and Roaring Rock Brook, the numbers of wild trout that were found were not considered to be substantial enough to provide for a fishery even with restrictive regulations. All three streams are listed as

"Trout Production Waters" in the State Water Quality Standards and protected under those regulations. Many people fail to make the distinction between these categories.

N.J.A.C. 7:25-6.7

COMMENT: The "Claremount" stretch of the upper South Branch of the Raritan River should be designated as a "Trout Conservation Area".

RESPONSE: No changes were proposed for this section of the Code. The issue raised by the commenter is currently being debated within the New Jersey Federation of Sportsmen Clubs and may be proposed for the 1995 Fish Code.

N.J.A.C. 7:25-6.9

COMMENT: The daily creel limit for trout should not be reduced at Swartswood Lake.

RESPONSE: The reduction was proposed to reduce the immediate harvest of trout in this lake so that more would be available to provide for a trophy fishery. The rationale is that the trout that would now have to be released would survive and grow in the lake, eventually being caught at a much larger size than they were immediately following stocking. In his letter the commenter did express his desire that everything should be done to promote this type of a fishery and in order to do that the trade-off of immediate harvest to provide for the extended fishery is necessary.

N.J.A.C. 7:25-6.13

COMMENT: A "Lunker Bass" program should be instituted on select New Jersey lakes.

RESPONSE: This action was not proposed for this Code. The concept of establishing stricter regulations in suitable lakes to provide for a reduced harvest fishery based on a bass population composed of a significantly greater number of larger (15 inch and up) bass is currently being discussed with bass oriented fishing clubs. A "Lunker Bass" program may be proposed for the 1995 Fish Code.

N.J.A.C. 7:25-6.16

COMMENT: The closure, to fishing, within 100 feet of any fish ladder should only be applied on a seasonal basis. The current regulation is inhibiting fishing at Lake Shenandoah with no obvious biological benefit.

RESPONSE: No changes were proposed for this section of the Code; however, the comment has merit. This issue will be taken into consideration by the Division's staff of fisheries biologists for the 1995 Fish Code.

N.J.A.C. 7:25-6.22

COMMENT: The proposed season for the taking of snapping turtles is overly restrictive.

RESPONSE: In addition to this comment, a number of interested parties also contacted Fish and Game Council members by phone regarding these proposed regulations. As a result, a considerable amount of information on the current harvest rate of turtles, manner and means of taking turtles and breeding seasons, which was previously unavailable has come to light. Some time must be devoted to the evaluation of this new data and, therefore, this section of the Code and the rest of the Code will be adopted as proposed. However, based on the outcome of the evaluation of this new data, once adopted, the 1994 Fish Code may be amended to establish regulations based on these new findings.

Full text of the adoption follows:

SUBCHAPTER 6. 1994-95 FISH CODE

7:25-6.3 Trout Season and Angling in Trout Stocked Waters

(a) Except as provided in N.J.A.C. 7:25-6.4, 6.6 to 6.9, 6.18, 6.19 and (i) below, the trout season for 1994 shall commence 12:01 A.M. January 1, 1994 and extend to midnight March 20, 1994. The trout season shall re-open at 8:00 A.M. Saturday, April 9, 1994 and extend to include March 19, 1995.

(b) Except as provided in N.J.A.C. 7:26-6.4, 6.6 and 6.7 and (i) below, it shall be unlawful to fish for any species of fish from midnight March 20, 1994 to 8:00 A.M. on April 9, 1994 in ponds, lakes or those portions of streams that are listed herein for stocking during 1994.

(c) (No change.)

(d) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters for which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. on dates indicated, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1. Big Flat Brook—100 ft. above Steam Mill Bridge on Crigger Road in Stokes State Forest to Delaware River—April 15, 22, 29; May 6, 13, 20, 27.
2. Black River—Route 206 Chester, to the posted Black River Fish and Game club property at the lower end of Hacklebarney State Park—April 14, 21, 28; May 5, 12, 19, 26.
3. Manasquan River—Route 9 bridge downstream to Bennetts Bridge, Manasquan Wildlife Management Area—April 11, 18, 25; May 2, 9, 16, 23.
4. Metedeconk River, N. Br.—Aldrich Road Bridge to Ridge Avenue—April 11, 18, 25; May 2, 9, 16, 23.
5. Metedeconk River, S. Br.—Bennetts Mills Dam to twin wooden foot bridge, opposite Lake Park Boulevard, on South Lake Drive, Lakewood—April 11, 18, 25; May 2, 9, 16, 23.
6. Musconetcong River—Lake Hopatcong Dam to Delaware River including all main stem impoundments, but excluding Lake Musconetcong, Netcong—April 15, 22, 29; May 6, 13, 20, 27.
7. Paulinskill River and E. Br. and W. Br.—Limecrest Railroad Spur Bridge on E. Br., Sparta Township, and Warbasse Junction Road, Route 663, on W. Br., Lafayette Twp., to Columbia Lake—April 14, 21, 28; May 5, 12, 19, 26.
8. Pequest River—Source to Delaware River—April 15, 22, 29; May 6, 13, 20, 27.
9. Pohatcong Creek—Route 31 to Delaware River—April 12, 19, 26; May 3, 10, 17, 24.
10. Ramapo River—State line to Pompton Lake—April 14, 21, 28; May 5, 12, 19, 26.
11. Raritan River, N. Br.—Peapack Road Bridge in Far Hills to Jct. with S. Br. Raritan River—April 13, 20, 27; May 4, 11, 18, 25.
12. Raritan River, S. Br.—Budd Lake dam through Hunterdon and Somerset Counties to Jct. with N. Br. Raritan River—April 12, 19, 26; May 3, 10, 17, 24.
13. Rockaway River—Longwood Lake dam to Jersey City Reservoir in Boonton—April 11, 18, 25; May 2, 9, 16, 23.
14. Toms River—Ocean County Route 528, Holmansville, to confluence with Maple Root Branch and Route 70 to County Route 571—April 11, 18, 25; May 2, 9, 16, 23.
15. Wallkill River—Lake Mohawk Dam to Route 23, Hamburg—April 11, 18, 25; May 2, 9, 16, 23.
16. Wanaque River—Greenwood Lake Dam to Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez—April 15, 22, 29; May 6, 13, 20, 27.

(e) (No change.)

(f) Trout stocked waters for which no in-season closures will be in force. Figure in parenthesis indicates the anticipated number of stockings to be carried out from April 11 through May 31, provided that, in the event of emergent conditions, the Division may suspend stocking of any or all of the following:

1.-4. (No change.)

5. Cape May County

Dennisville Lake—Dennisville—(4)

West Pond—Cape May Courthouse—(4)

6. Cumberland County

Bostwick Lake—Friesburg—(3)

Cohansey River—Dam at Seeley's Pond to powerline above Sunset Lake, Bridgeton—(4)

Giampietro Park Lake—Vineland—(3)

Mary Elmer Lake—Bridgeton—(3)

Maurice River—Willow Grove Lake dam to Sherman Avenue, Vineland—(4)

Shaw's Mill Pond—Newport—(3)

7.-18. (No change.)

19. Sussex County

...

20.-21. (No change.)

(g) (No change.)

(h) A person shall not take, kill or have in possession in one day more than six in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof during the period extending from 8:00 A.M. April 9, 1994 until midnight May 31, 1994 or more than four of these species during the periods of January 1, 1994 to midnight March 20, 1994 and June 1, 1994 through midnight March 19, 1995 except as designated in N.J.A.C. 7:25-6.4 to 6.9.

(i) Spruce Run Reservoir, Hunterdon County, Lake Hopatcong, Morris/Sussex County, and the Manasquan Reservoir, Monmouth County, will remain open to angling year-round. Trout, if taken during the period commencing at midnight, March 20, 1994 and extending to 8:00 A.M. April 9, 1994 must be returned to the water immediately and unharmed.

7:25-6.4 Special Regulation Trout Fishing Areas—Fly Fishing Waters

(a) From 5:00 A.M. on Monday, April 18, 1994 to and including March 19, 1995 the following stretches are open to fly-fishing only, and closed to all fishing from 5:00 A.M. to 5:00 P.M. on the days listed for stocking:

1.-2. (No change.)

(b) Beginning January 1, 1994 to midnight March 20, 1994 and from 8:00 A.M. on April 9, 1994 to midnight March 19, 1995 the following stretch is open to fly-fishing only, but is closed to all fishing from 5:00 A.M. to 5:00 P.M. on days listed for stocking:

1. (No change.)

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

7:25-6.5 Special Regulation Trout Fishing Areas—Seasonal Trout Conservation Areas

(a) The following stream segments are designated as Seasonal Trout Conservation Areas and are subject to the provisions at (b) below governing these areas during the period of May 23, 1994 through March 19, 1995.

1.-2. (No change.)

(b) (No change.)

7:25-6.6 Special Regulation Trout Fishing Areas—Wild Trout Streams

(a) (No change.)

(b) The following shall apply to the Wild Trout Streams designated at (a) above:

1.-4. (No change.)

5. During the period extending from 8:00 A.M. April 9, 1994 to September 15, 1994, no person shall have in possession while fishing any more than two legally sized dead, creeled or otherwise appropriated trout. No trout may be killed or possessed during other times of the year. Any number of trout may be caught provided they are immediately returned to the water unharmed.

6. (No change.)

7:25-6.8 Special Regulation Trout Fishing Areas—Trophy Trout Lakes

(a) (No change.)

(b) The following regulations shall apply to the Trophy Trout Lake designated at (a) above:

1.-3. (No change.)

4. The season for lake trout shall extend from 12:01 A.M., January 1, 1994 to midnight, September 15, 1994 and from December 1, 1994 to midnight, September 15, 1995.

5. (No change.)

7:25-6.9 Special Regulation Trout Fishing Areas—Holdover Trout Lakes

(a) The following lakes are designated as Holdover Trout Lakes:

1. Canistear Reservoir;
2. Clinton Reservoir;
3. Swartswood Lake;
4. Monksville Reservoir;
5. Wawayanda Lake; and
6. Sheppard's Lake, Passaic County.

(b) The following apply to the Holdover Trout Lakes designated at (a) above:

1.-2. (No change.)

3. A person shall not take, kill or have in possession, in one day more than four in total of brook trout, brown trout, rainbow trout, lake trout or hybrids thereof, during the period extending from 8:00 A.M. April 9, 1994 until May 31, 1994 or more than two of these species during the periods of January 1, 1994 to midnight March 20, 1994. Trout if taken during the period commencing at midnight, March 20, 1994 and extending to 8:00 A.M., April 9, 1994 must be returned to the water immediately and unharmed.

7:25-6.10 Baitfish

(a) Except as provided for in trout-stocked waters listed in N.J.A.C. 7:25-6.3, and (b) and (c) below, up to 35 baitfish per person per day may be taken from the freshwaters of the state with a seine not over 50 feet in length in all ponds and lakes which have an area of over 100 acres, and in all other waters with a seine not to exceed 30 feet in length, or half the width of the stream at the point of use, whichever is less, year-round. Minnow traps not larger than 24 inches in length with a funnel mouth no greater than two inches in diameter or an umbrella net no greater than 3.5 feet square may be used in any of the freshwaters of the state.

(b) (No change.)

(c) Up to 35 per day of alewife or blueback herring, in the aggregate, may be taken per person with a dip net not more than 24 inches in diameter, hook and line or as otherwise provided for in (d) below. Possession limit is one day's limit.

(d) (No change.)

7:25-6.11 Nets

(a) Except as provided for the taking of baitfish, it shall be illegal to take fish from the freshwaters of the State by means of nets except under special permit issued by the division at its discretion and as hereafter provided for in the tidal freshwaters of New Jersey, other than the Delaware River:

1. No person shall catch or take or attempt to catch and take fish of any kind or description by means of a net, or use a net of any character except for fyke nets and bait seines used for the purpose of taking of baitfish, from Saturday at 2:00 P.M. until the following Sunday at 12 midnight.

2. It shall be legal to take foodfish as defined in N.J.A.C. 7:25-6.2 by the following means:

i. Haul seines, the mesh of which shall not be less than two and three quarter inches stretched while being fished and not to exceed 70 fathoms in length, whether singly or attached, for all species except striped bass may be used from November 1 to April 30.

ii. Fykes, with leaders shall not exceed 30 feet in length and no part of the net or leaders to be larger than three inches stretched mesh while being fished for all species excepting striped bass may be used from November 1 to April 30.

iii. Miniature fykes or pots for the taking of carp, catfish, suckers and eels, the same not to exceed 16 inches in diameter may be used from March 15 to December 15. All other species of fish which may be caught must be immediately returned, unharmed, to the waters from which they were taken.

iv. Drifting gill nets, the smallest mesh of which shall be five and one quarter inches stretched measure while being fished, and shall not exceed 100 feet in length, for all species excepting striped bass may be used from March 1 to June 15.

v. Gill nets with a mesh not smaller than two and three quarters inches stretched measure, while being fished and not exceeding 200 feet in length may be used from March 1 to June 10 for the purpose of taking blueback herring only.

3. Not more than one gill net or hauling seine shall be used from a boat.

7:25-6.13 Warmwater Fish

(a)-(l) (No change.)

(m) The daily creel and possession limit for walleye shall be five, except for Monksville Reservoir, Wanaque Reservoir and the Wanaque River between Greenwood Lake and Monksville Reservoir, where it shall be two with a closed season during the period of March 1, 1994 to April 30, 1994.

(n)-(p) (No change.)

7:25-6.20 Delaware River between New Jersey and Pennsylvania

(a) In cooperation with the Pennsylvania Fish Commission, the following regulations for the Delaware River between New Jersey and Pennsylvania are made a part of the New Jersey State Fish and Game Code and will be enforced by the conservation authorities of each state.

1.	Season	Size Limit	Daily Bag Limit
Trout	April 9-Sept. 30	No minimum	5

...

2.-6. (No change.)

7:25-6.21 (No change.)

7:25-6.22 Snapping turtles, bull frogs and green frogs

(a) Any person who has a fishing license or is entitled to fish without a license may in the waters of the State, take snapping turtles, bull frogs and green frogs by means of spears, hooks, dip nets not more than 24 inches in diameter, traps or by hand. Turtles shall not be taken with a gun or bow and arrow. The use of set lines is prohibited.

(b) The daily limit for snapping turtles shall be three and the daily limit for both bull frogs and green frogs shall be 15 in total.

(c) The open season for taking of snapping turtles, bull frogs and green frogs shall be from June 1 to October 31.

(d) Snapping turtles, bull frogs and green frogs may be taken in numbers greater than the daily limit, and beyond the dates of the open season, under special permit issued by the Division at its discretion.

1. Required permit information is as follows:

i. The applicant's name;

ii. The applicant's address and telephone number; and

iii. The time period for permit.

2. Applications shall be directed to:

New Jersey Division of Fish, Game, and Wildlife
Bureau of Freshwater Fisheries
CN 400
Trenton, New Jersey 08625-0400

3. The following information will be needed by the Division to grant the permit:

i. Why is the extension necessary;

ii. How long will the extension be needed; and

iii. Where will the trapping activity take place.

4. The permittee must agree to all reporting requirements in this subchapter.

(e) Those species of frogs and turtles listed as State Threatened or Endangered may not be pursued, taken, killed or possessed. The possession of other species of frogs and turtles is regulated under N.J.S.A. 23:2A-6.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Standards for Licensing Nursing Home Administrators

Adopted Repeal and New Rules: N.J.A.C. 8:34

Proposed: August 16, 1993 at 25 N.J.R. 3727(a).

Adopted: October 7, 1993 by Bruce Siegel, M.D., M.P.H., Commissioner of Health (with approval of the Nursing Home Administrators Licensing Board).

Filed: October 8, 1993 as R.1993 d.545, **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-5b, 26:2H-27 and 26:2H-28.

Effective Date: November 1, 1993.

Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:

The Department of Health afforded all interested parties an opportunity to comment on the proposed repeal and new rule of N.J.A.C. 8:34 relating to the licensing of nursing home administrators and regulating the Nursing Home Administrators Licensing Board (Board). The proposal appeared in the New Jersey Register for Monday, August 16, 1993 at 25 N.J.R. 3727. The proposed new rules were also discussed at meetings of the professional associations representing nursing home administrators. Public comment was received on the proposal through September 15, 1993. The Department received written comments from James E. Cunningham, President, New Jersey Association of Health Care Facilities (NJAHCF); Karen J. Uebele, President, New Jersey Association of Non-Profit Homes for the Aging (NJANPHA); and Norda A. Bellantoni, Vice-President New Jersey Chapter of the American College of Health Care Administrators. On the basis of recommendations of NJAHCF and NJANPHA, the Department has amended N.J.A.C. 8:34-3.2(a)5, 7.2(c), and 7.6(b).

COMMENT: The New Jersey Chapter of the American College of Health Care Administrators requested that the Department and the Board consider the stature of achievement of certification by the professional society within the context of the proposed new licensing standards. Ms. Bellantoni submitted information from the national office of the society. This material reflects certification recognition in seven other states and position statements of the American College of Health Care Administrators (ACHCA).

At the present time, New Jersey recognizes certification as a nursing home administrator only in the statutory composition of its 13 member Nursing Home Administrators Licensing Board; one member of the Board shall be a fellow of the American College of Nursing Home Administrators and one member shall be a member of the American College of Nursing Home Administrators.

Through the national society, individuals applying for certification are required to have a current nursing home administrator license that has been in effect for at least two years, two years of NHA experience and at least 20 hours of continuing education each year for the previous two years. The certification process requires the applicant to take a two-part certification examination. To maintain certification, an administrator must be recertified every five years.

The ACHCA and its New Jersey chapter request that the Department view the certification process in the context of recognizing certification as a full or partial basis for licensure by reciprocity; as a substitute for certain components of initial licensure requirements; and in lieu of a certain number of continuing education credits or exemption from compliance with the continuing education requirement, totally.

RESPONSE: The Department welcomes the material received from the New Jersey chapter of the ACHCA. The Board discussed the comments at its September 23 meeting and has referred them to its regulatory subcommittee for more extensive review. At this time, any change to the proposed rule of the magnitude of the above mentioned recommendations would be viewed as substantive in nature and consequently could not be incorporated into the rule at this juncture of its adoption. The Department will consider proposal of such amendments at a future time, when the regulatory subcommittee of the Board has completed its review.

A summary of the specific issues raised by the comments, as well as the Department's responses, follows:

SUBCHAPTER 3. LICENSE REQUIREMENTS

COMMENT: NJAHCF requested that N.J.A.C. 8:34-3.2(a)5 be amended to clarify that the intent of the standard was not to exclude references received from previous or current co-workers of the applicant for licensure. In addition, both NJAHCF and NJANPHA commented that previous rules did not mandate that references be from health professionals nor that references attest to the applicant's administrative ability. Both associations feel that compliance with the proposed rule might be difficult for the applicant who is new to licensure, and often new to the health care field, to achieve.

RESPONSE: The Department had intended to strengthen this requirement and make it more germane to the application process. It was never the intention of the Department to exclude references obtained from previous or current co-workers of the applicant. However, the Department agrees with NJAHCF that clarification of the proposed standard is needed and recognizes and appreciates the concerns of both associations that this requirement may be too burdensome for the applicant to meet in a meaningful way. The rule has been amended to reflect these concerns.

SUBCHAPTER 7. CONTINUING EDUCATION

COMMENT: N.J.A.C. 8:34-7.2(c) proposed that each licensee be permitted to carry over up to five excess credit hours from one licensing period to the next. NJAHCF recommended that the current policy be continued and the proposed regulations be amended to allow 20 hours to be carried forth after a licensee exceeds the necessary requirement by 20 hours. NJANPHA recommended that a licensed nursing home administrator be allowed to carry a maximum of 10 credit hours into the next licensing period.

RESPONSE: The Department has re-examined this issue and has revised the proposed rule to allow a licensed nursing home administrator to carry a maximum of 10 credit hours into the next licensing period. The carry over of 10 credit hours in excess of the required 40 hours was permitted by the rule in the repealed Chapter 34 and was the prevailing practice among licensed administrators. Revising the rule to reflect this established practice would be responsive to the needs and practices of licensed administrators and advantage the regulated public. The administrator would be encouraged to attend additional courses knowing the continuing education hours would be credited to them. There would be no negative impact on the resident population of our nursing homes by this action.

COMMENT: N.J.A.C. 8:34-7.6(b) proposed that a sponsoring organization seeking program approval must apply to the Board at least 60 days prior to the Board meeting at which approval is requested. NJANPHA requested that there be no timetable for approval, since it is difficult for an organization to always plan continuing education programs significantly far in advance of the program date. NJAHCF asked that the timeframe be amended to 30 days and noted that the previous rules did not require written application of a seminar 60 days in advance of the session to gain approval.

RESPONSE: The Department elects to retain this rule but does accept the recommendation of NJAHCF to reduce the approval time to 30 days. Board staff must be afforded adequate time in which to properly review the program application material and prepare this material for submission to the Board for approval. While the Department appreciates the problems sponsoring organizations may encounter in complying with this requirement, a schedule is essential to promote the efficient and cost effective operation of the Board and to ensure that only high caliber and pertinent continuing education courses receive Board approval.

Summary of Agency Initiated Changes:

On adoption, the Department would like to correct two typographical errors which occurred in the August 16, 1993 proposal of the rules. In the Summary section of the proposal, N.J.A.C. 8:34-3 describes the licensure application process. As part of that description, the educational requirement was incorrectly stated as "10" hours. This should have read "100" hours and was correctly stated in the body of the rules. In addition, in the body of the rules, N.J.A.C. 8:34-3.2(a)10 should have read "documentation of any conviction of a felony violation of state **or** Federal law, rather than state **of** Federal law, which appeared in the proposal. The corrections have been made upon adoption.

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

CHAPTER 34
RULES FOR LICENSING NURSING HOME ADMINISTRATORS AND RULES REGULATING THE NURSING HOME ADMINISTRATOR BOARD

SUBCHAPTER 1. GENERAL PROVISIONS

8:34-1.1 Source of Authority

These rules shall be known as the "Rules for Licensing Nursing Home Administrators" adopted by the New Jersey State Department of Health and promulgated pursuant to the authority of N.J.S.A. 26:2H-27 and 26:2H-28 and N.J.S.A. 30:11 et seq.

8:34-1.2 Scope of rules

(a) This chapter contains rules for licensing nursing home administrators in New Jersey and rules regulating the Nursing Home Administrators Licensing Board.

(b) The rules of the Department shall be supplemental to the laws providing for the licensing of nursing home administrators and shall have the force and effect of law.

(c) The rules of the Board are intended to be consistent with the applicable Federal and State law and shall be construed whenever necessary, to achieve such consistency.

8:34-1.3 Scope of individual practice

(a) This chapter shall apply to all individuals who seek to secure a New Jersey license as a nursing home administrator; all individuals who currently are licensed; and all individuals who are in inactive status.

(b) The scope of practice for a licensed nursing home administrator is defined as the provision of physical and emotional health services for persons who require various therapeutic and protective measures in a supervised environment.

(c) The licensed nursing home administrator performs functions including, but not limited to, ensuring quality resident care management, personnel management, financial management, environmental management, regulatory management, organizational management, marketing, and community and public relations.

8:34-1.4 Scope of administrator responsibility

(a) The licensed administrator shall be responsible for the administrative functions at the facility to assure that the facility is operated at all times in compliance with N.J.A.C. 8:39, Licensing Standards for Long Term Care Facilities.

(b) In a facility where a licensed administrator has both administrative and other functions, the facility shall maintain time schedules which delineate clearly the specific hours spent by the administrator in each function.

8:34-1.5 Purpose

The purpose of this chapter is to implement the provisions of P.L. 1968, c.356 and by so doing, provide for the requirement of the education, experience, continuing education, and disciplinary processes of individuals acting as administrators of long term care facilities, in order to ensure safe and adequate treatment of all individuals in long term care facilities, and for the operation of the Nursing Home Administrator Board.

8:34-1.6 General Definitions

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

"Assistant administrator" means an individual employed in a licensed nursing home who assists the nursing home administrator in performing the prescribed functions of that position, has administrative responsibility for all areas of the facility and direct line responsibility to the administrator, and who may be designated to serve as administrator in the absence of the administrator.

"Administrator-in-training" (AIT) means an individual who is participating in a Board approved training program to become a licensed nursing home administrator.

"Board" means the Nursing Home Administrator Licensing Board (NHALB) of the New Jersey State Department of Health.

"Commissioner" means the Commissioner of the New Jersey State Department of Health.

"Department" means the New Jersey State Department of Health.

"Full-time" means at least 35 hours of work per week.

"Institution of higher learning" means an institution accredited by the New Jersey Department of Higher Education or its out-of-State equivalent.

"License" means a certificate issued by the Department upon recommendation from the Nursing Home Administrator Board which indicates that the bearer has been licensed by that body as meeting the standards contained in this chapter.

"Nursing home" means a nursing facility licensed pursuant to the Health Care Facilities Planning Act, P.L. 1971, c.136 and 138, N.J.S.A. 26:2H-1 et seq., and amendments thereto, or an out-of-State nursing facility licensed pursuant to similar licensure regulations.

"Nursing home administrator" means an individual who holds a valid New Jersey nursing home license, whether or not such individual has an ownership interest in such home and whether or not such functions and duties are shared with one or more other individuals.

"Preceptor" means an individual who holds a valid nursing home administrator license and who has been approved by the Board in accordance with N.J.A.C. 8:34-4.3 to be responsible for the training of an AIT.

8:34-1.7 Severability

In the event that any provision of these rules is declared unconstitutional or invalid, or the application thereof to any person or circumstance is held invalid, the applicability of such provision to other persons and circumstances and the constitutionality or validity of every other provision of these rules shall not be affected thereby.

8:34-1.8 Waiver

(a) After due consideration, the Department, upon recommendation from the Board, may waive any provisions of this chapter for good cause, if such a waiver would not endanger the health, safety, or welfare of residents in a long term care facility.

(b) A facility seeking a waiver of the standards in this chapter shall apply in writing to the Executive Director of the Board.

(c) A written application for waiver shall include the following:

1. The nature of the waiver requested;
2. The specific standard for which a waiver is requested;
3. Reasons for requesting a waiver;
4. An alternative proposal which would ensure the health and safety of the residents; and
5. Documentation to support the waiver application.

SUBCHAPTER 2. NURSING HOME ADMINISTRATORS LICENSING BOARD

8:34-2.1 General powers

(a) A majority of the currently serving membership of the Board shall constitute a quorum for the transaction of business at any meeting.

(b) The Board, or its designee, shall be responsible for determining the minimum eligibility requirements to take the nursing home administrator licensing examination.

(c) The Board may recommend to the Commissioner the assessment of a civil penalty, in accordance with N.J.S.A. 30:11-4(a), against a nursing home administrator for violation of, or failure to comply with, any order or rule issued or adopted by the Board, or any provision of this chapter.

(d) The Department shall maintain a registry of all licensed long term care administrators and a file of applicants for licensure.

SUBCHAPTER 3. LICENSE REQUIREMENTS

8:34-3.1 Requirements for license

(a) An applicant for a license as a nursing home administrator shall:

1. Be at least 18 years of age;
2. Be a citizen of the United States or have declared the intent to become same;
3. Have, at a minimum, a baccalaureate degree from an institution of higher learning;
4. Have served as an assistant administrator or AIT in a licensed nursing home or a facility with licensed long term care beds for at least 1,750 hours at a rate of no more than 50 hours per week. This requirement may be completed on a part time basis. In no instance shall said administrative experience have been more than two years prior to the submission of the application for examination (see also N.J.A.C. 8:34-4.4);
5. Have successfully completed 100 seminar or course hours in areas relevant to long term care administration as determined by the Board;
6. Be of good moral character as required in N.J.S.A. 30:11-13; and
7. Have passed an examination approved by the Board for the licensing of nursing home administrators.

(b) A baccalaureate degree shall not be required for an individual to serve as an AIT or assistant administrator.

(c) A new applicant for licensure shall undergo a background check by the New Jersey State Police at the applicant's expense.

(d) Pursuant to N.J.S.A. 30:11-1.1, no license shall be issued to any person who has ever been convicted of a crime involving moral turpitude or to any person who has been found guilty of violating the provisions of this chapter by a court of competent jurisdiction.

8:34-3.2 Application procedure

(a) An applicant for a license as a nursing home administrator shall submit the following to the Board:

1. A completed application form;
2. Declaration of intent to become a citizen, if applicable;
3. A non-refundable licensure application fee as set forth in N.J.A.C. 8:34-9.1(a)1;
4. An official transcript from a college or university accredited by the State Department of Higher Education;
5. Three references attesting to the applicant's administrative ability *[and]* *or* character from *[health care]* professionals who are not related to applicant, nor who have been, or currently are, a *[patient or]* client in a business relationship of the applicant. The current preceptor of the applicant may submit a reference on behalf of the applicant, but that reference shall be in addition to the required three references;
6. Documentation of administrative experience identified at N.J.A.C. 8:34-4.1(a);
7. Documentation of successful completion of 100 course hours identified at N.J.A.C. 8:34-3.1(a)5;
8. National examination scores from previous licensing examinations for administrators applying for license by equivalency, as identified at N.J.A.C. 8:34-3.1(a)7, if applicable;
9. Documentation of involvement on the part of the applicant in disciplinary proceedings with a licensure board or governmental agency in any jurisdiction the applicant is, or has been, licensed as an administrator, and where, as a result of that proceeding, a sanction of at least the level of a written warning was imposed on the administrator, if applicable;
10. Documentation of any conviction of a felony violation of state *[of]* *or* Federal law; and
11. A notarized statement on the application by the applicant indicating that the statements and documents are true and correct.

(b) Effective January 1, 1994, an application submitted to the Department shall remain active for a period of two years, by the end of which applicant shall meet all requirements to be deemed eligible to take the licensing examination.

(c) An applicant may request an extension of the two year period. Documentation of progress towards meeting the license requirements shall be submitted by the applicant prior to the expiration of the initial two year period. An extension may be granted by the Board or its designee under conditions to be determined by the Board.

(d) At the expiration of the two year period, an application for licensure will be deemed inactive and an applicant may, at the discretion of the Board, be required to resubmit an application.

SUBCHAPTER 4. ADMINISTRATIVE EXPERIENCE REQUIREMENT

8:34-4.1 Administrative experience requirement

(a) An applicant for licensure shall comply with the requirement of N.J.A.C. 8:34-3.1(a)4 through participation or employment in one of the following:

1. An administrator-in-training program that meets the requirements identified at N.J.A.C. 8:34-4.2(a) and is approved by the Board; or
2. An assistant administrator position, with the following conditions:

i. The applicant shall have the equivalent of one year full-time or two years part-time administrative experience, as an assistant administrator, totaling 1,750 hours in a nursing home, or licensed facility with long term care beds, within the five year period immediately prior to submission of an application; and

ii. The Board approves the job description for the specific position; in accordance with the requirements of this chapter; and

iii. The administrator submits documentation to the Board verifying the performance record of the assistant administrator until 1,750 hours of experience is completed.

8:34-4.2 Administrator-in-training (AIT) program

(a) An AIT program shall be approved by the Board prior to the individual beginning. The program shall be:

1. Conducted in a nursing home or facility with licensed long term care beds licensed in accordance with N.J.A.C. 8:39. The facility shall be in compliance with the track record requirements of N.J.A.C. 8:33-4.10(e)2; and

2. Under the preceptorship of a nursing home administrator who has been approved by the Board in accordance with N.J.A.C. 8:34-4.3; and

3. For a period of 1,750 hours, or as required by the Board after evaluation of the applicant's education and experience based upon the requirements contained in this chapter; and

4. With a minimum of 875 hours, or half of the hours required by the Board, served while a licensed administrator is on the premises of the nursing home.

(b) An AIT program approved by the Board shall provide at least 70 hours of administrative experience in each of the following service areas:

1. Administration,
2. Business office,
3. Nursing,
4. Resident activities,
5. Social service,
6. Medical records,
7. Dietary,
8. Maintenance, and
9. Environmental, including housekeeping/laundry.

(c) The hours of administrative experience to be provided in addition to (b) above shall be submitted to the Board for approval in the form of a program plan and shall be completed in areas of the AIT's need, after consideration by the Board of the AIT's previous work experience, training and education.

(d) The Board may waive, in accordance with N.J.A.C. 8:34-1.8, and after review of an individual's application, some or all of the hours required to meet the administrative experience requirement set forth at N.J.A.C. 8:34-4.2(a). This may include a waiver of any of the hours set forth at N.J.A.C. 8:34-4.2(b)1-9.

(e) If the AIT is working in a nursing home in another capacity, the preceptor shall conspicuously post the schedule stating when the AIT is performing as an AIT and when the AIT is working in another capacity.

(f) If the AIT is a department head, a notice shall be conspicuously posted in the nursing home stating who the acting department head will be while the AIT is performing administrative duties. A copy of this notice shall be forwarded to the Executive Director of the Board.

(g) An AIT program of 1,750 hours shall be completed within two years, or if 875 hours or less is required by the Board, within one year.

8:34-4.3 Preceptor for administrator-in-training

(a) A preceptor shall be responsible for supervising an AIT and for scheduling hours and activities for an AIT.

(b) A preceptor shall have held a valid license as a nursing home administrator for at least five years and shall have practiced as a licensed nursing home administrator in a long term care facility for at least three years immediately preceding serving as a preceptor.

(c) A preceptor shall be employed full time in the nursing home where the training program occurs.

(d) The preceptor shall notify the Board, in writing, if an AIT leaves the program, there is a change of preceptor, or there is a change in an approved training plan.

(e) Any change in an approved training program shall be submitted to the Board in writing for reapproval.

(f) The Board may refuse to approve a preceptor for training AITs if:

1. There is good cause to believe that the preceptor has failed to provide proper training and supervision for AITs previously under preceptor's responsibility in an AIT program; or

2. The preceptor has been subject to a disciplinary action by the Board within 12 months immediately preceding the start of the AIT program.

(g) A licensed nursing home administrator shall not function as a preceptor for more than two AITs at any one time.

8:34-4.4 Equivalency of internship requirement

(a) The service requirement identified at N.J.A.C. 8:34-3.1(a)4 shall be deemed to have been met if the applicant:

1. Has been awarded a Master's degree in Health Care Administration or Public Health Administration, or their equivalent, by an accredited institution of higher learning; and

2. Has completed an internship program approved by the institution awarding the Master's degree, of not less than 450 hours, or as determined by the Board to be substantially equivalent, in a nursing home or a facility that provides licensed long-term care services and has completed said internship within five years immediately preceding application to the Board for licensure.

(b) An applicant who possesses a Master's degree, as identified in (a) above, and who has not completed an approved program through the Master's program, shall be required to complete not less than 875 hours, or six months full-time experience in a nursing home or licensed facility that provides long term care services as an AIT or assistant administrator.

8:34-4.5 Written plan and reports

(a) An AIT program approval form shall be completed and submitted to the Board or its designee for approval prior to an individual beginning the program.

(b) The preceptor shall maintain progress reports for an AIT on forms prescribed by the Board for each quarter of the required hours of the training program.

(c) The quarterly report shall be submitted to the Executive Director of the Board and shall include the following:

1. Subjects covered and hours spent in each department;

2. Comments on the monthly internship logs as to accuracy and completeness;

3. Progress of the AIT; and

4. Identification of problems, if any.

(d) The AIT shall maintain monthly logs of work activities which shall be submitted quarterly to the Executive Director of the Board.

(e) The AIT shall co-sign and submit the quarterly progress reports to the Executive Director of the Board.

(f) Each quarterly report shall be submitted to the Board within 15 working days of the end of the quarter evaluated.

(g) The verification of program completion forms shall be completed, signed by the preceptor for the AIT or assistant administrator, and submitted to the Board within 15 working days of the completion of the program.

(h) If a preceptor fails to submit the report(s) required in a timely manner as indicated in N.J.A.C. 8:34-4.5(f) and 8:34-4.5(g) above, the AIT may be required to forfeit all credit for the training accumulated on the report(s) for that period.

SUBCHAPTER 5. EXAMINATION

8:34-5.1 Examination requirements

(a) The examination shall be the licensing examination approved by the Board.

(b) An applicant for licensure as an AIT or assistant administrator shall complete all the application requirements identified at N.J.A.C. 8:34-3.2 before being permitted to take the written examination.

8:34-5.2 Scheduling of examinations

Examinations shall be held at the discretion of the Board in accordance with the prevailing practice of the National Association of Boards, 808 17th Street, Suite 200, Washington, D.C. 20006.

8:34-5.3 Examination fee

An applicant shall be required to submit an examination fee at the time of the examination. The examination fee shall be determined by the Board, as set forth in N.J.A.C. 8:34-9.1(a)5.

8:34-5.4 Subjects for examination

The subject matter for examination shall include, but not be limited to, the areas of: Resident Care Management; Personnel Management, Financial Management; Environmental Management; Regulatory Management; and Organizational Management.

8:34-5.5 Exclusion of examination subjects

Nothing contained in this rule shall preclude the Board from administering an examination which excludes subjects for examination which are in derogation of, or in conflict with, the teachings and practices of any recognized faith; provided however, that any applicant seeking entrance to such an examination shall submit evidence satisfactory to the Board that he or she is, in fact, an adherent of such recognized religious faith.

8:34-5.6 Grading of examinations

The Board shall establish the passing grade for each license examination administration. Each candidate for a nursing home administrator license shall be required to pass the examination, by meeting or exceeding the grade established by the Board for that particular examination.

8:34-5.7 Records of examination

Following the close of every examination, a record stating in detail the result of the examination for each candidate shall be maintained by the Department permanently.

8:34-5.8 Re-examination

(a) An applicant who fails the licensing examination, will be permitted to take a re-examination, in accordance with (b) through (f), below.

(b) Following a first examination failure, an applicant shall be permitted to sit for re-examination, upon approval by the Board, based upon the application requirements contained in this chapter.

(c) Following a second examination failure, or any subsequent examination failures, an applicant shall take 50 hours of remediation approved by the Board or its designee, before the applicant is permitted to take a re-examination.

(d) If an applicant fails to pass the second licensing examination, or any subsequent licensing examination, the applicant shall be required to submit to the Board, at least 30 days prior to the next examination the applicant will take, documentation of having completed 50 hours of remediation in the areas specific to the individual's deficits, or as approved by the Board.

(e) Written documentation of successful completion of the remediation provided for at N.J.A.C. 8:34-5.8(c) shall be submitted to the Executive Director of the Nursing Home Administrators Licensing Board, New Jersey State Department of Health, CN 367, Trenton, New Jersey 08625-0367, at least 30 days prior to the examination.

(f) If an applicant fails to pass the third licensing examination, or any subsequent licensing examination, in addition to completing 50 hours of remediation as set forth at N.J.A.C. 8:34-5.8(c), the candidate shall be required to complete 450 hours of administrative experience as an AIT or assistant administrator in a nursing home or a facility with licensed long term care beds, prior to taking the next examination, and submit documentation of completion of this requirement to the Executive Director of the Board, at least 30 days prior to the examination.

8:34-5.9 Conditional admission to examination

(a) At the Board meeting preceding the administration of an examination, the Board may agree to allow an applicant to sit for examination if the applicant, by the date of the examination, will have met all the prerequisites to sit for examination.

(b) An applicant allowed to sit for examination in accordance with (a) above shall submit written evidence of completion of the qualification requirements to the Board, or its designee, at least five working days before the date of examination. The applicant shall not be permitted entrance to the examination if he or she has not submitted evidence of completion of requirements.

8:34-5.10 Ineligibility

(a) An applicant who has been disqualified from admission to an examination shall be given written notification by the Board of his or her disqualification and the reasons therefor.

(b) An applicant who has been disqualified may petition the Board in writing, within 30 days of notification of disqualification, for a hearing and a review of the application as set forth in N.J.A.C. 8:34-8.3 and 8.4.

(c) When an applicant for examination has been disqualified, the applicant shall submit a new application to qualify for examination. The applicant shall meet the requirements for examination and licensing in force at the time of such reapplication.

SUBCHAPTER 6. LICENSURE

8:34-6.1 Granting of license

(a) The Board shall authorize the issuance of a nursing home administrator license to an individual who has complied with the provisions of this chapter.

(b) An individual who fails to comply with the provisions of this chapter shall not be issued a license.

(c) A license shall be issued for a period of no more than two years.

(d) A license shall not be transferable or assignable.

8:34-6.2 Renewal of license

(a) All licenses issued under this chapter shall expire on the date established by the Board and shall become invalid if not renewed.

(b) The Department shall issue a renewal license to a licensed administrator every two years upon review by the Department of the following:

1. The licensee shall submit a completed licensure renewal application; and

2. The licensee shall submit the required license renewal fee as determined by the Board in accordance with N.J.A.C. 8:34-9.1(a); and

3. The licensee shall submit written documentation of the completion of 40 hours of continuing education approved by the Board in accordance with N.J.A.C. 8:34-7.2(a).

(c) At the discretion of the Board or its designee, a license may be renewed up to 60 days after the date of its expiration upon payment of a late fee, as set forth at N.J.A.C. 8:34-9.1(a)4, in addition to the renewal fee.

(d) An applicant for licensure renewal, who had a license issued by the Board for less than two years, shall be required to complete at least the following number of continuing education hours:

1. Licensed for 19 to 24 months.................................. 40 hours;
2. Licensed for 12 to 18 months.................................. 30 hours;
3. Licensed for 6 to 11 months.................................... 20 hours;
4. Licensed for less than 6 months.............................. 0 hours.

8:34-6.3 Use of the title, "Licensed Nursing Home Administrator"

(a) An individual who holds a valid license pursuant to the provisions of these rules shall have the right and privilege of using the title "Licensed Nursing Home Administrator" and have the right and privilege of using the abbreviation "L.N.H.A." after his or her name.

(b) Use or designation by title or abbreviation, or any other words, letters, sign, card or device intending to indicate that a person is a licensed nursing home administrator, by any person not so licensed, shall be prohibited.

8:34-6.4 Display of license

An individual licensed as a nursing home administrator shall display such license in a conspicuous place in the nursing home where the individual is employed.

8:34-6.5 Duplicate license

Upon receipt by the Board of a notarized statement from the licensed nursing home administrator that a license has been lost, mutilated, stolen, or destroyed, the Department may issue a replacement license upon payment of the appropriate fee as required at N.J.A.C. 8:34-9.1(a) and under such conditions as the Board may prescribe.

8:34-6.6 Change of name

If a licensed nursing home administrator changes his or her name, the name change shall be recorded in the register for licensed administrators. The licensed administrator shall submit documentation to the Department of the change of name and a certified copy of the court order or marriage certificate. When a duplicate license is issued, the original license shall be returned to the Department.

8:34-6.7 Change of address and employment

(a) A licensed administrator shall notify the Board in writing within ten working days of any change in his or her home address.

(b) A licensed administrator shall notify the Board in writing within ten working days of any change in his or her place of employment.

8:34-6.8 License by equivalency

(a) An individual licensed in good standing as a LNHA in another jurisdiction may request approval of the Board for issuance of a New Jersey license by equivalency. The Board may approve the application only where it finds that the educational, training, and administrative experience requirement, and passing scores in the licensing examination, are equal to those required in the State of New Jersey at the time the applicant received his or her license in the other jurisdiction.

(b) An individual who fails to comply with the requirements for licensure of this chapter may be issued a license if the individual has been employed as a long term care administrator, in an out-of-State licensed long term care facility for at least one year, full time, within no more than the two years prior to submission of an application for license by equivalency.

(c) An individual applying for licensure by equivalency, shall submit to the Board:

1. A completed nursing home administrator application form; and
2. An application fee as set forth in N.J.A.C. 8:34-9.1(a)1; and
3. Verification of out-of-State licensure form(s) completed by the State Board in all states in which the individual may have at any time held a license to practice as a nursing home administrator, providing evidence satisfactory to the Board of the individual's good standing as a nursing home administrator in the jurisdiction which issued the license; and
4. Three written references attesting to the administrative ability and character of the individual; and
5. A background check by the New Jersey State Police.

8:34-6.9 Inactive status

(a) If a licensed administrator fails to fulfill the license renewal requirements at the prescribed time, in accordance with N.J.A.C. 8:34-6.2, the license shall be considered inactive.

(b) An individual may apply for license without re-examination within two years of the license renewal date and upon submitting a request for restoration of said license, in writing, to the Board.

(c) An individual requesting restoration of his or her license from inactive status within two years of inactivity, shall be required to pay the current license renewal fee in accordance with N.J.A.C. 8:34-9.1(a)3 and comply with the education requirements identified at N.J.A.C. 8:34-6.9(d) below.

(d) The applicant shall be required to complete 40 hours of continuing education credit for each year in which the license was inactive in addition to the required 40 hours of continuing education for biennial licensing period.

(e) An administrator whose license is in an inactive status and who subsequently fails to meet the requirements identified at N.J.A.C. 8:34-6.9(b), (c), and (d), shall be required to apply in writing for restoration of licensure under the requirements as determined by the Board on an individual basis and as provided for in these rules.

SUBCHAPTER 7. CONTINUING EDUCATION

8:34-7.1 Purpose and scope

The requirements set forth under this subchapter shall apply to all Board licensees eligible to practice long term care administration within the State of New Jersey except where the rules provide for exemption or waiver.

8:34-7.2 Licensure renewal continuing education credit requirement

(a) By the completion of each biennial licensing period, each administrator shall, as a condition of licensure renewal identified at N.J.A.C. 8:34-6.2 successfully complete 40 hours of approved continuing education in health or health-related courses, seminars, or programs relevant to long term care administration as determined by the Board.

(b) Attendance at meetings of, and/or service for, professional trade associations and associations of licensed administrators approved by the Board, may yield up to ten hours of continuing education credits every two years.

(c) Each licensee shall be permitted to carry over up to *[five]* ***ten*** excess credit hours from one licensing period to the next.

8:34-7.3 Waiver of continuing education credits

(a) The Board or its designee may, for good cause to be determined by the Board or its designee, in accordance with N.J.A.C. 8:34-1.8, waive all or part of the continuing education requirement for the licensing period. All such requests to the Board by the licensee shall be in writing and accompanied by written documentation supporting the reasons for the request.

(b) Waivers shall be granted for one licensure period at a time. If the situation for which the waiver was granted continues, the licensee shall reapply in writing to the Board for a renewal of the waiver.

8:34-7.4 Extension of time

(a) The Board or its designee may, for good cause to be determined by the Board, grant an extension of time the licensee shall have to complete the continuing education requirement for the two year licensure period. All such requests to the Board by the licensee shall be in writing and accompanied by written documentation supporting the reasons for the request.

(b) Extension letters with a date of expiration shall be issued by the Board and shall serve as verification that the individual remains licensed during this period of time. Upon completion of the required continuing education hours within the prescribed period of time, a license shall be issued.

8:34-7.5 Continuing education criteria

(a) Criteria for continuing education courses shall include:

1. Professional competency and ethics, as well as legal aspects relating to the practice of long term care administration; and
2. Material designed to acquaint administrators with the utilization and application of new techniques relating to long-term care administration.

(b) The Board shall develop and promulgate standards for determining which, if any, out-of-State courses, seminars, or programs qualify for the credit hour requirement for licensure identified at N.J.A.C. 8:34-7.2(a).

(c) The Board shall review and monitor all approved courses, seminars or programs. Upon evidence that the courses, seminars or programs fail to meet the criteria in this chapter, the sponsoring institution or agency shall lose its approved status and shall be required to reapply for future continuing educational approval.

8:34-7.6 Program approval

(a) Any course of study offered by an educational institution, association, professional society, person or organization for the purpose of qualifying applicants for licensing in this State as nursing home administrators and/or for license renewal shall require the approval of the Board.

(b) Any person or organization desiring approval as a sponsor of a health or health-related course, seminar, or program shall apply to the Board through written application. Such written application shall be received by the Board at least *[60]* *30* days prior to the date of the Board meeting at which approval is requested and shall include at least the following:

1. Dates that the course, seminar or program is to be offered;
2. The objectives and content of the course, seminar or program;
3. The total hours of instruction and credit; and
4. The names and resumes of instructors.

(c) All sponsors shall secure Board approval prior to representing that the course, seminar or program fulfills the requirements of this subchapter.

(d) Board approval of a course, seminar or program shall be considered valid for one year from date of approval, provided that the items identified at N.J.A.C. 8:34-7.6(b)2-4 remain unchanged during the one-year time period.

(e) Notice of the date, time and place the course is to be offered shall be provided to the Board if the course is offered additional times during the one year approval period.

8:34-7.7 Record of continuing education credits

(a) An applicant for licensure or licensure renewal shall be required to maintain appropriate documentation of course, seminar or program attendance.

(b) An applicant for license renewal shall submit to the Board verification of continuing education hours accumulated by the licensee. Verification material shall be appropriate evidence of the successful completion of an approved course, seminar or program, in the form of a certificate or similar official record of attendance signed by the approved sponsor.

(c) An applicant for license renewal shall complete the appropriate licensure renewal forms by listing under continuing education information all the approved courses, seminars or programs which the applicant completed, as well as the number of credits earned, for the renewal period in question.

SUBCHAPTER 8. SUSPENSION, REVOCATION AND HEARINGS

8:34-8.1 Suspension and revocation

A nursing home administrator whose license is either suspended or revoked, pursuant to N.J.S.A. 25:2H-27 and 26:2H-28 (Chapter 356, P.L. 1968), shall not be appointed or retained in the facility in any administrative, managerial, supervisory, or similar position.

8:34-8.2 Denial, license suspension, or license sanctions

(a) The Board may refuse to issue a license, recommend to the Commissioner the revocation or suspension of a license, or may reprimand or otherwise discipline an individual, in accordance with N.J.A.C. 8:34-8.2(d), upon receiving substantial evidence that said individual for license or registration, or such nursing home administrator:

1. Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the rules of the Department pertaining thereto;
2. Has willfully or repeatedly violated any of the provisions of N.J.S.A. 26:2H-1 et seq. or the rules of any licensing or supervising authority or agency of the State or political subdivision thereof having jurisdiction over the operation and licensing of nursing homes;
3. Has been convicted of a crime involving moral turpitude or of violating the provisions of N.J.S.A. 30:11-11 or these rules by a court of competent jurisdiction or has admitted such guilt;
4. Has practiced fraud, deceit, or misrepresentation in securing or procuring a nursing home administrator license;
5. Is incompetent to engage in the practice of nursing home administration or to act as a nursing home administrator;
6. Has practiced fraud, deceit, or misrepresentation in his/her capacity as a nursing home administrator;
7. Has committed acts of misconduct in the operation of a nursing home under his/her jurisdiction;
8. Is addicted or dependent upon the use of any drug recognized as resulting in abnormal behavior;
9. Has practiced without a nursing home administrator license;
10. Has wrongfuly transferred or surrendered possession either temporarily or permanently of his/her license to any person;
11. Has paid, given, caused to be paid or given or offered to pay or give to any person a commission or other valuable consideration for the solicitation or procurement either directly or indirectly of nursing home patronage;
12. Has been guilty of fraudulent, misleading, or deceptive advertising;
13. Has impersonated another licensee of a like or different name;
14. Has failed to act to promote the safety, health and life of a patient(s);
15. Has willfully permitted unauthorized disclosure of information relating to a patient or his or her records;
16. Has discriminated in respect to residents, employees or staff on account of race, religion, color, sex or national origin;
17. Has committed an act of professional negligence or omission of professional responsibility that is repeated, willful or knowingly committed, or has committed gross negligence, in the opinion of the Board; or
18. For such other reasons as the (State) Board might deem reasonable and appropriate to protect the health, safety and welfare of the residents of any nursing home.

(b) The Board shall refuse to issue a license, recommend the revocation or suspension of a license, or reprimand an individual only after the individual has been afforded due notice and the opportunity to be heard in accordance with N.J.S.A. 30:11-17.

(c) Pursuant to N.J.S.A. 30:11-21, the Board shall have the right of inquiry into the operations of a facility and review of statement of deficiencies and penalties issued by the Department in accordance with this chapter and pursuant to N.J.S.A. 30:11-21.

(d) Pursuant to N.J.S.A. 30:11-21(e) the Board shall have the power to:

1. Request an administrator to appear before the Board;
2. Place a letter of reprimand in the Department file of an administrator;
3. Place a letter of censure or warning in the Department file of an administrator;
4. Require an administrator to complete continuing education credits in specified areas in addition to the CEUs required for licensure renewal;
5. Require an administrator to obtain counseling and assistance;
6. Recommend the issuance of a civil penalty; and/or
7. Recommend to the Commissioner, the denial, suspension or revocation of an administrator's license to the Commissioner.

8:34-8.3 Hearings

(a) Any person, public officer, association, or the Department, may prefer charges against a licensee for due cause. Such charge shall be in writing and shall be submitted to the Board.

(b) The Board shall review the charges and retain the authority to dismiss said charges and take no action thereon, by formal hearing or otherwise, in which case the complaint and supporting documentation shall be filed with the Department.

(c) The Board may elect to issue a recommendation of revocation, suspension, or denial of a license, in which case the Board shall forward notice of its recommendation, together with a specification of charges, to the applicant or licensee by registered mail.

(d) Revocation, suspension, reprimand, or denial shall become effective 30 days after mailing of notice unless the applicant or licensee, within said 30 day period, shall give written notice to the Department of a desire for a hearing.

(e) If a hearing is requested by the applicant or licensee, the revocation, suspension, reprimand, or denial action shall be held in abeyance until final adjudication of the complaint.

(f) An order of suspension, denial, or revocation may contain such provisions regarding reinstatement of the license as the Board shall recommend. In the absence of any such provisions regarding reinstatement in an order of revocation, the revocation shall be deemed to be permanent.

8:34-8.4 Conduct of hearings

(a) The applicant or licensee shall be afforded an opportunity for a prompt and fair hearing before a final decision is made on the matter of revocation, suspension, reprimand or denial of any license. The procedure governing such hearing shall be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The Commissioner shall render a written decision stating conclusions and reasons therefor upon each matter heard, and shall be empowered to enter orders of revocation, suspension or denial consistent with the circumstances in each case.

8:34-8.5 Restoration and reinstatement of licenses

(a) Upon written application for restoration of a license, the Board in its discretion may grant the applicant a hearing upon notice.

(b) If conviction of a crime which resulted in the revocation or suspension of a license is subsequently reversed on appeal and the accused acquitted or discharged, the license shall be restored, upon written request by the licensee to the Board.

SUBCHAPTER 9. FEES

8:34-9.1 Fees and charges

(a) The following fees shall be paid by the applicant:

1. Application fee	$100.00
2. Original license fee	
i. During the first year of a biennial renewal period	150.00
ii. During the second year of a biennial renewal period	75.00
3. Biennial license renewal fee	150.00
4. Late renewal fee in addition to renewal fee	25.00
5. Duplicate license fee	10.00
6. Duplicate certificate fee	10.00
7. License restoration fee	175.00
8. Annual fee for submission of a continuing education program application to be approved by the Board	25.00

i. State agencies shall be exempt from the payment of this fee.

(b) Prior to taking the licensure examination, each applicant shall be required to submit an examination fee in the amount specified by the professional examination service utilized by the Department for the administration of the examination and approved by the Department and the Nursing Home Administrator's Board in accordance with N.J.S.A. 30:11-13. The Department shall provide timely notice of the examination fee in the Public Notices section of the New Jersey Register.

(c) All fees collected under the provisions of this subchapter are non-refundable.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Licensing and Degree Approval Standards

Readoption with Amendments: N.J.A.C. 9:1

Proposed: July 19, 1993 at 25 N.J.R. 3057(a).
Adopted: September 22, 1993 by Board of Higher Education, Edward D. Goldberg, Chancellor and Secretary.
Filed: September 30, 1993 as R.1993 d.523, **without change**.

Authority: N.J.S.A. 18A:3-14(e), (m) and (n).

Effective Date: September 30, 1993, Readoption;
November 1, 1993, Amendments.
Expiration Date: September 30, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 9:1.

Full text of the adopted amendments follows:

9:1-7.1 Definitions

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

. . .

"Seeking accreditation" means that the institution has achieved candidacy status or the equivalent standing as evidenced by meeting criteria as defined by the Commission on Higher Education of the Middle States Association of Colleges and Schools or the equivalent criteria as established by an appropriate accrediting body recognized by the United States Department of Education.

9:1-7.2 Protected degree designations

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

(c) The institution's requirements for awarding an academic degree shall be generally equivalent to those accepted in the United States by an accrediting body recognized by the U.S. Department of Education.

9:1-7.4 Out-of-State duly authorized institutions of higher education

In those states which do not have a licensing requirement for institutions of higher education, a duly authorized institution of higher education shall mean an institution which is regionally accredited or accredited by the appropriate accrediting body recognized by the United States Department of Education, or is seeking accreditation by the appropriate accrediting body recognized by the United States Department of Education.

TRANSPORTATION

(b)

DIVISION OF TRANSPORTATION SYSTEMS PLANNING

BUREAU OF AUTHORITY COORDINATION AND LOCAL TRANSPORTATION PLANNING

State Highway Access Management Code

Definitions; Applications for Staged Development; Permit Process; Type of Permit and Review Determination, Access Permit Applications; Permits and Permit Fees; Major Access Permits with Planning Review Process; Appeal Process; Department Initiated Projects and Permits; Waivers

Adopted Amendments: N.J.A.C. 16:47-1.1, 4.1, 4.3 through 4.6, 4.13, 4.32, 4.35 and Appendix B.

Proposed: July 19, 1993 at 25 N.J.R. 3129(a).
Adopted: October 6, 1993 by William D. Ankner, Director, Division of Policy and Capital Programming.
Filed: October 1, 1993 as R.1993 d.524, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-44.1 and State Highway Access Management Act, P.L. 1989, c.32.

Effective Date: November 1, 1993.
Expiration Date: April 20, 1997.

Summary of Public Comments and Agency Responses:

The Department received a comment from Joanne M. Harkins, AICP/PP, Director of Land Use and Planning, New Jersey Builders Association, Plainsboro, New Jersey, concerning the rule proposal. There were no other comments received.

COMMENT: The New Jersey Builders Association, on behalf of its membership, supports the clarifying amendments. We appreciate the cooperation of the Department in adding clarifying language to state that it is vehicle trips "directly accessing a state highway" that are used to classify applications. We believe that this language eliminates the potential for any confusion on this issue in the future when the individuals who wrote the code may no longer be involved in its direct implementation.

RESPONSE: The Department appreciates the support from Ms. Harkins. The Department will continue to monitor the implementation of the Access Code and is willing to modify the Access Code when it will increase the clarity of the process and enhance the deliverability of permits for the regulated public.

Full text of the adoption follows:

16:47-1.1 Definitions

The following words and terms, when used in this Access Code, shall have the following meanings unless the context clearly indicate otherwise:

...

"Applicant time" means a period of time between a Department request for revisions or information and its receipt by the Department. Time during this period is not counted in the Department time frames. Following a determination that an application is incomplete or unacceptable for review by a Regional Maintenance Office or the Bureau of Major Access Permits, time frames will be reset to the beginning of that step of that unit's review time. The Department will publish a list of steps and the associated time frames for each type of application.

...

"Certificate of acceptance" means a document issued by the Bureau of Major Access Permits to indicate that the permittee for a major permit with a planning review has satisfactorily met the construction conditions of the permit. This certificate is required in advance of using the access and obtaining a certificate of occupancy.

...

"Design standards" means standards for design based on one or more of the following:

1.-14. (No change.)

15. Pline, James L., editor, "Traffic Engineering Handbook, 4th edition," 1992 or superseding edition, available through the Institute of Transportation Engineers, 525 School St., S.W., Suite 410, Washington, D.C. 20024-2729.

...

"Lot consolidation or subdivision applications (or permits)" means applications (or permits) addressing two or more lots to be combined into one lot or one lot to become two or more lots.

...

"Major access applications (or permits)" means access applications (or permits) for lots with an expected two-way traffic volume of 500 or more vehicle trips per day directly accessing a State highway to and from the use or uses.

"Major access applications (or permits) with planning review" means access applications (or permits) for lots with an expected two-way traffic volume of 500 or more vehicle trips per day directly accessing a State highway and with an expected peak-hour volume of 200 or more vehicle trips directly accessing a State highway to and from the use or uses.

...

"Major traffic generator" means the use or uses which generates a total of 500 or more vehicle trips per day directly accessing a State highway to and from the use or uses.

...

"Minor access applications (or permits)" means access applications (or permits) for lots with an expected two-way traffic volume of less than 500 vehicle trips per day directly accessing a State highway to and from the use or uses.

...

16:47-4.1 Applications for staged development

Applications for staged development will be approved if the access plan at each stage of development satisfies minimum design standards. If the development is staged, the applicant shall indicate the maximum development potential, under zoning, for the undeveloped portion of the lot.

16:47-4.3 Permit process

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

(f) Applications pertain to lots, not access points. Applications for driveways can only be signed by the lot owner or a representative holding an appropriate power of attorney. A completed power of attorney form (MT-156) shall be submitted with the application when the lot owner does not sign the application. For shared access between lots, at the time of the development application for each lot, an application and separate fee shall be submitted for each lot signed by each lot owner. For easements or access through lots adjacent to the highway, the application shall be signed by the owner of the lot adjacent to the highway.

(g)-(h) (No change.)

(i) Street intersection applications shall be submitted to the Bureau of Major Access Permits for all lane additions to existing streets, and new streets. Street improvement applications must be submitted for all other proposed changes to existing streets. Applications for new streets and lane additions to existing streets can be signed by an adjacent lot owner or the county or municipal official. Applications for other changes to existing streets shall be signed by the county or municipal official.

(j) There are three different categories of access applications. They are shown in N.J.A.C. 16:47-4.4(a) and are based on the following factors:

1. Traffic generation, as determined by reference to the Institute of Transportation Engineers (ITE) publication entitled "5th Edition, Trip Generation," superseding edition, or superseding rates adopted by the Department. For land uses not listed in these sources or when an applicant believes these rates are not representative, the Department may accept alternative evidence of representative rates; and

2. Those vehicle trips which directly access a State highway.

(k)-(r) (No change.)

16:47-4.4 Type of permit and review determination

(a) The Department shall determine the types of applications required. Single-family residential permits, residence and business combined permits, and government driveway permits shall be classified based on the definitions in N.J.A.C. 16:47-1.1. The Department shall be guided by Appendix E and Appendix E1, Access Application Thresholds, incorporated herein by reference, in determining the other types of applications and in determining which Department units will review an application.

1. Any use generating less than 500 vehicle trips per day directly accessing a State highway to and from the lot requires a minor application.

2. Any use generating 500 or more vehicle trips directly accessing a State highway per day and less than 200 peak-hour vehicle trips to and from the lot requires a major application.

3. Any use generating 500 or more vehicle trips per day and 200 or more peak-hour vehicle trips directly accessing a State highway to and from the lot requires a major application with a planning review.

(b) (No change.)

(c) The chart in Appendix E and Appendix E1 should be used only to estimate trip generation and assist in determining the type of application. Applicants should contact the Regional Maintenance Offices or the Bureau of Major Access Permits for assistance on the use of the table. The type of application, any required traffic analysis for potential traffic signals, or traffic impact study shall use the trip generation process derived from the Institute of Transportation Engineers publication entitled "5th Edition Trip Generation Report," or superseding edition including the use of superseded trip generation rates adopted by the Department. If the lot is to be served by alternative access as well as direct access to a State highway, the applicant is encouraged to discuss the distribution of vehicles between the direct access and alternative access with the Regional Maintenance Office or the Bureau of Major Access Permits.

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

16:47-4.5 Access permit applications

(a) The maximum time frames for the review of various types of applications are summarized below. They are for the Department only and do not include any applicant time or time for Federal Highway Administration reviews of work on interstate highways, interchanges, or ramps. The Department's check of the completeness of an application is included in these time frames.

DEPARTMENT TIME FOR APPLICATIONS ACCEPTED FOR REVIEW (IN DAYS)[1]

	Form	Minor[2]	Major	Major With Planning Review
. . .				
Street Intersection	MT-160	35	100	175
Concept Review	MT-32	NA	100	175
Street Improvement	MT-158	35	NA	NA
Lot Consolidation or Subdivision	MT-155	NA	50	NA

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

16:47-4.6 Permits and permit fees

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

(g) As a condition of any permit the Department may require a bond or certified check in an amount sufficient to guarantee or insure proper maintenance or restoration of the area disturbed by the permittee. If it becomes necessary for Department forces or contractors to make repairs, for any reason, the cost of such work shall be borne by the permittee.

(h)-(n) (No change.)

16:47-4.13 Major access permits with planning review process

(a) Potential applicants shall schedule a pre-application conference with the Bureau of Major Access Permits for major applications with a planning review.

(b)-(n) (No change.)

16:47-4.32 Appeal process

(a) The appeal process for minor permits is as follows:

1. The applicant shall submit a written request for reconsideration to the Regional Maintenance Office within 30 days of a notice of rejection or unacceptable permit conditions. The request shall include reasons for the appeal. Within seven days of receipt, the Regional Maintenance Office shall forward the request to the Regional Maintenance Engineer, with pertinent documents, and advise the applicant of this action.

2. Within 10 days of receipt of the reconsideration request, the Regional Maintenance Engineer will determine whether to grant the reconsideration request. If the request is granted, the Regional Maintenance Engineer will schedule a meeting, within 30 days, with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Regional Maintenance Engineer shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Regional Maintenance Engineer denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Regional Maintenance Engineer, the applicant may submit an appeal to the Executive Director for Regional Operations within 15 days.

4. The Executive Director for Regional Operations shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. The Executive Director for Regional Operations may conduct the hearing or designate the Manager of the Bureau of Major Access Permits as the hearing officer. At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. In reaching the final agency decision, the Executive Director for Regional Operations shall consider the information presented at the hearing and the recommendation of the hearing officer if designated and the criteria set forth in the Act and these rules, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system. The Executive Director for Regional Operations shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

(b) The appeal process for all major permits, concept reviews, and developer agreements shall be as follows:

1. (No change.)

2. Within 10 days of receipt of the reconsideration request, the Manager of the Bureau of Major Access Permits will determine whether to grant the reconsideration request. If the request is granted, the Manager of the Bureau of Major Access Permits will schedule a meeting, within 30 days of the receipt of the reconsideration request, with the applicant and provide the applicant with an opportunity to present additional information in support of the application.

3. The Manager of the Bureau of Major Access Permits shall render a decision in writing within 15 days of the meeting and so notify the applicant. If the Manager of the Bureau of Major Access Permits denies the applicant's request for reconsideration or if the applicant does not agree with the decision of the Manager of the Bureau of Major Access Permits, the applicant may submit an appeal to the Director, Division of Regional Design, within 15 days.

4. The Director, Division of Regional Design, shall schedule an informal hearing within 10 days of his or her receipt of the applicant's appeal. The Director, Division of Regional Design, may conduct the hearing or designate a Regional Design Engineer as hearing officer. At the hearing, the applicant will be accorded an opportunity to present further information justifying the acceptance of the access plan.

5. In reaching the final agency decision, the Director, Division of Regional Design, shall consider the information presented at the hearing and the recommendation of the hearing officer if designated and the criteria set forth in the Act and these regulations, the lot owner's right of reasonable access to the general system of streets and highways in the State and the public's right and interest in a safe and efficient highway system. The Director, Division of Regional Design, shall render the final agency decision, with reasons, within 10 days of the informal hearing and so notify the applicant in writing.

16:47-4.35 Waivers

(a) (No change.)

(b) If an applicant wishes to seek a waiver, a request must be submitted as an attachment to the permit application. A request for waiver form (MT-159) shall be prepared by the applicant. The request for waiver shall state reasons why a waiver is appropriate and include documentation to support the waiver.

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

APPENDIX B
STATE HIGHWAY ACCESS LEVELS BY ROUTE AND MILEPOST
ACCESS LEVEL (AL)

1.-6. (No change.)

DESIRABLE TYPICAL SECTIONS CODES (DTS) AND RIGHT OF WAY WIDTHS (R.O.W.) DESCRIPTION

	MILEPOST				
ROUTE	BEGIN	END	AL	DTS	CELL
...					
20	0.00	0.70	3	6A	4
...					
21	0.00	0.91	3	6B	1
...					
40	1.85	2.60	3	4A	7
40	2.60	5.60	2	4A	31
...					
208	3.55	5.12	3	6A	1
...					

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Zone of Rate Freedom

Adopted Amendment: N.J.A.C. 16:53D-1.1

Proposed: August 16, 1993 at 25 N.J.R. 3684(a).
Adopted: September 17, 1993 by William D. Ankner, Director, Division of Policy and Capital Programming.
Filed: October 7, 1993 as R.1993 d.537, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.20 through 2.25.
Effective Date: November 1, 1993.
Operative Date: January 1, 1994.
Expiration Date: May 3, 1994.

Summary of Public Comments and Agency Responses:
A public hearing was held on September 2, 1993, before Hearing Officer John J. Mycoff, of the Department's Office of Community Involvement, in the Multi-Purpose Room, Department of Transportation, Engineering and Operations Building, 1035 Parkway Avenue, Trenton, New Jersey 08625. There were no commenters or participation from the public. Mr. Mycoff in his hearing report of September 3, 1993, made no recommendations. The docket and comment period closed on September 15, 1993, and **no comments were received**. The hearing record may be inspected by contacting Charles L. Meyers, Administrative Practice Officer, NJDOT, 1035 Parkway Avenue, CN 600, Trenton, NJ 08625.

Full text of the adoption follows:

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this rule shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to customers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers) provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below upgraded to the nearest $.05.

1. The following chart sets forth the 1994 percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Increase	Increase Upgraded To Nearest $.05
$1.10 or less	4.0%	$.05
$1.15-$2.20	4.0%	$.10
$2.25-$3.30	4.0%	$.15
$3.35 upward	4.0%	$.20+

2. The following chart sets forth the 1994 percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Decrease	Decrease Upgraded To Nearest $.05
$ .50 or less	10%	$.05
$ .55-$1.00	10%	$.10
$1.05 upward	10%	$.15+

(b)

NEW JERSEY TRANSIT CORPORATION

Section 16(b)(2) Capital Assistance Program

Readoption with Amendments: N.J.A.C. 16:80

Proposed: July 19, 1993 at 25 N.J.R. 3142(a).
Adopted: September 28, 1993 by New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.
Filed: October 5, 1993 as R.1993 d.527, **without change**.
Authority: N.J.S.A. 27:25-5(e), (g) and (h).
Effective Date: October 5, 1993, Readoption, November 1, 1993, Amendments.
Expiration Date: October 5, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:80.

Full text of the adopted amendments follows:

16:80-1.1 Purpose

(a) Section 16(b)(2) of the Federal Transit Act, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to make grants and loans to private non-profit corporations and associations, public bodies approved by the State to coordinate services and/or public bodies which certify that no non-profit corporations or associations are readily available in an area for the specific purpose of assisting them in providing transportation services in meeting the special needs of elderly and persons with disabilities for whom mass transportation services are unavailable, insufficient, or inappropriate. Such grants and loans are subject to such terms, conditions, requirements, and provisions as the Secretary of Transportation may deem necessary or appropriate.

(b) The Section 16(b)(2) program is designed to supplement other capital assistance programs by funding transportation projects for the elderly and persons with disabilities in all areas—urbanized, small urban, and rural. Although recipients are often organizations which have specific clientele, transportation services funded under this program may be open to all elderly and persons with disabilities once the immediate transportation needs of the recipients are satisfied.

(c) The principal responsibility and authority for administering the program is with the Governor through the New Jersey Transit Corporation (NJ TRANSIT), the designated State agency which acts as grantee for all Section 16(b)(2) funds within the State of New Jersey. NJ TRANSIT is responsible for:

i. Notifying organizations of the availability of the program;

ii. Applying to the Federal Transit Administration for these funds on behalf of private non-profit agencies and public bodies within the State;

iii.-vii. (No change.)

(d) Each eligible organization shall apply directly to NJ TRANSIT for assistance under the program.

16:80-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings:

"Applicant" means any private non-profit organization or certified public body which applies for financial assistance under the Section 16(b)(2) Capital Assistance Program.

. . .

"Person with disability" means any individual who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including any person who uses a wheelchair or has semi-ambulatory capabilities, is unable without special facilities to utilize public transportation facilities and services effectively.

. . .

"Public body" means a county, municipality or other public organization or association which has been approved by the State to coordinate services for elderly persons and persons with disabilities or has itself certified that non-profit corporation or association is not readily available in a service area.

. . .

16:80-2.1 General

Section 16(b)(2) funds are allocated among the States by an administrative formula which is based on the percentage of elderly and persons with disabilities population in each State. The annual fiscal year funding level for each State is published in the Federal Register following the enactment of the annual United States Department of Transportation Appropriations Act. Notification of the fiscal year allocations are made on or about October 1. Section 16 funds are available to the States only for the fiscal year in which they are apportioned. Any funds remaining unobligated at the end of the fiscal year are reapportioned with the next year's apportionment to all States.

16:80-2.2 Formula

(a) The Federal share of eligible capital and program administrative costs is not to exceed 80 percent of the net cost of the program. The local match of eligible capital and administrative costs shall be no less than 20 percent of the net cost of the program. Subject to the availability of funds, NJ TRANSIT provides the 20 percent match requirement for New Jersey's Section 16(b)(2) Program.

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

(d) The Federal share can be 90 percent for vehicle related equipment required by the Clean Air Act Amendments of 1990 or the Americans with Disabilities Act of 1990. It is only the incremental cost of the equipment required that may be funded at 90 percent, not the entire cost of the vehicle.

16:80-3.1 Eligibility applicants

Private non-profit organizations and designated public bodies are eligible to apply to NJ TRANSIT for funding under the Section 16(b)(2) program.

16:80-3.2 Eligible capital expenses

(a) Funds for the Section 16(b)(2) program are available for capital expenses to support the provision of transportation services to meet the special needs of elderly and persons with disabilities. Examples of capital expenses include, but are not limited to, the following:

1.-8. (No change.)

9. Initial installation costs;

10. Vehicle procurement, testing, inspection, and acceptance costs;

11. Lease of equipment when lease is more cost effective than purchase; and

12. Acquisition of transportation services under contract, lease, or other arrangement. The State, as recipient, has the option to decide whether to provide funding for such acquired services.

16:80-3.3 Eligible NJ TRANSIT administrative expenses

(a) Eligible program administration costs consist of those costs incurred in implementing and managing the entire Section 16(b)(2) program, including previously funded projects, if necessary.

(b) Eligible program administration costs include, but are not limited to:

1. General, administrative, and overhead costs such as salaries of the program director, manager, secretary and bookkeeper;

2.-3. (No change.)

16:80-3.4 Private enterprise coordination requirements

(a) To the maximum extent feasible, NJ TRANSIT shall ensure that private-for-profit mass transportation operators have been given a fair and timely opportunity to participate in the local planning for the project, and have been afforded every feasible opportunity to provide the proposed special service for elderly and persons with disabilities. To ensure that all private-for-profit and public transit operators have been notified of the non-profit organization's intention to provide special services, and that they have had adequate opportunity to comment, two options are available:

1. The applicant should have a public notice describing the services it intends to offer to meet the special needs of elderly and persons with disabilities within a stated service area. The notice should invite any interested public or private-for-profit transit or paratransit operators within the stated service area to comment on the proposed service by sending a written notice to NJ TRANSIT and/or the local applicant. A minimum of 15 days response time shall be provided; or

2. The applicant should request individual sign-offs from public or private-for-profit transit and paratransit operators in the service area stating that the services that the private-for-profit operator is providing or is prepared to provide are not designed to meet the special needs of elderly and persons with disabilities within the service area.

16:80-4.1 Program advertisement

NJ TRANSIT shall advertise the program early enough to allow sufficient time for any interested applicant to obtain, complete, and return the preliminary application before an established deadline. The program shall be advertised by means of a local notice in three or more newspapers of general circulation published in New Jersey.

16:80-4.2 Preliminary application

(a) The preliminary application must be obtained from and submitted to:

The Section 16(b)(2) Program
NJ TRANSIT
c/o Office of Special Services
One Penn Plaza East
Newark, NJ 07105-2246

(b) The applicant shall submit the following information in the completion of the preliminary application:

1.-7. (No change.)

16:80-4.3 County coordinating committee review

(a) If a county has not been designated by NJ TRANSIT as a public body eligible to apply, then the county will be given an opportunity to review all applications received from within that particular county.

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

(d) If a county wants to apply and has been designated by NJ TRANSIT as an eligible applicant, then the county forfeits the opportunity to participate in the review process. In such cases, applications will be reviewed directly by NJ TRANSIT.

16:80-4.5 Selection of final applications

(a) NJ TRANSIT evaluates and selects the final applications to be used based on the following criteria approved by the Federal Transit Administration:

1.-2. (No change.)

3. The degree of coordination among applicant organizations submitting a proposal in attempting to provide transportation services to elderly and/or persons with disabilities; and

4. (No change.)

(b) NJ TRANSIT will submit a final program of projects listing the names of agencies completing applications to the capital assistance branch of the Federal Transit Administration.

(c) NJ TRANSIT will notify each county of the agency or organization within that county whose application has been selected to be included in the grant application NJ TRANSIT submits to the Federal Transit Administration.

16:80-4.6 Notification of grant award

NJ TRANSIT will notify the governing body of each county once it receives notification from the Federal Transit Administration of the grant award.

16:80-5.1 Lease agreements

(a) After program approval and purchase of vehicle equipment, NJ TRANSIT will enter into a lease agreement with the selected recipients for the purposes of leasing vehicles.

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

(a)

NEW JERSEY TRANSIT CORPORATION

Small Urban and Rural Area Public Transportation Program

Readoption with Amendments: N.J.A.C. 16:81

Proposed: July 19, 1993 at 25 N.J.R. 3144(a).

Adopted: September 28, 1993 by New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Filed: October 5, 1993 as R.1993 d.528, **without change**.

Authority: N.J.S.A. 27:25-5(e), (g) and (h).

Effective Date: October 5, 1993, Readoption, November 1, 1993, Amendments.

Expiration Date: October 5, 1998.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:81.

Full text of the adopted amendments follows:

16:81-1.1 Purpose

(a) Section 18 of the Federal Transit Act, 49 U.S.C. §§1601 et seq., as amended, authorizes the Secretary of Transportation to apportion funds to the Governor of each State for public transportation projects in non-urbanized areas.

(b) The funds, appropriated annually, are made available on population-based formulas and may be used for all projects included in the Section 18 Statewide program of projects submitted annually for approval to the Federal Transit Administration by NJ TRANSIT.

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

(e) The principal responsibility and authority for administering the program is with NJ TRANSIT, the State agency designated as the grantee for all Section 18 funds within the State of New Jersey. NJ TRANSIT is responsible for:

1.-4. (No change.)

5. Submitting a Statewide program of projects to the Federal Transit Administration for approval;

6.-11. (No change.)

16:81-2.3 Fund availability

Section 18 funds are available for obligation for three years, the fiscal year apportioned plus two additional years. Funds unobligated at the end of the three-year period will lapse to the State unless they are obligated for Section 18 projects or transferred to the Section 9 program to be obligated that year in areas having a population of between 50,000 and 200,000. Unobligated funds which have lapsed will be reapportioned among the States according to formula.

16:81-3.1 Local recipients

Eligible recipients include local public bodies and agencies thereof, private non-profit organizations, Indian tribes and groups, and operators of public transportation services. Private, for-profit operators of transit or paratransit services may participate in the program through contracts with eligible recipients. NJ TRANSIT may further define recipient eligibility requirements in order to comply with State laws or to further program goals.

16:81-3.2 Eligible services and areas

(a) Section 18 funds are available for expenditures for public transportation projects in areas other than urbanized areas. Public transportation is defined to mean mass transportation by bus, rail, or other conveyance, either publicly or privately owned, which provides the public general or special service on a regular and continuing basis (not including charter or sight-seeing or exclusive school bus).

(b) (No change.)

16:81-4.2 Capital expenses

(a) Capital expenses include the acquisition, construction and improvement of public transit facilities and equipment needed for an efficient and coordinated public transportation system. The Federal share of eligible facilities and equipment shall not exceed 80 percent of the net capital cost. Examples of eligible capital expenditures include, but are not limited to, the following:

1.-9. (No change.)

10. Vehicle procurement, testing, inspection and acceptance costs;

11. Construction or rehabilitation of transit facilities including design, engineering and land acquisition;

12. Facilities to provide access for bicycles to mass transit facilities or equipment for transporting bicycles on vehicles; and

13. Lease of equipment/facilities when more cost effective as well as the capital cost of contracting.

16:81-4.4 Project administrative expenses

(a) Under the Section 18 program, project administrative expenses incurred by a local recipient can be viewed as a separate cost category from either capital or operating expenses. NJ TRANSIT has determined such expenses to be capital.

(b) Eligible project administrative costs may include, but are not limited to, general, administrative and overhead costs such as:

1.-2. (No change.)

3. Insurance;

4. Marketing;

5. Office supplies; and

6. Standard overhead rates.

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

16:81-4.5 Intercity bus service

States are required to spend a portion of their Section 18 apportionment to carry out a program for the development and support of intercity bus transportation. The percentage required by the statute is phased in from not less than five percent in FY1992 and not less than 10 percent in FY1993, to not less than 15 percent in FY1994 and thereafter. The requirement is effective unless the Governor certifies that the intercity bus service needs of the State are being adequately met.

16:81-5.1 Application process

(a) The application package for Section 18 eligible recipients shall be obtained from, and returned to:

The Section 18 Program
NJ TRANSIT
c/o Office of Special Services
One Penn Plaza East
Newark, NJ 07105-2246

(b) Each local recipient of Section 18 funds shall submit the application to NJ TRANSIT for funds apportioned to the State of New Jersey during the current fiscal year. The application shall be complete and have authorizing signatures where appropriate.

(c) (No change.)

16:81-6.1 Notification process

(a) NJ TRANSIT will notify applicants of the selection of their projects to be included in the application to be submitted to the Federal Transit Administration once the NJ TRANSIT Board of Directors has reviewed and approved the Section 18 program of projects.

(b) (No change.)

SUBCHAPTER 7. RURAL TRANSIT ASSISTANCE PROGRAM (RTAP)

16:81-7.1 Purpose

(a) Section 18(h) of the Federal Transit Act, as amended, authorizes the Secretary to make grants and enter into direct contracts for transit research, technical assistance, training and related support services in non-urbanized areas. The Rural Transit Assistance Program (RTAP) provides a source of funding to assist in the design and implementation of training and technical assistance projects and other support services tailored to meet the specific needs of transit operators in non-urbanized areas. The program has two components. The State program provides an annual allocation to each State to develop and implement training and technical assistance programs in conjunction with the State's administration of the Section 18 formula assistance program. The national program provides for the development of information and materials for use by local operators and State administering agencies and supports research and technical assistance projects of national interest.

(b) The objectives of the Rural Transit Assistance Program are:

1. To promote the safe and effective delivery of public transportation in non-urbanized areas and to make more efficient use of public and private resources;

2. To foster the development of State and local capacity for addressing the training and technical assistance needs of rural/small urban transportation community;

3. To improve the quality of information and technical assistance available through the development of training and technical assistance resource materials;

4. To facilitate peer-to-peer self help through the development of local networks of transit professionals;

5. To support the coordination of public, private, specialized, and human service transportation services; and

6. To build a national data base on the non-urbanized segment of the public transportation industry.

16:81-7.2 Authorization

Funding for RTAP is authorized at the level of five percent of the three percent of Federal Transit Administration's formula and discretionary funds which are set aside for planning, programming, and research. This provides a stable funding source proportionate to other Federal Transit Administration program.

16:81-7.3 RTAP formula

Federal Transit Administration allocates RTAP funds to the States based on an administrative formula. A base level of funds is allocated first ($50,000 for each of the States and Puerto Rico, and $10,000 for the Insular Areas of Guam, American Samoa, Northern Marianas, and the Virgin Islands). The remaining funds are distributed according to the non-urbanized population based formula used for the apportionment of Section 18 funds. Allocations are announced in the Federal Register along with the annual Section 18 apportionments. The RTAP national program is funded from other Federal Transit Administration sources.

16:81-7.4 Funds availability

RTAP funds have the same period of availability as the Section 18 formula funds. That is, RTAP funds are available to the State for obligation during the fiscal year in which they are allocated plus two additional fiscal years. If not obligated during this period, they are reallocated among all the States with the following fiscal year's allocation. There is no Federal requirement for a local match for the RTAP funds.

(a)

NEW JERSEY TRANSIT CORPORATION

Disability Discrimination Complaint Procedure

Adopted New Rules: N.J.A.C. 16:84

Proposed: August 2, 1993 at 25 N.J.R. 3445(b).

Adopted: September 28, 1993 by New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Filed: October 5, 1993 as R.1993 d.530, **without change.**

Authority: N.J.S.A. 27:25-5(e), 42 U.S.C. §12101 et seq. and 28 C.F.R. §35.107.

Effective Date: November 1, 1993.

Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

CHAPTER 84
DISABILITY DISCRIMINATION COMPLAINT PROCEDURE

SUBCHAPTER 1. DEFINITIONS

16:84-1.1 Definitions

As used in this chapter, the following terms have the indicated meanings:

"ADA" means the Americans with Disabilities Act, 42 U.S.C.A. §12101 et seq.

"Agency" means the New Jersey Transit Corporation and its operating divisions, NJ TRANSIT Bus Operations, Inc.; NJ TRANSIT Rail Operations, Inc.; and NJ TRANSIT Mercer, Inc.

"Executive Director" means the Executive Director or his or her designee.

SUBCHAPTER 2. GENERAL PROVISIONS

16:84-2.1 Purpose

(a) These rules are adopted by the Agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 C.F.R. 35.107.

(b) The purpose of these rules is to establish a designated coordinator whose duties shall include assuring that the Agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the Agency pursuant to N.J.A.C. 16:84-4.

16:84-2.2 Required ADA Notice

In addition to any other advice, assistance or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the Agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Agency.

AGENCY NOTICE OF ADA PROCEDURE

The Agency has adopted an internal procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act. Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal procedure can be found in the New Jersey Administrative Code, N.J.A.C. 16:84-1.1 et seq. As those rules indicate, complaints should be addressed to the Agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

Bobby Coney
Manager, EEO/AA and Diversity Programs
NJ TRANSIT Headquarters
One Penn Plaza East
Newark, NJ 07105-2246
Phone: 201-491-8052

1. The Agency's company procedure does not preclude individuals from reporting incidents orally or in writing to a responsible company official in an effort to resolve a matter to the mutual satisfaction of all parties without resorting to the filing of a complaint.

2. A complaint should be filed in writing and contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator.

3. A complaint should be filed promptly within 30 days by the complainant after the incident or action being reported. (Processing of allegations of discrimination which occurred before this complaint procedure was in place will be considered on a case-by-case basis).

4. An investigation, as may be appropriate, will follow the filing of a complaint. The investigation will be conducted by the Agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

5. In most cases, a written determination as to the validity of the complaint and a description of the resolution, if any, will be issued by the "Executive Director" and/or his or her designee and a copy forwarded to the complainant no later than 60 days after its filing with the ADA Coordinator.

6. The ADA Coordinator will maintain the files and records of the Agency relating to the complaints filed.

7. The right of a person to a prompt and equitable resolution of the complaint filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA complaint with the responsible Federal department or agency of the New Jersey Division of Civil Rights. Use of this complaint procedure is not a prerequisite to the pursuit of other remedies.

8. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure that the Agency complies with the ADA and implementing Federal rules.

SUBCHAPTER 3. DESIGNATED ADA COORDINATOR

16:84-3.1 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the Agency is:

Bobby Coney
Manager, EEO/AA and Diversity Programs
NJ TRANSIT Headquarters
One Penn Plaza East
Newark, NJ 07105-2246
Phone: 201-491-8052

(b) All inquiries regarding the Agency's compliance with the ADA and the availability of accomodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the Agency should be directed to the designated coordinator identified in (a) above.

(c) All complaints alleging that the Agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this Section, in accordance with the procedures set forth in N.J.A.C. 16:84-4.

SUBCHAPTER 4. ADA COMPLAINT PROCEDURES

16:84-4.1 Procedure

A complaint alleging that the Agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted in writing to the designated ADA coordinator identified in N.J.A.C. 16:84-3.1(a).

16:84-4.2 Complaint contents

(a) A complaint submitted pursuant to this subchapter may be submitted in or on the form set forth at N.J.A.C. 16:84-4.3.

(b) A complaint submitted pursuant to this subchapter shall include the following information:

1. The name of the complainant, and/or any alternate contact person designated by the complainant to receive communication or provide information for the complainant;

2. The address and telephone number of the complainant or alternate contact person; and

3. A description of manner in which ADA has not been complied with or has been violated, including times and locations of events and names of witnesses, if appropriate.

16:84-4.3 Complaint form

Appendix A to this chapter contains the form that may be utilized for the submission of a complaint pursuant to this subchapter. A copy of the form may be obtained by contacting the designated ADA coordinator identified at N.J.A.C. 16:84-3.1.

16:84-4.4 Investigation

(a) Upon receipt of a complaint submitted pursuant to this subchapter, the designated ADA coordinator will notify the complainant of the receipt of the complaint and the initiation of an investigation into the matter. The designated ADA coordinator will also indicate a date by which it is expected that the investigation will be completed, which date shall not be later than 60 days from the date of receipt of the complaint by the ADA Coordinator, unless a later date is agreed to by the complainant.

(b) Upon completion of the investigation, the designated ADA coordinator shall prepare a report for review by the Executive Director or his or her designee for the Agency. The Executive Director or his or her designee shall render a written decision within 60 days of receipt of the complaint, unless a later date is agreed to by the complainant, which decision shall be transmitted to the complainant and/or the alternate contact person if so designated by the complainant.

APPENDIX A

NJ TRANSIT
DISABILITY DISCRIMINATION COMPLAINT FORM

INFORMATION PROVIDED TO THE ADA COORDINATOR IS MAINTAINED IN CONFIDENCE AND DIVULGED ONLY TO THE EXTENT NECESSARY TO CONDUCT A COMPREHENSIVE AND THOROUGH INVESTIGATION.

NAME:		
ADDRESS:		
PHONE NUMBERS: Work ( )	Home ( )	
NAME, ADDRESS & TELEPHONE # OF ALTERNATE CONTACT PERSON:		
NJ TRANSIT EMPLOYEES ONLY		
POSITION:	DEPARTMENT:	LOCATION:
SUPERVISOR:		
DATE OF HIRE:	EMPLOYEE #:	SOCIAL SECURITY #:
DISABILITY OF COMPLAINANT		
Agency alleged to have denied access:		
Department:	Division:	
Bureau/Office:	Location:	
Incident or Barrier:		

Please describe the particular way in which you believe you have been denied the benefit of any service, program of activity or have otherwise been subject to discrimination. Please specify dates, times and places of incidents, and names and/or positions of agency employees involved, if any, as well as names, addresses and telephone numbers of any witnesses to any such incident. (Attach additional pages if necessary.)

Proposed access or accommodation:

If you wish, describe the way in which you feel access may be had to the benefits described above, or that accommodation could be provided to allow access:

DATE OF ALLEGED DISCRIMINATION:		
Earliest / /	Latest / /	☐ Continuing Action

Name of Witness:	Address/Work Location:
Name of Witness:	Address/Work Location:
Name of Witness:	Address/Work Location:

Has the problem been reported to any other person? ☐ YES ☐ NO

If yes, with whom did you speak?

Name: Date: Position:

What was the result of your conversation with that person?

(NJ TRANSIT Employees Only)

Have you sought assistance about the action you think was discriminatory from your supervisor, union rep., or from any other person? ☐ YES ☐ NO

(If the answer is yes, complete below):

Name of Person:	Position:	Date Assistance Sought: / /

RESULTS (IF ANY):

Have you filed a complaint in the past? ☐ YES ☐ NO (If the answer if yes, complete below):

Approximate Date(s) Filed: / /	Person(s):

SIGNATURE OF COMPLAINANT: DATE:

For EEO/AA Department Use Only

ACTION: ____ (Termination, Discipline, Promotion, Accommodation, Access, etc.)	Complaint #:	Date Filed: / /	Date Closed: / /
DIVISION: ☐ Bus ☐ Rail ☐ Administrative Support	DEPARTMENT:		
Investigator Assigned Date Manager EEO/AA & Diversity Programs (Signature) Date	BASIS (Physical, Mental, Perception, Drug, Alcohol, etc.):		

(a)

NEW JERSEY TRANSIT CORPORATION

Contracting Policies and Procedures

Adopted New Rules: N.J.A.C. 16:85

Proposed: August 2, 1993 at 25 N.J.R. 3450(a).

Adopted: September 28, 1993 by New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Filed: October 5, 1993 as R.1993 d.529, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 27:25-5 and 27:26-6(b).

Effective Date: November 1, 1993.

Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency Initiated Changes:

The following changes have been made to correct errors made by New Jersey Transit in the proposal submitted for publication to the Office of Administrative Law.

1. In N.J.A.C. 16:85-2.1(b) the word "NJ TRANSIT's" has been changed to "the State's" in the last sentence of that rule since the services will benefit the State, meaning the citizens and taxpayers of New Jersey.
2. In N.J.A.C. 16:85-2.2(a) and (c), the word "NJ TRANSIT" has been changed to "the State", in the first sentence of each subsection, since the financial position will benefit the State, meaning the citizens and taxpayers of New Jersey.
3. In N.J.A.C. 16:85-3.9 the word "NJ TRANSIT" has been changed to "the State", in that rule since NJ TRANSIT would conduct negotiations based not solely on its own interests, but on the interests of the State, meaning the citizens and taxpayers of New Jersey.
4. In N.J.A.C. 16:85-3.14 the word "NJ TRANSIT" has been changed to "the State", in that rule since the purpose of the rule is to select the proposal which is most advantageous to the State, meaning the citizens and taxpayers of New Jersey.

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

CHAPTER 85
CONTRACTING POLICIES AND PROCEDURES

SUBCHAPTER 1. GENERAL PROVISIONS

16:85-1.1 Purpose

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as an instrumentality of the State to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the ways by which NJ TRANSIT fulfills this responsibility is by reviewing opportunities to contract out its regular route bus services. In April 1986, the NJ TRANSIT Board of Directors adopted a contracting out policy to govern how the existing bus services provided by NJ TRANSIT might be contracted in an effort to reduce the cost of providing such services. Since 1986, NJ TRANSIT has awarded numerous contracts for the provision of regular route service to private bus carriers or its wholly owned subsidiary, NJ TRANSIT Bus Operations, in accordance with the procedures set forth in these rules. On March 31, 1993, the Superior Court of New Jersey, Appellate Division ruled in *Academy Bus Tours, Inc. v. New Jersey Transit Corporation*, Docket No. A-2195-90T3, that NJ TRANSIT should have adopted its contracting out policy in accordance with the Administrative Procedure Act. These rules are intended to comply with this ruling and to govern whenever NJ TRANSIT seeks proposals for the provisions of regular route bus services, and these rules shall constitute NJ Transit's Board's policy statement and rule concerning the Contracting Out Program.

16:85-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings.

"Board" means the Board of Directors of NJ TRANSIT.

"Carrier" means any person, firm, corporation or any type of entity which proposes to provide regular route bus service for NJ TRANSIT.

"Executive Director" means the Executive Director of NJ TRANSIT or his or her designee.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"NJT Bus" means NJ Transit Bus Operations, Inc., the wholly owned bus operating division of NJ TRANSIT.

"Regular route bus services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states. For purposes of this chapter, "regular route bus service" also refers to bus routes to which NJ TRANSIT is authorized by law to possess or which NJ TRANSIT actually operates or could operate via NJT Bus Operations pursuant to law.

"Destructive competition" means the violation of territorial integrity that results in the worsening of the financial condition of the current operator.

"Direct costs" means costs that vary with the amount of service provided and therefore are directly attributable to the provision of the service (for example, drivers' and mechanics' wages, tolls, fees, fuel, parts and insurance).

"Fixed costs" means expenses that tend to remain constant in amount regardless of variations in volume of activity within a relevant range.

"Marginal cost" means the incremental cost, also known as avoidable cost, and not the fully allocated cost, as dictated by concepts of financial cost accounting and as deemed appropriate to mass transit activities by NJ TRANSIT.

"Marginal or avoidable cost analysis" means that in evaluating the exact cost of operating a service (or exact savings to be obtained from not operating a service), the "direct costs" must be utilized. In addition, "semi-variable costs" may be utilized in the exact cost calculation but only if the semi-variable costs result in additional costs or in cost savings. If no costs or savings are to be incurred in the "semi-variable cost" area, such costs should not be included in the analysis as they do not directly relate to the cost of the service.

"Semi-variable" means that portion of fixed costs that can be avoided by not running the service (for example garage costs, management and supervisory costs, finance and data services costs, labor relations/personnel costs, procurement and engineering costs).

SUBCHAPTER 2. CRITERIA FOR CONTRACTING OF BUS SERVICE

16:85-2.1 Introduction

(a) Carriers have no right or entitlement of any kind to the receipt of any contract for any service pursuant to this chapter and the award of such regular route bus service contracts shall always be at the discretion of NJ TRANSIT acting in the exercise of its business judgment and pursuant to N.J.S.A. 27:25-6(b).

(b) NJ TRANSIT is not required to contract for any portion of its regular route bus service. However, from time to time as it may deem proper, NJ TRANSIT may offer for contracting one or more of its regular route bus services. NJ TRANSIT's determination as to which specific routes may be offered for contracting shall be based on NJ TRANSIT's review regarding which services will serve *[NJ TRANSIT's]* ***the State's*** best interests by being operated through a contract for service.

16:85-2.2 Financial criteria

(a) In determining whether or not to award a contract for regular route bus service, NJ TRANSIT first shall determine whether such an award substantially improves the financial position of *[NJ TRANSIT]* ***the State***. NJ TRANSIT shall do this by establishing a benchmark cost figure against which proposed costs shall be compared. Since the true measurement of cost must be predicated on the basis of net actual cost increase or cost savings to NJ TRANSIT the marginal cost of operating the service, under consideration for contracting, by NJ TRANSIT shall be used to determine the benchmark.

(b) The benchmark cost figure shall include, but not be limited to, the following types of costs: operators labor, mechanics labor, cleaners labor, fringe benefits, fuel and lubricants, rentals, insurance, toll and departure fees, commissions, and other direct costs.

(c) Proposals from private bus carriers that meet the Technical Qualifications at N.J.A.C. 16:85-3.8 and offer to provide the regular route bus service at a cost less than the established benchmark, subject to (a) above and (d) below, shall be deemed to improve *[NJ TRANSIT's]* ***the State's*** financial position. NJ TRANSIT shall determine whether such improvements in its financial position are substantial.

(d) Additional factors which shall be included in NJ TRANSIT's assessment of proposed costs shall include, but are not limited to:

1. Lost opportunities to use part-time labor on other NJ TRANSIT routes;
2. All costs related to labor protection (unless the carrier agrees to assume such cost); and
3. Any additional cost which may be incurred, including monitoring and administrative costs such as revenue collection equipment and services associated with the contract.

16:85-2.3 Non-financial considerations

(a) In determining whether to contract out regular route bus services, NJ TRANSIT shall also consider the following non-financial factors:

1. The impact on the provision of regular route bus services in the most effective, efficient, coordinated, safe and responsive manner;
2. The need to encourage to the maximum extent feasible the participation of private enterprise;
3. Whether a carrier or its affiliates are current in its accounts with NJ TRANSIT or any other agency of the State of New Jersey;
4. The adequacy of performance by a carrier or its affiliates under prior leasing or other contractual arrangements with NJ TRANSIT;
5. Whether a carrier has the ability to maintain and operate the equipment associated with the service; and
6. Any other factor which NJ TRANSIT deems relevant to a particular proposal and in the public interest.

SUBCHAPTER 3. REQUESTS FOR PROPOSALS (RFP)

16:85-3.1 Solicitation for proposals

Proposals for the provision of regular route bus services shall be solicited by NJ TRANSIT in a manner which encourages, to the extent feasible, private carrier participation, unless it is otherwise deemed appropriate by NJ TRANSIT to utilize, on a case by case basis, a different method of solicitation due to the special needs and requirements of NJ TRANSIT.

16:85-3.2 Proposers' qualifications

Proposals from private carriers that, at the time of the proposal, are in violation of any agreement with NJ TRANSIT, disbarred and/or in destructive competition with NJ TRANSIT, shall not be considered.

16:85-3.2 Form and procedure for proposal

(a) Where NJ TRANSIT uses requests for proposals (RFPs) to seek proposals, the RFP shall identify and contain, but not be limited to, the following:

1. Standards of service;
2. Standards of equipment and facility maintenance;
3. Audit and inspections;
4. Revenue system and collection process;
5. Reporting requirements; and
6. Proposal format and evaluation process.

(b) The proposal format shall consist of two sections:

1. Technical qualification; and
2. Cost qualification.

(c) Both proposed sections must be separately sealed and delivered to NJ TRANSIT no later than the deadline specified in the RFP. Proposals must comply with all the terms and conditions of the solicitation or may be rejected as non-responsive. Persons or entities who wish to receive an RFP from NJ TRANSIT must file a written request to be provided with a specific RFP. A request for one RFP shall not be regarded as a continuing request for future RFPs.

16:85-3.4 Amendment of request for proposals

(a) If after the issuance of an RFP, but before the time of opening of the proposals, NJ TRANSIT deems it necessary to make changes in scope, closing dates, or any other part of the RFP or to correct a defective or ambiguous RFP, such changes shall be accomplished by the issuance of an amendment to the RFP or the RFP may be cancelled if deemed appropriate by NJ TRANSIT. The amendment or notice of cancellation shall be sent to those parties who have indicated in writing an interest to be supplied with the specific RFP in accordance with N.J.A.C. 16:85-3.10.

(b) Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an addendum to the RFP if such information is deemed by NJ TRANSIT to be necessary to the proposers in submitting proposals or if the lack of such information would be prejudicial to uninformed proposers.

16:85-3.5 Cancellation of requests before opening

Where an RFP is cancelled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued. The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

16:85-3.6 Receipt and safeguarding of proposals

(a) All proposals received prior to the time of opening shall be kept secure, and except as provided in (b) below, unopened. If an RFP is cancelled, or if a proposer withdraws its proposals, all proposals, or the withdrawn proposal, as the case may be, shall be returned.

(b) Unidentified proposals may be opened solely for the purpose of identification and then immediately resealed. A record of this event shall be kept in the RFP file.

(c) All proposals received prior to or at the time designated in the RFP, for formal receipt, shall be distributed for review by designated NJ TRANSIT employees.

16:85-3.7 Late submittals

Proposals not received prior to or at the time designated in the RFP for formal receipt shall not be considered. Late proposals shall be returned to the proposer unopened.

16:85-3.8 Evaluation of proposals

Based on a technical qualification evaluation, proposers' experience and ability to provide the service shall be scored. Proposers must obtain a minimum score as determined by NJ TRANSIT on the technical qualification evaluation before their cost proposal section may be considered. The cost proposals of proposers not achieving the minimum technical qualification score will not be opened or considered. The above indicated criteria shall be outlined on a case-by-case basis in each specific RFP.

16:85-3.9 Negotiations

Negotiations may be conducted by NJ TRANSIT with any proposers whose proposals are considered by NJ TRANSIT to be in the best interests of *[NJ TRANSIT]* ***the State***.

16:85-3.10 Cancellation, withdrawal and rejection of proposals

(a) Requests for proposals may be cancelled and withdrawn at any time before and after opening but prior to award and all proposals rejected, where NJ TRANSIT determines in writing that:

1. Inadequate or ambiguous specifications were given in the RFP;
2. The services being contracted are no longer required;
3. The RFP did not provide for consideration of all factors of cost to NJ TRANSIT;

4. All otherwise acceptable proposals received were at unreasonable prices as determined by the criteria established for a specific RFP;

5. Proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

6. For other reasons, cancellation is in the best interest of NJ TRANSIT.

16:85-3.11 Rejection of individual proposals

(a) Any proposal which materially fails to conform to the requirements of the criteria of a specific RFP shall be rejected.

(b) Proposals received from carriers determined by NJ TRANSIT to be not responsible shall be rejected.

(c) Those carriers whose proposals are rejected will be notified pursuant to N.J.A.C. 16:85-3.10.

16:85-3.12 Debriefing

Upon written request, unsuccessful proposers shall be informed in general terms, through a face to face debriefing, only of reasons for non-acceptance of their proposals without disclosing other offerors' proprietary data or NJ TRANSIT confidential information. NJ TRANSIT shall establish within an RFP, specific time limits to request a debriefing in anticipation of a dispute.

16:85-3.13 Dispute resolution

NJ TRANSIT is an entity of the State of New Jersey. As such, disputes between other parties and NJ TRANSIT are guided by R.2:2-3(a)(2) of the Rules governing the Courts of the State of New Jersey and applicable law thereunder. However, NJ TRANSIT may utilize as part of its RFP process a dispute resolution procedure. Such procedure may be used to resolve disputes arising out of NJ TRANSIT's decisions involving the contracting for bus service prior to NJ TRANSIT's Board of Directors award of a bus service contract. Any such procedure is not designed to confer any right on a carrier to obtain a hearing under New Jersey's Administrative Procedure Act. Upon the Board of Directors' award of a bus service contract, any unsuccessful proposer may seek judicial review of the final agency action of NJ TRANSIT by filing the appropriate appeal with the Superior Court of New Jersey, Appellate Division as provided by R.2:2-3(a)(2).

16:85-3.14 Award

Unless all proposals are rejected, award shall be made to that proposer whose proposal, conforming to the Request for Proposals, will be most advantageous to *[NJ TRANSIT]* ***the State*** as so determined by NJ TRANSIT.

TREASURY-GENERAL

(a)

STATE AFFIRMATIVE ACTION OFFICE (PUBLIC CONTRACTS)

Affirmative Action Rules

Readoption: N.J.A.C. 17:27

Proposed: August 16, 1993 at 25 N.J.R. 3706(a).
Adopted: October 5, 1993 by Samuel Crane, State Treasurer, Department of the Treasury.
Filed: October 6, 1993 as R.1993 d.531, **without change.**
Authority: N.J.S.A. 10:5-31 et seq., specifically 10:5-36K.
Effective Date: October 6, 1993.
Expiration Date: October 6, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:27.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

General Policies and Procedures

Adopted New Rules: N.J.A.C. 18:2

Proposed: July 19, 1993 at 25 N.J.R. 3107(a).
Adopted: October 7, 1993 by Leslie A. Thompson, Director, Division of Taxation.
Filed: October 8, 1993 as R.1993 d.542, **without change.**
Authority: N.J.S.A. 54:50-1.
Effective Date: November 1, 1993.
Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

N.J.A.C. 18:2 expired September 6, 1993 pursuant to Executive Order No. 66(1978). The expired rules are adopted herein as new rules in accordance with N.J.A.C. 1:30-4.4(f).

Full text of the expired rules adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 18:2.

OTHER AGENCIES

(c)

NEW JERSEY TURNPIKE AUTHORITY

Notice of Administrative Correction New Jersey Turnpike Authority Rules Expiration Date

N.J.A.C. 19:9

Take notice that the September 13, 1993 expiration date for N.J.A.C. 19:9 published in the notice of readoption with amendments at 25 N.J.R. 4605(a) (October 4, 1993) is a typographic error. In accordance with Executive Order No. 66(1978), the correct expiration date for N.J.A.C. 19:9 is **September 13, 1998.**

(d)

CASINO CONTROL COMMISSION

Temporary Adoption of Amendments Gaming Equipment; Rules of the Games Progressive 21 Wager in Blackjack

Authority: N.J.S.A. 5:12-69(e), 70(f) and 100(e).

Take notice that the Casino Control Commission shall, pursuant to N.J.S.A. 5:12-69(e), conduct an experiment for the purpose of determining whether various temporary amendments, which would give casino licensees the option of offering the progressive 21 wager in the game of blackjack, should be adopted on a permanent basis. The experiment shall be conducted in accordance with temporary rules, which will be posted in each casino participating in the experiment and will also be available from the Commission upon request.

Specifically this test would permit any casino licensee which wishes to participate in the experiment to offer the progressive 21 wager at specified, and specially equipped, blackjack tables. The wager would permit a patron to win either of two multi-casino progressive annuity payouts, as well as other cash payouts. The test would be subject to the terms and conditions of the experiment established by the Commission. The test will begin on or after November 14, 1993, on a specific date to be determined by the Commission, which date will be posted in each casino participating in the experiment and which will also be available from the Commission upon request. This experiment would continue for the maximum period of time permissible under N.J.S.A. 5:12-69(e), unless otherwise terminated by the Commission or any of the participating licensees prior to that time, pursuant to the terms and conditions of the experiment.

Should the temporary amendments prove successful, in the judgment of the Commission, the Commission will propose them for permanent adoption in accordance with the public notice and comment requirements of the Administration Procedure Act and N.J.A.C. 1:30.

(a)

CASINO CONTROL COMMISSION

Casino Hotel Alcoholic Beverage Control
Classification of Authorized Locations
Standards for Qualification

Adopted Amendments: N.J.A.C. 19:50-1.4 and 1.5

Proposed: August 16, 1993 at 25 N.J.R. 3687(a).

Adopted: October 6, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: October 8, 1993 as R.1993 d.541, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(q) and 103.

Effective Date: November 1, 1993.

Expiration Date: December 15, 1993.

Summary of Public Comment and Agency Response:

COMMENT: Adamar of New Jersey, Inc. (TropWorld Hotel & Casino) supports the proposal. The Division of Gaming Enforcement and Great Bay Hotel and Casino, Inc. (Sands Hotel & Casino) does not object to it.

RESPONSE: Accepted.

Full text of the adoption follows:

19:50-1.4 Classification of authorized locations

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

(d) The Commission may, consistent with the requirements of (b) above, issue two or more types of authorizations for the same authorized location, or different types of authorizations for different areas of the same authorized location.

19:50-1.5 Standards for qualification

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

(d) No Type V authorization shall issue to any applicant who does not hold a Type I, II, III, IV or VI CHAB authorization.

(e) Every employee and agent of a CHAB licensee whose employment or agency includes duties in, on, or about the premises, but not in a Type I or Type VI authorized location, shall be registered as a casino hotel employee in accordance with section 91 of the Act.

(f) (No change.)

(b)

CASINO CONTROL COMMISSION

Casino Hotel Alcoholic Beverage Control
Conduct of CHAB Licensees
Additional Operating Conditions of CHAB Licensees

Adopted Amendments: N.J.A.C. 19:50-2.2

Proposed: August 16, 1993 at 25 N.J.R. 3688(a).

Adopted: October 6, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.

Filed: October 8, 1993 as R.1993 d.539, **without change**.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(q) and 103.

Effective Date: November 1, 1993.

Expiration Date: December 15, 1993.

Summary of Public Comment and Agency Response:

COMMENT: The Division of Gaming Enforcement and Great Bay Hotel & Casino, Inc. (Sands Hotel & Casino) indicated they do not object to the proposal.

RESPONSE: Accepted.

COMMENT: Adamar of New Jersey, Inc. (TropWorld Hotel and Casino) and Boardwalk Regency Corporation (Caesars Atlantic City) object to the proposal. They contend the proposal would give front-line employees too much discretion, and would not allow a supervisor to make the final decision as to whether a patron is intoxicated.

RESPONSE: Rejected. The basic intent of the amendment, which was modeled after New Jersey's "whistleblower" statute, N.J.S.A. 34:19-1, is to give front-line employees the ability to refuse service to intoxicated patrons without fear of retribution by their employers.

The amendment is narrowly designed, and simply protects employees from retribution by their employers. It deliberately does not deal with the larger question of whether the casino or CHAB licensee should serve or continue to deal to the patron; that decision, and the responsibility for it, always was and always will be the licensee's. A supervisor is free to disagree with a dealer's assessment of a patron's situation, and may nevertheless permit liquor to be served to the patron. However, such action is at the licensee's own risk, and subject to existing CHAB regulations which prohibit licensees from serving alcoholic beverages to intoxicated persons, as well as recent judicial decisions which may impose other penalties in such situations.

The amendment also would not prevent an employee from voluntarily discussing the situation with his or her supervisor prior to taking any action, and as Caesars noted, would not prevent a licensee from creating specific procedures to deal with the situation, so long as they do not conflict with the regulation. For example, such procedures might properly provide that an employee must promptly notify a supervisor once he or she has refused to serve an intoxicated patron. On the other hand, a procedure which requires an employee to notify a supervisor or to obtain a supervisor's approval before acting would be improper under this regulation.

COMMENT: Caesars also contends that N.J.A.C. 19:50-2.2(h), which would permit Commission employees and Division agents to document instances of actual or apparent patron intoxication, is unnecessary, since Commission and Division personnel already observe the casino floor and gaming patrons in the course of their normal duties. Caesars is also concerned that agency personnel may become involved as witnesses in civil proceedings between casino licensees and patrons, which may not be desirable as a matter of policy.

RESPONSE: Rejected. The proposed amendment is simply a logical and necessary extension of the authority already statutorily granted to the Commission and the Division, which provides that these agencies may be present on the casino floor through their inspectors and agents, to receive patron complaints and investigate violations of the Act and Commission regulations. As the "eyes and ears" of the Commission, Commission inspectors are often subpoenaed as witnesses in civil and criminal proceedings. The Commission does not believe that these additional similar responsibilities would in any way interfere with or deter them from their present duties or responsibilities.

Full text of the adoption follows:

19:50-2.2 Additional operating conditions of CHAB licensees

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

(g) No CHAB licensee shall discharge, suspend, discipline or demote an employee, or take any other action which would be adverse to the terms and conditions of his or her employment, by reason of the refusal of the employee, with regard to any person who is actually or apparently intoxicated, to:

1. Serve, or allow, permit or suffer the service of alcoholic beverages to such person;

2. Allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises by such person;

3. Deal any game, or allow, permit or suffer the dealing of a game to such person; or

4. Allow, permit or suffer the placement of a wager by such person.

(h) At the request of a CHAB licensee or any patron or employee thereof, any Commission employee or agent of the Division may observe and document, request a videotaping by the Division or surveillance department, or otherwise record the physical condition, appearance and activities of any person who is or is claimed to be actually or apparently intoxicated. The Commission shall refer to the Division for appropriate action any evidence of a violation of Commission regulations or applicable provisions of N.J.S.A. 33:1-1 et seq. and N.J.A.C. 13:2.

(a)

CASINO CONTROL COMMISSION

Casino Hotel Alcoholic Beverage Control
Conditions of Operation in Type I (Casino) and Type VI (Casino Simulcasting Facilities) Locations
Adopted Amendments: N.J.A.C. 19:50-3.1 and 3.6

Proposed: August 16, 1993 at 25 N.J.R. 3689(a).
Adopted: October 6, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: October 8, 1993 as R.1993 d.540, **without change**.
Authority: N.J.S.A. 5:12-63(c), 69(a), 70(q) and 103(g)1 and (g)6.
Effective Date: November 1, 1993.
Expiration Date: December 15, 1993.

Summary of Public Comment and Agency Response:

COMMENT: Adamar of New Jersey, Inc. (TropWorld Casino & Entertainment Resort) support the proposals; the Division of Gaming Enforcement and Greate Bay Hotel & Casino, Inc. (Sands Hotel & Casino) do not object to it.

RESPONSE: Accepted.

Full text of the adoption follows:

19:50-3.1 Conditions of operation in Type I (casino) locations

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

(d) No alcoholic beverage shall be displayed in a Type I location except:

1. As required for the necessary operation of a bar;
2. During the customary and ordinary course of preparing a patron's drink order; or
3. Incidental to delivery or consumption by a patron.

(e) (No change.)

19:50-3.6 Conditions of operation in Type VI (casino simulcasting facility) locations

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

(d) No alcoholic beverage shall be displayed in a Type VI location except:

1. As required for the necessary operation of a bar;
2. During the customary and ordinary course of preparing a patron's drink order; or
3. Incidental to delivery or consumption by a patron.

(e) (No change.)

(b)

CASINO CONTROL COMMISSION

Equal Employment and Business Opportunity Advisory Boards; Employment Goals; Job Categories; Atlantic City Small Businesses
Adopted Amendments: N.J.A.C. 19:53-1.3, 1.5, 2.3, 4.4, 6.2 and 6.6

Proposed: August 16, 1993 at 25 N.J.R. 3690(a).
Adopted: October 6, 1993 by the Casino Control Commission, Steven P. Perskie, Chairman.
Filed: October 8, 1993 as R.1993 d.538, **without change**.
Authority: N.J.S.A. 5:12-63, 69, 75, 134 and 135.
Effective Date: November 1, 1993.
Expiration Date: December 15, 1995.

Summary of Public Comments and Agency Responses:

Comments on the proposal were submitted by the Division of Gaming Enforcement (Division), the Public Advocate and Resorts International Hotel, Inc. (Resorts).

COMMENT: The Division expressed its support for the adoption of the proposed amendments to N.J.A.C. 19:53-1.3, 2.3, 4.4, 6.2 and 6.6.

RESPONSE: Accepted.

COMMENT: The Division indicated that it generally supported the adoption of the proposed amendment to N.J.A.C. 19:53-1.5, but suggested that this section and various other sections of N.J.A.C. 19:53 be amended to require affirmative action efforts with regard to the employment of disabled persons by casino licensees and applicants, casino service industry enterprises and construction contractors and subcontractors. The Division included a group of proposed regulatory amendments with its comments.

RESPONSE: Although the proposed amendments suggested by the Division represent a thoughful analysis of some of the issues which may be confronted by the Advisory Board on the Disabled which will be created under the adopted amendment to N.J.A.C. 19:53-1.5, the comments of the Division and its proposed amendments were generally not responsive to the proposal. The Commission will refer the Division's suggestions concerning the need for affirmative action efforts on behalf of the disabled to the Advisory Board when it becomes operational. Should the Advisory Board consider the Division's suggestions to have merit, the Commission anticipates that the proposed amendments will be included in an Advisory Board recommendation for future regulatory action. As indicated in the Notice of Adoption for N.J.A.C. 19:53 (see 25 N.J.R.. 3843(b)), however, the Commission will not impose any affirmative action obligations concerning the disabled on the casino industry until the Commission determines, with the benefit of the information to be provided by its Advisory Board, whether such actions are necessary or appropriate.

COMMENT: The Public Advocate endorsed the concept of establishing an Advisory Board on the Disabled, but recommended that the rule be amended to specify the composition of the board. The Public Advocate further commented that the Advisory Board should include representatives of the Public Advocate, the Division of Vocational Rehabilitation Services and the Commission for the Blind and Visually Impaired. Finally, the Public Advocate suggested that a member of the Casino Control Commission should be included on the Advisory Board "to ensure that the views and recommendations of the board are fully understood by and presented to the Commission as a whole."

RESPONSE: The Commission accepts the Public Advocate's endorsement of the amendment to N.J.A.C. 19:53-1.5 but rejects the Advocate's suggestion that the composition of the Advisory Board be specified in the rule. The Commission believes the rule adequately identifies the types of individuals and organizations intended to be included on the Advisory Board. A specific enumeration of persons or ex officio members in the rule would require the rule to be amended whenever the composition of the Board was modified. The Commission does not believe such an amendment is necessary or useful. The Commission will consider the recommendations of the Public Advocate as to agencies appropriate for membership on the Board when the Board is established.

Although the Commission has not finally determined whether a member of the Commission will be requested to serve on the Advisory Board, the Commission does not agree with the suggestion of the Public Advocate that such membership would in any way affect the ability of the Advisory Board to obtain access to the Commission or to have its recommendations carefully reviewed and considered. The Commission has determined to establish the Advisory Board so that persons with expertise in issues affecting disabled persons will be in a position to provide the Commission with meaningful guidance on these issues. The Commission has every intention of availing itself of his expertise and guidance whenever it is offered or requested, although the Commission will, of course, reserve its right to exercise its authority in the manner it deems most appropriate, consistent with the policies and mandates of the Casino Control Act.

COMMENT: The Public Advocate suggested that the Advisory Board created pursuant to N.J.A.C. 19:53-1.5(b) should be vested with the authority to conduct public hearings for the purpose of soliciting information.

RESPONSE: The Commission believes the Advisory Board will have the authority to conduct public hearings and that no further regulatory action is necessary for this authority to exist.

COMMENT: Resorts objected to the amendment to N.J.A.C. 19:53-1.5(b) creating the Advisory Board on the Disabled. According to Resorts, there is no evidence that a problem exists concerning the employment of disabled persons in the casino industry so there is no need for an advisory board. Resorts believes the Commission should first determine whether there really is a problem by collecting accurate data concerning the employment of disabled persons in the industry; only then, according to Resorts, should the Commission consider instituting regulatory action such as the creation of an Advisory Board.

RESPONSE: As explained in some detail in the Notice of Adoption for N.J.A.C. 19:53, the Commission agrees with Resorts that the Commission should determine whether there really is a problem with the employment of disabled persons in the casino industry before regulatory obligations are imposed. What Resorts seems to fail to recognize, however, is that the Advisory Board created by N.J.A.C. 19:53-1.5(b) is simply the vehicle which the Commission has chosen to make this determination. Given the previous inability of the Commission to obtain meaningful information concerning the employment of disabled persons in the casino industry, the Commission decided that it would be appropriate in this case to turn to persons and agencies with expertise in this area to determine what issues, if any, exist and what regulatory measures, if any, are needed. Resorts' suggestion that the Commission simply collect data to determine whether any real problems exist ignores the rather extensive history associated with this issue. Despite repeated efforts, the Commission has previously been unable to gather information or to obtain expert input which would enable the Commission to draw any conclusions, positive or negative, concerning the participation of disabled persons in the casino industry. It is anticipated that the Advisory Board created pursuant to N.J.A.C. 19:53-1.5(b) will enable the Commission to get past this essential first step. Accordingly, the comment of Resorts was rejected.

COMMENT: Resorts objected to the amendments to N.J.A.C. 19:53-4.4 on the basis that they establish employment goals for minorities and females that are artificially high and inconsistent with county work force labor statistics and available labor pools.

RESPONSE: The Commission disagreed with Resorts' comment. As stated in the Notice of Proposal, the revised goals for each EEOC job category are based upon the higher of normalized casino industry employment in Atlantic City or cumulative Atlantic County work force statistics. The Commission believes that these employment goals are reasonable targets for the casino industry to attempt to achieve and are subject to modification should experience demonstrate that further adjustments are necessary.

COMMENT: Resorts also objected to the proposed amendments to N.J.A.C. 19:53-4.4 on the ground that the amendments eliminated the ability of casino licensees to establish "their own goals based on their current minority and female workforce levels and the availability of minorities and females in their recruitment areas."

RESPONSE: Resorts' comment did not specifically identify the language eliminated by the amendments which, in Resorts' opinion, previously permitted casino licensees to engage in individual goal setting. And, in the absence of a set of actual facts and circumstances, the Commission does not express any opinion on whether individual goal setting for the reasons expressed by Resorts would be approved by the Commission. But the Commission would note that the language which would allow casino licensees to request the approval of individual employment goals is still contained in the amended version of N.J.A.C. 19:53-4.4 ("Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the operations work force of a casino licensee or applicant, by EEOC job category, shall be . . .").

COMMENT: Resorts expressed the view that the problem of unreasonably high employment goals would be exacerbated by the proposed amendment to N.J.A.C. 19:53-1.3 which requires 25 percent minority and 46 percent female representation in each of the three subclasses within the Officials and Managers category.

RESPONSE: Resorts' objection to the amendment is based on a misreading of the rules and was therefore rejected by the Commission. Neither N.J.A.C. 19:53-1.3 nor 4.4 require a casino licensee to apply its employment goals to each of the subclasses of Officials and Managers. N.J.A.C. 19:53-1.3(a) clearly states that whenever a licensee or applicant is required "to classify employees or job titles by job category, the licensee or applicant shall use the nine broad occupational classifications . . . in (b) below." (Emphasis supplied.) This rule further states, "When required, the licensee or applicant shall also provide data concerning the three subclasses of Officials and Managers as described in (b) below." (N.J.A.C. 19:53-1.3(a); emphasis supplied.) The rule establishing employment goals for the operations work force, quoted above, clearly establishes the measurement of these goals by job category, and makes no mention of the application of the requirement to the three subclasses.

Full text of the adoption follows:

19:53-1.3 Classification of employees; use of EEOC job categories

(a) Whenever the rules in this chapter require a licensee or applicant to classify employees or job titles by job category, the licensee or applicant shall use the nine broad occupational classifications developed by the U.S. Equal Employment Opportunity Commission (EEOC), as adapted or modified by the rules of the Commission in (b) below. When required, the licensee or applicant shall also provide data concerning the three subclasses of Officials and Managers as described in (b) below.

(b) The EEOC job category classifications and subclassifications to be used by licensees and applicants are, in order, as follows:

1. "Officials and Managers" are occupations in which employees set broad policies, exercise overall responsibility for implementation of these policies, direct individual departments or special phases of the organization's operations, provide specialized consultations on a regional, district or area basis, or supervise or assist in the supervision of specific work units. This category shall include, without limitation, occupations such as chief executive officer, president, vice president, director, assistant director, equal opportunity officer, manager, assistant manager, pit boss, shift supervisor, floorperson and boxperson. Unless otherwise specified in an approved EEBOP, this category shall consist of three subclassifications defined by compensation range as follows:

i. "Subclass I" are positions whose actual salaries are $75,000 and above.

ii. "Subclass II" are positions whose actual salaries are from $35,000 to $74,999.

iii. "Subclass III" are positions whose actual salaries are less than $35,000.

2.-9. (No change.)

19:53-1.5 Advisory boards

(a) The Commission may establish an advisory board consisting of local or State officials, representatives of area businesses and communities, women and minority organizations, union officials, disabled persons, casino industry representatives or other interested parties. Such advisory board may make recommendations to the Commission, upon its request, concerning policies or techniques to assure equal employment opportunity for all persons and the participation of certified and provisionally certified MBEs and WBEs in purchasing and contracting in the casino industry and the casino-related construction industry.

(b) The Commission shall establish an Advisory Board on the Disabled to consider issues affecting disabled persons and the casino industry. This advisory board shall consist of members of the regional disabled community, representatives of organizations which advance the interests of the disabled and representatives of the casino industry. The purpose of the advisory board shall be to identify, investigate, and make recommendations to the Commission concerning issues which affect the ability of disabled persons to obtain employment and business opportunities with the casino industry. Such recommendations may include, at the discretion of the advisory board or upon request by the Commission, suggestions for the promulgation of specific regulations. The advisory board may also develop and recommend to the Commission a program which will permit the accurate identification and reporting of disabled persons who are employed by or doing business with the casino industry.

19:53-2.3 Women and minority employment goals for the construction work force of casino licensees and applicants

(a) Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the construction work force of a casino licensee or applicant and its individual contractors and subcontractors shall be five percent for women journeyworkers and apprentices and 14 percent for minority journeyworkers and apprentices.

(b) (No change.)

19:53-4.4 Women and minority employment goals for the operations work force of casino licensees and applicants

Unless otherwise specified in an approved EEBOP pursuant to N.J.A.C. 19:53-6, the women and minority employment goals for the operations work force of a casino licensee or applicant, by EEOC job category, shall be as follows:

EEOC Job Category	Minority Goal (Percentage)	Female Goal (Percentage)
Officials and Managers	25	46
Professionals	25	46
Technicians	25	46
Salesworkers	25	46
Office and Clerical	25	46
Craftpersons	14	5
Operatives	25	30
Laborers	25	14
Serviceworkers	25	46

19:53-6.2 General regulatory section of an EEBOP

(a) (No change.)

(b) Other topics appropriate for inclusion in the general regulatory section of an EEBOP shall include, without limitation, the following:

1. (No change.)

2. A description of the lines of communication and reporting within the organization as they relate to the objectives of this chapter;

3. A description of the resources which the casino licensee or applicant will make available to the advisory boards organized pursuant to the provisions of N.J.A.C. 19:53-1.5 and a commitment by the casino licensee or applicant to actively participate in and support the efforts of these advisory boards; and

4. A description of the procedures and techniques which the casino licensee or applicant will use to monitor implementation of the EEBOP and to assess the need for modifications.

19:53-6.6 Atlantic City small businesses

(a) In order to further the statutory goal of revitalizing Atlantic City as set forth in section 1 of the Act, each casino licensee and applicant shall be encouraged to include in its EEBOP strategies and objectives which are intended to foster the development of Atlantic City small businesses. For the purposes of this section, an "Atlantic City small business" shall be defined as a sole proprietorship, partnership or corporation:

1. Whose management owns at least 51 percent of the business and is responsible for its daily and long-term operation;

2. Which either has 50 or fewer full-time employees or is a firm with full-time employees at least 80 percent of whom are permanent residents of Atlantic City; and

3. Which has its principal place of business (the location where the majority of its employees are located or based) in Atlantic City.

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

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Organizational Rules

Organization of the Division of Family Development

Readoption with Amendments: N.J.A.C. 10:80

Adopted: September 24, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: September 27, 1993 as R.1993 d.518.

Authority: N.J.S.A. 52:14B-3(1) and 52:14B-4(b).

Effective Date: September 27, 1993.

Expiration Date: September 27, 1998.

Take notice that the Department of Human Services hereby adopts a description of the organizational structure and operation of the Division of Family Development (DFD). N.J.A.C. 10:80, which would have expired on May 19, 1994, pursuant to the "sunset" provisions of Executive Order No. 66(1978), is being amended to reflect current structure of DFD.

These rules are intended to inform the public of the existence of and the basic tasks and responsibilities delegated to DFD and how it is organized to implement those duties.

These organizational rules are exempt from the notice and hearing requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and become effective upon filing.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 10:80.

Full text of the amendment follows (additions indicated in boldface **thus**, deletions indicated in brackets with asterisks [thus]):

10:80-1.2 Division of Family Development organizational unit functions

(a) (No change.)

(b) The responsibilities described in N.J.A.C. 10:80-1.1 are accomplished through functions assigned to the various constituent units of DFD.

1.-2. (No change.)

3. Office of Program Regulations (OPR): OPR has responsibility for developing and recommending policy for all the public assistance programs, including the Federal Food Stamp Program, and providing policy interpretations of *[Federal and]* State ***General Assistance rules and*** regulations to *[CWA administrative staff,]* municipal welfare directors, public and private agencies, and the general public. It prepares comments on pending legislation affecting the responsibilities of DFD and assists in drafting legislation when required.

i. (No change.)

4. (No change.)

5. Office of County [Municipal] Operations: The Office of County [Municipal] Operations is responsible for supervising and monitoring the operations of local welfare agencies (county and municipal), [and] providing a channel of communication between such agencies and DFD, **and providing policy interpretations of Federal and State regulations to CWA administrative staff, public and private agencies, and the general public.**

6.-7. (No change.)

(b)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Persons Eligible for Medical Assistance

Adopted Amendment: N.J.A.C. 10:81-8.22

Proposed: July 6, 1993 at 25 N.J.R. 2815(a).

Adopted: September 24, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: September 27, 1993 as R.1993 d.519, **without change**.

Authority: N.J.S.A. 44:10-3.

Effective Date: November 1, 1993.

Expiration Date: August 24, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:81-8.22 Persons eligible for medical assistance

(a) All children and their parents or needy parent-persons who are eligible for AFDC money payments (-C, -F and -N segments), or no money payments due to the provisions of N.J.A.C. 10:82-11, are eligible for Medicaid benefits. If an eligible unit chooses not to receive a money payment, members are eligible for Medicaid coverage. Medicaid coverage commences with the date that eligibility is established.

1.-2. (No change.)

3. When a family is determined financially ineligible for AFDC cash assistance due to deeming of the income of the parent(s) of an adolescent parent in accordance with N.J.A.C. 10:82-3.14, the dependent child(ren) of the adolescent parent shall be or continue to be eligible for AFDC categorically-related Medicaid coverage as long as the family's countable income, excluding the deemed income of the parent(s) of the adolescent parent, is less than the AFDC eligibility standard set forth at N.J.A.C. 10:82-1.2(b), Schedule II, as applicable for the family size. Medicaid eligibility, in such instances, would be limited to the dependent child(ren) of the adolescent parent; the adolescent parent, therefore, would remain ineligible for such Medicaid coverage.

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

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Adoption Agencies Searches

Adopted Amendment: N.J.A.C. 10:121A-5.10

Proposed: August 2, 1993 at 25 N.J.R. 3415(a).

Adopted: October 5, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: October 6; 1993 as R.1993 d.532, **without change**.

Authority: N.J.S.A. 9:3-37 et seq., 30:1A-1 et seq. and 30:4C-4(b).

Effective Date: November 1, 1993.

Expiration Date: November 25, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:121A-5.10 Searches

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

(d) The agency shall document and maintain on file all the aspects of a search as specified in (b) and (c) above that were undertaken on behalf of the adult adoptees, birth parents or adoptive parents.

(e) (No change.)

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Family Day Care Registration

Readoption: N.J.A.C. 10:126

Proposed: August 16, 1993 at 25 N.J.R. 3703(a).

Adopted: October 5, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: October 6, 1993 as R.1993 d.533, **without change**.

Authority: N.J.S.A. 30:5B-16 et seq., specifically 30:5B-19, 23 and 25.

Effective Date: October 5, 1993.

Expiration Date: October 5, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:126.

(c)

DIVISION OF YOUTH AND FAMILY SERVICES

Notice of Administrative Corrections

Manual of Requirements for Residential Child Care Facilities

N.J.A.C. 10:127

Take notice that the Division of Youth and Family Services has discovered seven typographic publication errors, and has requested 13 other clarifying technical corrections which OAL has agreed to permit, in the current text of N.J.A.C. 10:127, adopted effective August 16, 1993 (see 25 N.J.R. 3787(a)).

The typographic errors at variance with the original proposal document (PRN 1993-239) or adoption document (R.1993 d.403) are as follows:

1. The initial word "injury" in N.J.A.C. 10:127-3.7(b)1 should be "Injury."

2. The colons concluding N.J.A.C. 10:127-3.8(c)1, 5.2(f)4 and 9.10(d) should be semicolons.

3. The world "children" in N.J.A.C. 10:127-8.1(e)5 is misprinted as "chidren."

4. The reference to "(e) below" in N.J.A.C. 10:127-9.10(h)1 should be to "(e) above."

5. The word "Infant" in the reference to the WIC Program in N.J.A.C. 10:127-10.4(e)7 should be "Infants."

The corrections made by request are as follows:

1. In N.J.A.C. 10:127-2.1(d)3, the reference to "governing boards" is changed to "governing board" to reflect the fact that residential child care facilities are not subject to multiple-board governance.

2. The reference to "Complaint Investigation Summary" in the facility recordkeeping requirements under N.J.A.C. 10:127-3.8(b)1iii is revised to refer to "Complaint Investigation Summary reports" to accurately reflect that the DYFS Bureau of Licensing provides the affected facility with a report summarizing each complaint investigation.

3. In N.J.A.C. 10:127-3.8(b)1iii and (b)3vii, and 3.8(d)2, four commas were added to properly set off modifying and conjunctive phrases.

4. In N.J.A.C. 10:127-8.4(c), the first use of the word "transportation" is deleted as an unnecessary, redundant descriptive, given the otherwise expressed nature of the records to be maintained.

5. In N.J.A.C. 10:127-9.1(q), the reference to "all water in streams, ... used for drinking, ..." is revised to more accurately refer to "all water from streams, ...," as the water is no longer in its body of origin when it is used for the purposes for which this subsection prescribes purifying actions.

6. The reference to "Class I, Class II or III" personal flotation device ratings in N.J.A.C. 10:127-9.10(e) is clarified to make full reference to the three ratings, "Class I, Class II or Class III."

7. In N.J.A.C. 10:127-10.13(b)6, the reference to a residential child care facility as a "home" is revised as "facility" to conform to other chapter references.

8. The reference in N.J.A.C. 10:127-10.15(d)2 to "birth center" is changed to "birthing center," which is the accepted term in use for this type of facility.

9. In N.J.A.C. 10:127-10.16(a), "[t]he facility shall ... take necessary follow-up" is revised as "[t]he facility shall ... make necessary follow-up," which is the more appropriate turn-of-phrase for requiring follow-up action.

10. At the end of N.J.A.C. 10:127-10.25(a)6v, the conjunction "and" is added to make most clear the requirement expressed in N.J.A.C. 10:127-10.25(a)6 that residential care facilities ensure that adolescent mothers receive instruction and experience in home safety guidelines including, but not limited to, those set forth in subparagraphs (a)6i through vi.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

10:127-2.1 Application for a certificate of approval

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

(d) The application form referenced in (b) and (c) above shall include the following:

1.-2. (No change.)

3. Names of members of the governing board[s];
4.-6. (No change.)

10:127-3.7 Reporting requirements
(a) (No change.)
(b) The facility shall notify the Bureau verbally of any of the following changes or events by the next working day after the facility learns of their occurrence, to be followed by written notification to the Bureau within five working days:
1. [injury] **Injury**, accident or illness that results in the admittance of a child to a hospital;
2.-4. (No change.)
(c)-(e) (No change.)

10:127-3.8 Records
(a) (No change.)
(b) Each facility shall maintain on file the following administrative records until the expiration of its regular certificate of approval:
1. The following records shall be maintained in files located at the facility:
i.-ii. (No change.)
iii. The Life/Safety and Program Inspection/Violation reports and Complaint Investigation Summary **reports** from the Bureau, if applicable, as well as letters of enforcement or other actions taken against the facility, if applicable, that cover the current certificate of approval period;
iv.-xxxvi. (No change.)
2. (No change.)
3. For all facilities whose programs are primarily adventure based, the following records shall be maintained on location:
i.-vi. (No change.)
vii. A record of signed parental consent for medical treatment for each child, as specified in N.J.A.C. 10:127-3.6(b)10;
viii.-xiii. (No change.)
(c) The facility shall maintain on file the following staff records throughout a staff member's employment and for one year after the staff member has stopped working at the facility:
1. The following records for the director and all staff members shall be maintained in files located either at the facility's administrative office or at the facility[;]**:**
i.-v. (No change.)
2. (No change.)
(d) The facility shall maintain on file the following children's records during the child's placement at the facility and for at least three years following the discharge of the child:
1. (No change.)
2. A copy of each treatment plan developed for the child, as specified in N.J.A.C. 10:127-6.1, and a copy of the case management plan for facilities that serve pregnant and parenting adolescents, as specified in N.J.A.C. 10:127-10.4;
3.-13. (No change.)
(e) (No change.)

10:127-5.2 Staff qualifications
(a)-(e) (No change.)
(f) Each child care staff member shall:
1.-3. (No change.)
4. Have one of the following qualifications[;]**:**
i.-iv. (No change.)
(g)-(j) (No change.)

10:127-8.1 General requirements
(a)-(d) (No change.)
(e) The facility shall ensure that the following safety practices are followed:
1.-4. (No change.)
5. [Chidren] **Children** are not permitted to ride in the back or beds of trucks.
(f)-(j) (No change.)

10:127-8.4 Record requirements
(a)-(b) (No change.)
(c) The facility shall maintain [transportation] maintenance records for all vehicles used by the facility for the transportation of children, including repair and inspection records, and shall retain them for the lifetime of the vehicles.
(d) (No change.)

10:127-9.1 General requirements
(a)-(p) (No change.)
(q) The facility shall ensure that all water [in] **from** streams, ponds, lakes and rivers that is used for drinking, food preparation and dishwashing is first boiled, filtered or purified with iodine or tablets specifically designed to purify water.
(r) (No change.)

10:127-9.10 Sailing and boating
(a)-(c) (No change.)
(d) The facility shall ensure that the following non-commercial boats have a current decal indicating a satisfactory rating on a courtesy inspection by the U.S. Coast Guard Auxiliary[;]**:**
1.-4. (No change.)
(e) For sailboats and motor boats less than 16 feet, the facility shall ensure that there is a throw line and a personal flotation device (PFD) rated Class I, Class II or **Class** III by the U.S. Coast Guard on board for every passenger.
(f)-(g) (No change.)
(h) The survival equipment on board shall be Coast Guard approved and shall include the following:
1. A personal flotation device (PFD) for each passenger as specified in (e) [below] **above**;
2.-15. (No change.)

10:127-10.4 Case management requirements
(a)-(d) (No change.)
(e) The case management plan shall include the following information:
1.-6. (No change.)
7. Documentation that a referral to the Supplemental Feeding Program for Women, Infants and Children (WIC) was made and that any necessary follow up was done, or documentation that the adolescent or infant was ineligible for WIC;
8.-19. (No change.)
(f)-(i) (No change.)

10:127-10.13 Visiting and communication
(a) (No change.)
(b) The facility shall develop a visiting policy and explain the visiting policy to the adolescent and her parent(s) at intake. The visiting policy shall specify:
1.-5. (No change.)
6. That the facility may overrule an adolescent's arrangements for leaving her infant with persons living outside the [home] **facility**; and
7. (No change.)

10:127-10.15 Comprehensive health plan for pregnant adolescents
(a)-(c) (No change.)
(d) The facility shall ensure that arrangements for the birth of the infant are made by the end of the first trimester. If the adolescent enters the facility after the first trimester, the facility shall ensure that arrangements for delivery are made by the second prenatal visit.
1. (No change.)
2. The facility shall document that delivery arrangements have been made by recording the names and address of the selected hospital or [birth] **birthing** center in:
i.-ii. (No change.)
(e)-(f) (No change.)

10:127-10.16 Comprehensive health plan for infants
(a) The facility shall ensure that infants are referred to the Supplemental Feeding Program for Women, Infants and Children (WIC) and [take] **make** necessary follow-up, or document that the infant was ineligible for WIC.
(b)-(e) (No change.)

10:127-10.25 Life skills development

(a) The facility shall ensure that the adolescent mothers receive instruction and experience in the following:

1.-5. (No change.)

6. Home safety guidelines, including but not limited to:

i.-iv. (No change.)

v. Fire prevention; **and**

vi. (No change.)

7.-8. (No change.)

(b) (No change.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Case Plan

Adopted New Rules: N.J.A.C. 10:133D-2

Proposed: June 7, 1993 at 25 N.J.R. 2209(a).

Adopted: October 5, 1993 by William Waldman, Commissioner, Department of Human Services.

Filed: October 6, 1993 as R.1993 d.534, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:4C-4(h).

Effective Date: November 1, 1993.

Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:

In N.J.A.C. 10:133D-2.5(b), the word "case" has been added to "plan" in order to standardize use of the term "case plan" throughout the subchapter.

In N.J.A.C. 10:133D-2.7(a) and (b), the word "written" has been added to "case plan" in order for the text to agree with the title of the section.

In N.J.A.C. 10:133D-2.7(b)10, a reference to a related rule has been added to assist the reader.

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

CHAPTER 133D
CASE MANAGEMENT

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CASE PLAN

10:133D-2.1 Purpose

The purpose of this subchapter is to describe the process of developing a case plan, to identify the participants in the development of the case plan, and to identify the contents of the case plan.

10:133D-2.2 Scope

The provisions of this subchapter shall apply to each client, family member, caregiver, Division representative, and other person participating in the case plan development.

10:133D-2.3 Definitions

The definitions in N.J.A.C. 10:133-1.3, Definitions, are hereby incorporated into this subchapter by reference.

10:133D-2.4 When a case plan is developed

A case plan shall be developed for each family for whom services will be provided on the same schedule as the assessment. See N.J.A.C. 10:133C-3.10. The case plan may be revised more often than the standard set above, if the case situation warrants.

10:133D-2.5 Participants in developing the case plan

(a) The Division representative shall develop the case plan with the child's parent, unless he or she is unwilling to participate, any person appointed by the court for this purpose and the child, if the Division representative determines that the child is willing and able to participate in the development of the case plan, in accordance with this subchapter. Other interested parties or service providers may be invited to participate.

(b) In addition to (a) above, when the child lives in an out-of-home placement, the Division representative shall develop the ***case*** plan in consultation with the child's out-of-home placement caregiver.

10:133D-2.6 Process of developing the case plan

(a) Participation in developing the case plan shall include providing information, identifying problems, identifying services and actions which are needed to resolve the problems and achieve the case goal, suggesting the time frames for beginning and completing the identified services and actions and specifying who is responsible for completing the identified services and actions.

(b) The participants in the case plan may participate by:

1. Meeting together with the Division representative to discuss the case plan;

2. Meeting individually with the Division representative;

3. Providing written information to the Division representative; or

4. Talking with the Division representative by telephone.

(c) The Division representative shall prepare a written case plan.

10:133D-2.7 Contents of the written case plan

(a) The ***written*** case plan for a family with the child living at home shall include:

1. The reasons for the Division's involvement with the family;

2. The case goal for each family member receiving services;

3. The schedule for contacts between the Division representative and the family members, pursuant to N.J.A.C. 10:133D-4, In-Person Visits with Clients and Substitute Care Providers;

4. The services offered to and used by the family since the last case plan was developed, for each case plan after the initial case plan;

5. The behavioral and other changes expected;

6. The services or activities which are intended to facilitate the changes and who will accomplish or provide them; and

7. Progress toward achieving the case goal for each family member receiving services.

(b) The ***written*** case plan for a child in an out-of-home placement shall include:

1. Whether a court ordered the placement or the parent signed a voluntary agreement authorizing the placement;

2. The efforts made to prevent placement, the reasons for making the placement or for continuing the placement, all efforts made to reunify the family and the impact of those efforts;

3. The case goal for the child, the progress towards its achievement, and any obstacles to reaching it;

4. An assessment of the appropriateness of the current placement;

5. The efforts made to find a missing parent or relative, pursuant to N.J.S.A. 30:4C-12 et seq.;

6. The schedule for contacts between the Division representative and the family members, pursuant to N.J.A.C. 10:133D-4, In-Person Visits with Clients and Substitute Care Providers;

7. The plan for visits between the child and parents, siblings and other relatives (see N.J.A.C. 10:122D-1);

8. The views of the child, family, and caregiver concerning the placement and the case plan;

9. The needs of the child, the parent, and the child's caregiver in order to meet the case goal; and

10. The services or actions intended to meet the identified needs and who is responsible to provide the services and complete the activities, with projected time frames. ***See N.J.A.C. 10:122D-2, Services to Children in Foster Home Placement.***

10:133D-2.8 Notice of the case plan

(a) The Division representative shall ask each person who participated in developing the case plan to sign the case plan to indicate his or her participation in developing the case plan.

(b) The Division representative shall give a copy of the case plan to each person who signs the case plan, including the caregiver, and to each parent who declines to participate in or sign the case plan.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

State Board of Medical Examiners

Adopted New Rules: N.J.A.C. 13:35-10

Proposed: January 19, 1993 at 25 N.J.R. 265(a).

Adopted: August 2, 1993 by New Jersey State Board of Medical Examiners, Fred M. Jacobs, M.D., J.D., President.

Filed: October 8, 1993 as R.1993 d.546, **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. 45:9-37.35 et seq., specifically 45:9-37.38.

Effective Date: November 1, 1993.

Expiration Date: September 21, 1994.

Summary of Public Comments and Agency Responses:

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:35-10, relating to athletic trainer registration requirements and general rules of conduct.

The official comment period ended on February 19, 1993.

Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 19, 1993 at 25 N.J.R. 265(a). Announcements were also forwarded to The Star Ledger, The Trenton Times, the Department of Health and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Charles Janousek, Executive Director, Room 602, 28 W. State Street, Trenton, New Jersey 08608.

During the 30 day comment period, the Board received 18 written comments regarding the proposal. A list of the commenters follows:

Dennise Krencicki, President, New Jersey Chapter American Physical Therapy Association

Lawrence L. Baggitt, Trainer, Colonia High School

Mark I. Cherwony, Secretary, Athletic Trainer's Society of New Jersey, Inc.

Tanya M. Dargusch, Southern Region Representative, Athletic Trainer's Society of New Jersey, Inc.

J. Timothy Sensor, Head Athletic Trainer, Kean College

John Davis, Head Athletic Trainer, Montclair State College

Chuck Wedon, Head Athletic Trainer, Rowan College

Mark Haines, Athletic Trainer, Rancocas Valley Regional H.S.

Mark Bramble, Trainer, Marlboro High School

Jeff Ryan, Director of Rehabilitation, Temple University

Barry G. Inglett, P.T., Wayne Physical Therapy Center

Elisa Camillone, President, Athletic Trainer's Society of New Jersey, Inc.

Stephen J. Straub, Assistant Athletic Trainer, Kean College

Stephen E. Blair, M.Ed.

William J. von Leer, M.A.

Sue Layton, Athletic Trainer, Rutgers University

Eric Nussbaum, Athletic Trainer, Rutgers University

Brian Mikesell, Athletic Trainer, Valley Hospital

Following is a summary of the comments received, together with the Board's responses:

COMMENT: One respondent noted that there are approximately 450 athletic trainers in the State, not 250, as stated in the original Regulatory Flexibility Analysis.

RESPONSE: The Board's Athletic Training Advisory Committee also noticed this error, and confirms the approximate number of 450.

COMMENT: Eight respondents addressed the role of the athletic trainer in light of the Orthotist and Prosthetist Licensing Act P.L. 1991, c.512 (N.J.S.A. 45:12B-1 et seq.). Their concern had to do with whether or not athletic trainers could continue to perform their duties without being in violation of the Act. In particular, they noted that physical and occupational therapists had received an exemption from this law in order to continue to function as before.

RESPONSE: The Board directs the respondents' attention to the Open Minutes of the meeting of the New Jersey State Board of Medical Examiners of March 10, 1993. At that time, the Board expressed the belief that athletic trainers fall into the group of persons who "are registered, certified or licensed by this State who are an exception to the Orthotist and Prosthetist Licensing Act." These exceptions are cited in N.J.S.A. 45:12B-18.

N.J.A.C. 13:35-10.2 Definitions

COMMENT: Seventeen respondents wrote concerning their fears that the definition of "athlete" is unnecessarily restricted and may preclude athletes, such as faculty or staff members, who engage in intramural activities from receiving treatment; three respondents likewise felt that the term "intramural" was too restrictive as it refers to athlete.

RESPONSE: The Board shares these concerns and has already asked the Attorney General to provide an opinion that will form the basis for later, additional consideration of this issue.

COMMENT: One respondent questioned whether it is appropriate for an athletic trainer to administer physical treatment modalities in light of P.L. 1990, c.68, which prohibits the administering of certain modalities by an employee, unless that employee is a health care provider licensed in this State.

RESPONSE: It appears that P.L. 1990, c.68 pertains to physician-employee relationships, that is, who physicians may and shall employ. An athletic trainer may be employed only by a school, college, university or professional athletic team. Thus P.L. 1990 would not seem to apply to athletic trainers. Even if it should apply, however, registered athletic trainers should be regarded as licensed health care providers for purposes of the limited settings where athletic training may be practiced.

COMMENT: One respondent suggested without explanation that the definition of athletic trainer be changed to either, "Athletic trainer means a person who practices athletic training on athletes" or "Athletic trainer means a person who practices athletic training as an employee of a school, college, university, olympic committee, youth league, sports club, summer camp, all-star game, or professional athletic team." The intent of both of these proposed alternative definitions is seemingly to ensure that the definition of athletic trainer is not unnecessarily restrictive, an intent to be achieved either by making the definition less specific in terms of who employes an athletic trainer or by making the definition include a wide range of circumstances in which an athletic trainer may be employed. A second respondent shared the concern that this definition appears to limit the settings of practice of the athletic trainer.

RESPONSE: The definition of "athletic trainer" that appears in this rule tracks the definition that appears in N.J.S.A. 45:9-37.36(c) Definitions, and therefore the definition must remain as is.

COMMENT: Eighteen respondents asked for an explanation as to why chiropractors were specifically included in the definition of "Direction of a licensed physician." In order to understand whether the inclusion of chiropractors signaled the exclusion of other medical specialists, most of these respondents sought clarification as to the scope of practice of all physicians licensed by the state of New Jersey.

RESPONSE: The Board agreed that "licensed physician" should be redefined according to scope of practice in order to be as inclusive of physicians empowered to design and oversee a plan of care for an athlete as is medically and legally appropriate. Therefore, the reference to chiropractors that previously followed the reference to physician was incorporated into a list of licensees with either a M.D., D.O., D.C. or D.P.M. degree who may, within their scope of practice, design and oversee a plan of care for an athlete. As previously proposed, the reference to chiropractors did not signal the exclusion of other medical specialists; nor as changed on adoption does the deletion of the reference to chiropractors following the reference to physicians signal that chiropractors are not eligible to design and oversee a plan of care for an athlete, for doctors of chiropractic (D.C.) are included in the list of licensees whose degree qualifies them to offer the services cited above, provided that those services are within the licensee's scope of practice.

In addition, the Board has revised this definition to clarify that the athletic trainer should use professional judgment regarding the athlete's physical ability to participate in the plan of care in the event an unforeseen circumstance arises after the physician has designed the plan of care. The clarification has been added as a new subsection (e).

N.J.A.C. 13:35-10.3 Education Standards

COMMENT: One respondent noted that in 1988 the National Athletic Trainers Association (NATA) relinquished the authority to develop requirements for the certification of athletic trainers to the National

Athletic Trainers Association Board of Certification, Inc., an autonomous credentialing board. The respondent then proceeded to suggest, without explanation, that this section be revised such that the concluding phrase about a curriculum or program of education, training, and experience "which was approved during the entire course of the applicant's education, training, and experience by the National Athletic Trainers Association" be changed to "which has met the requirements for certification of the National Athletic Trainers Association Board of Certification, Inc."

RESPONSE: The Board acknowledges the factual error regarding the shift in credentialing authority and has thereby changed this section such that references to the National Athletic Trainers Association in N.J.A.C. 13:35-10.3 and 10.4 have been updated to read: "National Athletic Trainers Association Board of Certification, Inc." However, the other suggested changes in wording in 13:35-10.3 have been rejected by the Board because the Board believes that all such education, training and experience should be approved by the N.A.T.A. during the entire course of such education, training and experience, and not just by an end-product certificate.

N.J.A.C. 13:35-10.4 Examinations

COMMENT: One respondent wondered whether the references to "examination" in this section refer to a separate examination after the NATA exam, or a separate exam for licensing in the State.

RESPONSE: The answer to both questions is "No" because the examination contemplated and approved by the Medical Board is the NATA exam.

N.J.A.C. 13:35-10.6 Approved activities

COMMENT: Nine respondents indicated concerns as to whether or not athletic trainers are properly educated and trained for all of the activities listed as approved.

RESPONSE: On behalf of the Medical Board, the Athletic Training Advisory Committee had already previously conducted extensive research in order to confirm that athletic trainers providing the proper accreditation and N.A.T.A. certification are adequately trained to provide the services listed in this rule. After an additional review of various documents, programs and requirements produced by entities like the Committee on Allied Health Education and Accreditation and the National Athletic Trainers' Association Professional Education Committee, the Board, at the advice of the Athletic Training Advisory Committee, reaffirms that the range of approved activities should remain as stated.

N.J.A.C. 13:35-10.6(a)

COMMENT: One respondent requested without explanation that "evaluation" be included with prevention and management of injuries at the end of this section, which would thus be rewritten as "prevention, evaluation and management of injuries."

RESPONSE: Including "evaluation" in this section would permit athletic trainers to diagnose injuries, which only medical doctors are permitted to do. Therefore, no change has been made.

COMMENT: One respondent requested that the phrase that concludes this subsection, "procedures for the prevention and management of injuries," be amended to read: "procedures for the prevention and management of sports-related injuries." The respondent felt that inserting "sports-related" would signal that it is not appropriate for athletic trainers to provide therapeutic interventions for such pathological conditions as head injuries, multiple trauma secondary to a motor vehicle accident, etc., even when the person receiving the treatment is an athlete.

RESPONSE: The Board declined to make this change, as the statutory definition makes it clear that the practice of athletic training only involves the conditioning and reconditioning of athletes as related to school, college, university or professional sports activities.

N.J.A.C. 13:35-10.6(b)

COMMENT: Two respondents asked for "first aid" to be clarified as a term.

RESPONSE: The Board dropped "including first-aid for wound care" to avoid confusion and because it has always been deemed appropriate for both registered and unregistered individuals to render first aid in emergency circumstances.

N.J.A.C. 13:35-10.6(d)

COMMENT: One respondent stated that an athletic trainer is also responsible for the initial evaluation of an athletic injury. The respondent further stated that this evaluation requires athletic trainers to test the musculoskeletal, internal organs, and neuromotor capability of an athlete to determine the extent of an injury, and that none of this was mentioned in this section, and should be added.

RESPONSE: "Athletic training" is defined by the statute and does not include evaluating athletic injuries. The evaluation of an injury for more than first-aid purposes requires a diagnosis, which only a licensed physician can provide.

N.J.A.C. 13:35-10.6(e)

COMMENT: In requesting that "written plan" be clarified as a term, two respondents asked if separate plans of care must be maintained for every athlete under a physician's prescription, and whether "written plan" refers to standing orders or protocols, without which orders would need to be written for every modality used in every injury evaluation.

RESPONSE: The Board never intended for "written plan" to mean or be confused with the formal written plan of care, which is mutually agreed upon by the supervising licensed physician and the athletic trainer. Rather, the Board's intent was to require a chronological report of progress and activities, not a future course of action. Thus, for purposes of clarification, the Board has amended this section to omit the reference to "written plan of care."

N.J.A.C. 13:35-10.6(g)

COMMENT: Ten respondents expressed their confusion regarding 13:35-10.6(g) which permits unregistered individuals to apply bandaging, etc., to an athlete. Such language threw the ten respondents into doubt about the distinction between the activities that unregistered individuals are allowed to perform versus activities permitted registered athletic trainers in N.J.A.C. 13:35-10(a), for they had believed that unregistered persons could provide services listed herein only to non-injured athletes.

RESPONSE: N.J.A.C. 13:35-10.6(g) is distinctly different from N.J.A.C. 13:35-10(a) because the activities that unregistered individuals may perform are preventative in nature and concern non-injured athletes. For clarification, the Board has added "non-injured" to N.J.A.C. 13:35-10(g) and has defined "non-injured athlete" in N.J.A.C. 13:35-10.2.

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

SUBCHAPTER 10. ATHLETIC TRAINERS

13:35-10.1 Scope and purpose

(a) This subchapter is promulgated by the New Jersey State Board of Medical Examiners, pursuant to N.J.S.A. 45:9-37.35 et seq., providing for the registration and regulation of athletic trainers within the State of New Jersey.

(b) The rules contained in this subchapter shall apply to all individuals currently practicing as athletic trainers, as well as those individuals studying to become athletic trainers within this State. The rules are designed to better define the allowable activities, professional standards, and the educational requirements of athletic trainers.

13:35-10.2 Definitions

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

"Advisory Committee" means the Athletic Training Advisory Committee established under N.J.S.A. 45:9-37.39.

"Athlete" means an individual who participates in an interscholastic, intercollegiate or intramural athletic activity being conducted by an educational institution licensed in the State of New Jersey or a professional athletic activity.

"Athletic trainer" means a person who practices athletic training as an employee of a school, college, university or professional athletic team.

"Athletic training" means the practice of physical conditioning and reconditioning of athletes and the prevention of injuries incurred by athletes. Athletic training shall also include, at the direction of a physician licensed in the State of New Jersey, the application of physical treatment modalities to athletes as recommended by the Advisory Committee and defined in N.J.A.C. 13:35-10.6(c).

"Board" means the State Board of Medical Examiners.

"Direction of a licensed physician" means the designing and overseeing of a plan of care for the athlete by a *[the]* physician *[or chiropractor]* **licensed in the State of New Jersey (M.D., D.O., D.C., D.P.M.) within his or her permitted scope of practice as specified by N.J.S.A. 45:9-5.1, N.J.S.A. 45:9-14.5, N.J.S.A. 45:9-41.27, N.J.S.A. 45:5-7***.

"Non-injured athlete" means an athlete who has not sustained an injury or who has received medical clearance from a physician licensed in the State of New Jersey for full participation after injury/illness.

"Professional athletic team" means any team, group or individual athlete paid to perform at athletic events and activities.

13:35-10.3 Education standards

The requirement of N.J.S.A. 45:9-37.42 that an athletic trainer must provide proof of graduation or successful completion of a program of education, training, and experience approved by the Board shall be defined as the curriculum or program of education, training, and experience which was approved during the entire course of the applicant's education, training, and experience by the *[National Athletic Trainers Association]* ***National Athletic Trainers Association Board of Certification, Inc.***

13:35-10.4 Examinations

The requirement of N.J.S.A. 45:9-37.43 that an athletic trainer must pass an examination approved by the Board shall be deemed to have been met by evidence of passing the examination administered by the *[National Athletic Trainers Association]* ***National Athletic Trainers Association Board of Certification, Inc.*** The Advisory Committee, in its discretion and with prior approval of the Board, may develop and administer an alternative examination, testing the applicant's knowledge in the areas outlined in N.J.S.A. 45:9-37.43.

13:35-10.5 (Reserved)

13:35-10.6 Approved activities

(a) A registered athletic trainer may provide the full spectrum of pre-season, in-season and post-season conditioning programs. These programs include, but are not limited to, maintenance and reconditioning programs, as well as bandaging, wrapping, taping, padding, and splinting procedures for the prevention and management of injuries.

(b) Nothing in this subchapter shall be interpreted to prohibit registered athletic trainers from providing first-aid*[, including first-aid for wound care]*.

(c) A registered athletic trainer may, at the direction of a licensed physician as provided in N.J.A.C. 13:35-10.2, administer the following physical treatment modalities:

1. Cold;
2. Heat;
3. Light;
4. Sound;
5. Electricity;
6. Electromagnetic waves;
7. Water; and
8. Traditional mobilization techniques, rehabilitative exercise programs, traction, and massage.

(d) A registered athletic trainer may, at the direction of a licensed physician as provided in N.J.A.C. 13:35-10.2, provide testing of neuromotor and musculoskeletal functional capability for the purposes of conditioning, reconditioning or otherwise evaluating the athlete's performance capability. However, nothing in this subchapter shall be interpreted to permit a registered athletic trainer to conduct electromyographic testing or nerve conduction velocity studies.

(e) The Advisory Committee recognizes that the athletic trainer is not authorized to diagnose an injury or illness. However, prior to implementing or while maintaining the plan of care, the athletic trainer shall exercise professional judgment to determine whether any intervening circumstances have adversely affected the athlete's ability to participate in or continue to participate in the plan of care.

*[(e)]***(f)*** *[A registered athletic trainer shall establish a written plan of care under the direction of a licensed New Jersey physician, as to the use of the modalities and tests enumerated in (c) and (d) above.]* A written record *[for an injured athlete]* ***regarding the treatment of an athletic injury*** shall be created by the athletic trainer and maintained for a period of seven years from the date of the last entry.

*[(f)]***(g)*** Nothing in this subchapter shall be interpreted to prohibit registered athletic trainers from being employed or performing activities which do not require licensure or registration provided they do not hold themselves out as being able to perform athletic training in that employment or performance.

*[(g)]***(h)*** Nothing in this section shall be interpreted to prohibit unregistered individuals from applying bandaging, wrapping, taping, padding or splinting techniques to *[an athlete]* ***non-injured athletes***.

13:35-10.7 Violations

Without limiting the prosecution of any practices which may be unlawful under any other state or Federal law, a violation of this subchapter shall be deemed to be a violation of the Athletic Training Practice Act, N.J.S.A. 45:37-35 et seq., and shall be subject to the sanctions and penalties provided for thereunder.

13:35-10.8 Fees

The fee schedule for athletic trainers is determined by the Board and appears at N.J.A.C. 13:35-6.13(a)8.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS
Board of Psychological Examiners Rules
Adopted New Rules: N.J.A.C. 13:42

Proposed: July 19, 1993 at 25 N.J.R. 3062(a).

Adopted: August 30, 1993 by Jeffry H. Tindall, Ph.D., Chair, Board of Psychological Examiners.

Filed: October 8, 1993 as R.1993, d.547, **with substantive and technical changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3), and **with deferral of final action on N.J.A.C. 13:42-1.2(a)3, 4.5 and parts of N.J.A.C. 13:42-1.1(a)3 and 4 and 9.9(a)2.**

Authority: N.J.S.A. 45:14B-13, 44 and 45.

Effective Date: November 1, 1993.

Expiration Date: November 1, 1998.

Summary of Public Comments and Agency Responses:

The Board of Psychological Examiners afforded all interested parties an opportunity to comment on the proposed new rules, N.J.A.C. 13:42, relating to the requirements and general rules of conduct for licensees of the Board. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on July 19, 1993 at 25 N.J.R. 3062. Announcements were also forwarded to *The Star Ledger, The Trenton Times,* the Department of Health and other interested parties. The official comment period ended on August 18, 1993.

However, due to extensive public comment received on certain topics, the Board agreed to accept additional written comments until October 18, 1993, on the subject of psychoanalysis and non-profit community organizations. A public hearing limited to these two issues was scheduled for October 18, 1993; see, 25 N.J.R. 4585(a).

A full record of this opportunity to be heard can be inspected by contacting the Board of Psychological Examiners, Leslie G. Aronson, Executive Director, P.O. Box 45017, 124 Halsey Street, Newark, New Jersey.

The Board received 84 written comments regarding the proposal. A list of the commenters follows. Subsequently recorded is a summary of the comments received together with the Board's responses.

Leonard S. Altamura, DSW Executive Director, NJ Association of Mental Health Agencies, Inc.

Stephen A. Andrew, Ph.D., CCMHC Past President, NJCA New Jersey Counseling Assoc.

Mellisa K. Baer, MSW, ACSW
Michael Blatt, Vice President, Shore Mental Health Center
Laurie Boehm, ACSW, BCD, Director of Program Services, Family Guidance Center of Warren County
Dan R. Bottorff D. MIN, Legislative Chairperson, American Association of Marriage and Family Therapy—New Jersey
Mildred M. Boyd, Board President, Mental Health Assoc. of Monmouth County
Judith Burger, Psy.D.
Mary Burke, MSW, CSW, Union County Psychiatric Clinic
Dr. Harold A. Clark, Ph.D., Clark Institute Relationship & Career Counseling for Individuals, Couples & Families
Catherine Courtney, R.N.
Dean S. Davis, Ph.D, American Board for Accreditation in Psychoanalysis
Harold Davis, Ph.D., NCPsyA., Joint Council for Mental Health Service, Inc.
Rose Maria DeBonis
John Paul Dizzia, Esq.
Karen M. Edwards, R.N., M.A.
Dr. Ernie Sidney Becnel, Ph.D., Marriage & Family Therapy
Robert D. Farina, M.S.W., A.C.S.W.
James P. Gallagher, Director of Behavioral Services, Raritan Bay Medical Center
Dr. Thomas Gebhard, CFSC Catholic Family & Community Services, Partnership for Social Services
Helen Goldberg, C.S.W., Hotel Olcott
Cindy Gore, P.T., President, NJAPTA, New Jersey Chapter American Physical Therapy Association
Alfred Graydon
Marcia K. Graydon
Emile B. Gurstelle, Ph.D., Wayne Psychological Group
Linda Hausdorff, ACSW, Executive Director, Fair Lawn Mental Health Center, Inc.
Joan M. Heller, Assistant Director, Riverview Medical Center
Seth Ersner-Hershfield, Ph.D., Clinical Psychologist, Psychological Associates
Dr. James Hollis
Marion B. Houghton, M.A.
Diana P. Hunt, OTR, President, NJOTA, New Jersey Occupational Therapy Association
Barry G. Inglett, P.T., Wayne Physical Therapy Center
Michael S. Isaac
Victoria S. Ix
Robert B. Jones, B.C.D., President, Family Service Association of New Jersey
Alan G. Kaufman, Director, Department of Human Services, Division of Mental Health and Hospitals
Muriel Klinger
Lee E. Lanning, CRNP, MA, CMACHCA, Hon. J.D., President, Execu Care
Miriam E. Lememan
Maurice Lovell, NCPsyA
Pamela Lovell
Susan Madnel, Psy.D., ACSW, BCD
Patricia A. Mahoney
John McGinley, M.S.
Abigail S. Miller
David H. Miller
Pat Miller
Ann R. Neuman, SS, BCD
Edward P. O'Connor, AACSW, Exeuctive Director, National Association of Social Workers, New Jersey Chapter
Margot C. Osborne, MSW
Shan S. Pincus, Ph.D.
Charles V. Pumilia, Clinical Director, Community Psychiatric Institute
Michael J. Quinn, MA, MSW, Psychiatric Coordinator, Bayonne Hospital
Joseph A. Racite, Ph.D., CCMHC, Past President, NJMHCA 1992-93 New Jersey Mental Health Counselors Association
Karyn Reader, M.S.W.
Dr. Jerome J. Rosenberg, F.A.A.M.D.
Edna Rudolph, M.S.W., A.C.S.W.
Suzyanne Salkareni
Althea Schoen, MSW, BCD
Paul C. Schroy, Ph.D., M.D.
Vicki Graner Semel, Psy.D.
Susan W. Shanok, NCPsyA, President, National Assoc. for the Advancement of Psychoanalysis & the American Boards for Accreditation & Certification
Herbert Shigekane, A.C.S.W.
Thomas P. Shubek, Ph.D., President, AAMFT-NJ AAMFT-New Jersey Inc.
Patricia Simpson
Leon Sokol, Sokol, Behot & Fiorenzo
Marcyanne E. Sosnoski, MSW, Executive Director, Union County Psychiatric Clinic
Arther E. Springarm, A.C.S.W.
Warren Steinberg, Ph.D.
Adrean F. Stone, MSW, ACSW
Edward W. Stroh, NJ Counseling Association
Nina Thomas, Ph.D., President, NJ Psychological Association
Elizabeth Thorne, JD, Ph.D., NCPsyA
Fredrick S. Title, General Counsel, HIP Rutgers Health Plan Corporate Office
John G. Tuttle
Richard Van Houten, Auditing Manager, PSI Auditing Services
Janice Stern Victor, MSW, ACSW
Janice Weintraub
Liselotte D. Weyl, M.A.
Patsey White, MSW, CSW, ACW
Philip E. Wilson, A.C.S.W., Executive Director, West Bergen Mental Health Center
Barbara Yellowitz, MS, NCPsyA, NAAP
Shelia Zaretsky, Psy.A., NAAP

Requests for public hearing:

Thirty-eight people requested a public hearing to discuss the proposed changes in Subchapter 1. Thirty-four of these requests protested the intention to make psychoanalysis a regulated subspecialty of psychology. Two referred to proposed changes in N.J.A.C. 13:42-1.3, claiming that the proposed changes would have an adverse impact on certain community agencies. Others referred to proposed changes in 13:42-1.5, protesting the failure to exempt additional professions such as marriage counselors, occupational therapists and other licensed professions, and some objected to failure to exempt a variety of unlicensed practitioners, including art therapists.

RESPONSE: As noted, the Board will hold a public hearing regarding all references to psychoanalysis and to employment/supervision in a professional setting exempt from Board licensure requirements. For the reasons set forth below, the Board determined that a public hearing in connection with exempt professions and unlicensed practitioners other than persons identifying themselves as psychoanalysts was unnecessary.

COMMENT: The law firm of Sokol, Behot and Fiorenzo requested a stay of final consideration of the rules at the August 30, 1993 meeting of the Board, alleging that many members of the profession are on vacation at this time of the year.

RESPONSE: The Board noted that the rules were published July 19, 1993 and copies sent both to interested parties and to newspapers. The Board determined that the only issues of particular and extensive interest which could not be readily addressed at the scheduled August 30 meeting are those relating to psychoanalysis and exempt settings. The Board agreed to accept additional written comment on the subject of psychoanalysis and scheduled the public hearing on both topics as noted above. The Board therefore granted the request to defer final consideration of those portions of the rule, granted the request to receive additional public comment on the designated subject, and denied the request to delay final consideration of the remainder of the rule.

13:42-1.1 Scope of Practice

COMMENT: Several commenters suggested that the definition of "psychological services" (including the concept of "counseling") seems overly broad, going beyond the statutory authorization of N.J.S.A. 45:14B-2 and infringing upon certain unlicensed persons who offer counseling services. Others suggested that the Scope of Practice fails to clearly set psychology apart from other related and licensed disciplines (including certain licensed or otherwise recognized "counselors") and urged detailed listings of the personnel the rule is intended to regulate.

RESPONSE: These commenters mistakenly concluded that a Scope of Practice description for a licensed psychologist necessarily means that other practitioners are precluded from engaging in any of the defined conduct. However, the Board stresses that its rules are intended to regulate only the conduct of psychologists and that other practitioners are not excluded from engaging in similar conduct provided the conduct is within the scope of their separate licensed professions. Those practitioners specifically exempt from potential allegations of unlawful practice of professional psychology are those set forth in N.J.S.A. 45:14B-6 and 8, as supplemented directly or indirectly by subsequently enacted practice acts.

COMMENT: Several persons contended that the term "counseling" is vague and is often associated with other mental health professionals besides those licensed by the Board of Psychological Examiners.

RESPONSE: See response above.

COMMENT: Several people wrote to protest the assumption that psychologists would be allowed to function "in areas for which they are not trained," i.e. careers, divorce, child custody and family matters.

RESPONSE: The training provided to those completing licensure requirements includes training in all of the practice areas listed in the Scope definition. Rules of Court and of Evidence recognize the services of psychologists as experts in many matters besides treatment of individual clients. For example, Rule of Court 4:74-7 on Civil Commitment clearly recognizes that psychological assessments are given for purposes other than for individual client treatment. In addition, Rule 5:3-3 recognizes that psychologists are routinely asked to provide various kinds of assessments for persons not under treatment.

COMMENT: One commenter suggested that the current definitions do not allow for innovations in the profession which may result from scientific or medical discoveries, and so the Scope of Practice should be more elastic.

RESPONSE: The Practice Act protects the public by defining conduct that requires regulation, particularly when the conduct is accompanied by direct or inferred use of proprietary titles such as "psychologist" and related words. To leave Scope "elastic" would vitiate the very protection intended by the Practice Act. The Legislature is the appropriate body to determine whether additional types of licensed practice would be in the public interest.

13:42-1.2 Persons requiring licensure

COMMENTS: Numerous commenters objected to the proposed inclusion of psychoanalysis within the scope of practice of psychology, an inclusion which will require psychoanalysts to be licensed by this Board or by other health care boards.

RESPONSE: Given the extensive public interest in this issue, the Board will defer final consideration of N.J.A.C. 13:42-1.2(a)3, and inclusion of the word "psychoanalyst" in N.J.A.C. 13:42-9.9(a)2 at this time in order to permit further discussion on this subject at a public hearing to be conducted on October 18th.

13:42-1.3 Employment by a non-profit bona fide community organization; exemption from licensure

COMMENT: Many persons commented on the Board's interpretation of definitions set forth in N.J.S.A. 45:14B-6(a)3. That statutory provision pertains to any non-profit organization that is in the Board's opinion a bona fide community agency supported wholly or in a major part by public funds. An employee of such an organization may perform psychological services as part of his or her duties provided that the psychological services are performed under the direct supervision of a licensed practicing psychologist.

In specific, these commenters objected to involvement by the Board or by psychologists in agency activities. Their objections were based either on claims that psychologists are unavailable for employment to provide the supervision contemplated by the statute or the interpreting regulation, or on claims that such agencies would be financially unable to comply. Other commenters pointed out that many such agencies are managed by social workers who (subsequent to N.J.S.A. 45:14B-6) have themselves become eligible to be licensed professionals.

RESPONSE: The need for supervision by a licensed person in an agency setting is a policy decision of the State legislature. The issue of whether psychologists are in too short supply would be better directed to legislative remedy. All other issues will be further explored at the public hearing scheduled to address this section.

COMMENT: Alan G. Kaufman, the Director of the Division of Mental Health and Hospitals in the State Department of Human Services, noted that the Division funds, regulates, certifies and/or licenses many community health organizations in New Jersey. Mr. Kaufman asked how the Board proposes to identify a bona fide community agency as defined in the statute, and the rationale for some of the definitions that may affect programs regulated by the Division.

RESPONSE: This rule was not intended to affect the conduct of organizations or of individuals not reasonably contemplated by N.J.S.A. 45:14B-6. But, because of the significant public interest in this part of the proposal, the Board will defer final consideration, of N.J.A.C. 13:42-1.3 in order to conduct a public hearing. At that time, all issues will be explored with the intention of implementing state policy both for quality care and consumer protection, and for health care cost containment.

13:42-1.5 Member of other professional group doing work of psychological nature; exemption from licensure

COMMENT: The majority of letters regarding this section requested exemptions for licensed marriage counselors, career counselors, occupational therapists and physical therapists who utilize biofeedback as a tool in physiotherapy.

RESPONSE: The Board has now included, upon adoption, all of the above in the list of exempted licensed professionals and notes that their omission was inadvertent, resulting from enactment of new professional practice acts subsequent to N.J.S.A. 45:14B-8. The Board notes that although licensure procedures for social workers and occupational therapists are not yet in place, the Board considers individuals practicing these professions to be exempt based upon their enabling legislation.

COMMENT: Some commenters urged exemptions for alcoholism counselors, creative arts therapists, mental health counselors and sociologists [sic].

RESPONSE: Persons engaged in the unlicensed professions above within a mental health or hospital setting are in no way precluded from performing these activities so long as they are performed at the direction of or under the supervision of an authorized practitioner. Please note that treaters of problems involving alcohol, drug abuse or gambling are specifically exempt, provided that their work is supervised.

COMMENT: One respondent protested the "subjugation" of social workers by this Board. Another commenter urged specific exemption of pastoral counselors.

RESPONSE: Social workers are specifically exempted in this section. The rule also exempts "A member of the clergy or pastoral counselor directly affiliated with a recognized ministry and employed by that ministry to provide psychological services."

13:42-2.1 Application; qualifications to sit for examination

COMMENT: Nina Thomas, Ph.D., President of the New Jersey Psychological Association (NJPA), wrote to express NJPA's belief that psychologists undergoing the licensure process should have to meet very similar training requirements, including an organized plan of study with supervised practice of psychology and internships integrated into the training of candidates. The Board presumes that the commenter was urging such uniformity regardless of whether licensure was sought following completion of a traditional psychology program or by way of an allied degree or equivalent training. NJPA did not specify any particular criticisms or problems warranting a change in this rule.

RESPONSE: The Legislature delegated to the Board the discretion to evaluate credentials to ensure that candidates for licensure have undergone a reasonably consistent and extensive program of psychology training. The Board believes that both its current procedures and these new rules adhere to the legislature's intention in delegating discretion in this area, which is that the public be provided with licensees whose training is indeed reasonably consistent and extensive enough to establish strong professional standards.

COMMENT: NJPA questioned the Board's limiting the number of doctoral credits which will be recognized after transfer from other graduate schools, seeming to suggest that the Board has no authority to "look behind" the facial award of a diploma in order to determine whether requirements have been satisfactorily met.

RESPONSE: The Board does not "look behind" the diploma in order to challenge issuance of the academic degree. Instead, the Board is given considerable discretion by N.J.S.A. 45:14B-3 to ascertain whether the training received by a licensure applicant is sufficient for New Jersey's licensure track. The Board is therefore not prevented from "looking behind" a diploma to ensure that the applicant has had an adequately comprehensive, integrated and supervised professional education to warrant independent practice in this State. The Board has authority to determine, in the public interest, that an applicant demonstrates better and more uniform training when graduated from an integrated program rather than from disjointed educational experiences derived from a succession of schools. Thus the Board deems it appropriate to require a candidate to have met at least two-thirds of the academic requirements at the applicant's school of choice.

13:42-2.2 Academic degree in a field allied to psychology and 13:42-2.3, Equivalent training

COMMENT: Two commenters questioned the revised definition for allied degree and equivalent degree requirements. NJPA urged tighter interpretation to reduce any variance between the training derived from any of the alternative routes for licensure. In contrast, another commenter urged greater flexibility in maintaining alternative routes.

RESPONSE: The Board agrees that the proposed definitions are not clear and has therefore modified the definition at N.J.A.C. 13:42-2.2. Deletion of the word "clearly" in N.J.A.C. 13:42-2.2 will distinguish the requirements for a doctoral degree in an allied field from those of a doctoral degree in psychology. A clarification of N.J.A.C. 13:42-2.3 illustrates the alternative opportunity for an applicant for licensure based on equivalent scholarly work to meet the statutory definition in N.J.S.A. 45:14B-17(a) as a form of "employment" in professional work of a nature which the Board deems sufficient to warrant its opinion that the applicant is competent to practice professional psychology.

13:42-3.4 Extension of permit upon request of permit holder

COMMENT: NJPA seemingly charged that the Board has no authority to extend a temporary permit and, in particular, has no authority to condition an extension of permit on the applicant's consent to obtain personal therapy during the training process. NJPA would seem to prefer that any such recommendation be made only by the permit holder's supervisor.

RESPONSE: The Association's criticism is somewhat unclear. Let it be noted in general, however, that it is not uncommon for permit holders to fail to complete all requirements for licensure within the designated time. Since the Board is given authority by N.J.S.A. 45:14B-6(e) and (f) to issue permits in appropriate circumstances, the Board can exercise discretion and recognize that an extension of the permit may be warranted in some situations. Because the Board is regularly called upon to issue extensions and to consider recurring problems related to that matter, the Board deems it appropriate to inform permit holders by rule of most of the factors and conditions involved. (The Board now assesses an additional fee for processing extension requests.)

The Board rejects allowing the supervisor to be the sole evaluator of either requests or the conditions to be imposed on extensions of the permit. Indeed, failing candidates have sometimes been advised to select a different supervisor who might be more astute in remedying deficiencies in the applicant's preparation for practice. The Board maintains that its cited rule conditions strike a reasonable balance between an applicant's request for more than the standard time to complete the basic training process, and the public's need for protection and quality service.

13:42-4.1 Amount of supervision required

COMMENT: Many persons wrote objecting to aspects of supervision requirements.

RESPONSE: The Board notes that the requirements of N.J.A.C. 13:42-4.1 through 4.4 apply to responsibilities of supervisors of permit-holders on the licensure track, while only N.J.A.C. 13:42-4.5 (as numbered in the proposal) refers to individuals in any exempt setting, which is the area of concern of these commenters. Since the Board recognizes that confusion was precipitated by the placement of N.J.A.C. 13:42-4.5 within the overall supervision chapter, that subsection has been removed in its entirety and inserted into Subchapter 10, where it will be recodified as N.J.A.C. 13:42-10.15.

13:42-4.4 Responsibilities of supervisor

COMMENT: NJPA suggested that the required disclosure form acknowledging that services are to be provided by a psychologist permit-holder should be obtained only by contact between the permit-holder and the client.

RESPONSE: The permit-holder is not, in fact, deemed a "psychologist" for New Jersey practice purposes until the licensure process is complete. It is precisely for that reason that the supervisor should be the contact person regarding the signed disclosure form. Such an arrangement also ensures increased awareness of the tripartite relationship.

COMMENT: NJPA suggested substituting the phrase "third party payors" for the term "insurance companies."

RESPONSE: The Board agrees and has so modified the sentence.

COMMENT: NJPA objected that a supervisor should not have to provide "physical working conditions" for a permit-holder.

RESPONSE: The commenter misread the pertinent phrase, which continues an existing requirement. This statement, "A supervisor shall provide professional working conditions . . .," does not obligate the supervisor to provide a job; it means merely that the supervisor shall provide guidance to the permit-holder on how to interact in a professional manner regardless of where the permit-holder is working.

13:42-4.6 Financial arrangements between supervisor and supervisee

COMMENT: One commenter asked if the Board intended that N.J.A.C. 13:42-4.6 (when read in conjunction with section 13:42-10.14) allow a permit-holder/supervisee, but not a licensee, to be listed for tax purposes as an independent contractor. If so, the commenter questioned the rationale. After all, N.J.A.C. 13:42-10.14 forbids a licensee from dividing a fee for a client service with a psychologist practicing as an independent contractor. (The second aspect of this comment will be addressed in the response to N.J.A.C. 13:42-10.14.)

RESPONSE: Because the permit-holder cannot practice independently, it would be misleading and improper for a permit-holder to bill a client in his/her own name or in anyone's name other than the supervisor's. At the same time, the Board recognizes that the permit-holder must receive some compensation for his or her services (which are in fact being rendered to the supervisor). The Board rule further clarifies the difference between licensed persons permitted to practice (and bill), independently, and those unlicensed, by specifying that the supervisor may charge the permittee for supervision services. In the field, this may well result in a "wash" of the fees between supervisor and permit-holder. Nevertheless, the Board finds it appropriate to establish clear lines of authority for training and billing for each category of personnel in the training enterprise.

The rule specifies that the designation of "independent contractor under supervision," applied to a permit holder, is subject to approval by the Internal Revenue Service.

13:42-5.2 Examination Review Procedures

COMMENT: One commenter suggested that N.J.S.A. 45:14B-18 limits the Board to the conduct of "assembled examinations" and urged the Board to conduct its oral examinations only in the form of "assembled examinations."

RESPONSE: N.J.S.A. 45:14B-14(d) and 18, which address requirements to demonstrate qualification for "admission to an assembled examination to be conducted by the Board," must be read in a commonsense manner. Candidates taking the written examination do so anonymously and are identified only by number. The exam is proctored for security concerns. Obviously, there can be no security protection in an "assembled" oral examination. Furthermore, the Board has traditionally made an effort to focus the oral exam on the area of the applicant's chosen professional orientation, and assembled exams of applicants in a variety of orientations would not be feasible. Oral exams are scheduled on a frequent basis to enable qualified applicants to enter the profession without undue delay.

The Board regards oral examinations as a critical component in the licensure process. The practice of professional psychology is preeminently one of verbal communication. Unlike the practice of medicine, psychological diagnosis and treatment is accomplished primarily by verbal communication between psychologist and client. Moreover, a written exam will inevitably involve limitations because a written exam does not readily allow for assessment of good character, maintenance of professional deportment, or clarification of any ambiguities or concerns arising from the self-selected work sample submitted by the applicant. Passing a written exam is therefore merely one of several screening devices, and the oral exam remains an important assessment tool in the examination process.

COMMENT: NJPA requested more explicit criteria for the process of evaluation of a candidate's oral examination, particularly when the examiners may disagree on the evaluation.

RESPONSE: The Board recognizes that many applicants for licensure identify with a particular practice orientation. The Board allows the applicant to select a work sample of his/her best recent work to serve as the general basis for the oral examination. However, the license granted is not limited solely to one orientation but allows for the plenary practice of psychology. Thus the examining committee must have latitude to question the applicant to assure sufficient awareness of the following: the major professional approaches to understanding a client's needs, the therapy which the client may have previously received, and if and where to refer a patient to other appropriate care resources. As exploration of these issues will, to some extent, be dependent upon the particular work sample, no finely-detailed criteria can be applied uniformly to all applicants. However, the Board already utilizes a basic outline of professionally appropriate considerations. The Board will actively consider NJPA's suggestion to further refine a more uniform test outline to the extent that it is practical to do so given the circumstances.

Currently, in the event of disagreement between examiners or even significant uncertainty of an examiner, one or more additional Board members will review the entire licensing application, including work sample and examination tape.

COMMENT: Two commenters asked why a candidate who fails the oral exam may not copy the Board's tape recording of the examination unless the matter is appealed to the Appellate Division. One commenter suggested that the inability to have a copy at the outset hampers the applicant's ability to receive adequate legal assistance in evaluating potential grounds for appeal, including the ability to have the examination reviewed by a consultant.

RESPONSE: To make current test questions and responses available would severely compromise the integrity of the examination. The Board does permit a failed test applicant to listen to the tape with counsel present, if so desired. However, in order to avoid further compromising the security and integrity of the examination, a transcript of the tape may not be made. The Board has struck this particular balance to allow review for consideration of an appeal, while avoiding a situation in which information may be readily made available to future applicants. Board records disclose no judicial finding of any arbitrary denial of licensure resulting from the oral examination.

13:42-5.3 Out-of-State psychologists; admittance to oral examination

COMMENT: A commenter suggested that no more than five to ten years of successful professional practice is needed to admit to oral examination a psychologist who has been licensed out-of-State but not by means of a written, approved examination.

RESPONSE: The Board rule is intended to address a very narrow category of applicants: those who became licensed as a result of "grandfathering" but not by the written examination recognized only subsequent to 1969 by each of the American licensing boards. The work of such applicants may never before have been subject to specific scrutiny. Since the Board will not accept any applicant who has avoided or failed the nationally recognized standard examination (see N.J.A.C. 13:42-5.3(a) and (c) where parochial state examinations are disapproved), the five to ten years of practice proposed by the commenter would not address the sole problem at issue here.

13:42-7.2 Partnership or professional association

COMMENT: NJPA questioned the prohibition on use of the term "Associate" in the name of a professional office by a person who is not a member of the professional firm.

RESPONSE: The Board maintains that the term "Associate" in the name of a firm suggests to consumers a formal and integrated professional relationship with shared responsibilities and liabilities. Its use would be misleading by one who has no ongoing professional obligations of care for the patients of the firm and for whom there is no integrated control or review of the quality of practice.

COMMENT: One commenter indicated that he and a group of colleagues share the expenses of running an office. He noted that if a potential client calls for an appointment but does not request a particular therapist, one of the office space-sharers will decide to whom that client should be "assigned." However, none of the group participates in the practice of another member, nor chooses to bear any responsibility for it. The commenter contended that the rule will force his group to change its name, thereby resulting in "undue hardship."

RESPONSE: The Board finds that the description offered by the commenter provides an example of the need for the rule, as it displays the potential for consumer confusion. A potential client would readily think he or she had consulted an actual "group" and would have had no way to know that the individual practitioners merely shared office expenses and had no other professional relationship or joint responsibility.

COMMENT: An association of mental health counselors protested that the Board does not and should not have the authority to prohibit unlicensed "but qualified" employees from working as independent contractors.

RESPONSE: The Board finds no current statutory authorization for hiring, in a non-exempt setting, persons who are unlicensed and not otherwise authorized to perform professional psychological services. Aspects of this issue will be further addressed in the Board response to N.J.A.C. 13:42-10.14, which deals with independent contractors.

13:42-7.6 Managed health care plans

COMMENT: NJPA objected that only psychologists would bear the responsibilities listed in the rule, and that such limitations would impede psychologists in negotiating contracts with managed health care organizations. NJPA urged that the subject not be addressed.

RESPONSE: Licensees of the Board of Medical Examiners appear to be subject to requirements identical to those in this proposal (see N.J.A.C. 13:35-6.16(h) and 13:35-6.17(f) and (g)), except that psychologists will also be required to inform Plan clients of the financial arrangements between the licensee and the Plan. If that single difference is shown to cause a problem, application may be made to the Board for modification of the rule. The Board believes that each of the specific limitations protects the public and also the professional integrity of the participant psychologist. Government representatives and consumers have expressed continuing concern regarding two problems. The first is that the insureds of some plans have received restricted professional advice, without disclosure of the restriction, simply because the particular plan does not offer a particular service. The second is that referrals to specialists deemed appropriate may nevertheless not have been made because of economic disincentives built into certain plans. This Board often receives complaints from Plan members who have belatedly learned that the Plan does not offer psychological services to the extent the treatment provider and patient believe to be professionally warranted, or complaints from patients whose paid benefits were suddenly terminated by the Plan manager because the number of "approved" visits has been exhausted. The Board believes consumers should be informed about the health care plans in which they participate.

13:42-7.8 Real estate arrangements

COMMENT: NJPA objected that N.J.A.C. 13:42-7.8 seemed needlessly restrictive of the rental arrangements psychologists might secure.

RESPONSE: The rule should not unduly impede the start-up of a practice, as it limits only a licensee who receives referrals from a lessor who is also a licensed health care professional. To minimize concerns about fraud and abuse fostered by unnecessary referrals, this rule requires that the psychologist pay no more than fair market value rent for the space, and that the rental arrangement be for a regular term and not for sporadic use. This concept is consistent with the federal Safe Harbors Rule and with rules of sister state agencies designed to reduce abusive and collusive referrals generated by financial incentives of the lessor. The rule does not prevent a licensee-lessor from permitting a low rental for the initial term and then renegotiating it for a later term. Alternatively, the rule does not prevent a psychologist from renting shared office space on an occasional basis, provided that the licensee-lessor does not refer clients to the psychologist-lessee who is paying the rent.

13:42-8.1 Preparation and maintenance of client records

COMMENT: NJPA objected that the recordkeeping requirements are excessively specific and stringent, and noted that guidelines of the American Psychological Association list only an initial evaluation and treatment plan, and entries or summaries where appropriate or where a significant change in condition or treatment has occurred.

RESPONSE: Guidelines of a private professional association do not supersede the authority of a government agency to require higher standards and, in fact, the APA document itself makes clear that its advice is subject to State requirements. Psychologists, as an integrated part of the health care system, should expect to maintain appropriate records just as all other licensed mental health care practitioners are required to do. The Board notes that it has always had a rule (see N.J.A.C. 13:42-4.1(a)1(ix) now being repealed) requiring the keeping of records which accurately reflect patient contact with the practitioner.

The rule should not be unduly burdensome, as most of the requirements will be satisfied by documentation on the initial intake visit or periodically for third party payor purposes. Thus the Board is not persuaded by NJPA's contention that the required items are "overburdening psychologists with paperwork."

13:42-8.2 Use of personal or other computer to prepare client records

COMMENT: NJPA asked whether the write-protect provision precludes psychologists from using computers to maintain client and billing records, or whether licensees will have to purchase new software to meet the requirements.

RESPONSE: One primary value of computer use is the convenience of preparing more comprehensive notes and avoidance of the widespread problem of illegible handwriting and obscure abbreviations. One deficiency is the risk of accidental loss or the opportunity for fraudulent alteration. The Division of Law has advised that virtually all computer programs can be adapted to meet the rule requirements, with cost dependent on the volume and extent of the licensee's files and the nature of the data in them. The write-protect computer program is required only if the computer is the sole method of preparation and storage of the records. If, however, the licensee elects to print the session record in hard copy, no special program is required, as the computer is simply being used as a typewriter; see subsection (e).

13:42-8.3 Access to copy of client record

COMMENT: NJPA suggested that the term "insurance carrier" be changed to "third party payor;" that access to records be limited to the information "necessary" to assess a claim for reimbursement; and that access be further limited by N.J.S.A. 45:14B-31. NJPA also contended that there was no definition of who constitutes an "authorized representative" to request record release.

RESPONSE: The Board agrees with the first comment and has changed the term to "third party payor." The Board finds no need to modify any other part of this section since, while the licensee may limit released information in compliance with the Peer Review Law if applicable to the patient's care, the licensee may not determine what is "necessary" to assess a claim for insurance benefits under other applicable law. Finally, the rule does provide a sufficient definition of "authorized representative." This section, in conjunction with N.J.A.C. 13:42-8.4 and 8.5, addresses the circumstances of waiver and when it is not required for release of a client record.

COMMENT: One commenter asked how a licensee could avoid releasing confidential information if a computer program prevents subsequent editing of the client record (as he believed was required by N.J.A.C. 13:42-8.2).

RESPONSE: N.J.A.C. 13:42-8.3 does not require wholesale unedited release of records. The licensee generally retains authority to tailor a response to the special circumstances of the request. Thus this section allows preparation of a summary for a client or the parent of a minor. Another alternative would be "whiting out" certain sections deemed deleterious to the client's interest if released in photocopied form. However, the original record must be maintained, intact and secure, for accountability to the Board as well as for other appropriate releases.

13:42-8.5 Confidentiality

COMMENT: NJPA objected that the current rule allowed a licensee to "choose" to reveal information about a client when there is a clear and imminent danger, but the new rule imposes an affirmative duty to do so in such circumstances. NJPA believes the rule wording does not conform to new law N.J.S.A. 2A:62A-16.

RESPONSE: The Board believes that the commenter partially misread both the law and the rule. The law speaks of a duty to warn because of an overriding need to protect the public. The rule indicates that if in the licensee's judgment, certain dangerous situations are present, then the disclosure must be made but only to the limited class of persons.

13:42-9.3 Minimum content

COMMENT: NJPA objected to inclusion of a street address in advertisements because an address might encourage unwanted "off the street" clients and potentially put psychologists at personal risk. A verbal comment was received from another commenter who often does forensic work in custody matters and who feared retaliatory conduct by a litigant.

RESPONSE: The Board finds that a street address (not a post office box number) is useful and significant information to a potential client. Among other benefits, it will allow an assessment of geographical convenience prior to making an initial contact, and may confirm a sense of trust regarding the stability of the licensee's practice. The psychologist may, of course, include a note in the advertisement that reads: "By appointment only." The address requirement is consistent with current rule N.J.A.C. 13:42-4.1(a)6. However, the Board will consider petitions for waiver from the requirement for those licensees who can demonstrate good cause for omitting some or all parts of a street address.

COMMENT: NJPA and other commenters objected to a requirement to include the names and license numbers of all members of a group practice in Yellow Pages and other advertising, including business cards and letterhead stationery/billing forms. The commenters contended that individual name listings were unnecessary and would add cost to advertisements.

RESPONSE: Since the Practice Act permits persons other than licensed psychologists to offer psychological services, inclusion of license numbers will permit consumers to readily identify and select licensed psychologists.

Furthermore, license listing of all members of a group practice will enable consumers to better ascertain the nature and extent of services available in a multi-practitioner firm.

The Board agrees. however, that it might be unwieldy to require all names of a group practice on either a business card or in yellow page advertising placed by the licensee. In those two circumstances only, the Board will permit the business card to include the following minimum data, as applicable: for a sole practitioner, the name of the psychologist, license number, address, and telephone number; for a partnership or professional service corporation (a "P.A."), the same information as above regarding the licensed psychologist in question, followed by the group, trade, or professional service corporation name of the practice. This change is made at N.J.A.C. 13:42-9.3.

13:42-9.6 Use of testimonials

COMMENT: NJPA suggested that testimonials should be restricted to those who are not current clients, in order to prevent a dual relationship.

RESPONSE: The Board agrees that it would be a dual relationship/ conflict of interest for a psychologist to use a testimonial from an individual receiving current therapy, evaluation or consultation services. The Board appreciates the comment and has so modified the section. (Please also note the response to N.J.A.C. 13:42-9.7 in the concluding Summary of Agency Initiated Changes.)

13:42-9.9 Misleading implications of licensure

COMMENT: As noted in the comments to N.J.A.C. 13:42-1.5, a number of persons and organizations have sought to have psychoanalysis exempted from the definition of professional psychological practice.

RESPONSE: The Board defers the inclusion of the word "psychoanalyst" in this section pending final consideration after the public hearing to be conducted on the subject.

13:42-10.1 Posting of practice authorization and notification of availability of fee information

COMMENT: NJPA found it offensive and demeaning to require posting a notice inviting consumer complaints to be filed with the Board or the Division of Consumer Affairs.

RESPONSE: The Board regrets that anyone took offense but notes that it is the policy of the Division of Consumer Affairs to require such a posting in order to ensure that consumers are aware of their right to have complaints addressed by notifying the proper governmental bodies.

13:42-10.5 Maintaining competence in testing situations

COMMENT: NJPA objected to N.J.A.C. 13:42-10.5(c), which requires that a licensee affirmatively indicate the reason for deviation from a standard protocol test administration. The commenter suggested that the psychologist need explain the deviation only where that psychologist deems it "appropriate."

RESPONSE: The Board notes that the proposed wording is consistent with a long-standing rule, N.J.A.C. 13:42-4.1(a)xxvi(3). The Board is particularly concerned that several recent investigative inquiries have disclosed situations in which tests were administered in a nonstandard fashion, without notice or explanation to the reviewing tribunal. The Board deems this lapse to be a serious issue of professional competence and integrity, which thereby warrants sharpening of the rule as a deterrent.

13:42-10.8 Professional interactions with clients

COMMENT: NJPA suggested that clarification was needed for phrases in (a) and (c): "without making reasonable arrangements" and "undue influence."

RESPONSE: The Board notes that its current rule N.J.A.C. 13:42-4.1(a)1(ii) is virtually identical to the proposal. The Board is satisfied that the rule adequately expresses concepts with which professional psychologists should be fully familiar.

COMMENT: A commenter asked whether N.J.A.C. 13:42-10.8(b) precludes employers from requiring an employed or affiliated psychologist to sign and then comply with post-employment restrictive covenants, and whether the section imposes a prohibition on fee splitting and referral fees in connection with such a document. If not, the commenter urged that such interpretation be made, consistent with the ban on restrictive covenants by the Supreme Court of New Jersey as applied to employed attorneys. The commenter urged the Board to recognize an important public policy of avoiding imposition of an artificial barrier upon patient choice of therapist.

RESPONSE: The Board recognizes the concern for "abandonment" of a patient as it might seem to arise following termination of employment of a psychologist at the former therapy site. However, N.J.A.C. 13:42-10.8(a) does allow for the making of reasonable alternative arrangements for continuation of care. In the event that a specific patient complaint is received asserting inability to continue care with a willing provider due to the terms of a restrictive covenant, the Board will address the matter at that time. At present, the Board will further address the subject in its response to N.J.A.C. 13:42-10.14.

13:42-10.10 Financial arrangements with clients and others

COMMENT: NJPA pointed out that Medicare currently requires that assignment be taken on all billings; thus, the option implied in the rule is unnecessary. NJPA also objected to having to inform clients regarding the extent to which insurance payments are accepted. NJPA further stated that its Ethics Committee has deemed it "fraud" for a licensee to accept insurance payment ("excluding deductible") as payment in full.

RESPONSE: The Board agrees that reference to assignment in Medicare billing is unnecessary under current law, and has modified the section to make clear that clients should be informed if they will be billed for any balance unpaid after the deductible and insurance payment is made. The Board finds it fair and reasonable for clients to be prepared in advance for such balance billing. The Board agrees that a licensee would be engaged in fraud if he or she accepted insurance payment (without collecting the deductible) as payment in full and nothing in this section is meant to suggest otherwise. Let it be further noted that a routine waiver of balances due may, however, be deemed by the third party carrier to lower that practitioner's financial "profile" of usual, customary and reasonable fees.

13:42-10.14 Prohibition on kickbacks and rebates

COMMENT: The commenter who wrote regarding N.J.A.C. 13:42-10.8 above asked the Board to consider the subject of restrictive covenants as not consonant with the public interest. The Board chose to address the matter in this section of the rule.

RESPONSE: The Board notes there are two common components to restrictive covenants: prohibiting the opening of a new practice by the formerly employed licensee within a specified geographic propinquity to the former employer, and/or requiring a new or continuing division of client fees received from a client who had established initial contact with the licensee during the former employment. The Board has not contemplated the issue of restrictive covenants when proposing this subsection, and believes that to incorporate such an interpretation at this time would not be giving licensees fair notice of the matter. The Board will therefore decline to make that interpretation at this time. Nevertheless, the Board is impressed with the wisdom of the suggestion and shall give prompt consideration to preparation of a rule amendment similar to that in effect for attorneys in order to ban restrictive covenants.

The ban proposed in subsection (b) on dividing fees with one who is not a current employee, partner or member of a professional service corporation would, however, be applicable to component (2) as discussed above. Thus the Board would deem it to be professional misconduct for a licensee to divide a client fee with a former employer in the absence of performance by each licensee of actual professional services warranting payment.

COMMENT: NJPA objected to the ban on division of fees with an independent contractor, contending that this would violate a Consent Order entered between the FTC and the American Psychological Association. By the terms of that Order, APA agreed not to forbid its members from paying any patient referral service or similar institution for referrals. NJPA further asserted that the Board rule would violate due process under the 14th Amendment to the United States Constitution and the "property expectations of psychologists under State law," citing *Herz v. Degnan,* 648 *F.*2d 201, 208 (3d Cir. 1981), and would be *ultra vires,* citing *In re Amendment of N.J.A.C. 8:31B-3.31,* 119 *N.J.* 531 (1990). Finally, NJPA contended that the Board rule would be inconsistent with a rule of the Board of Medical Examiners, which recognizes certain use of independent contractors, citing N.J.A.C. 13:35-6.16(f)(3) and 6.17.

RESPONSE: The Board finds these contentions unpersuasive. Current Board rule N.J.A.C. 13:42-4.1(a)1(4) has long prohibited the giving or receiving of any form of remuneration for referral of patients. A reading of the cited *Herz* and *In re Amendment* cases discloses nothing relating to the use of independent contractors or to the division of fees or to any legal principle pertinent to this section; those cases relate to property rights in retaining an existing license in the absence of a formal disciplinary proceeding and to confidentiality of client records by a therapist.

Even if the cited Medical Board rules differed from those of this Board, those rules are not binding upon another agency. Nor do they prevent another agency from imposing higher ethical practice standards in order to address a problem in a different practice context. Such differences are not "discriminatory" in a legally cognizable sense. Moreover, the wording of the cited Medical Board rules suggests that they may relate to circumstances peculiar to medical practice (such as a general practitioner sending x-rays to a radiologist for interpretation, or an ophthalmologist having eyewear prepared by an optician); the rules make clear that if a global bill is issued by the primary treating doctor, it must specify the name and address of the person providing the subcontracted professional or technical services and must state the precise cost to the prescriber of the subcontracted services. It is apparent that no additional fee can be charged for the arrangement and thus the situation involves not a division of fees for a given service, but rather a cumulative total fee for separate professional services in the medical context.

The Board is similarly unpersuaded by the reference to the FTC Order. The commenter fails to distinguish between conduct by a private association (which the FTC may have believed to be anticompetitive within the private sector) and conduct regulated by a government agency. Moreover, certain types of referral fees are permitted by Board rule; see N.J.A.C. 10.14(a)(3) which permits payment of a fee to a professionally sponsored referral service. Thus, even if the FTC agreement with the APA were applicable here, the Board does not find its proposed rule inconsistent. The new rule is a continuation of current N.J.A.C. 13:42-4.1(a)1.xxiii(3)(I).

13:42-11.1 Purpose and scope

COMMENT: NJPA commended the Board for inviting the reporting of third party carrier demands for information which may be found to be unlawful under the terms of the current Peer Review Law.

RESPONSE: The Board appreciates NJPA's support and has amended N.J.A.C. 13:42-11.1(a) to interpret the applicability of Employee Retirement Income Security Act (ERISA) programs to New Jersey's Peer Review Law. (See explanation in Summary of Agency Initiated Changes).

13:42-11.2 Definitions

COMMENT: Some commenters contended that the definition of "psychological services" in N.J.A.C. 13:42-11.2 is too broad.

RESPONSE: The definition utilized here is not beyond that contemplated by the Practice Act, and has been set forth in the present manner specifically for the guidance of third party insurance carriers in interpreting the Peer Review Law. Such a purpose is clearly indicated in the introduction to the Chapter. This rule is unchanged in substance from the current rule.

COMMENT: One commenter sought confirmation that the Independent Professional Review Committee (IPRC) process is not required when a third party payor is investigating the legitimacy of a claim for payment for a Personal Injury Protection (PIP) case.

RESPONSE: The commenter is correct. N.J.S.A. 39:6A-13(b) and (e) specifically permit direct inspection of a treating practitioner's client record or preparation of a treatment report. The Personal Injury Protection Program is not limited by constraints otherwise imposed by the Peer Review Law.

Miscellaneous.

COMMENT: Several general letters of protest were received, questioning whether the proposed rules were reasonable and within the Board's statutory authorization. The correspondents suggested that the Board was motivated by "guildism," that there were not enough psychologists to comply with either current law or the needs of the population and, therefore, the public should be able to seek and receive mental health services from any person offering them. The correspondents suggested total deregulation of the profession or establishment of an independent entity to study all health care professionals.

RESPONSE: The Legislature has determined the need for psychological services at a professionally recognized level, and has determined that licensure of professional psychologists is the appropriate way to assure the public of the minimum training and competence of a practitioner who so represents him/herself. Changes or licensure of additional categories of mental health professionals is the prerogative of the Legislature.

Summary of Agency Initiated Changes:

Reference to "psychoanalysis" at N.J.A.C. 13:42-1.1(a)3. and 4 is being deleted pending the outcome of the hearing scheduled for October 18, 1993.

N.J.A.C. 13:42-1.5(a)11, 1.6 and 4.5 were clarified because, as previously written, they cross-referenced N.J.A.C. 13:42-1.3, which is not being adopted at this time.

N.J.A.C. 13:42-4.2 was reorganized to clarify the formerly implicit assumption that a supervising psychiatrist would be licensed if so required in that person's location of practice, and to clarify that the two years' experience requirement applies both to the period of practice while under supervision in a professional setting and to the alternative of substantial recent experience in the field of applied psychology.

N.J.A.C. 13:42-5.1(c) was revisited and changed to clarify that the number of examiners may vary.

N.J.A.C. 13:42-5.3(a)3 was clarified regarding documents which must be submitted by an out-of-State applicant by adding an appropriate cross reference to N.J.A.C. 13:42-5.1(b).

N.J.A.C. 13:42-5.4 was clarified regarding the proposed wording for admission of an American Board of Professional Psychology (ABPP) holder. The modified wording recognizes that the Board may exclude a person who holds an ABPP certificate but who may, for example, have been convicted of a crime or have been administratively sanctioned in another state or whose pattern of adverse malpractice verdicts raises questions requiring additional investigation of competence.

At N.J.A.C. 13:42-7.5 a subsection was added to create a six-month phase-in period during which time licensees whose practices do not conform with this section shall bring those practices into compliance with the requirements of this proposal. During the adoption process, the Board engaged in further discussions at which time it concluded that a phase-in period of compliance should be allowed so that licensees are in practical terms given full opportunity to be in compliance with the proposed amendments.

N.J.A.C. 13:42-8.1 was clarified because the rule refers to "treatment" and is presumed to include all types of professional psychological services, such as evaluation or consultation. Thus references in N.J.A.C. 13:42-8.1(c)1, 11, 12, 13 and 17 and (d) have been modified as necessary to refer to session notes and/or "treatment or evaluation or consultation" or "progress notes" (if applicable), etc.

N.J.A.C. 13:42-8.4 and 11.1 have been changed upon adoption to interpret the applicability of Employment Retirement Income Security Act, 29 USCA 1001, (ERISA) programs to New Jersey's Peer Review Law. The changes set forth those situations in which licensees may disclose information to third-party payors which, except for preemption by Federal law (ERISA), would otherwise have to be maintained as confidential under the Peer Review Law. These changes are not viewed as so substantive as to need reproposal in that they merely reflect existent statute.

N.J.A.C. 13:42-8.5(a) was rearranged for easier reading.

N.J.A.C. 13:42-8.5(c)3 has been recodified as subsection (d).

N.J.A.C. 13:42-9.4(c) was changed upon adoption to clarify that additional academic degrees may be utilized in professional representations, provided that they are degrees earned from bona fide accredited educational institutions.

N.J.A.C. 13:42-9.7 was modified upon adoption because the original proposed wording would have prohibited a licensee from engaging in any in-person solicitation with a prospective client. Staff noted that the abuse to be prevented relates to solicitation of an individual, and not solicitation of a business organization client for purposes such as offering an employee-assistance plan or providing services as part of a pool or panel of approved Workers Compensation treatment providers. The sentence has now been modified to permit in-person solicitation of a business entity to offer psychological services to a class of persons.

N.J.A.C. 13:42-10.12(b)1 was clarified to recognize the transition period when some Board permit holders will be practicing pursuant to a Board letter of authorization rather than a permit number.

N.J.A.C. 13:42-10.14(b) was changed upon adoption, in response to a request by NJPA, to create a six-month extension period during which time licensees whose practices do not conform with this section shall bring those practices into compliance with the requirements of this proposal.

The new N.J.A.C. 13:42-10.15 was recodified from N.J.A.C. 13:42-4.5 without change in text.

N.J.A.C. 13:42-11.1(a) An Attorney General's opinion has now been issued (93-80092) which, in addressing those types of managed care plans deemed to be exempt from the limitations of the Peer Review Law, has clarified the relationship between ERISA and the Peer Review Law. This section has thus been subsequently modified to reflect the Attorney General's opinion. Also see explanation of changes at N.J.A.C. 13:42-8.4 above.

N.J.A.C. 13:42-11.2 was clarified to make certain minor editing changes, including insertion of the assumed phrase "client's need" in the determination of what psychological services shall be provided by the licensee.

N.J.A.C. 13:42-11.4 and 11.5 were adjusted to reflect minor editing clarifications.

At N.J.A.C. 13:42-11.11 a correction was made to the internal reference cite.

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

CHAPTER 42
BOARD OF PSYCHOLOGICAL EXAMINERS

SUBCHAPTER 1. SCOPE OF PRACTICE; PERSONS REQUIRING LICENSURE; EXEMPTIONS FROM LICENSURE; UNLICENSED PRACTICE

13:42-1.1 Scope of practice

(a) The scope of practice of a licensed psychologist includes, but is not limited to, the use or advertisement of the use of theories, principles, procedures, techniques or devices of psychology, whether or not for a fee or other recompense. Psychological services include, but are not limited to:

1. Psychological assessment of a person or group including, but not limited to: administration or interpretation of psychological tests and devices for the purpose of educational placement, job placement, job suitability, personality evaluation, intelligence, psychodiagnosis, treatment planning and disposition; career and vocational planning and development; personal development; management development; institutional placements; and assessments in connection with legal proceedings and the actions of governmental agencies including, but not limited to, cases involving education, divorce, child custody, disability issues and criminal matters;

2. Psychological intervention or consultation in the form of verbal, behavioral or written interaction to promote optimal development or growth or to ameliorate personality disturbances or maladjustments of an individual or group. Psychological intervention includes, but is not limited to, individual, couples, group and family psychotherapy, and psychological consultation includes consultation to or for private individuals, groups and organizations and to or for governmental agencies, police and any level of the judicial system;

3. Use of psychological principles, which are operating assumptions derived from the theories of psychology that include, but are not limited to: personality, motivation, learning and behavior systems, *[psychoanalysis,]* psychophysiological psychology including biofeedback, neuropsychology, cognitive psychology and psychological measurement; and

4. Use of psychological procedures, which are applications employing the principles of psychology and associated techniques, instruments and devices. These procedures include, but are not limited to, psychological interviews, counseling, psychotherapy, *[psychoanalysis,]* hypnotherapy, biofeedback, and psychological assessments.

13:42-1.2 Persons requiring licensure

(a) Persons requiring licensure include all those whose conduct is within the scope of practice set forth in N.J.A.C. 13:42-1.1, and whose practice is not otherwise exempt pursuant to N.J.S.A. 45:14B-6, N.J.S.A. 45:14B-8 and N.J.A.C. *[13:42-1.3 through]* ***13:42-1.4 and*** 1.5, including the following:

1. Persons offering services to the public in private practice, in partnership with other licensed health care professionals, in professional service corporations as shareholders or employees, and in or affiliated with all forms of managed health care organizations (for example, HMO, PPO, IPA, etc.);

2. Employees of general business corporations to the extent such practice is permitted pursuant to N.J.A.C. 13:42-7.5; and

3. *[Practitioners of psychoanalysis. Psychoanalysis is a theory of personality development and a technique of psychotherapy which requires advanced training and specialization. Only practitioners who hold licensure from the State Board of Psychological Examiners or who demonstrate exemption pursuant to N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-1.3 through 1.5 may use the title psychoanalyst.]* ***(Reserved)***

13:42-1.3 *[Employment by a non-profit bona fide community organization; exemption from licensure]* ***(Reserved)***

*[(a) Pursuant to N.J.S.A. 45:14B-6(a)3, an employee of a non-profit organization which is a bona fide community agency supported wholly or in a major part by public funds is exempted from licensure provided the employee is under the supervision of an authorized supervisor pursuant to the provisions of N.J.A.C. 13:42-4.2(a) and 4.6(b).

(b) For purposes of this section, the term "public funds" shall not mean payments by Medicare or Medicaid or other public or private insurance fund on behalf of an individual client to an individual provider (directly or through a professional service corporation) licensed by this Board.

(c) For purposes of this section, the term "non-profit bona fide community organization" shall mean:

1. An entity which is exempt from taxation pursuant to Section 501 of the United States Internal Revenue Code and which meets one of the following definitions. The organization shall be:

i. A corporate entity or any community chest, fund or foundation organized and operated exclusively for religious or charitable purposes; or

ii. A civic league or organization not organized for profit but operated exclusively for the promotion of social welfare; or

iii. A religious society devoted exclusively to charitable or religious purposes; or

2. An entity which has as its commitment the delivery of mental health services to clients who are amenable to those forms of psychological services customarily provided by the organization and which meets one of the following definitions:

i. The organization receives 50 percent or more of its funding in the form of public monies from a budget line or grant appropriated on a quarterly, twice-yearly, annual or other regular basis; or

ii. The organization has publicly and permanently committed itself to accepting, without numerical restriction, clients whose treatment shall be reimbursed either:

(1) By Medicaid or Medicare or other public insurance program funding; or

(2) By payment pursuant to contract with departments of State, county or municipal governments.

(d) Examples of organizations which may be considered bona fide non-profit community organizations under the definition set forth in (c)2 above include:

1. A private or public non-psychiatric hospital which is licensed by the New Jersey State Department of Health to provide health and medical care to the general public and which has a designated psychiatric unit; and

2. A mental health entity (other than a private office) which may be privately owned and operated and which offers outpatient mental health services to the general public.

(e) Within 30 days of the effective date of this rule or at the time employment of the unlicensed employee commences, whichever is later, the exempt entity or exempt practitioner shall submit to the Board a notice specifying the following information:

1. The public commitment of the organization and the basis for exemption under this section;

2. The name of the New Jersey licensed psychologist(s) or psychiatrist(s) supervising the offering of psychological services at the organization's facility; and

3. The name of each unlicensed employee who does or shall perform psychological services. The unlicensed employee may not be an independent contractor.

(f) The exempt entity may submit notice on behalf of the employee(s), and a single annual notice in January of each year will suffice to retain the exemption for that year. The exempt entity shall update the notice as necessary, and the Board will acknowledge receipt of each notice.

(g) Exemption shall be conditioned upon the employing organization continuing to meet the criteria of N.J.S.A. 45:14B-6 and this section.]*

13:42-1.4 Student of psychology; exemption from licensure

(a) For purposes of this section, "student of psychology" means a person who is presently registered at a regionally accredited institution and there matriculated into a graduate program of study leading toward a doctoral degree in psychology or an allied field.

(b) A student of psychology may be exempt from licensure under the Act provided that the student is under the supervision of an authorized supervisor as set forth in N.J.A.C. 13:42-4.2.

(c) The student's authorized supervisor shall be responsible for ensuring that:

1. The student's participation in the training program is a requirement of the graduate psychology program;

2. The student's transcript (or previous transcripts accepted by the degree-granting college or university as specifically supportive of the present graduate program leading toward the graduate degree) reflects prior academic training specific to the duties assigned to the student; and

3. The student is clearly identified as a student intern or extern prior to engaging in psychological practice.

13:42-1.5 Member of other professional group doing work of psychological nature; exemption from licensure

(a) The following individuals, whose recognized scope and accepted standards of practice include performance of work of a psychological nature, are exempt from licensure under the Practicing Psychology Licensing Act provided they do not hold themselves out to the public by any title or description stating or implying that such person is a psychologist or is licensed to practice psychology:

1. A licensed allopathic or osteopathic physician;

2. A licensed optometrist;

3. A licensed chiropractor;

4. A member of the clergy or pastoral counselor directly affiliated with a recognized ministry and employed by that ministry to provide psychological services;

5. A licensed attorney at law;

6. A licensed social worker under the supervision of a duly licensed mental health professional;

7. A licensed clinical social worker;

8. A licensed registered nurse certified by the Society of Clinical Specialists in Psychiatric Nursing of the American Nurses Association;

9. A person employed by the Federal government and solely in a Federal installation;

10. An authorized practitioner as designated by a New Jersey court of competent jurisdiction to perform services which may be psychological in nature pursuant to Rule of Court 5:3-3;

11. A school psychologist or guidance counselor who is certified by the New Jersey State Department of Education and who is employed by, and whose services are rendered in or for, a public or private school. No exemption shall be permitted to any school psychologist/counselor not certified by a governmental department

of the State of New Jersey and not employed in an exempt setting as set forth in *[N.J.A.C. 13:42-1.3; and]* ***N.J.S.A. 45:14B-6(a)1 and (b);***

12. A person engaged in the practice of alcohol, drug abuse or gambling intervention, prevention or treatment who is certified and employed in an exempt setting as set forth in *[N.J.A.C. 13:42-1.3]* ***N.J.S.A. 45:14B-6(a)1, 2 and 3, and (b)*** or who is certified and employed in a private setting supervised by a duly licensed mental health professional*[.]**;*

***13. A licensed marriage counselor;**

14. A licensed occupational therapist;

15. A licensed physical therapist; and

16. A career counselor registered pursuant to N.J.S.A. 34:8-65 et seq.*

(b) Representations to the public by any such groups or practitioners shall clearly indicate the person's primary licensed or exempt profession.

13:42-1.6 Ineligibility for exemption

A person denied a permit or license for reasons other than clear educational deficiency, or whose permit or license has been suspended, revoked or limited by the Board, shall be deemed ineligible to be employed in an exempt setting as defined in *[N.J.A.C. 13:42-1.3]* or to qualify for practice under N.J.S.A. 45:14B-6 except by order of the Board.

SUBCHAPTER 2. INITIAL QUALIFICATIONS

13:42-2.1 Application; qualifications to sit for examination

(a) An applicant for licensure shall file with the Board an application together with all supporting material. The application form requests a brief summary of educational and employment experience. Supporting material required to be submitted with the application includes official transcripts; an abstract of the applicant's doctoral dissertation; and two certificates of good moral character. Documentation of two years of full time or full time equivalent supervised experience in the practice of psychology is required upon the applicant's completion of such experience.

(b) In order to be eligible to sit for the examination, an applicant shall have two years of full time or full time equivalent supervised experience in accordance with N.J.A.C. 13:42-4, and:

1. An earned doctorate, which meets the criteria set forth in (d) through (i) below, in the field of psychology from an educational institution recognized by the Board;
2. An earned doctorate, which meets the criteria set forth in (d) through (i) below, in a field allied to psychology; or
3. Equivalent training as set forth in N.J.A.C. 13:42-2.3.

(c) The institution at which the applicant earned his or her doctorate shall have been fully accredited during the entirety of the applicant's attendance by an accrediting body generally recognized within the national academic community. Alternatively, an educational institutional program shall have been granted continuous provisional accreditation by a recognized regional or national entity during the entirety of the applicant's attendance, with full accreditation having been awarded within five years of the candidate's graduation.

(d) No more than one-third of the doctoral credits shall have been transferred from other regionally/nationally accredited graduate schools.

(e) The doctoral degree must be based upon at least 40 doctoral credit hours earned specifically within the field of psychology and within a doctoral program requiring personal attendance at the degree-granting institution. Thirty-six of the required 40 credit hours shall be distributed across the following areas of graduate study:

1. Personality Theory and Human Development Theory: six credits;
2. Learning Theory and/or Physiological Psychology: six credits;
3. Psychological Measurement and Psychological Assessment: six credits;
4. Psychopathology: six credits;
5. Psychological therapy/counseling or Industrial/Organizational Psychology: six credits; and
6. Research and Statistical Design: six credits.

(f) The applicant shall submit evidence of an additional 20 credit hours, also specifically in the field of psychology, but which were not necessarily obtained as part of the doctoral program. The additional 20 credits can have been granted at a pre-doctoral or post-doctoral graduate level and must have been obtained as part of an educational program in a regionally accredited institution.

(g) If the Board finds the psychological nature of the dissertation or of any course submitted as fulfilling the requirements of this section to be questionable, the Board may, prior to making a determination, consult with the chairperson of the graduate department of psychology of the degree-granting institution and the chairperson of the graduate department in which the degree was earned, or with any other expert designated by the Board.

(h) The Board may, in its discretion, recognize up to six credits for a dissertation which is psychological in nature. The six credits may be used either to satisfy the requirement of having at least 40 doctoral credit hours specifically within the field of psychology and earned within a doctoral program, or to satisfy a credit deficiency in one or more of the required distribution areas of doctoral study.

(i) The Board may, in its discretion, accept up to nine credits, taken at a regionally accredited school or university, to remediate a deficiency in the requirements of (e) and (f) above.

13:42-2.2 Academic degree in a field allied to psychology

(a) An applicant for licensure based on receipt of an earned doctoral degree in a field allied to psychology shall arrange for transmittal to the Board of an official copy of all undergraduate and graduate transcripts from a regionally and/or nationally accredited educational institution or one which is recognized by the New Jersey State Department of Higher Education and by the Board.

(b) The doctorate degree must meet the criteria set forth in N.J.A.C. 13:42-2.1(d) through (f), and the doctoral dissertation must be *[clearly]* psychological in nature.

13:42-2.3 Equivalent training

(a) An applicant for licensure based on equivalent training shall submit evidence to the Board that the applicant has all of the following equivalent training:

1. An earned doctorate based upon a dissertation which is clearly psychological in nature from a regionally and/or nationally accredited educational institution or one which is recognized by the New Jersey State Department of Higher Education and by the Board; ***or, if the dissertation is not clearly psychological in nature, authorship of work in a refereed scholarly publication which work the Board deems to be clearly psychological in nature and equivalent to a dissertation; and***
2. Extensive experience, subsequent to receipt of the earned doctorate and for at least the five years immediately preceding application, in the field of applied psychology. The applicant's work in the field of applied psychology must be generally accepted by the local and/or regional psychological community as meeting the standards of professional psychological practice and contributing substantially to that community; and
3. Substantial formal post-doctoral study in a training program accredited by a bona fide accrediting body acceptable to the Board.

SUBCHAPTER 3. TEMPORARY PERMITS

13:42-3.1 One-year permit

(a) The Board shall issue a numbered temporary permit for the unsupervised practice of psychology for a period not to exceed one year to a psychologist who:

1. Is licensed as a psychologist by written examination in another state;
2. Otherwise qualifies for licensure pursuant to the Practicing Psychology Licensing Act, N.J.S.A. 45:14B-1 et seq.;
3. Meets all requirements of New Jersey law other than passing of the oral examination in this State; and
4. Has had at least one year of active post-doctoral experience in the practice of applied psychology within the five years immediately preceding application.

(b) The Board shall issue a numbered temporary permit for the unsupervised practice of psychology for a period not to exceed one year to an individual who has not been licensed in any state while that individual is completing the requirements of the New Jersey examination process, provided the individual:

1. Has an earned doctorate in psychology or an allied field from a recognized educational institution;

2. Has completed the supervised experience required for licensure under the Act;

3. Otherwise qualifies for licensure pursuant to the Practicing Psychology Licensing Act, N.J.S.A. 45:14B-1 et seq.;

4. Meets all requirements of New Jersey law other than passing of the oral examination in this State; and

5. Has had at least one year of active post-doctoral experience in the practice of applied psychology in an exempt setting within the five years immediately preceding application.

(c) The Board shall issue a numbered temporary permit for the supervised practice of psychology for a period not to exceed one year to individuals who meet the qualifications of (a)1 through 3 or (b)1 through 4 above but who have not engaged in active practice for one year. Supervision shall be rendered consistent with the provisions of N.J.A.C. 13:42-4.

(d) The holder of a temporary permit pursuant to (a) above shall, within 45 days of issuance of the permit, submit to the Board a work sample for oral examination. Failure to meet this deadline may, upon notice to the permit holder, result in revocation of the permit.

(e) The holder of a temporary permit pursuant to (b) above shall, within 45 days of notification of successful completion of the written examination, submit to the Board a work sample for oral examination. Failure to meet this deadline may, upon notice to the permit holder, result in revocation of the permit.

(f) The holder of a temporary permit issued pursuant to (c) above shall, at least 90 days prior to the expiration of the permit, submit to the Board a work sample for oral examination. Failure to meet this deadline may, upon notice to the permit holder, result in revocation of the permit.

(g) The permit holder shall complete the examination process before the expiration of the permit.

(h) The permit holder shall assume only the number and kind of cases that can be readily transferred to a licensed psychologist in the event the permit holder fails the examination or has his or her permit suspended or revoked prior to the expiration of the one-year period.

(i) An individual granted permission to engage in temporary practice for one year by letter of the Board issued prior to commencement of the numbered permit system on *[(the effective date of these regulations)]* ***November 1, 1993*** may continue to practice pursuant to that authorization for the duration of the one-year period.

13:42-3.2 Three-year permit

(a) The Board shall issue a numbered temporary permit for the supervised practice of psychology for a period not to exceed three years to a qualified individual who meets all requirements for admission to the examination except the requisite number of hours of post-doctoral supervised experience.

(b) The permit holder shall practice only in accordance with the standards of supervised practice set forth in N.J.A.C. 13:42-4.

(c) The permit holder shall obtain the required supervised experience and successfully complete the written and oral examinations prior to the expiration of the permit.

(d) The permit holder shall undertake only the number and kind of cases that may be readily transferred to a licensed psychologist should the permit holder fail to obtain the required supervised experience, have his or her permit suspended or revoked, or fail to successfully complete the examination process prior to the expiration of the three-year period.

(e) An individual granted permission to engage in temporary supervised practice for three years by letter of the Board issued prior to commencement of the numbered permit system on *[(the effective date of these regulations)]* ***November 1, 1993*** may continue to practice pursuant to that authorization for the duration of the three-year period.

13:42-3.3 Limitation, suspension or revocation of permit by Board

(a) The Board may, upon notice to the permit holder limit, suspend or revoke the permit of an individual who fails the written or oral examination.

(b) The Board may, upon notice to the permit holder and the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, limit, suspend or revoke the permit of an individual who fails to properly discharge his or her responsibilities.

13:42-3.4 Extension of permit upon request of permit holder

(a) Upon the written request of a permit holder, the Board may, in its discretion, extend the temporary permit for good cause shown.

(b) The permit holder shall submit the request for extension, together with the required fee, no later than 30 days before expiration of the permit. The request shall include the reason for the extension.

(c) Extension of a permit may be conditioned upon the individual meeting the following requirements:

1. Immediate appearance by the permit holder, upon notice, before a committee of the Board to review the current caseload;

2. Acceptance of such limitations and conditions (for example, reduction of caseload, alterations in the supervisory arrangement, personal therapy, etc.) as the Board may deem necessary to promote competent psychological practice; and/or

3. Demonstration to the satisfaction of the Board that the welfare of the public is protected by extension of the permit, with appropriate limitations and conditions.

13:42-3.5 Return of permit

All temporary permits are the property of the Board. The holder of a temporary permit shall return the permit to the Board no later than 10 days after its expiration or within 10 days of notice of suspension or revocation of the permit.

SUBCHAPTER 4. SUPERVISION ***OF CANDIDATES FOR LICENSURE***

13:42-4.1 Amount of supervision required

(a) An applicant for licensure shall be required to document at least two years of full time or full time equivalent supervised experience in the practice of psychology, at least one year of which shall have been completed subsequent to the applicant's receipt of his or her doctoral degree.

(b) The equivalent of one year of full time supervised experience shall be a minimum of 1,750 hours. The 1,750 hours shall include:

1. No more than 1,000 client contact hours;

2. At least 200 hours of supervision. At least 100 hours must be individual face-to-face supervision; the remaining 100 hours may be individual or group supervision. The ratio shall be one hour of supervision for each five hours of client contact per week; and

3. At least 550 hours in other work-related activities such as recordkeeping, consultations, report writing, etc.

13:42-4.2 Authorized supervisors

(a) Supervision shall be rendered by:

1. A psychologist licensed in New Jersey for at least two years; or

2. An individual who is clearly eligible for licensure. The Board shall deem an individual to be "eligible for licensure" for supervisory purposes only if the individual:

i. Possesses an earned doctorate in psychology or in a closely allied field granted by a recognized educational institution acceptable to the Board; or

ii. Is a psychiatrist who is board-certified in psychiatry or neurology; *[demonstrates substantial experience in the field of applied psychology or, in the case of a psychiatrist, substantial experience in the practice of psychotherapy; and demonstrates two years of supervised practice in the delivery of psychological or psychotherapeutic services in a professional setting.*] ***and**

iii. Is licensed in the jurisdiction(s) in which such person practices (if so required by law); and

iv. Demonstrates two years of supervised practice in the delivery of psychological or psychotherapeutic services in a professional setting, or two years of substantial recent experience in the field of applied psychology.*

(b) An applicant may receive no more than one-third of the required hours of supervision from a psychiatrist.

13:42-4.3 Responsibilities of applicant for three-year temporary permit

(a) An applicant for a three-year temporary permit shall have on file with the Board an application for licensure together with all required supporting material.

(b) The applicant shall request in writing the issuance of a temporary permit for the purpose of meeting the supervision requirement.

(c) A permit holder shall see only those clients assigned to the permit holder by the supervisor.

(d) A permit holder shall not set a professional fee or receive a professional fee from a client. A permit holder may be compensated only through the supervisor or employing entity as provided in N.J.A.C. 13:42-4.6.

(e) A permit holder shall limit client contact hours to a number reasonable for the educational purposes involved and shall, in any event, not exceed a total caseload of 20 clients or more than 20 client contact hours per week, or a total of 1,000 client contact hours per year.

(f) A permit holder shall not engage in unsupervised or independent practice.

(g) A permit holder shall be responsible for the supervisor's compliance with the requirements of N.J.A.C. 13:42-4.4(a) through (c).

(h) A permit holder shall include his or her permit number on any printed in-office representations of practice.

(i) A permit holder shall not advertise.

13:42-4.4 Responsibilities of supervisor

(a) A supervisor shall obtain prior Board approval and shall provide the Board with a letter stating that the supervisor has agreed to enter into a supervisory arrangement with the permit holder.

(b) A supervisor shall supervise no more than three permit holders at any one time, except for good cause shown and at the discretion of the Board.

(c) Every six months and at the completion of the supervision, the supervisor shall document the supervised experience on a form provided by the Board. The information to be supplied on the form includes the dates during which the permit holder was under supervision, the nature of the cases assigned, and the proficiency rating earned by the permit holder.

(d) A supervisor shall ensure that the permit holder has, at all times, a current and valid Board permit or other required authorization.

(e) A supervisor shall provide adequate and timely evaluations, as required by the work setting, to employees, permit holders, students and others whose work is being supervised.

(f) Prior to a permit holder's commencement of client treatment, the supervisor shall obtain a written disclosure form, which shall be signed by the client and retained as part of the client record, acknowledging that the client has been informed that:

1. Services are to be rendered by a permit holder who is not a licensed psychologist; and

2. *[Insurance companies]* ***Third party payors*** may not necessarily reimburse services rendered by a person not licensed by this Board, notwithstanding supervision by a licensed psychologist.

(g) A supervisor shall retain full professional responsibility for setting fees, billing clients and collecting fees from clients consistent with the provisions of N.J.A.C. 13:42-10.10 and 10.11.

(h) A supervisor shall provide professional working conditions, constructive consultation and experience opportunities.

(i) A supervisor shall not condone or knowingly permit the permit holder to practice without supervision or independently.

(j) A supervisor shall not enter into supervisory arrangements involving a potential conflict of interest such as, but not limited to, arrangements with:

i. Family members;

ii. Those with whom the supervisor has close personal associations;

iii. Those with whom the supervisor has financial relationships (such as creditor-debtor), other than as specifically permitted by N.J.A.C. 13:42-4.6; or

iv. Those with whom the licensee has a therapist/client relationship.

*[13:42-4.5 Supervision of individuals exempt from licensure

(a) A psychologist may supervise services of a psychological nature rendered in:

1. A private practice setting by a health care professional exempt from licensure pursuant to N.J.S.A. 45:14B-8; and

2. An exempt non-profit bona fide community organization as defined in N.J.A.C. 13:42-1.3.

(b) The supervisor shall ensure that the exempt supervisee complies with all Board regulatory requirements (including preparation of client records) and with accepted standards of professional and ethical practice of the exempt agency or exempt health care professional.]*

13:42-*[4.6]****4.5*** Financial arrangements between supervisor and supervisee

(a) The supervisor may segregate fees received from clients being treated by the supervisee in recognition of the fact that fees charged to such clients shall be less than the usual, reasonable and customary fees charged by the supervisor to his or her own clients.

(b) Financial arrangements between the supervisor and supervisee shall be reasonable and may take into account the special teaching arrangement which forms the context of the relationship. For example, the supervisor may:

1. Designate the supervisee as an "independent contractor under supervision," if permitted by tax authorities;

2. Designate the supervisee as a part-time employee; or

3. Agree to pay the supervisee the entirety of the client fees charged by the supervisor.

(c) The supervisor shall charge the supervisee separately, if at all, for the supervision itself or for ancillary costs such as rent for use of premises, equipment, malpractice insurance, etc.

SUBCHAPTER 5. EXAMINATION

13:42-5.1 Board-approved written examination; oral examination

(a) A candidate who has been admitted to sit for examination shall take the Examination for Professional Practice in Psychology sponsored by the American Association of State Psychology Boards. A satisfactory score is defined minimally as one standard deviation below the national mean of all doctoral level candidates taking the examination on a given date.

(b) A candidate who passes the written examination shall then take an oral examination of his or her professional practice based on a work sample in accord with guidelines to be supplied to the candidate by the Board and as follows:

1. The candidate shall, within 45 days of notification of successful completion of the written examination, present a current work sample representative of the candidate's present practice. For the purposes of this rule, "current" work sample is defined to mean a work sample either in progress or completed no more than one year prior to its submission for the oral examination. The dates of client service shall be specifically mentioned on the cover page. Exceptions may be granted for good cause shown.

2. The candidate shall identify the work sample by the area of the candidate's specialty.

3. The text of the work sample shall be typed and double spaced and shall not exceed 20 pages in length. All tests and protocols used as the basis for professional intervention shall be presented as appendices.

(c) The *[examiners]* ***examiner(s)*** shall tape the oral examination for the purpose of creating a record. The candidate shall not tape the oral examination.

13:42-5.2 Examination review procedures

(a) A candidate who fails the written examination may request a handscoring of answer sheets, copy of individual answer sheet or role-feedback as available from the Professional Examination Service (PES). The candidate shall be responsible for payment of any fees required by the PES. The candidate's written request for review must reach the Board's Executive Director within 45 days of the date of the letter of notification of examination results.

(b) A candidate who fails the oral examination may request a review of his or her oral examination tape. The candidate's written request for review must reach the Board's Executive Director within 45 days of the date of the letter of notification of examination results. The Executive Director will make the tape of the oral examination available to the candidate at the Board office on a mutually convenient date. Neither the candidate nor an agent of the candidate may tape the Board's copy of the oral examination tape during this or any review of the tape of the oral examination.

(c) Following review of the examination tape, a candidate who failed the oral examination may request reconsideration of the decision. The candidate's written request for reconsideration must reach the Board's Executive Director within 45 days of the date of the examination review. The request for reconsideration must be limited to no more than 5 8½ inch by 11 inch sized pages, single spaced, with normal size type set and standard margins. Only one side of the page may be used.

(d) The Board shall grant a request for reconsideration only upon the candidate's showing of good cause establishing that the request is meritorious and made in good faith. Good cause for this purpose shall mean:

1. Proof of unusual circumstances surrounding the examination which adversely and significantly influenced the candidate's performance;

2. Proof that the scope of the examination conducted did not sufficiently address the candidate's professional work sample;

3. Proof of examiner bias against the candidate, the candidate's orientation or kind of work; or

4. Proof of a substantial and material error on the part of the examiners.

(e) If, upon review of the written request for reconsideration, the Board determines that the candidate has demonstrated good cause for reconsideration, the Board may designate a subcommittee to review the matter and make a recommendation to the Board after conducting such inquiry or investigation as the subcommittee deems necessary. The subcommittee shall subsequently present to the Board the following information in closed session: the basis for the request for reconsideration; the reasons advanced by the applicant for changing the Board's previous decision; and the subcommittee's recommendation to sustain, modify, overturn or vacate the Board's previous decision and the reasons for that recommendation.

(f) The Board shall promptly mail to the candidate a copy of the Board's final decision and supporting reasons.

(g) A transcript of the oral examination may be prepared by a shorthand reporter, at the candidate's expense, only if the transcript is required for appellate review by the Superior Court.

13:42-5.3 Out-of-State psychologists; admittance to oral examination

(a) An out-of-State psychologist shall be admitted to take the oral examination in New Jersey provided the individual can demonstrate to the satisfaction of the Board that he or she:

1. Has taken the Board-approved written examination in another state;

2. Has passed the examination at the minimum level established by the Board and in effect at the time of application; and

3. Meets all other requirements for licensure***, including submission of a work sample as defined in N.J.A.C. 13:42-5.1(b)***.

(b) An out-of-State psychologist who can demonstrate proof of meeting all requirements for licensure other than the Board-approved written examination shall be admitted to take the oral examination in New Jersey provided the individual can demonstrate to the satisfaction of the Board completion of 20 years of licensed, responsible and competent practice in another state.

(c) The Board shall not recognize licensing examinations other than the Board-approved examination sponsored by an individual state or other entity, if completed subsequent to January 1, 1980.

13:42-5.4 License without examination

A psychologist who holds a diploma from the American Board of Professional Psychology awarded by examination***, and who meets all other requirements of New Jersey law,*** shall be licensed following satisfactory completion of an oral interview with the Board or designated member(s) thereof.

13:42-5.5 Subversion of the licensing examination process

(a) Any individual found by the Board to have engaged in conduct which subverts or attempts to subvert the licensing examination process may, at the discretion of the Board, have his or her scores on the licensing examination withheld or declared invalid, be found ineligible for licensure, be disqualified from the practice of the pertinent profession, and/or be subject to the imposition of other appropriate sanctions pursuant to N.J.S.A. 45:1-22.

(b) Conduct which subverts or attempts to subvert the licensing examination process includes:

1. Conduct which violates the security of the examination materials, such as removing from the examination room any of the examination materials; taping, reproducing or reconstructing any portion of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; or selling, distributing, buying, receiving or having unauthorized possession of any portion of a current or future licensing examination;

2. Conduct which violates the standard of test administration, such as communicating with any other examinee during the administration of the licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the licensing examination; or having in one's possession during the administration of the licensing examination any copying or taping equipment, or any books, notes, written or printed materials or data of any kind, other than the examination materials distributed; or

3. Conduct which violates the credentialing process, such as falsifying or misrepresenting educational credentials or other information required for admission to the licensing examination, impersonating an examinee, or having an impersonator take the licensing examination on one's behalf.

13:42-5.6 Failure of examination; when retaking permitted

(a) The written examination may be retaken at any subsequent scheduled examination session provided that all applicable requirements have been satisfied.

(b) The oral examination may be retaken only as follows:

1. First reexamination no sooner than six months after the first examination;

2. Second reexamination no sooner than one year after the date of the first reexamination;

3. Successive reexamination no sooner than one year after the date of the previous reexamination and after having shown proof of meeting any additional professional training which the Board may require.

SUBCHAPTER 6. BOARD FEES

13:42-6.1 Board fees

(a) Charges for examinations, licensure and other services are:

1. Application fee: $100.00.

2. Examination fee: $200.00 written, $100.00 oral.

3. Initial license fee:

i. During the first year of a biennial license renewal period: $210.00.

ii. During the second year of a biennial license renewal period: $105.00.

4. License renewal fee, biennial: $210.00.

5. Late renewal fee in addition to biennial renewal: $50.00.

6. Reinstatement fee in addition to biennial renewal fee: $150.00.

7. Temporary permit:

i. $75.00 plus $25.00 for each additional supervisor.

ii. Review of extension request for one-year and three-year permits, each: $25.00.

8. Replacement wall certificate: $50.00.
9. Verification of licensure: $35.00.
10. Duplicate renewal certificate: $25.00.

(b) It is the candidate's responsibility to see that all mandated fees reach the Board office as follows:

1. Application, examination, re-examination and reinstatement fees are required to initiate Board action in one's behalf.
2. An initial license fee is required upon notice of successful completion of candidacy and before issuance of a license.
3. A license renewal fee must reach the Board office by June 30 of the renewal year in order to avoid a late renewal fee.
4. A late renewal fee must reach the Board office by December 31st of the renewal year in order to avoid removal from the licensee lists and a reinstatement fee prior to reinstatement.

SUBCHAPTER 7. ACCEPTABLE PROFESSIONAL PRACTICE

13:42-7.1 Solo

(a) A licensee practicing solo may employ or otherwise remunerate the following individuals to render professional services only in circumstances where quality control of the employed practitioner's professional practice can be and is lawfully supervised and evaluated by the licensee:

1. Other licensed practitioners to render services within the scope of practice of each employee's license; and
2. Practitioners who are authorized to practice psychology under an exemption from licensure pursuant to N.J.A.C. 13:42-1.3.

(b) A licensee with a restricted scope of practice shall not employ a licensee or practitioner with an unrestricted license to practice psychology.

(c) A licensee may employ ancillary non-licensed staff, limited to:

1. Clerical staff;
2. Permit holders;
3. Biofeedback technicians, as defined in N.J.A.C. 13:42-7.3; and
4. Neuropsychometric technicians, as defined in N.J.A.C. 13:42-7.4.

(d) Any additional types of employees other than those in (c) above may be employed within the professional practice only with the advance review and approval of the Board.

13:42-7.2 Partnership or professional association

(a) A licensee may practice in a partnership or professional association of licensed health care professionals provided that the licensee retains authority to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of the licensee's individual clients.

(b) The professional services offered by each practitioner, whether a partner or shareholder, shall be the same or shall be in a closely allied professional health care field.

(c) If the scope of practice authorized by law for each such person differs, any document used in connection with professional practice, including, but not limited to, professional stationery, business cards, advertisements of listings and bills, shall designate the field to which such person's practice is limited.

(d) The term "Associates" in the name of a professional office connotes an actual group enterprise such as a professional association or partnership. The term "Associates" shall not be utilized to refer to individuals sharing office expenses or rental space but practicing independently of each other or having the relationship of independent contractor.

13:42-7.3 Employer of biofeedback technician

(a) For purposes of this section, "biofeedback" means the application of bio-regulation procedures to the management of cognitive and physiological status. The feedback may encompass smooth muscle, striated muscle, cardiac muscle, brain wave, blood pressure, skin conduction and other physiological measures.

(b) For purposes of this section, "direct supervision" means that the licensee shall be constantly accessible, either on-site or through electronic communication, and available to render assistance when required and that the licensee shall retain full professional responsibility for client care and treatment.

(c) A licensee with specialized training in biofeedback may employ a biofeedback technician on the office premises, as appropriate to the primary practice of the employer, only under the following circumstances:

1. The licensee shall provide instruction to the technician; ascertain that the technician has received education and training appropriate for the work assigned; ensure that the technician obtains continuing education credits consistent with standards in the field; and regularly direct, supervise and monitor the technician's work;
2. The licensee shall provide direct supervision to the technician, as defined in (b) above; and
3. The activities of the technician shall be limited to:

i. Operating machinery for monitoring feedback, including positioning of the monitoring equipment; and

ii. Providing instruction in the use of the machinery to the client.

13:42-7.4 Employer of neuropsychometric technician

(a) For purposes of this section, "direct supervision" means that the licensee shall be constantly accessible, either on-site or through electronic communication, and available to render assistance when required and that the licensee shall retain full professional responsibility for client care and treatment.

(b) A licensee may employ a neuropsychometric technician as an assistant, for the purpose of administering certain classes of sensory, motor and other measures, only under the following circumstances:

1. The licensee shall provide instruction to the technician; ascertain that the technician has received education and training appropriate for the work assigned; ensure that the technician obtains continuing education credits consistent with standards in the field; and regularly direct, supervise and monitor the technician's work;
2. The licensee shall provide direct supervision to the technician, as defined in (a) above; and
3. The activities of the technician shall be limited to the administration of neuropsychological tests which have specific mechanical administration procedures and which do not require interpretation, querying of the examinees about individual items, or other judgments.

(c) The role of the technician is that of a paraprofessional assistant in test administration, and any deviation from that role shall be deemed the unauthorized practice of psychology.

(d) Specifically excluded from the scope of activities of the technician are administration of individual intelligence tests and projective techniques, which may be given only by a licensed practicing psychologist, a permit holder under supervision, or a person doing work of a psychological nature in an exempt setting.

13:42-7.5 Shareholder or employee of a general business corporation

(a) A licensee may offer health care services as an employee of a general business corporation in this State only in one or more of the following settings. Any such setting shall have a designated director of psychological services or a medical director licensed in this State who is regularly on the premises and who (alone or with other persons authorized by the State Department of Health, if applicable) is responsible for licensure verification, credentialing and quality control of the provision of psychological services.

1. The corporation is licensed by the New Jersey Department of Health as a health maintenance organization, hospital, long or short-term care facility, ambulatory care facility or other type of licensed health care facility or health care provider. The above may include a licensed facility which is a component part of a for-profit corporation employing or otherwise remunerating licensed psychologists;
2. The corporation is not in the business of offering treatment services to the public but maintains a clinic for the purpose of providing psychological services to employees and/or for monitoring the health environment of employees. The licensee rendering care

or evaluation in this setting shall comply with the provisions of N.J.A.C. 13:42-8 regarding preparation, maintenance and release of treatment and health monitoring records;

3. The corporation is a non-profit corporation sponsored by a union, social, religious or fraternal organization providing health care services to members only; and/or

4. The corporation is an accredited educational institution which maintains a medical or psychological service clinic for health care service to students and faculty.

(b) A licensee may also have an equity or employment interest in a general business corporation which offers to contract with a licensed practitioner or professional service corporation to provide services exclusively of a non-professional nature such as routine office management, hiring of non-professional staff, provision of office space and/or equipment and servicing thereof, and billing services. The general business corporation shall make no determination regarding establishment of client fees or modification or waiver thereof in an individual case and shall make no representations to the public of offering, under its corporate name, health care services which require licensure.

(c) A licensee employed or having an equity interest in any of the practice forms listed in (a) and (b) above shall terminate such employment or sever professional affiliation upon acquiring personal knowledge that the entity regularly fails to provide or observe the quality assurance mechanisms listed in N.J.A.C. 13:42-7.7 and refuses, upon request, to implement such mechanisms. A licensee terminating employment or affiliation with a general business corporation for reasons required by this section shall so notify the Board.

(d) Licensees who have been providing professional services in a business format which is inconsistent with the provisions of this section shall complete a transfer to an acceptable practice form as soon as possible but no later than May 1, 1994.

13:42-7.6 Managed health care plans

(a) For purposes of this section, "managed health care plans" include, but are not limited to, plans involving wholly or partially pre-paid medical/psychological services. By way of example, these include plans commonly described as health maintenance organizations, preferred provider organizations, competitive medical/psychological plans, individual practice associations, or other similar designations.

(b) A licensee may enter into a plan agreement which provides interim remuneration to licensees by making provisional allocation of percentages of plan-member fees, whether denominated as reserves, pools, withholds, holdbacks, etc., for the purpose of funding all portions of the health services plan.

(c) A licensee may participate in a plan which requires a purchase of shares for the purpose of providing start-up funds, provided that any profits of the plan are paid solely in accordance with the principles listed in this section and the licensee complies with the following professional requirements:

1. The licensee retains authority at all times to exercise professional judgment within accepted standards of practice regarding care, skill and diligence in examinations, diagnosis and treatment of each client;

2. The licensee retains authority at all times to inform the client of appropriate referrals to any other health care providers:

i. Whether or not those persons are provider-members of the plan; and

ii. Whether or not the plan covers the cost of the non-member provider's services to the client;

3. Plan clients are informed that they may be personally responsible for the cost of treatment by a provider who is not a member of the plan or for treatment which the plan administration does not approve; and

4. Plan clients are informed of the financial arrangements between the licensee and the plan, including financial incentives and disincentives established by the plan affecting availability or provision of treatment or other psychological services to plan members.

13:42-7.7 Conduct of professional practice; quality control

(a) A licensee shall establish policies and procedures with respect to licensed or exempt personnel who are employed by or under the supervision of the licensee. The policies and procedures shall include, but need not be limited, to the following:

1. Designation of a licensed practitioner responsible for:

i. Hiring professional staff and verifying current licensing credentials, permits or other educational/training credentials required by law or pertinent agency rule (for example, recertifications, continuing professional education, current biennial registration or permits, etc.); and/or

ii. The professional propriety of billing and of advertising or other representations;

2. Identification of the nature of the psychological services which shall be offered at the practice location;

3. Policies for maintenance, registration and inspection of professional equipment;

4. Standards for recordkeeping as to client records, billing records, and such other records as may be required by law or rule;

5. Policies for security, including confidentiality of client records; and

6. Procedures for periodic audit of client records and of professional services to assure quality professional care on the premises.

13:42-7.8 Real estate arrangements

(a) A licensee may be an owner, investor or lessor in real estate utilized for the conduct of a professional practice, provided that rent, dividends or any other forms of remuneration are received solely on the basis of the investment or fair market value, as applicable to the circumstances.

(b) A licensee may lease space to or from another licensed health care professional to whom clients are referred only where rent is a fixed fee determined by the fair market value, or less, and is for a regular term and not for sporadic use of the space.

(c) A licensee may lease professional space from a commercial entity on any arrangements consistent with standard business practice in the community, provided the arrangements do not affect the licensee's professional discretion in matters including choice of clients, professional services offered, or fees.

(d) The establishment of any lease, investment or other commercial relationship for the conduct of professional practice other than as set forth in this section shall require Board approval for good cause shown.

SUBCHAPTER 8. CLIENT RECORDS: CONFIDENTIALITY

13:42-8.1 Preparation and maintenance of client records

(a) A licensee shall prepare and maintain separately for each client a permanent client record which accurately reflects the client contact with the licensee whether in an office, hospital or other treatment***, evaluation or consultation*** setting.

(b) A licensee shall make entries in the client record contemporaneously with the services provided. A licensee may dictate an entry for later transcription, provided the transcription is dated and identified as "preliminary" until the licensee reviews the transcription and finalizes the entry in the client record.

(c) The licensee shall include in the client record material pertinent to the nature and extent of the professional interaction, for example:

1. The location of treatment***, evaluation or consultation***;
2. The client name, address and telephone number;
3. The client complaint on intake;
4. Medical history recognized as of potential significance;
5. Past and current medications;
6. Significant social history;
7. Findings on appropriate examination;
8. Raw data and interpretation of tests administered;
9. Current functional impairments and rating levels thereof;
10. A diagnostic impression;

11. Contemporaneous and dated progress ***or session*** notes including specific components of treatment***, evaluation or consultation***;

12. Dates of all treatment***, evaluation or consultation sessions***;

13. An evaluation of progress ***(if applicable)***;

14. A prognosis;

15. The client identity on each page;

16. Fees charged and paid;

17. The identity of *[an individual]* ***each provider of*** treatment ***, evaluation or consultation*** *[provider]* (and supervisor, if any); and

18. If services are rendered by a permit holder, the written disclosure form signed by the client as required by N.J.A.C. 13:42-4.5(f).

(d) The client record shall contain information regarding referrals to other *[treating]* professionals together with reports and records provided by other *[treating]* professionals and integrated into the client's treatment***, evaluation or consultation report***.

(e) A licensee may make corrections or additions to an existing record provided that each change is clearly identified as such, dated and initialed by the licensee. Any other alteration of records shall be deemed professional misconduct.

(f) When records are to be maintained as confidential, the licensee shall establish and maintain a procedure to protect such records from access by unauthorized persons.

(g) The licensee shall retain the permanent client record for at least seven years from the date of last entry, unless otherwise provided by law.

(h) The licensee shall establish procedures for maintaining the confidentiality of client records in the event of the licensee's relocation, retirement or death and shall establish reasonable procedures to assure the preservation of client records in the event of the licensee's separation from a group practice.

13:42-8.2 Use of personal or other computer to prepare client records

(a) A licensee who prepares a client record maintained solely on a personal or other computer shall use a write-protected program which:

1. Contains an internal permanently activated date and time recordation for all entries;

2. Automatically prepares a back-up copy of the file; and

3. Is designed in such manner that, after the licensee "signs" by means of a confidential personal code ("CPC"), the entry cannot be changed in any manner.

(b) Notwithstanding the permanent status of a prior entry, the licensee may make a new entry at any time and may indicate correction to a prior entry.

(c) The licensee shall include in the client record at least two forms of identification; for example, name and record number or any other specific identifying information.

(d) The licensee shall finalize or "sign" the entry by means of a CPC. Where more than one individual is authorized to make entries into the computer file of any client record, the licensee responsible for the practice shall assure that each such person obtains a CPC and uses the program in the same manner.

(e) A licensee wishing to continue a system of computerized client records which does not meet the requirements of this section shall promptly initiate arrangements for modification of the system, which must be completed by *[(one year after the effective date of these regulations)]* ***November 1, 1994***. In the interim, the licensee shall, on the date of the first treatment of each client treated subsequent to *[(the effective date of these regulations)]* ***November 1, 1993***, print out a hard copy of the entire computer recorded client record. The printout shall be dated and initialled by the licensee. Thereafter, a hard copy shall be prepared for each subsequent visit, continuing to the date of the changeover of computer program, with each page initialled by the licensee. The initial printout and the subsequent hard copies shall be retained as a permanent part of the client record.

13:42-8.3 Access to copy of client record

(a) For purposes of this section, "authorized representative" means, but is not necessarily limited to, a person designated by the client or a court to exercise rights under this section. An authorized representative may be the client's attorney or an agent of *[an insurance carrier]* ***a third party payor*** with whom the client has a contract which provides that the *[carrier]* ***third party payor*** be given access to records to assess a claim for monetary damages or reimbursement. If the client is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative.

(b) A licensee may require the record request to be in writing. No later than 30 days from receipt of a request from a client or duly authorized representative, the licensee shall provide a copy of the client record and/or billing records, including reports relating to the client. Limitations on this requirement are set forth in (e) and (f) below and in N.J.A.C. 13:42-9.

(c) The licensee may elect to provide a summary of the record, as long as the summary adequately reflects the client's history and treatment, unless otherwise required by law.

(d) A licensee may charge a reasonable fee for the preparation of a summary and reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the costs of transcription or copying.

(e) This section shall not require a licensee to release to a minor client's parent or guardian records or information relating to the minor's sexually transmitted disease, termination of pregnancy or substance abuse.

(f) A licensee may withhold information contained in the client record from a client or the client's guardian if, in the reasonable exercise of his or her professional judgment, the licensee believes release of such information would adversely affect the client's health or welfare.

1. That record or the summary, with an accompanying explanation of the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

i. The client's attorney;

ii. Another licensed health care professional; or

iii. The client's health insurance carrier (except as may be limited by N.J.A.C. 13:42-9).

(g) Records maintained as confidential pursuant to N.J.A.C. 13:42-8.1(c) shall be released:

1. If requested or subpoenaed by the Board or the Office of the Attorney General in the course of an investigation;

2. Pursuant to an order of a court of competent jurisdiction;

3. Except as limited by N.J.A.C. 13:42-8.4, upon a waiver of the client or an authorized representative to release the client record to any person or entity, including to the Violent Crimes Compensation Board; or

4. In order to contribute appropriate client information to the client record maintained by a hospital, nursing home or similar licensed institution which is providing or has been asked to provide treatment to the client.

(h) The licensee's obligation hereunder to release information shall include the obligation to complete forms or reports required for third party reimbursement of client treatment expenses. The licensee may charge reasonable fees for completion of reports other than health insurance claim forms, for which no fee may be charged pursuant to N.J.S.A. 45:1-12.

(i) When a request is made for release of already completed reports to enable the client to receive ongoing care by another practitioner, or for use in judicial proceedings, the licensee shall not require prior payment for the professional services to which such reports relate as a condition for making such reports available. A licensee may, however, require advance payment for a report prepared for services as an expert witness.

13:42-8.4 Access by a managed health care plan to information in client record

(a) With regard to a client whose treatment cost is covered by a ***wholly insured*** health insurance plan***, or a multiple employer welfare arrangement (MEWA)***, including a managed health care plan, a licensee shall make available, on request of the client or duly authorized representative ***with the client's consent***, all information required***, but only*** pursuant to N.J.A.C. 13:42-11.4.

***(b) A psychologist whose client has explicitly waived the psychologist-client privilege established by N.J.S.A. 45:14B-28 may release requested information deemed professionally appropriate, not limited by the constraints of the Peer Review Law, to a third-party payor whose benefit plan is qualified under the Federal Employee Retirement Income Security Act (ERISA); that is:**

1. The plan of a self-insured employer or an entity providing administrative services to that employer for the purposes of determining entitlement to benefits; or

2. An employer's "stop-loss" plan (i.e., a plan in which an employer self-insures up to a certain amount and then purchases excess insurance beyond that amount from an insurance company).*

13:42-8.5 Confidentiality

(a) A licensee shall preserve the confidentiality of information obtained from a client in the course of the licensee's teaching, practice or investigation. However, *[if in the licensee's judgment, exercised in accordance with the standards of the profession, any of the following circumstances occur,]* the licensee shall reveal the information *[only]* to appropriate professional workers, public authorities and the threatened individual(s) or their representatives ***only, if in the licensee's judgment, exercised in accordance with the standards of the profession, any one of the following circumstances occur***:

1. There is a clear and imminent danger to the individual or the public;

2. There is probable cause to believe that an identifiable potential victim of a client is likely to be in danger; or

3. Release of such information *[as]* is otherwise mandated by law, such as, but not limited to, N.J.S.A. 2A:62A-17.

(b) A licensee may discuss the information obtained in clinical or consulting relationships, or in evaluating data concerning children, students, employees and others, only for professional purposes and only with persons clearly connected with the case.

(c) A licensee may reveal, in writing, lectures or other public forums, personal information obtained during the course of professional work only as follows:

1. With prior consent of the clients or persons involved; ***or***

2. Where the identity of the client or person involved is adequately disguised*[; or]****.***

[3. Where the original source and other persons involved have given their express permission to share confidential communications with the parties interested therein.]

(d) A licensee may share confidential communications with other parties interested therein, in a non-public forum, only where the original source and other persons involved have given their express permission to do so.

*[(d)]***(e)*** A licensee may reveal the identity of research subjects only if the subjects have granted explicit permission.

*[(e)]***(f)*** A licensee may release confidential documents, testimony or other information contained in the client record only in accordance with the provisions of N.J.A.C. 13:42-8.3 and this section.

SUBCHAPTER 9. ADVERTISING

13:42-9.1 Definitions

For the purposes of this subchapter, the following terms shall have the indicated meanings unless the context clearly indicates otherwise:

"Advertisement" means an attempt directly or indirectly by publication, dissemination or circulation in print, electronic or other media which directly or indirectly induces or attempts to induce any person or entity to purchase from a Board licensee, or enter into an agreement to purchase, services, treatment or goods related thereto.

"Board licensee" means any professional licensee of the State Board of Psychological Examiners.

"Electronic media" include, but are not limited to, radio, television, telephone and other electronic means of communication. The term does not include communications made by sound equipment from a motor vehicle or other promotional media.

"Professional service" means a service which a Board licensee or professional association performs or lawfully authorizes a person under supervision to perform.

"Print media" includes newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, flyers, billboards, signs, direct mail, matchcovers and other items disseminated by means of the printed word. The term shall not include aerial displays.

"Range of fees" means a statement of fees containing an upper and lower limit on the fees charged for services or goods offered by a Board licensee.

13:42-9.2 Advertising; general requirements

(a) A Board licensee (but not a permit holder) may provide information to the public by advertising in print or electronic media.

(b) A licensee shall be able to substantiate the truthfulness of any material, objective assertion or representation set forth in an advertisement, when requested by the Board to do so.

(c) A licensee who is a principal, partner or officer of a firm or entity identified in an advertisement which offers psychological services or goods shall be responsible for the form and content of any advertisement disseminated by or on behalf of a licensee affiliated with the firm.

(d) A licensee shall assure that an advertisement does not misrepresent, suppress, omit or conceal a material fact. Omission, suppression or concealment of a material fact includes use of any print, language or format which directly or indirectly obscures a material fact under circumstances where the licensee knows or should know that the omission is improper or prohibits a prospective client from making a full and informed judgment on the basis of the information set forth in the advertisement.

13:42-9.3 Minimum content

(a) ***Except as set forth in subsections (b) and (c) below,*** *[A]* ***a*** licensee shall include the following in all advertisements and professional representations (other than an office entry sign), including advertisements in a classified directory, business cards and professional stationery:

1. The name and license number of the Board licensee. *[Advertisements of a group practice, including professional service corporations and practices under a trade name, shall include the name and license number of all members of the group; and]*

2. The street address and telephone number of the practice location.

***(b) A licensee may list, on a business card or in classified advertising, the names of all members of the practice. Alternatively, the licensee may list the name of only the individual psychologist and the trade name or name of the professional service corporation, if any.**

(c) A licensee may petition the Board for waiver of the requirement to list street address for good cause. A licensee shall submit a request for a waiver in writing which shall detail the reason(s) for the request which may include, but is not limited to, the maintenance of personal or family safety.*

13:42-9.4 Use of professional credentials and certifications

(a) A licensee shall accurately and objectively represent his or her competence, education, training and experience.

(b) Advertisements which include information on professional credentials shall contain the highest academic degrees attained relating to the practice of psychology and shall refer only to degrees obtained from an accredited academic institution or an academic institution acceptable under the rules of the New Jersey State Department of Higher Education.

(c) A licensee may advertise only those certifications obtained from bona fide accrediting bodies and directly related to the practice of psychology***, and other degrees earned from bona fide accredited educational institutions***.

(d) Nothing in this section shall preclude any truthful and nondeceptive statement in regard to education or experience in a particular area of psychology.

13:42-9.5 Advertising making reference to or setting forth a fee; required disclosures

(a) Advertising making reference to or setting forth a fee shall be limited to that which contains a fixed or a stated range of fees for specifically described professional services.

(b) Advertising making reference to or setting forth a fee shall include the following disclosures:

1. All relevant and material variables and considerations which are ordinarily included in the advertised services so that the fee will be clearly understood by prospective clients. In the absence of such disclosures, the stated fees shall be presumed to include everything ordinarily required for the advertised services;

2. A specific delineation of additional services contemplated and the fee to be charged therefor. In the absence of such disclosures, the licensee shall be prohibited from charging an additional fee for the advertised service; and

3. The time period during which the advertised fee will remain in effect. In the absence of such disclosure, the advertisement shall be deemed to be effective for 30 days from the date of the advertisement's initial publication.

(c) The advertisement of a fee shall not preclude downward adjustment or waiver of a fee between the professional and the client in individual circumstances.

13:42-9.6 Use of testimonials

(a) A licensee may use an advertisement containing either a lay or an expert testimonial provided that:

1. The testimonial is based upon the testimonial giver's personal knowledge or experience obtained from a ***past, completed*** provider relationship with the licensee or upon the testimonial giver's direct personal knowledge of the subject matter of the testimonial; and

2. The licensee obtains, prior to the use of the testimonial, a signed, notarized statement and release indicating the testimonial giver's willingness to have his or her testimonial used in the advertisement.

(b) A layperson's testimonial shall not attest to any technical matter beyond the testimonial giver's competence to comment upon.

(c) An expert testimonial shall be rendered only by an individual possessing specialized expertise sufficient to allow the rendering of a bona fide statement or opinion.

(d) A licensee shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct.

13:42-9.7 Prohibited types or methods of advertising

(a) A licensee shall not make any statement or claim or make use of any professional format which is false, fraudulent, misleading or deceptive with regard to the performance of professional services or accepted standards of professional practice.

(b) A licensee shall not use the word "doctor" or an otherwise incomplete and misleading designation when offering to perform professional services without also indicating that the licensee is a psychologist.

(c) A licensee shall not guarantee that satisfaction or a cure will result from the performance of professional services.

(d) A licensee shall not claim or use any secret or special method of treatment and/or diagnostic technique which the licensee refuses to divulge to the Board.

(e) A licensee shall not make claims of professional superiority with regard to services or goods offered or with regard to apparatus, equipment or technology utilized unless the licensee can substantiate such claims.

(f) A licensee shall not communicate any fact, data or information which may identify a client without the client's written consent.

(g) A licensee shall not offer or promote a professional service which the licensee knows or should know is beyond the licensee's ability to perform.

(h) A licensee shall not permit an advertisement to contain any technique or communication which appears to intimidate, exert undue pressure or unduly influence a prospective client.

(i) A licensee shall not engage *[in any in-person solicitation with a prospective client]*, either directly or indirectly through an agent, employee or representative***, in any in-person solicitation with a prospective client, except that a licensee may offer to a business entity, or its representative, psychological services to be provided to a class of persons***.

13:42-9.8 Retention of advertisements

(a) The licensee shall retain, for a period of three years from the date of initial publication or dissemination, a copy of every advertisement appearing in print media as well as a video or audio tape of every advertisement communicated by electronic media. All advertisements in the licensee's possession shall indicate the accurate date and place of publication.

(b) A licensee who advertises through the use of testimonials shall maintain documentation relating to the testimonial for a period of three years from the date of the last use of the testimonial. Documentation shall include, but not be limited to:

1. The name, address and telephone number of the testimonial giver identified in the advertisement;

2. The type and amount or value of compensation; and

3. The notarized statement and release required pursuant to N.J.A.C. 13:42-9.6(a)2.

(c) The licensee shall make copies of all advertisements and documentation concerning testimonials available for review upon request by the Board or its designee.

13:42-9.9 Misleading implications of licensure

(a) A person not licensed under the Practicing Psychology Licensing Act is prohibited from implying licensure under the Act by using a title or description which, when used in combination with other circumstances, would lead a reasonable person to think that the individual is a licensed psychologist or is authorized to perform professional services which only a licensed psychologist can offer. Examples of such conduct, whether for recompense or not, include:

1. Representing that he or she has:

i. A graduate degree or is a candidate therefor in psychology or an allied field;

ii. Membership in psychological organizations;

iii. Training or certification in applied psychological methods; or

iv. Professional association and identification with a licensed psychologist, unless the individual is the holder of a duly authorized and valid Board permit or is otherwise duly authorized to engage in a health care profession with a psychologist; or

2. Using names or professional or occupational titles including "counselor," "psychotherapist," "therapist," ***or*** "analyst," *[or "psychoanalyst"]* and related terms or forms unless clearly qualified by reference to another profession or group exempt from licensure under the Act pursuant to N.J.S.A. 45:14B-8 and N.J.A.C. 13:42-1.5.

SUBCHAPTER 10. GENERAL OBLIGATIONS OF A LICENSEE

13:42-10.1 Posting of practice authorization and notification of availability of fee information

(a) Every licensee shall prominently display in every place of conducting independent practice the following notice:

(Name of Individual) is licensed by the Board of Psychological Examiners, an agency of the Division of Consumer Affairs. Any member of the consuming public may notify the Board of any complaint relative to the practice conducted under this license at the Division of Consumer Affairs, Board of Psychological Examiners, Post Office Box 45017, 124 Halsey Street, Newark, New Jersey 07101.

(b) Every licensee shall post a conspicuous notice in the waiting room stating: "INFORMATION ON PROFESSIONAL FEES IS AVAILABLE TO YOU ON REQUEST."

13:42-10.2 Notification of change of address; service of process

(a) Each licensee and permit holder shall notify the Board, in writing, within 30 days of any change in the address on file with the Board and shall specify whether the address is a residence or employment address.

(b) Service of an administrative complaint or other process initiated by the Board, the Attorney General or the Division of

Consumer Affairs at the address on file with the Board shall be deemed adequate notice for the commencement of any inquiry or disciplinary proceeding.

13:42-10.3 Prohibition on unethical referrals

(a) A licensee shall not refer a client to a health care service in which the licensee has any financial or significant beneficial interest. This shall not prohibit professionally justified referral for treatment or services to an employed associate or another practitioner within the licensee's bona fide group practice or managed health care plan.

(b) A licensee shall not prescribe goods or devices which the licensee sells or leases to the client, except as follows:

i. The goods or devices are an integral part of the professional treatment for that client;

ii. The item and its fee (if any) are specified on the billing statement under the licensee's professional office name; and

iii. Any fee is set at a level which does not exceed a recoupment of the reasonable actual expense to the licensee for provision of the goods or devices. The burden of justifying the fee shall be on the licensee.

13:42-10.4 Professional responsibilities to the Board, other regulatory authorities, or the public

(a) Where not otherwise specified in this section, the term "licensee" includes holders of licenses and holders of temporary permits issued by the Board.

(b) A licensee shall meet professional responsibilities to the Board, to other regulatory authorities, and to the public as determined by accepted standards of practice, law or rules.

(c) A licensee shall respond within 30 days or sooner, as specified, to written communication from the Board, the Attorney General or the Director of the Division of Consumer Affairs and shall make available all records required with respect to a complaint from a client or as otherwise deemed necessary regarding the licensee's conduct. The response period commences on the date of the communication to the licensee's last reported address.

(d) A licensee shall maintain competence consistent with professional responsibilities, including the following:

1. A licensee shall remain abreast of standards of practice in the profession by means of securing continuing education such as training, experience or counsel and through professional journals;

2. A licensee-teacher shall base academic instruction primarily upon material the licensee reasonably believes to be accurate, current and scholarly;

3. A licensee shall obtain competent professional assistance in order to determine whether to voluntarily suspend, terminate or limit the scope of the licensee's professional and/or scientific activities which are foreseeably likely to lead to inadequate performance or harm to a client, colleague, student or research participant;

4. A licensee shall refuse to engage in or condone hiring, promotion or training practices that are inhumane or that result in illegal or otherwise unjustifiable discrimination on the basis of race, handicap, age, gender, sexual preference, religion or national origin; and

5. A licensee shall make reasonable use of professional, technical and administrative resources that best serve the interests of consumers. A psychologist is responsible for recognizing his or her areas of competence in the profession and when to refer appropriately to practitioners of related or other professions.

13:42-10.5 Maintaining competence in testing situations

(a) A licensee responsible for decisions involving individuals or policies based on test results shall have an understanding of psychological or educational measurement, validation problems, and other test research.

(b) A licensee responsible for development and standardization of psychological tests and other assessment techniques shall utilize established scientific procedures and observe relevant professional standards.

(c) When reporting test results, if fewer than the standard number of test components as designated by the test manual have been administered, a licensee shall indicate the reason for such deviation and shall note reservations or limitations regarding validity or reliability resulting from testing circumstances or the possible inappropriateness of the test norms for the person tested. A licensee shall take reasonable measures to ensure that the results of assessments and their interpretations are not misused by others.

(d) A licensee shall make reasonable efforts to avoid use of obsolete testing measures.

(e) A licensee offering test scoring and interpretation services shall be prepared to demonstrate that he or she is competent to understand the programs and procedures used in arriving at the interpretations. In this regard, a licensee's use of an automated test interpretation from a professionally recognized testing entity and the licensee's utilization of such interpretation shall remain confidential and shall be considered to be only one component of a psychological evaluation.

(f) A licensee shall not sponsor or supervise the use of psychological assessment techniques by persons who are not in an appropriate psychological or closely-related field or who are otherwise unqualified.

(g) A licensee shall administer or supervise the administration of all testing materials on premises and consistent with accepted standards of practice.

13:42-10.6 Research

(a) A licensee shall observe research requirements consistent with accepted standards of practice including, but not limited to, the following:

1. A licensee shall minimize the possibility that research findings will be misleading and shall not knowingly publish misleading or false findings;

2. A licensee shall provide thorough discussion of the limitations of the published data and alternative hypotheses, especially where the work touches on social policy or might reasonably be construed to the detriment of persons in specific age, sex, ethnic, socioeconomic or other identifiable social groups;

3. A licensee shall reveal contrary or disconfirming data or acknowledge the existence of alternative hypotheses and explanations of the findings following reasonable and customary efforts at research of the topic;

4. A licensee shall acknowledge the authors of work in proportion to their professional contribution; and

5. A licensee shall treat research participants ethically and ensure ethical treatment of them by collaborators, assistants, students and employees.

13:42-10.7 Reporting of violations of other licensees

(a) A licensee is encouraged to address violations of law, rule or accepted standards of practice by other licensees of this Board. A licensee who discovers apparent violations by another licensee may attempt to rectify the situation informally or may confidentially notify the Board or a local, State or national professional society for follow-up.

(b) Notwithstanding the provision for voluntary reporting set forth in (a) above, a licensee shall promptly notify the Board when in possession of information which reasonably indicates that another licensee has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to a client or to the public health, safety or welfare.

(c) Notwithstanding the provisions of (b) above, when a licensee in the course of a professional therapeutic relationship with a client who is not a licensee of the Board obtains information from the client about another licensee's suspected unlawful conduct, the treating licensee shall report the information only with the written permission of the client.

(d) Notwithstanding the requirements of (b) above, a licensee who acquires knowledge of impairment, incompetence or unprofessional conduct in the course of treating a client-psychologist or an individual exempt from licensure pursuant to N.J.A.C. 13:42-1.3 and N.J.S.A. 45:14B-8 shall not be obligated to notify the Board if:

1. The treating psychologist reasonably believes that the improper conduct has ceased and that the treatment is preventing a recurrence of the impairment, incompetence or professional misconduct; or

2. The treating psychologist has reasonable cause to believe that the incompetent psychologist or exempt professional is currently

receiving professional supervisory and educational measures which are reasonably likely to protect clients against gross incompetence.

(e) A licensee acquiring privileged information of drug or alcohol abuse in the course of treating a client-psychologist or exempt professional in a substance abuse treatment program governed by Federal law shall, as required by Federal law, first obtain authorization for release of such information from a court of competent jurisdiction or shall obtain the client's written consent to release the information.

(f) A licensee is not exempt from reporting any information otherwise mandated by law, such as, but not limited to, P.L.1974, c.119, reporting of an abused child as defined in N.J.S.A. 9:6-8.8 et seq.

13:42-10.8 Professional interactions with clients

(a) A licensee shall not abandon or neglect a client under and in need of professional care without making reasonable arrangements for the continuation of such care or offering to help the client find alternative sources of assistance.

(b) A licensee shall not abandon or neglect professional employment by a group practice, hospital clinic or other health care facility without reasonable notice or under circumstances which would be expected to seriously impair the delivery of professional care to clients.

(c) A licensee shall not exercise undue influence on the client including the promotion of services by the licensee or others.

(d) A licensee shall not willfully harass, abuse or intimidate a client regarding delivery of client services, either physically or verbally.

(e) A licensee shall not order excessive tests, treatment or use of treatment facilities not warranted by the condition of the client.

(f) A licensee shall terminate a clinical or consulting relationship when it is reasonably clear that the client is not benefiting from it. In such instances, the licensee shall offer to help the client find alternative sources of assistance.

(g) A licensee shall not participate in assessment and/or testing in which the client is not advised, in terms the client can understand, of the nature and purposes of the test and test results unless the client agrees in advance to have the test results released to a specified third party.

13:42-10.9 Sexual conduct

(a) A licensee shall not participate in a sexual relationship or engage in sexual intimacies with a current psychotherapy client, a former client to whom psychotherapy was rendered within the immediately preceding 24 months, a current student, a direct supervisee or supervisor, or a research participant.

(b) In circumstances where any of the persons listed in (a) above are, or should be recognized by the licensee as, clearly vulnerable by reason of emotional or cognitive disorder to exploitive influence by the licensee, the 24 month limitation set forth in (a) above shall not apply and the prohibition shall extend indefinitely.

(c) A licensee shall refrain from any sexual harassment which, for the purposes of this section, is defined as condoning or engaging in deliberate or repeated comments, contacts or gestures which are unrelated to professional instruction on the subject of harassment and which are sexually suggestive, seductive, demeaning or harassing.

(d) A licensee shall not accept as a client a former sexual partner.

(e) In the treatment of sexual dysfunction as well as in other areas of the practice of psychology, a licensee shall not engage in the following conduct, which is hereby defined as professional misconduct:

1. Physical contact of a sexual or deliberately hurtful nature between psychologist and client; or

2. In therapy groups, activities which promote or allow physical contact of a sexual or deliberately hurtful nature between group members.

13:42-10.10 Financial arrangements with clients and others

(a) Fees shall be reasonable and commensurate with the status and experience of the licensee when compared with fees of licensed psychologists in the geographic area and shall be consistent with the provisions of N.J.A.C. 13:42-10.11 prohibiting excessive fees.

(b) Fees for services rendered by a permit holder or an exempt professional practicing under supervision shall be reasonable and commensurate with the status and experience of the supervisee when compared with fees of licensed psychologists in the geographic area. The supervisor shall be responsible for justifying any fee charged in light of this requirement.

(c) A licensee shall prepare and maintain a written list of current fees for standard services, which list shall be available to clients upon request. The licensee shall include all of the following information on the list:

1. Whether Medicaid clients are accepted;

2. Whether Medicare clients are accepted and, if so, if *[assignment is taken on all billings]* ***the licensee shall bill the client for any balance remaining after assignment***;

3. Whether other third party payor plans are accepted;

4. The extent to which insurance payment (excluding deductible) is accepted as payment in full; and

5. Whether special fee categories are available, such as senior citizens or members of designated groups (for example, preferred provider plan members).

(d) Before commencing the therapeutic relationship, a licensee shall assist clients to understand financial arrangements. The information provided to the client shall include, but not be limited to:

1. The fee for services or the basis for determining the fee to be charged, unless services are provided during an emergency or in other circumstances where opportunity, custom and practice preclude discussion prior to the rendering of services;

2. Whether the licensee will accept installment payments or assignment of benefits from a third party payor;

3. That insurance coverage may not be available in all circumstances; and

4. The financial consequences, if any, of missed sessions.

(e) Where payment of the usual fee would be a hardship, a licensee shall assist clients to find other sources for provision of the needed services. A licensee is encouraged, however, to make special accommodations in adjusting usual fees in appropriate cases.

(f) A licensee shall not enter into financial arrangements with clients which are likely to impair professional judgment. Improper financial arrangements shall include, but are not limited to, loans (whether borrower or lender) or assumption of liabilities for debt.

(g) A licensee shall not enter into a financial arrangement or other potentially exploitive relationship with a former client which is likely to be the product of judgment impaired by the former relationship.

13:42-10.11 Prohibition on excessive fees

(a) The Board may review information and complaints alleging excessive fees charged by Board licensees. This regulation is not intended to impinge upon the strong public policy in favor of a competitive, free enterprise economy embodied in the antitrust laws of the United States and of this State.

(b) A licensee shall not charge an excessive fee for services. A fee is excessive when, after a review of the facts, a licensee of ordinary prudence would be left with a definite and firm conviction that the fee is so high as to be manifestly unconscionable or overreaching in the circumstances.

(c) Factors which the Board may consider in determining whether a fee is excessive include, but are not limited to, the following:

1. The novelty and difficulty of the service or treatment;

2. The time and effort required;

3. The skill required to properly perform the procedure or treatment;

4. Any requirements or conditions imposed by the client or by the circumstances;

5. The nature and length of the professional relationship with the client;

6. The experience, reputation and ability of the licensee performing the services;

7. The nature and circumstances under which services are provided; and

8. Comparable fees charged by licensees not under inquiry.

(d) Charging an excessive fee in violation of the provisions of this section shall constitute professional misconduct subjecting the licensee to disciplinary sanction by the Board.

13:42-10.12 Billing

(a) The licensee's bill shall include at least the following in-ormation:

1. The licensee's name, license number, tax identification number and original signature;

2. The street address and telephone number of the practice location;

3. The dates and nature of professional services including, in connection with treatment, whether individual or group;

4. Diagnosis and insurance codes, if required or requested;

5. In a practice setting where services are provided by more than one practitioner, the name and license number of the licensee who provided the services being billed; and

6. Fees. The licensee shall identify which part, if any, of the services billed were provided by a technician at the direction of and under the supervision of the licensee pursuant to N.J.A.C. 13:42-7.3 and 7.4 and shall adjust the fee downward accordingly.

(b) A licensee billing for services rendered by a permit holder or an exempt professional practicing under supervision shall include all of the following information on the bill in addition to the information required pursuant to (a) above:

1. The name and permit number of ***the*** supervisee***. If the supervisee is practicing pursuant to a Board letter of authorization issued prior to the effective date of this rule, a copy of said letter shall be provided to the client with the first billing statement***;

2. The dates, if any, when the client was seen personally by the supervisor; and

3. A statement that treatment was rendered by the supervisee under the supervision of the supervisor.

13:42-10.13 Conflicts of interest

(a) A licensee shall not enter into or continue in any treating relationship in which he or she has any personal, financial or beneficial interest other than that arising from the usual therapist-client relationship.

(b) A licensee shall not enter into any relationship which a reasonable psychologist in similar circumstances would expect to limit objectivity, impair professional judgment or increase risk of exploitation. Examples of such relationships include, but are not limited to, professional treatment of employees, tenants, students, supervisees, close friends or relatives. Professional relationships other than for treatment purposes, such as research using such persons, should be governed by caution to avoid impropriety.

(c) A licensee, whether practicing privately or within an institution or agency utilizing psychological services, shall not condone distortion, misuse or suppression of psychological findings by the licensee or others.

(d) A licensee shall not condone misuse of a psychologist's influence or professional work.

(e) A licensee shall not exploit the client's trust and dependency.

(f) A licensee who has identified a conflict of interest shall notify the parties involved and shall take action to terminate the conflict.

13:42-10.14 Prohibition on kickbacks and rebates

(a) A licensee shall not pay, offer to pay or receive any fee or other form of compensation for referral of a client for professional services or for the purchase of goods. This subsection shall not prohibit a licensee from:

1. Paying a flat fee for regular advertising services;

2. Paying a flat fee for the licensee's placement on a commercially sponsored "referral list" of licensed health care providers; or

3. Contributing a fee to a professionally sponsored referral service for provision of low-cost psychotherapy to screened clients.

(b) A licensee shall not permit the division of fees for professional services other than among licensees engaged in a bona fide partnership or professional service corporation or employment relationship. A licensee shall not divide fees for professional services rendered to a client with a psychologist practicing as an independent contractor. ***A Licensee who utilizes practices inconsistent with the provisions of this subsection (b) shall transfer to acceptable practices as soon as possible but no later than May 1, 1994.***

(c) This section shall be construed broadly to effectuate its remedial intent.

***13:42-10.15 Supervision of individuals exempt from licensure**

(a) A psychologist may supervise services of a psychological nature rendered in

1. A private practice setting by a health care professional exempt from licensure pursuant to N.J.S.A. 45:14B-8; and

2. An exempt non-profit bona fide community organization as defined in N.J.S.A. 45:14B-6(a)3.

(b) The supervisor shall ensure that the exempt supervisee complies with all Board regulatory requirements (including preparation of client records) and with accepted standards of professional and ethical practice of the exempt agency or exempt health care professionals.*

SUBCHAPTER 11. ACCESS TO TREATMENT INFORMATION IN DESIGNATED HEALTH INSURANCE PROGRAMS

13:42-11.1 Purpose and scope

(a) This subchapter implements the provisions of P.L. 1985, c.256 (N.J.S.A. 45:14B-31 et seq.), which limits the scope of and establishes procedures by which clients may authorize licensees to disclose confidential information upon the request of an insurer or other third-party payor. ***The following provisions of (b)-(d) below apply, unless the third-party payor is:**

1. A self-insured employer or an entity providing administrative services to such an employer for the purpose of determining entitlement to benefits; or

2. The payor is a "stop-loss" plan (i.e., a plan in which an employer self-insures up to a certain amount and then purchases excess insurance beyond that amount from an insurance company. (See also 13:42-8.4.)*

(b) Any consent or agreement purporting to waive the provisions of P.L. 1985, c.256 or this subchapter shall be against public policy and void.

(c) The provisions of this subchapter shall not apply when access to client treatment records may be had by otherwise lawful methods, as set forth in N.J.A.C. 13:42-11.11.

(d) Nothing in this subchapter shall preclude an interested party, including a licensee, from:

1. Filing a complaint with the Board regarding the conduct of a licensee or of an independent professional review committee (IPRC) member;

2. Notifying the Board of an apparently improper demand for confidential information made upon a licensee by an insurance carrier or other third party; or

3. Notifying the Board of an apparently improper termination or threat to terminate third party benefits without compliance with P.L. 1985, c.256 and this subchapter.

13:42-11.2 Definitions

As used in this subchapter, the following words shall have the following meanings unless the context clearly indicates otherwise and except as otherwise expressly provided:

"Customary" means that range of usual practices provided by psychologists of similar education, experience and orientation within a similar geographic or socioeconomic area.

"Education" means completion of any of the educational programs and attainment of the attendant degrees that have qualified a person for licensure under the Act; that is, Ph.D., Ed.D., Psy.D. For the purposes of assigning reviewers of similar education to a given claim under review, the holders of any of these degrees shall be deemed equivalent.

"Experience" means one of the following areas of specialized practice: psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; testing assessment.

"Orientation" means one of the following five theoretical positions: behavioral, humanistic/existential, psychoanalytic, systems*,* or eclectic.

"Psychological services" means the provision of professional services which are founded upon psychological principles derived from a base of scientific knowledge and a recognized and accepted theory of clinical application; and used to promote the optimal development of an individual's potential or to ameliorate an individual's personality disturbances and maladjustment as manifested in personal and interpersonal situations. Psychological services shall be selected and rendered to clients based upon ***the client's need,*** the treating psychologist's professional experience, knowledge of empirical and theoretical literature and professional guidelines and standards. Psychological services shall be necessary and appropriate in light of the client's circumstances, the diagnosis, the reasonableness of goals, and the adequacy of progress.

"Reasonable" means that there is a professionally acceptable probability that the client will realize a significant benefit from continuation of the psychological treatment.

"Stage I (Preliminary Disclosure)" means a request from a third party payor to obtain certain limited information about a client from the treating psychologist for the purpose of permitting the client to obtain or continue benefits from the third party payor for psychological services.

"Stage II Review" means a review conducted by an independent professional review committee (IPRC), established pursuant to N.J.S.A. 45:14B-44, for the purposes of determining whether the treatment is usual, customary or reasonable.

"Stage III Review" means a review conducted by the IPRC when the reviewers are unable to determine, based upon the information provided in Stage II, whether the treatment is usual, customary or reasonable.

"Stage IV Review" means a comprehensive review conducted by the IPRC when the reviewers are unable to determine, based upon the information provided in Stage III, whether the treatment is usual, customary or reasonable.

"Usual" means a practice in keeping with the licensee's general mode of operation.

13:42-11.3 Stage I (Preliminary Disclosure); required authorization

(a) When a licensee receives a request from a third party payor for information about psychological services rendered by the licensee, the licensee shall request a valid authorization from the client or other designated person.

(b) The licensee shall secure the authorization within 14 days of receiving the request from the third party payor, unless precluded from doing so by the circumstances of the case.

(c) The authorization shall be in writing and shall specify at least the following:

1. The nature of the information to be disclosed, the person authorized to disclose the information, to whom the information may be disclosed, the specific purposes for which the information may be used at the time of disclosure and at any future time;

2. That the client is aware of the statutory privilege for confidential communication between a client and a licensed psychologist; and

3. That the consent may be revoked in writing by the client at any time, if such notice is given to both the treating psychologist and the recipient named in the authorization.

(d) The authorization shall be signed and dated by the client or the person authorizing the disclosure. If the client is adjudicated incompetent or is deceased, the authorization shall be signed by the client's legally authorized representative. When the client is more than 14 years of age but has not yet reached age 18, the authorization shall be signed by the client and by the client's parent or legal guardian. When the client is less than 14 years of age, the authorization shall be signed only by the client's parent or legal guardian.

(e) The authorization shall apply only to information existing as of the date signed and is effective for one year only from the date signed.

(f) The licensee shall provide a copy of the authorization to the client or the person authorizing the disclosure.

13:42-11.4 Stage I: Information to be provided to the third party payor

(a) A Stage I inquiry does not involve the Independent Professional Review Committee (IPRC). The licensee shall provide the information set forth below directly to the third party payor.

(b) Within 10 days of receipt of the authorization required pursuant to N.J.A.C. 13:42-11.3, the treating psychologist shall provide the third party payor with basic client information limited to the following. The information provided shall be marked "Confidential" and forwarded to the attention of the specific individual designated in the authorization, if any.

1. Administrative information, defined as the client's name, age, sex, address, educational status, identifying number within the insurance program, date of onset of difficulty, date of initial consultation, dates and character of sessions (individual or group) and fees;

2. Diagnostic information, defined as therapeutic characterizations (including all five *[axes]* ***Axes***) of the type found in DSM III-R or the current version of the DSM or in another professionally recognized diagnostic manual;

3. Status of the client (voluntary or involuntary; inpatient or outpatient);

4. The reason for continuing psychological services, limited to an assessment of the client's current level of functional impairment and level of distress. Each aspect shall be described as "none," or by the term mild, moderate, severe or extreme; and

5. Prognosis, limited to an estimate of the minimal time during which treatment might continue.

13:42-11.5 Stages II, III and IV; Information to be provided to Independent Professional Review Committee

(a) The licensee shall notify the Board within 10 days of a request by a third party payor for a Stage II, III or IV review by the IPRC, established pursuant to N.J.S.A. 45:14B-44 and N.J.A.C. 13:42-11.6. The notification shall include the following information:

1. The licensee's major theoretical orientation; that is, behavioral, humanistic/existential, psychoanalytic, systems*,* or eclectic; and

2. The licensee's area of practice specialization; for example, psychotherapy with adults and adolescents, psychotherapy with children, marital/family therapy or testing/assessment.

(b) Within 10 days of the Board's receipt of the licensee's notification, the Board shall designate two or more members of the IPRC to serve as reviewers of the case and shall inform the licensee of their names and addresses.

(c) The licensee shall immediately provide, directly to the IPRC and not to the Board, the client's written authorization and shall disclose to the IPRC, in writing, confidential information concerning the client's treatment limited to the following:

1. For a Stage II review: The case identification number; status of the client; duration and frequency of treatment; diagnosis including all five Axes; prognosis (including minimal length of future treatment expressed in terms of identified goal(s)); the reason for continuing psychological services stated in terms of the various functions assessed; and professional judgment as to level of impairment and level of distress (each rated as none, mild, moderate, severe or extreme).

2. For a Stage III review: All of the information set forth in (c)1 above plus a written statement describing the licensee's customary mode of treatment for the particular diagnosis and for the client in question, within the context of the licensee's theoretical orientation.

3. For a Stage IV review: All of the information set forth in (c)1 and 2 above, details and circumstances concerning the case under review, and the entire client record for inspection by the reviewers.

(d) In the event a client declines to provide the authorizations required pursuant to P.L. 1985, c. 256 and N.J.A.C. 13:42-11.3, the review process shall not be undertaken pursuant to the IPRC process. The licensee shall so notify the third party payor and any assigned reviewers.

(e) Absent good cause shown, failure of the licensee to comply with any of the provisions of P.L. 1985, c.256 or this subchapter shall subject the licensee to any of the disciplinary sanctions authorized by law. Good cause shall include, but not be limited to, taking vacations of reasonable length, illness, serious family problems, or not receiving daily mail deliveries if there is more than one practice location.

13:42-11.6 Independent Professional Review Committee; responsibilities of the Board

(a) The Board shall appoint IPRC members from a pool of volunteer licensed psychologists who are screened and trained by the Board. The Board shall appoint to the IPRC, for a three-year term, licensees who demonstrate that they are:

1. Licensed in New Jersey for the five years immediately preceding appointment;

2. Active practitioners with a current minimum average of 10 hours per week of direct service in the areas of service they are authorized to review; for example, psychotherapy with adults and adolescents; psychotherapy with children; marital/family therapy; testing/assessment; and

3. Respected and known by their professional colleagues for the quality of their clinical work and exemplary professional conduct.

(b) The IPRC Administrator shall, within 10 days of receipt of notification from a licensee or a request by a third party payor for a Stage II review, designate two members of the IPRC to conduct the review and notify the treating psychologist of the assignment of reviewers.

(c) To the extent practicable, reviewers designated for case review shall be knowledgeable in the orientation used by the treating psychologist and the customary practices of that orientation.

13:42-11.7 Stage II review by Independent Professional Review Committee

(a) The reviewers shall examine the material submitted by the treating psychologist as specified in N.J.A.C. 13:42-11.5(c), as well as any material made available by the third party payor, including, but not limited to, billing statements, treating doctor reports and claim forms, and the report of an independent examining practitioner, if any.

(b) Each reviewer shall make an independent assessment of the material provided to determine, on the basis of the limited information provided, whether the psychological services for which payment is claimed are usual, customary or reasonable.

(c) Each reviewer shall confer with the other designated reviewer to ascertain whether there is agreement on the finding.

(d) If, on the basis of the information provided, the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board, and no further review shall be undertaken by the IPRC.

(e) If the two reviewers are unable to agree that services are usual, customary or reasonable, or if they both agree that the services are not; or if both reviewers find the information provided to be insufficient to reach a conclusion, the reviewers shall proceed to Stage III and shall so notify the Board and the treating psychologist.

13:42-11.8 Stage III Review by Independent Professional Review Committee

(a) The two designated reviewers shall request the treating psychologist to provide a written statement describing his or her customary mode of treatment for the particular diagnosis and for the client in question, within the context of the psychologist's theoretical orientation.

(b) If, on the basis of the information provided, the reviewers can certify that the treatment is usual, customary or reasonable, the reviewers shall so notify the third party payor and the Board, and no further review shall be undertaken by the IPRC.

(c) If the two reviewers are unable to agree that the treatment is usual, customary or reasonable, or if they both agree that the services are not usual, customary or reasonable, or if one or both reviewers find the information provided to be insufficient to reach such a conclusion, the reviewers shall proceed to Stage IV and shall so notify the Board and the treating psychologist.

13:42-11.9 Stage IV review by Independent Professional Review Committee

(a) In a Stage IV review, the Board shall appoint a third reviewer.

(b) The reviewers shall request the treating psychologist to provide details and circumstances concerning the case under review. The reviewers shall request production of the original client record including session notes, test data and results, etc.

(c) On the basis of the information provided, the reviewers shall then certify to the third party payor and the Board their conclusion as to whether the treatment is usual, customary or reasonable. The conclusion of a majority of the three-person IPRC shall be reported as the conclusion of the Committee.

(d) The reviewers shall certify to the third party payor the date and length of time of their consultation in reviewing the case.

13:42-11.10 Independent Professional Review Committee; responsibilities of reviewers

(a) IPRC reviewers shall complete the entire review process, that is, Stages II, III (if necessary) and IV (if necessary), within 20 days of their receipt of the review request by the Board. The Board shall interpret the timeframe to be exclusive of days lost as a result of injury or extenuating personal circumstances. The reviewers shall inform the Board or arrange for another to do so when such unforeseen event prevents the timely completion of a review assignment. The Board shall, in that event, attempt to appoint a substitute reviewer to complete the assignment.

(b) A reviewer shall treat all information provided by the treating psychologist as confidential and shall not disclose the information to the third party payor or to any private person.

(c) Upon termination of a reviewer's practice, the reviewer or his or her designee shall transfer all IPRC records to the IPRC office.

(d) A reviewer who believes that the information disclosed in the review raises a substantial possibility that a psychologist has engaged in any act or practice declared unlawful by a statute, regulation or accepted standard of practice of the Board shall make a report to the Board, which may conduct its own inquiry.

13:42-11.11 Independent Board investigation

(a) The Board may conduct its own inquiry into a matter pursuant to N.J.S.A. 45:1-18, notwithstanding prior consideration by the IPRC, in the following circumstances:

1. The Board is requested by the third party payor, acting in good faith, to conduct an independent investigation of a matter; and

2. The third party payor's request sets forth specific grounds for questioning the IPRC results.

(b) The Board, at its discretion, may require the IPRC to provide to the Board the complete file of the review team for investigative purposes.

(c) Independent investigation by the Board shall not preclude any available right of the reviewer to judicial review pursuant to N.J.S.A. *[45:15B-34(d)]* ***45:14B-34(d)***.

13:42-11.12 Circumstances in which IPRC process is not required

(a) The IPRC process is not required for otherwise lawful methods of access to client treatment records in the following circumstances:

1. The client, vis-a-vis another person or a third party payor, has placed his or her mental condition in issue in a litigation context, and the client has consented to release of records of the treating psychologist;

2. The treating psychologist has been requested to provide information regarding underlying claims for damages or for reimbursement of professional fees, as authorized or directed by the Rules of Court or by order of a court of competent jurisdiction (not the mere service of an attorney's subpoena for discovery in litigation);

3. The third party payor has requested, pursuant to applicable laws, inspection of the client record and/or preparation by the licensee of a written report; that is, the Personal Injury Protection Program established by P.L. 1972, c.70, N.J.S.A. 39:6A-13(b) and (e), as amended or superseded, with regard to injuries resulting from motor vehicle accidents;

4. A third party payor has directed the client-insured to submit to mental or physical examination by an appropriate practitioner who prepares and submits findings and conclusions, pursuant to N.J.S.A. 39:6A-13(d), (e), (f);

5. A hospital, nursing home or other similar licensed health care institution has requested the licensee to provide existing client records of an inpatient for the purpose of ongoing evaluation;

6. A third party payor has requested access to hospital records, to the extent permitted by hospital rules governing the release of client records and/or mental health records in particular; or

7. The Board or the Attorney General has subpoenaed a complete copy of treatment records for the purpose of determining whether the conduct of a Board licensee conforms to accepted standards of practice.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

COMMISSION ON RADIATION PROTECTION

Notice of Public Meetings

Advisory Committee on Non-ionizing Radiation

Draft Regulations Governing Electric and Magnetic Fields from Electric Power Transmission Lines

Take notice that the Advisory Committee on Non-ionizing Radiation ("Advisory Committee"), a committee of the Commission on Radiation Protection (the "Commission"), will hold **public meetings** to provide all interested persons with the opportunity to comment on the Advisory Committee's conceptual draft of Regulations Governing Electric and Magnetic Fields from Electric Power Transmission Lines.

The **meetings** will take place at 9:30 A.M. on Wednesday, November 10, 1993, and Friday, December 3, 1993, at the Department of Environmental Protection and Energy's Radiation Protection Program located at 729 Alexander Road, Princeton, New Jersey in the medium conference room. **A copy of the draft,** which is preliminary and conceptual in nature, is available for public review by contacting Deborah Wenke at (609) 987-6372.

(b)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on September 30, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management Plan was adopted by the Department. This amendment which was submitted by the Bernards Township Sewerage Authority (BTSA), updates the BTSA Wastewater Management Plan by expanding the sewer service area in Bernards Township by the Harrison Brook Sewage Treatment Plant. The service area is expanded to address several lots with frontage upon roads wherein the center line of the road currently establishes the sewer service area boundary. The lots affected by this proposal include: Block 1-Lot 9, Block 5-Lot 1, Block 23-Lots 1, 2, 3, 4, 5.01, 6, 7 and 8, Block 133-Lots 4, 5, 6, 7, 8, 9.01, 9.02, 10, 11, 12, 13, 14, 15, 16, 17 and 18, Block 172-Lots 35, 39, 39.01, 40, 41 and 42, and Block 175-Lots 19, 37.01, 38.01, 39.01, 40.01 and 45. The service area will be extended for these lots to include at least 200 feet measured from the center of the road. For some lots, the service area will extend greater than 200 feet from the road to include existing dwellings. In order to address the requirement of providing a future service area boundary based on recognizable geographic or political features (N.J.A.C. 7:15-5.20(b)), the BTSA amended their Rates, Rules and Regulations to include the proposed service area subject to approval of this amendment by the New Jersey Department of Environmental Protection and Energy.

(c)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Upper Delaware Water Quality Management (WQM) Plan. This amendment submitted on behalf of the Warren County Board of Chosen Freeholders, would modify the Washington Township and Franklin Township Wastewater Management Plans. The amendment would allow the future Warren County Community College building, which is to be located in Washington Township, to utilize the existing Warren County Vocational-Technical School sewage treatment plant, located in Franklin Township, for its wastewater disposal. The Warren County Community College building is on a 13 acre site of the 130 acre Warren County Educational Park. This amendment request is specific to the 13 acre Warren County Community College building site only (Block 69, portion of Lot 1).

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Delaware WQM Plan. All information relating to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Land and Water Planning, CN423, 401 East State Street, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Land and Water Planning at (609) 633-1179.

Interested persons may submit written comments on the amendment to Dr. Daniel J. Van Abs, Office of Land and Water Planning, at the NJDEPE address cited above with a copy sent to Mr. John D. Van Dorpe, Maser Sosinski & Associates, P.A., 70 E. Water Street, Toms River, New Jersey 08754. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at proposed hearing or state the reasons why the proposed extension is necessary.

These requests must be submitted within 30 days of the date of this public notice to Dr. Van Abs at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

HEALTH

(d)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Notice of Opportunity for Public Comment

Petition for Rulemaking regarding Hospital Licensing Standards

N.J.A.C. 8:43G-6.10(c)(2)

Take notice that the New Jersey State Department of Health solicits public comment regarding the issue of confidentiality related to reports of deaths in anesthetizing locations or intraoperative or postoperative events or unexpected outcomes related to anesthesia. The Department solicits this public comment as part of its deliberations regarding a petition submitted by Steven J. Picco, Esq., representing the New Jersey health Care Payers Coalition. The petition requests that the Department amend its hospital licensing standards at N.J.A.C. 8:43G-6.10(c)2, to allow for public examination of records collected on such deaths, events or outcomes related to anesthesia. The rule currently states: "Records of such reports and telephone calls shall be made available to Department of Health personnel for official purposes and, for each report, to the specific facility to which the report pertains." The petitioner proposes the following addition: "This report shall be considered a public record for the purposes of N.J.S.A. 47:1A-1 et seq." Public notice of this petition was published in the September 7, 1993 New Jersey Register at 25 N.J.R. 4337(b).

This notice is given to inform the public of the rationale for confidentiality as originally promulgated in the rule at N.J.A.C. 8:43G-6.10(c)2. The Department intended to collect data related to the effectiveness of the anesthesia safety standards which were adopted in 1989. In order to protect patient confidentiality and encourage reporting by hospitals, confidentiality of reports was assured. In response to a public comment made prior to adoption of the rule, the Department noted that "this confidentiality provision does not cover reports of verified deficiencies resulting from investigations of reported incidents." (21 N.J.R. 502). Consequently, deficiencies in hospital licensing standards which are substantiated are a matter of public record and may be reviewed upon request.

As a result of the data submitted by hospitals, the Department prepared a Statewide summary of all anesthesia related incidents which was shared with hospitals in February 1993. In excess of 1600 reports have been received by the Department since the inception of reporting in 1989. These reports document patient death or adverse outcome in a procedure involving anesthesia. It should be noted that anesthesia is not presumed to be the causal agent of the adverse outcome; instead the Department evaluates whether anesthesia safety requirements were followed in these cases. This summary is considered public information and is available upon written request to the below address. The Department shared this information with the hospital industry for the purpose of assisting hospital risk management and quality assurance programs in the analysis of anesthesia safely. Additional reports will be issued periodically by the Department.

Reasons previously offered by the affected public in support of confidentiality have included the concern that patient confidentiality would be compromised, that public accessibility to individual reports may have a chilling effect on the full and timely submission of data by the hospitals, and that increased malpractice litigation would be fostered by providing a public record of patient-specific adverse incidents.

Interested persons may submit written comments on the proposed amendment permitting public examination of records to:

Robert J. Fogg, Esq.
Director, Licensing, Certification, and Standards
Division of Health Facilities Evaluation and Licensing
Department of Health
CN 367
Trenton, NJ 08625-0367.

All comments must be submitted by December 1, 1993. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Department with respect to the proposed amendment.

(a)

Solicitation of Public Comments
Americans with Disabilities Act
Self-Evaluation Plan

Take notice that the New Jersey Department of Health (Department) is commencing the development of the self-evaluation process for compliance with the Americans with Disabilities Act of 1990 (ADA).

The self-evaluation process is required by Title II of the ADA, 42 U.S.C. Sec. 1210 et seq., 28 C.F.R. Part 35. Title II states that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity, namely State and local government. Each department in State government is responsible to evaluate its compliance with the ADA.

This notice is being given in order to solicit public comments regarding the self-evaluation being undertaken by the Department. Interested persons may submit comments regarding the self-evaluation in writing, on cassette or videotape by November 30, 1993 to:

Janet E. Dick
New Jersey Department of Health
Health and Agriculture Building
8th Floor
CN 360
Trenton, New Jersey 08625.

All comments submitted by November 30th in response to this notice shall be considered by the Department.

(b)

OFFICE OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH SERVICES

Notice of Availability of Grants
Preventive Health and Health Services Block Grant
Cancer Registry Electronic Data Submission

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: Preventive Health and Health Services Block Grant: Cancer Registry Electronic Data Submission, Grant Program No. 94-81-CRD.

Purpose for which the grant program funds will be used: To purchase specified items of computer hardware in order to computerize local tumor registries for electronic reporting to the New Jersey State Cancer Registry.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

Eligible applicants must comply with the following requirements:

1. Terms and conditions for the Administration of Health Service Grants
2. General and Specific Grant Compliance Requirements issued by the Granting Agency
3. Applicable Federal Cost Principles relating to the Applicant

Groups or entities which may apply for the grant program: Local tumor registries which currently report to the New Jersey State Cancer Registry and which are not computerized.

Qualifications needed by an applicant to be considered for the grant: Local tumor registry must be staffed by a Certified Tumor Registrar (CTR) or an individual eligible for such certification.

Procedures for eligible entities to apply for grant funds: Submit a completed Application for Health Service Grant. Details will be provided in the formal Request for Application.

For information contact: Debra M. Harlan, Director, Epidemiology and Research Services, New Jersey Department of Health, CN 369, Trenton, NJ 08625-0369. (609) 588-3500.

Deadline by which applications must be submitted: Information will be included in the formal Request for Application

Date by which applicant shall be notified whether they will receive funds: Information will be included in the formal Request for Application.

(c)

DIVISION OF HEALTH CARE PLANNING, FINANCING, AND INFORMATION SERVICES

Notice of Availability of Grants
Rural Health Grant
Health Planning and Community Initiatives

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: Rural Health Grant-Health Planning and Community Initiatives, Grant Program No. 94-80-HPR.

Purpose for which the grant program funds will be used: To establish a State Office of Rural Health in New Jersey. The objectives of this grant will be to initiate a clearing house on rural health; to coordinate all activities statewide which impact on rural health; to identify Federal and State programs regarding rural health and provide technical assistance to public and non-profit entities; and to promote the recruitment and retention of health professionals to work in rural areas.

Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the Department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

Eligible applicants must comply with the following requirements:

1. Terms and conditions for the Administration of Health Service Grants

2. General and Specific Grant Compliance Requirements issued by the Granting Agency

3. Applicable Federal Cost Principles relating to the Applicant

Grants or entities which may apply for the grant program: Non-profit, community based agencies and organizations.

Qualifications needed by an applicant to be considered for the grant: Demonstrated history and understanding of health needs in rural areas of New Jersey. These issues include access and actual service delivery.

Procedures for eligible entities to apply for grant funds: Complete and submit an original and six typed copies of New Jersey Department of Health Application for Health Service Grant.

For information contact: Maria Morgan, Director, Health Planning and Community Initiatives, New Jersey Department of Health, CN 360, Trenton, NJ 08625-0360. (609) 292-9354.

Deadline by which applications must be submitted: November 18, 1993. Information will be included in formal request for application.

Date by which applicant shall be notified whether they will receive funds: Applicant will be notified approximately 30 days prior to start date of grant.

HUMAN SERVICES

(a)

MENTAL HEALTH AND HOSPITALS

Availability of Grant Funds
Projects for Assistance in Transition from Homelessness (PATH)

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services hereby announces the availability of the following grant program funds.

A. Name of program: Projects for Assistance in Transition from Homelessness (PATH).

B. Purpose: The PATH Program is a Federal state grant to provide support services to individuals with severe mental illness, as well as individuals with co-occurring substance use disorders, who are homeless, or at risk of homelessness.

C. Amount of funding for the program: $129,551 annualized.

D. Organizations which may apply for funding under this program: Political subdivisions of the state and non-profit private entities. Special consideration will be given to entities with a demonstrated effectiveness in serving homeless veterans.

E. Qualifications needed by an applicant to be considered for funding: Entities that have the capacity to provide, directly or through arrangements, and to coordinate a broad range of mental health, social and support services in order to meet the needs of eligible homeless individuals who are both mentally ill and suffering from substance abuse.

F. Procedure for eligible organizations to apply: Interested applicants may request an application package from the Division of Mental Health & Hospitals, Central Regional Office, Capital Center, CN 727, Trenton, NJ 08625 by calling Shirley McKeon, Program Analyst at (609) 777-0766. Completed applications (six copies) must be submitted to Shirley McKeon by close of business on November 30, 1993.

G. Address to which applications must be submitted: Fax submissions will not be accepted.

New Jersey Division of Mental Health & Hospitals
CN 727
Capital Center—3rd Floor
Trenton, NJ 08625

H. Deadline by which applications must be submitted: November 30, 1993.

I. Date the applicant is to be notified of acceptance or rejection: December 30, 1993.

TRANSPORTATION

(b)

DIVISION OF TRANSPORTATION RESEARCH AND DATA TECHNOLOGY
BUREAU OF TRANSPORTATION DATA DEVELOPMENT

Notice of Request for Expression of Interest from Qualified, Established and New Firms in Providing Long-Term Data Collection

Take notice that the Department of Transportation (NJDOT) is seeking Expression of Interest from qualified, established and new firms interested in providing long-term data collection activities. The specific agency notice follows:

The New Jersey Department of Transportation (NJDOT) must substantially increase its transportation data collection activities in response to the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the Clean Air Act Amendments (CAAA), and a variety of other needs for system and travel information.

Qualified, established and new firms are needed to accomplish these long-term data collection activities. A series of contracts for various data collection activities are expected to be awarded during this fiscal year. Interested firms are encouraged to request an invitation to a meeting where we will discuss a partnering arrangement with existing and new businesses for the purposes of collecting and processing ISTEA mandated data. Among the data needs to be discussed and for which proposals will be eventually requested are: traffic volume data; automatic vehicle classification; spot and average travel speed; speed and delay; road inventory; average vehicle occupancy; and digitizing of New Jersey State Highway Straight Line Diagrams.

The NJDOT is an equal opportunity employer. The NJDOT, in accordance with Title VI Civil Rights Act of 1964, 78 Stat., 42 USC and 49 CFR, Part 21, issued pursuant of such act; affords minority/women business enterprises the full opportunity to submit an indication of interest in response to this invitation and will not discriminate against any interested firm on the grounds of race, color, sex, age, or national origin in a contract award. Interested firms will be required to comply with the requirements to N.J.S.A. 10:5-31 et seq. and all other applicable Equal Employment Opportunity laws and regulations.

All requests must be in writing and received by November 10, 1993. Please reply to:

George W. Kuziw, Manager
Bureau of Transportation Data Development
New Jersey Department of Transportation
1035 Parkway Avenue, CN 609
Trenton, New Jersey 08625-0609
ATTENTION: Data Collection

STATE

(c)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Application Available for Fellowship Support
Fiscal Year 1995 (July 1, 1994-June 30, 1995)

Take notice that the New Jersey State Council on the Arts, acting under the authority of Public Law 1966, Chapter 214, hereby announces the availability of the following grant program:

Name of program: Fellowship Support Program, Fiscal Year 1995.

Purpose: In recognition of outstanding artwork, Fellowships are granted to enable New Jersey resident artists 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 FY 1991-92; artists who are not matriculated students 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 only apply in one discipline and only in one category of a discipline.

Ineligible applicants: Artists who are residents in another state; are matriculated students in an undergraduate program at the time of application; artists who received a fellowship during FY 92, 93 or 94.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for FY 95. For FY 94 awards ranged from $5,000 to $12,000.

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 December 15, 1993, (5:00 P.M. if delivered in person to office).

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council further reviews the panel evaluations. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for August 2, 1994. Applicants are notified in writing of the Council's decision within six weeks of the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 1, 1993. Call (609) 292-6130 or write GRANTS 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 Available for Organization Grants Fiscal Year 1995 (July 1, 1994-June 30, 1995)

Take notice that the New Jersey State Council on the Arts, acting under the authority of Public Law 1966, Chapter 214, hereby announces the availability of the following grant program:

Name of program: Organization Grant Program, Fiscal Year 1995.
General Operating Support
Special Project Support
Arts Basic to Education Expansion Project Grant
Major Impact Organization

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey, through the award of matching grants to eligible organizations. Matching grants under this program are exclusively to support art projects, program and services and the operation of arts organizations during the fiscal year 1994/95 (July 1, 1994 to June 30, 1995).

Eligible applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt 501(c)(3) or (4) by determination of the Internal Revenue Service; must have been in existence and active for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finances; and must comply with all existing State and Federal regulations and laws as described in 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 FY 95.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must indicate at least a 4:1 match of applicant cash to NJSCA dollars, Special Project applicants, (who are arts organizations), at least 1:1 match of applicant cash to NJSCA dollars and Special Project applicants, (who are *not* an arts organization) at least 3:1 match of applicant cash to NJSCA dollars. Indirect Costs, however, cannot be included.

Deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than January 7, 1994, (5:00 P.M. if delivered in person to office). All prospective applicants that are *not* direct recipients of FY 94 NJSCA Grants must submit a Letter of Intent.

Letters of intent are due on December 1, 1993, (5:00 P.M. Receipt)— All categories (organizations who have not received direct funds in FY 94 only).

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 consensus of the panel is further reviewed by the Council. The Council's final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for August 2, 1994. Applicants are notified in writing of the Council's decision within six weeks of the annual meeting.

To receive a set of guidelines and application forms: Guidelines and Applications will be available for distribution after October 1, 1993. Call (609) 292-6130 or write GRANTS 95, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

(b)

NEW JERSEY HISTORICAL COMMISSION

Grants Application Available for Minigrants in New Jersey History Fiscal Year 1994 (July 1, 1993-June 30, 1994)

Take notice that the New Jersey Historical Commission, acting under the authority of N.J.S.A. 18:73-21—25, hereby announces the availability of the following grant program.

Name of Program: Minigrants in New Jersey History Fiscal Year 1994.

Purpose: To assist efforts to present New Jersey history to the widest possible audience and to assist efforts to preserve the materials on which such presentation is based. Matching and nonmatching grants of up to $1,000 may be requested for such projects as research, writing, and publication; oral history; exhibitions, conferences, and seminars; classroom projects that involve students at any instructional level with New Jersey history; projects to stabilize, preserve, and/or manage collections of historical materials such as manuscripts, photographs, books, maps, etc. Eligible types of projects are not necessarily limited to those listed above.

Eligible Applicants: Teachers, schools, or school districts; public libraries; public and private organizations, including libraries, museums, and historical organizations; associations of professional and nonprofessional historians, archivists, teachers, librarians, etc.; individual researchers working on books, films, radio or television programs. Eligible types of applicants are not necessarily limited to those listed above.

Ineligible Applicants: Grantees with active NJHC grants; grantees which have not filed final reports on earlier grants.

Grant Size: Up to $1,000.

Amount of Available Funding for the Program: $17,000.

Match: Grants to organizations with annual budgets of $500,000 must be matched .5 to 1. In-kind matches are allowed. Expenditure of grant funds for direct costs associated with the project (by organizational/institutional applicants only) may not exceed 25 percent of the request and must be connected to the purposes of the project for which NJHC support is requested.

Deadline for Submission: There is no application deadline. Applicants submit their proposals at their convenience, and the NJHC reviews them each month. Applicants requesting assistance for a public event (conference, lecture series, exhibition opening, etc.) must do so at least 90 days before the date of the event for which they seek support.

Decisions: All complete applications by eligible applicants will be evaluated by the NJHC staff and by the NJHC according to the published criteria for evaluation. The concensus of the staff panel is reviewed by the Commission's Committee on Grants, Prizes, and Awards, and by the Historical Commission itself. The Commission's final recommendations are voted on by the full Commission at one of its regularly scheduled meetings. Applicants are notified in writing of the Commission's decision within six weeks of submitting their applications.

To Receive a Set of Guidelines and an Application Form: After October 15, telephone (609) 292-6062, or write to Grants and Prizes, NJ Historical Commission, CN 305, Trenton, NJ 08625-0305.

(a)

NEW JERSEY HISTORICAL COMMISSION

Grants Application Available for Grants-in-Aid in New Jersey History Fiscal Year 1994 (July 1, 1993-June 30, 1994)

Take notice that the New Jersey Historical Commission, acting under the authority of N.J.S.A. 18:73-21—25, hereby announces the availability of the following grant program.

Name of Program: Grants-in-Aid in New Jersey History Fiscal Year 1994.

Purpose: To assist efforts to present New Jersey history to the widest possible audience and to assist efforts to preserve the materials on which such presentation is based. Matching and nonmatching grants of up to $8,000 may be requested for such projects as research, writing, and publication; oral history; exhibitions, conferences, and seminars; classroom projects that involve students at any instructional level with New Jersey history; projects to stabilize, preserve, and/or manage collections of historical materials such as manuscripts, photographs, books, maps, etc. Eligible types of projects are not necessarily limited to those listed above.

Eligible Applicants: Teachers, schools, or school districts; public libraries; public and private organizations, including libraries, museums, and historical organizations; associations of professional and nonprofessional historians, archivists, teachers, librarians, etc.; individual researchers working on books, films, radio or television programs. Eligible types of applicants are not necessarily limited to those listed above.

Ineligible Applicants: Grantees with active NJHC grants; grantees which have not filed final reports on earlier grants.

Grant Size: $1,000 to $8,000.

Amount of Available Funding for the Program: $128,998.

Match: Grants to organizations with annual budgets of $500,000 must be matched .5 to 1. In-kind matches are allowed. Expenditure of grant funds for direct costs associated with the project (by organizational/institutional applicants only) may not exceed 25 percent of the request and must be connected to the purposes of the project for which NJHC support is requested.

Deadline for Submission: Applications sent through the mail must be postmarked by Tuesday, February 1, 1994; if delivered to the NJHC's office, they must arrive by 5:00 P.M. on February 1, 1994.

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJHC according to the published criteria for evaluation. The concensus of the panel is reviewed by the Commission's Committee on Grants, Prizes, and Awards, and by the Historical Commission itself. The Commission's final recommendations are voted on by the full Commission at its first or second regularly scheduled meeting after the application deadline. Applicants are notified in writing of the Commission's decision within three weeks of the meeting.

To Receive a Set of Guidelines and an Application Form: After October 15, telephone (609) 292-6062, or write to Grants and Prizes, NJ Historical Commission, CN 305, Trenton, NJ 08625-0305.

(b)

MARTIN LUTHER KING, JR. COMMISSION

Grants Application Available for Organization Grants Fiscal Year 1993-1994

Take notice that the Martin Luther King, Jr. Commission acting under the authority of Executive Order 83 hereby announces the availability of the following grant program.

Name of Program: King Legacy—Fiscal Year 1993-1994.

Purpose: The Martin Luther King, Jr. Commission, State of New Jersey, encourages and supports interested groups that plan educational programs and events. These programs and events must promote a public awareness of Dr. King's ideals and philosophy, and his impact in preserving the freedoms outlined in the Constitution for all Americans.

Eligible Applicants: Organizations, universities, churches and ensemble theaters that are residents of the State of New Jersey, nonprofit, must comply with all existing State and Federal regulations and laws as described in the Guidelines and Application.

Ineligible Applicants: Organizations that are incorporated as profit making entities, reside out of state received grants for three (3) consecutive years.

Grants Size: Each entity will receive a maximum of $1,000.00 or under on a competitive basis.

Amount of Available Funding for the Program: Will depend on the finalization of the Commission's availability of funds.

Deadline for Submission: October 15, 1993.

Decisions: All grants will be reviewed by the Grants Commission of the Martin Luther King, Jr. Commission.

To Receive a Set of Guidelines and Application Forms: Applications will be mailed to organizations after contacting:

Martin Luther King, Jr. Commission
Pearl Beatty, Executive Director
Grants Program
CN 456
Trenton, N.J. 08625

(c)

NEW JERSEY HISTORICAL COMMISSION

Grants Application Available for Grants in New Jersey Afro-American History Fiscal Year 1994 (July 1, 1993-June 30, 1994)

Take notice that the New Jersey Historical Commission, acting under the authority of N.J.S.A. 18:73-21—25, hereby announces the availability of the following grant program.

Name of Program: Grants in New Jersey Afro-American History Fiscal Year 1994.

Purpose: To assist efforts to present New Jersey's Afro-American history to the widest possible audience and to assist efforts to preserve the materials on which such presentation is based. Matching and nonmatching grants of from $1,000 to $8,000 may be requested for such projects as research, writing, and publication; oral history; exhibitions, conferences, and seminars; classroom projects that involve students at any instructional level with New Jersey's Afro-American history; projects to stabilize, preserve, and/or manage collections of historical materials such as manuscripts, photographs, books, maps, etc. Eligible types of projects are not necessarily limited to those listed above.

Eligible Applicants: Teachers, schools, or school districts; public libraries; public and private organizations, including libraries, museums, and historical organizations; associations of professional and nonprofessional historians, archivists, teachers, librarians, etc.; individual researchers working on books, films, radio or television programs. Eligible types of applicants are not necessarily limited to those listed above.

Ineligible Applicants: Grantees with active NJHC grants; grantees which have not filed final reports on earlier grants.

Grant Size: $1,000 to $8,000.

Amount of Available Funding for the Program: $15,000.

Match: Grants to organizations with annual budgets of $500,000 must be matched .5 to 1. In-kind matches are allowed. Expenditure of grant funds for direct costs associated with the project (by organizational/institutional applicants only) may not exceed 25 percent of the request and must be connected to the purposes of the project for which NJHC support is requested.

Deadline for Submission: Applications sent through the mail must be postmarked by Tuesday, February 1, 1994; if delivered to the NJHC's office, they must arrive by 5:00 P.M. on February 1, 1994.

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJHC according to the published criteria for evaluation. The concensus of the panel is reviewed by the Commission's Committee on Grants, Prizes, and Awards, and by the Historical Commission itself. The Commission's final recommendations are voted on by the full Commission at it's first or second regularly scheduled meeting after the application deadline. Applicants are notified in writing of the Commission's decision within three weeks of the meeting.

To Receive a Set of Guidelines and an Application Form: After October 15, telephone (609) 292-6062, or write to Grants and Prizes, NJ Historical Commission, CN 305, Trenton, NJ 08625-0305.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 7, 1993 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 16, 1993

NEXT UPDATE: SUPPLEMENT SEPTEMBER 20, 1993

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
24 N.J.R. 3785 and 4144	November 2, 1992	25 N.J.R. 1913 and 2150	May 17, 1993
24 N.J.R. 4145 and 4306	November 16, 1992	25 N.J.R. 2151 and 2620	June 7, 1993
24 N.J.R. 4307 and 4454	December 7, 1992	25 N.J.R. 2621 and 2794	June 21, 1993
24 N.J.R. 4455 and 4606	December 21, 1992	25 N.J.R. 2795 and 3050	July 6, 1993
25 N.J.R. 1 and 218	January 4, 1993	25 N.J.R. 3051 and 3276	July 19, 1993
25 N.J.R. 219 and 388	January 19, 1993	25 N.J.R. 3277 and 3582	August 2, 1993
25 N.J.R. 389 and 616	February 1, 1993	25 N.J.R. 3583 and 3884	August 16, 1993
25 N.J.R. 619 and 736	February 16, 1993	25 N.J.R. 3885 and 4360	September 7, 1993
25 N.J.R. 737 and 1030	March 1, 1993	25 N.J.R. 4361 and 4540	September 20, 1993
25 N.J.R. 1031 and 1308	March 15, 1993	25 N.J.R. 4541 and 4694	October 4, 1993
25 N.J.R. 1309 and 1620	April 5, 1993	25 N.J.R. 4695 and 4812	October 18, 1993
25 N.J.R. 1621 and 1796	April 19, 1993	25 N.J.R. 4813 and 4980	November 1, 1993
25 N.J.R. 1797 and 1912	May 3, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	Family Development hearings	25 N.J.R. 3888(a)		
1:13A-1.1, 14.2, 14.4, 18.1, 18.3	Lemon Law hearings	25 N.J.R. 2625(a)	R.1993 d.422	25 N.J.R. 4063(a)
	Most recent update to Title 1: TRANSMITTAL 1993-1 (supplement June 21, 1993)			
AGRICULTURE—TITLE 2				
2:68	Commercial feeding stuffs	25 N.J.R. 3889(a)		
2:69	Commercial fertilizers and soil conditioners	25 N.J.R. 4544(a)		
2:69-1.11	Commercial values of primary plant nutrients	25 N.J.R. 3585(a)		
2:76-5.1-5.4	Soil and water conservation project cost-sharing	25 N.J.R. 3279(a)	R.1993 d.521	25 N.J.R. 4899(a)
2:76-6.11	Farmland Preservation Program: acquisition of development easements	25 N.J.R. 3890(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		
	Most recent update to Title 2: TRANSMITTAL 1993-5 (supplement August 16, 1993)			
BANKING—TITLE 3				
3:1-13.2	Mortgage loans: fire insurance amount	25 N.J.R. 3585(b)	R.1993 d.520	25 N.J.R. 4900(a)
3:1-16.2, 16.3	Fees; mortgage banker non-servicing	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:2-1.4	Mortgage banker non-servicing	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:4-1.6	Capital for interim conversion in merger or acquisition	25 N.J.R. 4545(a)		
3:4-2	Payment of stock options to directors, officers and employees of State depositories	25 N.J.R. 3586(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:28-4.7, 4.12	Repair and improvement loans	25 N.J.R. 3587(a)	R.1993 d.517	25 N.J.R. 4900(b)
3:31	Repeal (see 3:28-4.7, 4.12)	25 N.J.R. 3587(a)	R.1993 d.517	25 N.J.R. 4900(b)
3:32	Conversion of associations and savings banks	25 N.J.R. 2799(a)	R.1993 d.535	25 N.J.R. 4900(c)
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)		
3:38-1.3, 4.1	Mortgage banker—mortgage banker non-servicing conversion; fees	25 N.J.R. 2625(b)	R.1993 d.423	25 N.J.R. 4063(b)
3:41-2.1, 11	Cemetery Board: location of interment spaces and path access	25 N.J.R. 623(a)		
	Most recent update to Title 3: TRANSMITTAL 1993-6 (supplement July 19, 1993)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:1-5	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1314(c)		
4A:3	Classification, services and compensation	25 N.J.R. 1916(a)	R.1993 d.424	25 N.J.R. 4064(a)
	Most recent update to Title 4A: TRANSMITTAL 1993-4 (supplement June 21, 1993)			

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
COMMUNITY AFFAIRS—TITLE 5				
5:3	Department records	25 N.J.R. 2157(a)	R.1993 d.419	25 N.J.R. 4071(a)
5:10	Maintenance of hotels and multiple dwellings	25 N.J.R. 2627(a)	R.1993 d.464	25 N.J.R. 4482(a)
5:10-1.12	Hotels and multiple dwellings: administrative correction	————	————	25 N.J.R. 4901(a)
5:18-1.4, 1.5, 2.1, 2.3, 2.5, 2.6, 2.11, 2.14, 4.1, 4.3	Uniform Fire Code	25 N.J.R. 4363(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:18A-1.4, 2.2, 2.3, 2.5–2.11, 3.3, 3.4, 3.6, 4.2–4.6, 4.9, 4.10	Fire Code enforcement	25 N.J.R. 4363(a)		
5:18B-2.8	High level alarms	25 N.J.R. 4363(a)		
5:18C-1.4, 1.5, 1.7, 1.8, 1.9, 2.3	Fire service training and certification	25 N.J.R. 4363(a)		
5:18C-4.2, 5.2, 5.3, 5.4	Fire service training and certification	25 N.J.R. 1846(a)	R.1993 d.440	25 N.J.R. 4071(b)
5:23-1.4, 2.7, 2.17A	Uniform Construction Code: minor work; ordinary repairs	25 N.J.R. 3692(a)		
5:23-1.4, 2.16, 2.17	Uniform Construction Code: prior approvals; abandoned wells	25 N.J.R. 2158(a)	R.1993 d.420	25 N.J.R. 4072(a)
5:23-2.6, 2.14, 2.23, 3.2, 3.4, 3.8A, 3.11A, 3.14–3.18, 3.20, 3.20A, 3.21, 4.3A, 4A.8, 4A.11, 12.2	Uniform Construction Code: subcodes	25 N.J.R. 3891(a)		
5:23-2.7, 9.3	Uniform Construction Code: ordinary repairs; interpretation	25 N.J.R. 2159(a)	R.1993 d.487	25 N.J.R. 4592(a)
5:23-2.17A	Uniform Construction Code: reroofing work	25 N.J.R. 4546(a)		
5:23-2.18A, 3.11, 4.20	UCC: utility load management device permits; mausoleum plan review; Department fees	25 N.J.R. 4546(b)		
5:23-2.23	Uniform Construction Code: ventilation system requirements in Class I and II business and education buildings	25 N.J.R. 2161(a)	R.1993 d.421	25 N.J.R. 4073(a)
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-4.5	Uniform Construction Code: "Notice of Elevator Device Sealed Out of Operation"	25 N.J.R. 3693(a)		
5:23-4.18	UCC: subcode training registration fee	25 N.J.R. 4548(a)		
5:26-8.2	Meetings of community associations	25 N.J.R. 3693(b)	R.1993 d.522	25 N.J.R. 4901(b)
5:50	State Review Process for intergovernmental review of applications for Federal financial assistance and direct development activities	25 N.J.R. 3281(a)	R.1993 d.505	25 N.J.R. 4743(a)
5:51	Handicapped persons recreational opportunities	25 N.J.R. 2633(a)	R.1993 d.436	25 N.J.R. 4074(a)
5:70-6.3	Congregate Housing Services Program: service subsidy formula	25 N.J.R. 2634(a)	R.1993 d.437	25 N.J.R. 4075(a)
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-26.19	Housing and Mortgage Finance Agency: affordable housing controls	25 N.J.R. 4369(a)		
5:92-1.1	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 1118(a)		

Most recent update to Title 5: TRANSMITTAL 1993-8 (supplement August 16, 1993)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A				
5A:7-1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1317(a)		

Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)

EDUCATION—TITLE 6				
6:1 et seq.	Title 6, New Jersey Administrative Code: opportunity for public comment	25 N.J.R. 4369(b)		
6:2	Appeals to State Board of Education	25 N.J.R. 4548(b)		
6:22A	School facility lease purchase agreements	25 N.J.R. 3588(a)	R.1993 d.544	25 N.J.R. 4901(c)
6:28-4.1	Special education: administrative correction	————	————	25 N.J.R. 4743(b)
6:78	Marie H. Katzenbach School for the Deaf	25 N.J.R. 3592(a)	R.1993 d.543	25 N.J.R. 4904(a)

Most recent update to Title 6: TRANSMITTAL 1993-6 (supplement August 16, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7				
7:0	Green glass marketing and recycling: request for public input on feasibility study	25 N.J.R. 1654(a)		
7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:1D	Allocation of water supply costs for emergency water projects	25 N.J.R. 2635(a)	R.1993 d.497	25 N.J.R. 4595(a)
7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G-1-5, 7	Worker and Community Right to Know	25 N.J.R. 1631(a)		
7:1G-2.1, 6.4	Environmental Hazardous Substances and Industrial Survey lists: copper phthalocyanine compounds; confidentiality	25 N.J.R. 2166(a)		
7:1K-1.5, 3.1, 3.4, 3.9-3.11, 4.3, 4.5, 4.7, 5.1, 5.2, 6.1, 6.2, 7.2, 7.3, 9.2-9.5, 9.7, 12.6-12.9	Pollution Prevention Program requirements	25 N.J.R. 1849(a)		
7:2-2.20, 3.6, 6.4, 8.4, 8.6, 10.2, 16.5, 17.1, 17.3, 17.4, 17.5	State Park Service Code	25 N.J.R. 2799(b)		
7:4B	Historic Preservation Revolving Loan Program	25 N.J.R. 748(a)		
7:7A-1.4, 2.7	Freshwater Wetlands Protection Act rules: definition of project	25 N.J.R. 1642(a)		
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(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)	Surface water quality standards; draft Practical Quantitation Levels; total phosphorus limitations and criteria: extension of comment periods and notice of roundtable discussion	25 N.J.R. 404(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)		
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-4.15	Water surface quality standards: Wallkill River	25 N.J.R. 3755(a)		
7:13-7.1	Delaware River, Pohatcong Township: flood plain redelineation	25 N.J.R. 4370(a)		
7:13-7.1	Overpeck Creek, Englewood: flood plain redelineation	25 N.J.R. 4371(a)		
7:13-7.1	Poplar Brook, Deal: flood plain redelineation	25 N.J.R. 4372(a)		
7:14A	NJPDES Program: opportunity for interested party review of permitting system	25 N.J.R. 411(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A-1.8	NJPDES Program fees	25 N.J.R. 1358(a)	R.1993 d.477	25 N.J.R. 4486(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14A-2.5	NJPDES Program: administrative correction regarding permittee requirements	———	———	25 N.J.R. 4791(a)
7:14B-1.6, 2.2, 2.6, 2.7, 2.8, 3.1–3.8	Underground Storage Tanks Program fees	25 N.J.R. 1363(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:20A	Water usage certifications for agricultural or horticultural purposes	25 N.J.R. 3956(a)		
7:25-6	1994-95 Fish Code	25 N.J.R. 3053(b)	R.1993 d.526	25 N.J.R. 4905(a)
7:25-7.13, 14.1, 14.2, 14.4, 14.6, 14.7, 14.8, 14.11, 14.12, 14.13	Crab management	25 N.J.R. 1371(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-18.1	Marine fisheries: administrative correction	———	———	25 N.J.R. 4495(a)
7:25-18.1, 18.14	Summer flounder permit conditions	25 N.J.R. 2167(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:25A-1.2, 1.4, 1.9, 4.3	Oyster management	25 N.J.R. 754(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-1.9, 11.4, 12.9	Waste management: administrative corrections	________	________	25 N.J.R. 4595(b)
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)	R.1993 d.508	25 N.J.R. 4763(a)
7:26-6.6	Procedure for modification of waste flows	25 N.J.R. 991(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26B-1.3, 1.10, 1.11, 1.12	Environmental Cleanup Responsibility Act Program fees	25 N.J.R. 1375(a)		
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1-23.7, 25.1, 25.7	Air pollution by volatile organic compounds: control and prohibition	25 N.J.R. 3339(a)		
7:27-1.4, 2.1, 8.1, 8.2, 16, 17.1, 17.3, 17.4, 23.1–23.7, 25.1, 25.7	Air pollution control: extension of comment period	25 N.J.R. 4551(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)	R.1993 d.428	25 N.J.R. 4075(b)
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27-19	Control and prohibition of air pollution from oxides of nitrogen	25 N.J.R. 631(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3, 25.4, 25.9, 25.10, 25.11, 25.12	Oxygenated fuels program	25 N.J.R. 4039(a)		
7:27-26	Low Emissions Vehicle Program	25 N.J.R. 1381(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.2, 3.10	Air pollution civil administrative penalties	25 N.J.R. 3339(a)		
7:27A-3.2, 3.10	Air pollution civil administrative penalties: extension of comment period	25 N.J.R. 4551(a)		
7:27A-3.5, 3.10	Control and prohibition of air pollution from oxides of nitrogen: civil administrative penalties	25 N.J.R. 631(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Oxygenated fuels program penalties	25 N.J.R. 4039(a)		
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures	25 N.J.R. 3339(a)		
7:27B-3.1, 3.10	Air pollution sampling and analytical procedures: extension of comment period	25 N.J.R. 4551(a)		
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)	R.1993 d.510	25 N.J.R. 4770(a)
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations; extension of comment period	25 N.J.R. 1039(a)		
7:36	Green Acres Program: opportunity to review draft rule revisions	25 N.J.R. 1473(a)		
7:31-2.5, App. I	Toxic Catastrophe Prevention Act rules: administrative corrections	________	________	25 N.J.R. 4791(b)
7:36	Green Acres Grant Program	25 N.J.R. 3405(a)		

Most recent update to Title 7: TRANSMITTAL 1993-8 (supplement August 16, 1993)

HEALTH—TITLE 8				
8:2A-1	Access to death records	25 N.J.R. 3115(a)		
8:18	Catastrophic Illness in Children Relief Fund Program	25 N.J.R. 2169(a)	R.1993 d.438	25 N.J.R. 4128(a)
8:21-10.1, 10.2, 10.4, 10.6, 10.12	Milk and fluid milk products	25 N.J.R. 4373(a)		
8:23-6	Pilot low-cost spaying and neutering clinic surgery fees	25 N.J.R. 3116(a)		
8:24	Packing of refrigerated foods in reduced oxygen packages by retail establishments: preproposal	25 N.J.R. 660(b)		
8:25-2.1, 2.3	Youth Camp Safety Act standards: administrative corrections	________	________	25 N.J.R. 4744(a)
8:31B	Hospital financing: correction to proposal	25 N.J.R. 3566(a)		
8:31B-1.1	Hospital financing	25 N.J.R. 3117(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:31B-3.41, 4.38, 4.39, 4.40, 7	Hospital reimbursement: uncompensated care	25 N.J.R. 3125(a)		
8:31B-4.41-4.41N	Hospital reimbursement: charity care audit functions	25 N.J.R. 3707(a)		
8:33	Certificate of Need: application and review process	25 N.J.R. 2171(a)	R.1993 d.442	25 N.J.R. 4129(a)
8:33A-1.2, 1.16	Hospital Policy Manual: applicant preference; equity requirement	24 N.J.R. 4476(a)		
8:33A-1.10, 1.16, 1.29	Hospital Policy Manual: capital cap and review process	25 N.J.R. 3710(a)		
8:33E	Cardiac diagnostic facilities and surgery centers: certificate of need	25 N.J.R. 3712(a)		
8:33H	Long-term care services: certificate of need policy	25 N.J.R. 3719(a)		
8:33S	Surgical facilities: certificate of need	25 N.J.R. 2790(a)	R.1993 d.498	25 N.J.R. 4626(a)
8:34	Nursing home administrators: standards for licensing	25 N.J.R. 3727(a)	R.1993 d.545	25 N.J.R. 4908(a)
8:36	Assisted living residences and comprehensive personal care homes: standards for licensure	25 N.J.R. 3734(a)		
8:40-1.1, 2.3, 2.7, 3.1, 4.12, 5.23, 6.26	Invalid coach and ambulance services: licensure; street EMS	25 N.J.R. 2663(a)		
8:41-4.1, 10.5-10.13, 11	Mobile intensive care programs: standing orders; paramedic clinical training objectives	25 N.J.R. 2665(a)		
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)	R.1993 d.473	25 N.J.R. 4631(a)
8:43	Licensure of residential health care facilities: public hearing	25 N.J.R. 757(a)		
8:43A	Licensure of ambulatory care facilities	25 N.J.R. 757(b)	R.1993 d.443	25 N.J.R. 4140(a)
8:44	Operation of clinical laboratories	25 N.J.R. 3904(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.11	Clinical laboratories: reporting by supervisors	25 N.J.R. 3751(a)		
8:57-3.2	Physician reporting of occupational and environmental diseases and injuries	25 N.J.R. 2186(a)		
8:59-5.6	Worker and Community Right to Know: exclusions from labeling requirements	25 N.J.R. 3441(a)		
8:59-App. A, B	Worker and Community Right to Know Act: preproposal concerning Hazardous Substance List and Special Health Hazard Substance List	25 N.J.R. 792(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b); 25 N.J.R. 582(a))	24 N.J.R. 1674(a)	R.1993 d.226	25 N.J.R. 1970(b)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a); 25 N.J.R. 583(a))	24 N.J.R. 2414(b)	R.1993 d.338	25 N.J.R. 2882(b)
8:71	Interchangeable drug products (see 24 N.J.R. 4261(a); 25 N.J.R. 582(b))	24 N.J.R. 2997(a)	R.1993 d.225	25 N.J.R. 1970(a)
8:71	Interchangeable drug products (see 25 N.J.R. 580(b), 2883(a))	24 N.J.R. 4009(a)	R.1993 d.468	25 N.J.R. 4497(a)
8:71	Interchangeable drug products (see 25 N.J.R. 1221(a), 1969(c), 2882(a))	25 N.J.R. 55(a)	R.1993 d.467	25 N.J.R. 4496(b)
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b))	25 N.J.R. 875(a)	R.1993 d.469	25 N.J.R. 4497(b)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a))	25 N.J.R. 1814(b)	R.1993 d.466	25 N.J.R. 4496(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products	25 N.J.R. 2802(b)	R.1993 d.465	25 N.J.R. 4495(b)
8:71	Interchangeable drug products	25 N.J.R. 3906(a)		
8:71	List of Interchangeable Drug Products	25 N.J.R. 4377(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)		

Most recent update to Title 8: TRANSMITTAL 1993-7 (supplement August 16, 1993)

HIGHER EDUCATION—TITLE 9

9:1	Licensing and degree approval standards	25 N.J.R. 3057(a)	R.1993 d.523	25 N.J.R. 4915(a)
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:7-9	Paul Douglas Teacher Scholarship Program	25 N.J.R. 3594(a)		
9:9	NJHEAA student loan programs	25 N.J.R. 2187(a)	R.1993 d.441	25 N.J.R. 4079(a)
9:11-1.1, 1.2, 1.4, 1.6, 1.10, 1.22, 1.23	Educational Opportunity Fund: student eligibility for undergraduate grants	25 N.J.R. 1663(a)	R.1993 d.480	25 N.J.R. 4596(a)
9:11-1.5	Educational Opportunity Fund Program: financial eligibility for undergraduate grants	25 N.J.R. 1946(a)	R.1993 d.479	25 N.J.R. 4597(a)

Most recent update to Title 9: TRANSMITTAL 1993-5 (supplement August 16, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
HUMAN SERVICES—TITLE 10				
10:3	Contract administration	25 N.J.R. 3694(b)		
10:4	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(b)		
10:8	Patient advance directives; DNR orders; declaration of death	25 N.J.R. 2669(a)		
10:31-1.4, 2.1, 2.2, 2.3, 8.1, 9.1	Screening and Screening Outreach Programs: mental health services	25 N.J.R. 1324(a)		
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:38-1.4, 2.1, 2.2, 3.3, 3.4, 3.6, 3.8, 4.3, 5.2, 7.2, 7.4, 7.5, App. C, E, G	Interim Assistance Program for discharged State psychiatric hospital clients	25 N.J.R. 3697(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:44A	Licensed community residences to developmentally disabled	25 N.J.R. 4378(a)		
10:49-19.1, 19.4, 19.7, 19.11	State-defined HMOs	Emergency (expires 12-3-93)	R.1993 d.525	25 N.J.R. 4793(a)
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)	R.1993 d.434	25 N.J.R. 4082(a)
10:51-5.6	Pharmaceutical services: income eligibility limits	25 N.J.R. 3407(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:60-1.1–1.17, 2.2, 2.4, 2.5, 2.8, 2.9, 2.10, 2.12, 2.14, 2.15, 2.16, 3.2, 3.3, 3.6, 4.2, 6, App. A, H	Home Care Services Manual	25 N.J.R. 2803(a)		
10:62	Vision care services	25 N.J.R. 3907(a)		
10:66	Independent clinic services: Medicaid program services	25 N.J.R. 4379(a)		
10:66-1.2, 1.6, 1.7	Independent clinic services: ambulatory care/family planning/surgical facility	25 N.J.R. 2683(a)	R.1993 d.444	25 N.J.R. 4104(a)
10:66-1.5, 1.6, 3	Independent mental health clinics: personal care assistant services	25 N.J.R. 3058(a)	R.1993 d.475	25 N.J.R. 4498(a)
10:69-5.1	HAAAD income eligibility limits	25 N.J.R. 3407(a)		
10:69A-1.2, 6.2	PAAD income eligibility limits	25 N.J.R. 3407(a)		
10:69B	Lifeline Programs	25 N.J.R. 3701(a)		
10:69B-4.2	Lifeline programs: income eligibility limits	25 N.J.R. 3407(a)		
10:80	Organization of the Division of Family Development	Exempt	R.1993 d.518	25 N.J.R. 4931(a)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-8.22	Medicaid eligibility of dependent child of adolescent parent	25 N.J.R. 2815(a)	R.1993 d.519	25 N.J.R. 4931(b)
10:81-10.7, 10.8	Refugee Resettlement Program: eligibility limitations	25 N.J.R. 3919(a)		
10:81-11.4, 11.16A, 11.20	Public Assistance Manual: closing criteria for IV-D cases; application fee for non-AFDC applicants	25 N.J.R. 881(a)		
10:81-11.7, 11.9	Non-AFDC child support orders	25 N.J.R. 2816(a)		
10:81-11.21	Review and adjustment of child support orders in AFDC, foster care, and Medicaid Only cases	25 N.J.R. 2818(a)		
10:81-14.18A	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:82-3.2	Assistance Standards Handbook: administrative correction regarding exempt resources	————	————	25 N.J.R. 4597(b)
10:82-3.14	Deeming income of parents or guardians of adolescent parent	25 N.J.R. 2819(a)		
10:82-5.3	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:84	Administration of public assistance programs: agency action on public hearing	24 N.J.R. 4480(a)		
10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
10:86-10.2, 10.6	Child care services: payment rates and co-payment fees	25 N.J.R. 1692(a)		
10:87	Food Stamp Program	25 N.J.R. 4697(b)		
10:97-1.3, 3.1	Commission for the Blind and Visually Impaired: licensing procedure for Business Enterprise Program	25 N.J.R. 4551(d)		
10:121A-5.10	Requirements for adoption agencies: searches	25 N.J.R. 3415(a)	R.1993 d.532	25 N.J.R. 4932(a)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	25 N.J.R. 2684(a)	R.1993 d.489	25 N.J.R. 4598(a)
10:126	Family day care registration: manual of requirements	25 N.J.R. 3703(a)	R.1993 d.533	25 N.J.R. 4932(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:127-2.1, 3.7, 3.8, 5.2, 8.1, 8.4, 9.1, 9.10, 10.4, 10.13, 10.15, 10.16, 10.25	Residential child care facilities requirements: administrative correction	————	————	25 N.J.R. 4932(c)
10:133C-4	Division of Youth and Family Services: case goals	25 N.J.R. 1947(a)	R.1993 d.490	25 N.J.R. 4598(b)
10:133D-2	DYFS case management: case plan	25 N.J.R. 2209(a)	R.1993 d.534	25 N.J.R. 4934(a)
10:133D-4	DYFS case management: in-person visits with clients and substitute care providers	25 N.J.R. 2210(a)		
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		

Most recent update to Title 10: TRANSMITTAL 1993-7 (supplement August 16, 1993)

CORRECTIONS—TITLE 10A

10A:1-1.2, 2.7	Rulemaking petitions; rule exemptions: administrative changes	————	————	25 N.J.R. 4105(a)
10A:1-1.3, 1.4	Public information requests; reimbursement for copying costs	25 N.J.R. 4552(a)		
10A:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(b)		
10A:3-1.4, 2.3	Inmate keep separate status	25 N.J.R. 4702(a)		
10A:3-9.6	Recall of inmate to court	25 N.J.R. 2820(a)	R.1993 d.435	25 N.J.R. 4105(b)
10A:4-4.1	Inmate discipline: sexual assault	25 N.J.R. 3416(a)	R.1993 d.488	25 N.J.R. 4599(a)
10A:4-5.1, 5.2, 5.3	Sanctions for prohibited acts committed by inmates	25 N.J.R. 4435(a)		
10A:9-5.5	Restoration to inmates of forfeited commutation credits	25 N.J.R. 4553(a)		
10A:16-9.1	Blood donation by inmates: autogolous donations	25 N.J.R. 3920(a)		
10A:31-6.13	Reimbursement for copy costs	25 N.J.R. 4552(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.47	State Parole Board: victim input	25 N.J.R. 4705(a)		
10A:71-7.16	State Parole Board: general conditions of parole and future eligibility upon revocation	25 N.J.R. 3597(a)		

Most recent update to Title 10A: TRANSMITTAL 1993-4 (supplement August 16, 1993)

INSURANCE—TITLE 11

11:1-3	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1327(a)		
11:1-7	New Jersey Property-Liability Insurance Guaranty Association: plan of operation	25 N.J.R. 1045(a)		
11:1-31	Surplus lines insurer eligibility	25 N.J.R. 1819(a)		
11:1-32.4, 35	Insurance holding company systems	Emergency (expires 10-15-93)	R.1993 d.445	25 N.J.R. 4275(a)
11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
11:1-36	Examination of insurers	Emergency (expires 10-15-93)	R.1993 d.446	25 N.J.R. 4284(a)
11:2-17.11	Payment of third-party claims: written notice by insurer to claimant	25 N.J.R. 3921(a)		
11:2-27	Determination of insurers in a hazardous financial condition	Emergency (expires 10-15-93)	R.1993 d.447	25 N.J.R. 4286(a)
11:2-28	Credit for reinsurance	Emergency (expires 10-15-93)	R.1993 d.448	25 N.J.R. 4289(a)
11:2-33.4	Workers' compensation self-insurance: administrative correction	————	————	25 N.J.R. 4179(a)
11:2-34	Surplus lines: allocation of premium tax and surcharge	25 N.J.R. 1827(a)		
11:2-36	Risk retention groups and purchasing groups	Emergency (expires 10-15-93)	R.1993 d.449	25 N.J.R. 4298(a)
11:2-37	Producer-controlled insurers	Emergency (expires 10-15-93)	R.1993 d.450	25 N.J.R. 4304(a)
11:2-38	Increase in property and casualty capital and surplus requirements	Emergency (expires 10-15-93)	R.1993 d.451	25 N.J.R. 4306(a)
11:2-39	Increase in capital and surplus requirements for life and health insurers	Emergency (expires 10-15-93)	R.1993 d.452	25 N.J.R. 4309(a)
11:2-40	Life, health and annuity reinsurance agreements	Emergency (expires 10-15-93)	R.1993 d.453	25 N.J.R. 4314(a)
11:3-2.2, 2.4, 2.5, 2.6, 2.11, 2.12	Personal Automobile Insurance Plan	25 N.J.R. 2212(a)		
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
11:3-16.10	Private passenger automobile insurance: rate filing requirements	25 N.J.R. 4436(a)		
11:3-20.5, 20A.1	Automobile insurers: reporting apportioned share of MTF losses in excess profits reports; ratio limiting the effect of negative excess investment income	25 N.J.R. 1829(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:3-28.1, 28.2, 28.4, 28.6, 28.10-28.13, App. A, B	Reimbursement of excess medical expense benefits paid by automobile insurers	25 N.J.R. 2636(b)		
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
11:3-29.6	Personal auto injury fee schedule: physician's services	25 N.J.R. 4554(a)		
11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)		
11:4-37	Selective contracting arrangements of insurers	25 N.J.R. 4554(b)		
11:5	Real Estate Commission rules	25 N.J.R. 3597(b)		
11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:13-7.4, 7.5	Commercial lines: exclusions from coverage; refiling policy forms	25 N.J.R. 1053(a)		
11:17-1.2, 2.3–2.15, 5.1–5.6	Insurance producer licensing	24 N.J.R. 3216(a)	R.1993 d.507	25 N.J.R. 4744(b)
11:17-6	Managing general agents	Emergency (expires 10-15-93)	R.1993 d.454	25 N.J.R. 4318(a)
11:17-7	Reinsurance intermediaries	Emergency (expires 10-15-93)	R.1993 d.455	25 N.J.R. 4323(a)
11:17A-1.5	Activities for which licensure as insurance producer not required: administrative correction	———	———	25 N.J.R. 4179(b)
11:19-2.2, 2.3, 2.5, App. B	Data submission requirements for all domestic insurers	25 N.J.R. 2820(b)		
11:20	Individual Health Coverage Program	25 N.J.R. 2945(a)	R.1993 d.439	25 N.J.R. 4180(a)
11:20-2	Individual Health Coverage Program: temporary plan of operation	25 N.J.R. 4707(a)		
11:20-11	Individual Health Insurance Reform Act: relief from obligations	25 N.J.R. 4559(a)		
11:21	Small Employer Health Benefits Program	25 N.J.R. 3599(a)		
11:21-1.3, 1.4, 1.5, 6, 7, 7A, 17, 18, App. Exh. N–T	Small Employer Health Benefits Program	25 N.J.R. 4437(a)		
11:21-2	Small Employer Health Benefits Program: Plan of Operation	25 N.J.R. 4563(a)		
11:21-2	Small Employer Health Benefits Program: public hearing on Plan of Operation	25 N.J.R. 4678(a)		
11:21-14	Small Employer Health Benefits Program: declaration and approval of reinsuring or risk-assuming carrier status	25 N.J.R. 4572(a)		
11:21-15	Small Employer Health Benefits Program: relief from obligations	25 N.J.R. 4577(a)		
11:21–App. Exh. E	Small Employer Health Benefits Program: correction to proposed Appendix Exhibit E and extension of comment period	25 N.J.R. 4458(a)		

Most recent update to Title 11: TRANSMITTAL 1993-8 (supplement August 16, 1993)

LABOR—TITLE 12

12:3-1	Debarment from contracting with Department	25 N.J.R. 4716(a)		
12:5	Department audit resolution procedures	25 N.J.R. 3417(a)	R.1993 d.511	25 N.J.R. 4748(a)
12:6	Petitions for rulemaking	25 N.J.R. 3682(a)	R.1993 d.512	25 N.J.R. 4748(b)
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1334(a)		
12:7	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA): extension of comment period	25 N.J.R. 2216(a)		
12:15-1.3, 1.4, 1.5, 1.6, 1.7	Unemployment Compensation and Temporary Disability: 1994 maximum benefit rates, taxable wage base, government entity contribution rate, base week, and alternative earnings test	25 N.J.R. 3922(a)		
12:17-11.2	Offset of unemployment benefits by retirement and pension income	25 N.J.R. 3923(a)		
12:18-1.1, 2.4, 2.27, 2.40, 2.43, 2.48, 3.1, 3.2, 3.3	Temporary Disability Benefits Program	25 N.J.R. 1515(c)		
12:23	Workforce Development Partnership Program: application and review process for customized training services	25 N.J.R. 449(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)		
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)		
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)		
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)		
12:45	Vocational Rehabilitation Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2216(b)		
12:112	Occupational Safety and Health Review Commission	25 N.J.R. 3059(a)	R.1993 d.474	25 N.J.R. 4498(b)
12:175	Ski lift safety	25 N.J.R. 4581(a)		
12:235-1.6	Workers' Compensation: 1994 maximum benefit rate	25 N.J.R. 3925(a)		

Most recent update to Title 12: TRANSMITTAL 1993-7 (supplement August 16, 1993)

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1335(b)		
12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N..R. 4461(b)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses: extension of comment period	25 N.J.R. 2216(c)		
12A:11-1.2, 1.3, 1.4, 1.7	Certification of women-owned and minority-owned businesses	25 N.J.R. 2484(a)		
12A:121	Urban Enterprise Zone Authority: policies	25 N.J.R. 4582(a)		

Most recent update to Title 12A: TRANSMITTAL 1993-4 (supplement August 16, 1993)

LAW AND PUBLIC SAFETY—TITLE 13

13:1-7.2	Police Training Commission rules: administrative correction	————	————	25 N.J.R. 4106(a)
13:1C	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1338(a)		
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
13:19-10.1	Operating motorcycle or motorized bicycle without protective helmet	25 N.J.R. 2646(a)	R.1993 d.486	25 N.J.R. 4599(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)		
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:26	Transportation of bulk commodities	25 N.J.R. 1343(a)	R.1993 d.418	25 N.J.R. 4106(b)
13:27-5.8	Board of Architects: examination fees	25 N.J.R. 3704(a)		
13:29-1.13	Board of Accountancy: biennial renewal fee for inactive or retired licensees	25 N.J.R. 1665(b)		
13:30-1.1	Board of Dentistry: qualifications of applicants for licensure to practice	25 N.J.R. 2216(d)		
13:30-8.1	Board of Dentistry: fee schedules	25 N.J.R. 3927(a)		
13:30-8.6	Board of Dentistry: professional advertising	25 N.J.R. 2823(a)		
13:30-8.7	Board of Dentistry: patient records	25 N.J.R. 1833(a)		
13:33-1.35, 1.36	Ophthalmic dispensers and technicians: referrals; space rental agreements	24 N.J.R. 4010(a)		
13:34	Board of Marriage Counselor Examiners rules	25 N.J.R. 3060(a)		
13:35-2A.9, 2A.11, 6.13	Certified midwife practice: prescriptive authority	25 N.J.R. 4583(a)		
13:35-6.10	Board of Medical Examiners: request for comment regarding advertising of specialty certification	25 N.J.R. 2824(a)		
13:35-6.18	Board of Medical Examiners: control of anabolic steroids	24 N.J.R. 4012(a)		
13:35-10	Practice of athletic trainers	25 N.J.R. 265(a)	R.1993 d.546	25 N.J.R. 4935(a)
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:37	Board of Nursing rules	25 N.J.R. 455(b)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1	Board of Nursing: fee schedule	25 N.J.R. 3928(a)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:39A-2.5	Board of Physical Therapy: referral of patients from chiropractors	25 N.J.R. 3938(a)		
13:41-2.1	Board of Professional Planners: professional misconduct	24 N.J.R. 3221(a)	R.1993 d.506	25 N.J.R. 4748(c)
13:42	Board of Psychological Examiners rules	25 N.J.R. 3062(a)	R.1993 d.547	25 N.J.R. 4937(a)
13:42	Board of Psychological Examiners rules: public hearing and extension of comment period regarding psychoanalysis and scope of practice, and employment by non-profit community organization	25 N.J.R. 4585(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	25 N.J.R. 3929(a)		
13:43	State Board of Shorthand Reporting rules	25 N.J.R. 3079(a)	R.1993 d.471	25 N.J.R. 4499(a)
13:44-1.2, 1.3, 1.4, 2.9	Board of Veterinary Medical Examiners: examinations	25 N.J.R. 3930(a)		
13:44D-2.4	Advisory Board of Public Movers and Warehousemen: late renewal and reinstatement fee timeframes	25 N.J.R. 3931(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)		
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)		
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)		
13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)		
13:44G-1–5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)		
13:45A-12.3	Sale of animals: administrative correction	———	———	25 N.J.R. 4600(a)
13:45A-21, 22	Kosher Enforcement Bureau: sale of food represented as kosher	25 N.J.R. 3086(a)		
13:45A-26	Automotive dispute resolution	25 N.J.R. 3939(a)		
13:46-2	Athletic Control Board: participant health and safety in boxing and combative sports events	25 N.J.R. 4717(a)		
13:46-23.5, 23A	State Athletic Control Board: standards of ethical conduct	24 N.J.R. 4489(a)	R.1993 d.460	25 N.J.R. 4499(b)
13:60	Motor carrier safety	25 N.J.R. 3091(a)	R.1993 d.472	25 N.J.R. 4501(a)
13:70-1.31	Thoroughbred racing: prohibited services by Racing Commission employees and appointees	25 N.J.R. 4458(b)		
13:70-3.40	Thoroughbred racing: minimum age for admittance to racetrack	25 N.J.R. 2647(a)	R.1993 d.483	25 N.J.R. 4600(b)
13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)		
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)		
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)		
13:70-29.52	Thoroughbred racing: Pick(N)	25 N.J.R. 4585(b)		
13:70-29.53	Thoroughbred racing: trifecta	25 N.J.R. 3103(a)	R.1993 d.516	25 N.J.R. 4751(a)
13:71-1.26	Harness racing: prohibited services by Racing Commission employees and appointees	25 N.J.R. 4459(a)		
13:71-2.3	Harness racing: suspension from driving	25 N.J.R. 2647(b)	R.1993 d.484	25 N.J.R. 4600(c)
13:71-5.18	Harness racing: minimum age for admittance to racetrack	25 N.J.R. 2648(a)	R.1993 d.485	25 N.J.R. 4600(d)
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)		
13:71-23.3B, 23.3C	Harness racing: pre-race blood gas analyzing machine testing program	25 N.J.R. 3427(a)	R.1993 d.513	25 N.J.R. 4751(b)
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)		
13:71-27.50	Harness racing: trifecta	25 N.J.R. 3106(a)	R.1993 d.515	25 N.J.R. 4752(a)
13:71-27.56	Harness racing: the Pick(N)	25 N.J.R. 3705(a)	R.1993 d.514	25 N.J.R. 4752(b)
13:78	Administration of Victim and Witness Advocacy Fund	25 N.J.R. 4721(a)		
13:79	Safe and Secure Communities Program	Emergency (expires 10-26-93)	R.1993 d.476	25 N.J.R. 4511(a)

Most recent update to Title 13: TRANSMITTAL 1993-8 (supplement August 16, 1993)

PUBLIC UTILITIES (BOARD OF REGULATORY COMMISSIONERS)—TITLE 14

14:0	IntraLATA competition for telecommunications services: preproposal	25 N.J.R. 3682(b)		
14:0	Intrastate dial-around compensation: preproposal	25 N.J.R. 4586(a)		
14:3-3.6	Discontinuance of service to multi-family dwellings	25 N.J.R. 1346(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:3-10.15	Solid waste collection: customer lists	24 N.J.R. 3286(c)	R.1993 d.508	25 N.J.R. 4763(a)
14:11-7.10	Solid waste disposal facilities: initial tariff for special in lieu payment	24 N.J.R. 3286(c)	R.1993 d.508	25 N.J.R. 4763(a)
14:11-8	Natural gas pipelines	25 N.J.R. 897(a)	R.1993 d.361	25 N.J.R. 4106(c)
14:18-2.11	Cable television: pre-proposal regarding disposition of on-premises wiring	24 N.J.R. 4496(a)		
14:18-2.11	Cable television: change in hearing date and comment period for pre-proposal regarding disposition of on-premises wiring	25 N.J.R. 270(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		

Most recent update to Title 14: TRANSMITTAL 1993-4 (supplement July 19, 1993)

ENERGY—TITLE 14A

Most recent update to Title 14A: TRANSMITTAL 1993-1 (supplement February 16, 1993)

STATE—TITLE 15

15:1	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1347(a)		
15:10-8	Certification of electronic voting systems	25 N.J.R. 4587(a)		

Most recent update to Title 15: TRANSMITTAL 1993-2 (supplement May 17, 1993)

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1990-3 (supplement August 20, 1990)

TRANSPORTATION—TITLE 16

16:1B	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1478(a)		
16:25	Utility accommodation	25 N.J.R. 2217(a)	R.1993 d.433	25 N.J.R. 4111(a)
16:28-1.6, 1.56, 1.111	Speed limit zones along U.S. 40, U.S. 40 and 322, and Route 87 in Atlantic County	25 N.J.R. 3942(a)		
16:28-1.33	Speed limit zones along Route 41 in Gloucester, Camden, and Burlington counties	25 N.J.R. 2833(a)	R.1993 d.456	25 N.J.R. 4507(a)
16:28-1.92	Speed limit zones along Route 169 in Bayonne and Jersey City	25 N.J.R. 2834(a)	R.1993 d.457	25 N.J.R. 4507(b)
16:28-1.125	Speed limits along Route 67 in Fort Lee	25 N.J.R. 3442(a)	R.1993 d.500	25 N.J.R. 4601(a)
16:28A-1.2, 1.31, 1.36, 1.44	Parking restrictions along U.S. 1 and 9 in Elizabeth, Route 45 in Woodbury, Route 57 in Washington Borough, Route 88 in Lakewood and Brick Township	25 N.J.R. 3443(a)	R.1993 d.499	25 N.J.R. 4601(b)
16:28A-1.6, 1.7, 1.33, 1.41, 1.52, 1.57	Restricted parking and stopping on Route 7 in Nutley, U.S. 9 in Galloway Township, Route 47 in Vineland, Route 77 in Bridgeton, Route 173 in Bethlehem, and U.S. 206 in Lawrence Township	25 N.J.R. 2649(a)	R.1993 d.426	25 N.J.R. 4118(a)
16:28A-1.9, 1.18, 1.19, 1.37	Parking restrictions along Route 17 in Paramus, Route 27 in Rahway, Route 28 in Bound Brook, and Route 70 in Manchester	25 N.J.R. 4725(a)		
16:28A-1.19	Parking restrictions along Route 28 in Bound Brook	25 N.J.R. 3943(a)		
16:28A-1.19, 1.57	Parking restrictions along Route 28 in Bound Brook and U.S. 206 in Hamilton Township	25 N.J.R. 4459(b)		
16:28A-1.20, 1.25, 1.31, 1.41	Restricted parking and stopping along Route 29 in Lambertville, Route 35 in Berkeley Township, Route 45 in Woodbury, and Route 77 in Bridgeton	25 N.J.R. 3127(a)	R.1993 d.501	25 N.J.R. 4602(a)
16:28A-1.36	Restricted parking along Route 57 in Washington Borough	25 N.J.R. 2834(b)	R.1993 d.458	25 N.J.R. 4507(c)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:28A-1.41	Restricted parking along Route 77 in Bridgeton	25 N.J.R. 3944(b)		
16:28A-1.41	Time limit parking in Bridgeton	25 N.J.R. 4118(a)		
16:30-3.8	Shoulder use lane along I-195 in Millstone Township	25 N.J.R. 2651(a)	R.1993 d.427	25 N.J.R. 4117(a)
16:30-6.1	Weight limit on Edison Bridge along U.S. 9 over Raritan River	Emergency (expires 9-27-93)	R.1993 d.417	25 N.J.R. 3863(a)
16:30-10.15	Midblock crosswalk along Route 27 in Franklin Township and North Brunswick	25 N.J.R. 3128(a)	R.1993 d.502	25 N.J.R. 4603(a)
16:30-10.16	Midblock crosswalk on Route 71 in Belmar	25 N.J.R. 3683(a)		
16:31-1.10	Left turn prohibition along U.S. 30 in Magnolia Borough	25 N.J.R. 3445(a)	R.1993 d.503	25 N.J.R. 4603(b)
16:31-1.10, 1.17, 1.22, 1.32	Turn restrictions along U.S. 30 in Waterford Township, Route 73 in Winslow Township, U.S. 130 in Mercer County, and Route 36 in Sea Bright	25 N.J.R. 2835(a)	R.1993 d.459	25 N.J.R. 4508(a)
16:31-1.32	U turn prohibition along Route 36 in Sea Bright	25 N.J.R. 4460(b)		
16:31-1.33	U turn prohibition along Route 12 in Flemington and Raritan Township	25 N.J.R. 4460(a)		
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:44	Construction services	25 N.J.R. 4727(a)		
16:47-1.1, 4.1, 4.3–4.6, 4.13, 4.32, 4.35, App. B	State Highway Access Management Code	25 N.J.R. 3129(a)	R.1993 d.524	25 N.J.R. 4915(a)
16:47-8.5	State Highway Access Management Code: access classifications	25 N.J.R. 3945(a)		
16:50	Employer Trip Reduction Program (ETRP)	25 N.J.R. 3132(a)		
16:53D-1.1	Zone of rate freedom for regular route private autobus carriers: 1994 percentage maximum	25 N.J.R. 3684(a)	R.1993 d.537	25 N.J.R. 4918(a)
16:80	NJ TRANSIT: Section 16(b)(2) Capital Assistance Program	25 N.J.R. 3142(a)	R.1993 d.527	25 N.J.R. 4918(b)
16:81	NJ TRANSIT: Small Urban and Rural Area Public Transportation Program	25 N.J.R. 3144(a)	R.1993 d.528	25 N.J.R. 4920(a)
16:84	NJ TRANSIT: disability discrimination complaint procedure	25 N.J.R. 3445(b)	R.1993 d.530	25 N.J.R. 4921(a)
16:85	NJ TRANSIT: contracting policies and procedures	25 N.J.R. 3450(a)	R.1993 d.529	25 N.J.R. 4925(a)

Most recent update to Title 16: TRANSMITTAL 1993-8 (supplement August 16, 1993)

TREASURY-GENERAL—TITLE 17

17:3	Teachers' Pension and Annuity Fund	25 N.J.R. 4461(a)		
17:6	Consolidated Police and Firemen's Pension Fund	25 N.J.R. 3946(a)		
17:9	State Health Benefits Program	25 N.J.R. 2651(b)	R.1993 d.463	25 N.J.R. 4508(b)
17:9-4.1, 4.5	State Health Benefits Program: "appointive officer" eligibility	24 N.J.R. 3493(a)	Expired	
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
17:16-61.5	State Investment Council: Cash Management Fund investments	25 N.J.R. 2839(a)	R.1993 d.425	25 N.J.R. 4119(a)
17:27	Affirmative action rules	25 N.J.R. 3706(a)	R.1993 d.531	25 N.J.R. 4927(a)

Most recent update to Title 17: TRANSMITTAL 1993-8 (supplement August 16, 1993)

TREASURY-TAXATION—TITLE 18

18:2	Division of Taxation policies and procedures	25 N.J.R. 3107(a)	R.1993 d.542	25 N.J.R. 4927(b)
18:2-3	Payment of taxes by electronic funds transfer	25 N.J.R. 1078(a)		
18:7-13.8	Corporation Business Tax: claims for refund	25 N.J.R. 1842(a)		
18:12	Local property tax rules: preparation of tax lists; revaluation; appeals; homestead rebate; exemptions	25 N.J.R. 2652(a)	R.1993 d.482	25 N.J.R. 4604(a)
18:12-4.5	Local property tax assessors: conflict of interest	25 N.J.R. 4591(a)		
18:12-10.1, 10.2, 10.3	Local property tax: classification of real and personal property	25 N.J.R. 61(a)	R.1993 d.504	25 N.J.R. 4792(a)
18:12A-1.18	Local property tax assessors: conflict of interest	25 N.J.R. 4591(a)		
18:12A-18:17	Local property taxation: county boards; senior citizens' deduction; farmland assessment; realty transfer fee; assessor qualification	25 N.J.R. 2653(a)	R.1993 d.481	25 N.J.R. 4604(b)
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)		
18:35-1.17	Gross income tax: Health Care Subsidy Fund withholding	25 N.J.R. 1957(a)		

Most recent update to Title 18: TRANSMITTAL 1993-4 (supplement July 19, 1993)

TITLE 19—OTHER AGENCIES

19:3A-3	HMDC: Disability discrimination grievance procedure	25 N.J.R. 3946(b)		
19:4-2.2, 4.23A, 4.30, 4.39, 4.49, 4.59, 4.69, 4.88, 4.98, 4.107, 4.117, 4.129, 4.152	HMDC: District zoning rules	25 N.J.R. 3949(a)		
19:4-6.28	Official Zoning Map: rezoning of site in Kearny	25 N.J.R. 3429(a)		
19:4A-3.1, 4.4, 5.3, 5.7, 6.2	HMDC: District zoning rules	25 N.J.R. 3949(a)		
19:9	Turnpike Authority rules	25 N.J.R. 2839(b)	R.1993 d.496	25 N.J.R. 4605(a)
19:9	Turnpike Authority rules: extension of comment period	25 N.J.R. 3685(a)		
19:9	Turnpike Authority rules: administrative correction	———	———	25 N.J.R. 4927(c)
19:25	ELEC: Establishment of committees; reporting requirements	25 N.J.R. 3429(b)	R.1993 d.509	25 N.J.R. 4753(a)
19:31-8	Economic Development Authority: Hazardous Discharge Site Remediation Fund	25 N.J.R. 4468(a)		

Most recent update to Title 19: TRANSMITTAL 1993-7 (supplement July 19, 1993)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY				
19:40-6	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1503(a)		
19:41-5, 7.14	Applicant disclosure forms	25 N.J.R. 2655(a)	R.1993 d.429	25 N.J.R. 4120(a)
19:41-5.1, 5.11, 5.12	Vendor Registration Form; Junket Enterprise Registration Form	25 N.J.R. 3951(a)		
19:41-7.2A	Applicant identification	25 N.J.R. 4736(a)		
19:41-8.8	Reapplication for employee licensure or registration after denial or revocation	25 N.J.R. 3685(b)		
19:42-2.2	Motions for reconsideration or relief	25 N.J.R. 3685(b)		
19:42-4.5	Exclusion of persons from casino premises	25 N.J.R. 4739(a)		
19:44	Gaming schools	25 N.J.R. 2660(a)	R.1993 d.430	25 N.J.R. 4125(a)
19:44-3.2	Statement of gaming school proposal	25 N.J.R. 2655(a)	R.1993 d.429	25 N.J.R. 4120(a)
19:44-8.3	Poker	25 N.J.R. 2236(a)		
19:45-1.1, 1.2, 1.11, 1.12, 1.20	Poker	25 N.J.R. 2236(a)		
19:45-1.1, 1.14A	Casino simulcasting	25 N.J.R. 4737(a)		
19:45-1.1, 1.16, 1.33, 1.36, 1.37, 1.42, 1.44, 1.46, 1.46A, 1.46B	Coupon redemption for slot machine play	25 N.J.R. 4471(a)		
19:45-1.1, 1.34, 1.35, 1.46	Imprest inventory of changepersons	25 N.J.R. 3107(b)	R.1993 d.492	25 N.J.R. 4618(a)
19:45-1.1, 1.40	Jackpot payouts not paid directly from slot machine	25 N.J.R. 2227(b)	R.1993 d.491	25 N.J.R. 4615(a)
19:45-1.9, 1.9B	Complimentary services, items, cash, and noncash gifts	25 N.J.R. 3108(a)	R.1993 d.494	25 N.J.R. 4619(a)
19:45-1.12A	Minimum and maximum gaming wagers	25 N.J.R. 3953(a)		
19:45-1.19	Card-o-lette	25 N.J.R. 2230(a)		
19:45-1.32, 1.43	Court room requirements and procedure	25 N.J.R. 2855(a)	R.1993 d.493	25 N.J.R. 4622(a)
19:45-1.41	Slot machine hopper fills	25 N.J.R. 4474(a)		
19:46-1.1, 1.4, 1.5	Gaming chips	25 N.J.R. 3111(a)		
19:46-1.1, 1.8, 1.9, 1.13F, 1.20	Card-o-lette	25 N.J.R. 2230(a)		
19:46-1.5	Gaming chips not in active use	25 N.J.R. 2233(a)	R.1993 d.431	25 N.J.R. 4126(a)
19:46-1.5	Imprest inventory of changepersons	25 N.J.R. 3107(b)	R.1993 d.492	25 N.J.R. 4618(a)
19:46-1.10	Multiple action blackjack	25 N.J.R. 2234(a)	R.1993 d.461	25 N.J.R. 4508(c)
19:46-1.12	Minibaccarat: charging vigorish	25 N.J.R. 4474(b)		
19:46-1.13E, 1.17, 1.18	Poker	25 N.J.R. 2236(a)		
19:46-1.20	Gaming equipment: administrative correction	————	————	25 N.J.R. 4762(a)
19:46-1.20	Casino simulcasting	25 N.J.R. 4737(a)		
19:46-1.26	Coupon redemption for slot machine play	25 N.J.R. 4471(a)		
19:46-1.33	Slot machine tokens	25 N.J.R. 1961(a)	R.1993 d.432	25 N.J.R. 4127(a)
19:47	Poker: temporary adoption of new rules	25 N.J.R. 2001(a)		
19:47	Card-o-lette: temporary adoption of new rules	25 N.J.R. 2001(b)		
19:47-1.3, 2.3, 2.6, 3.2, 4.2, 5.1, 5.6, 6.6, 7.2, 8.2, 9.3, 10.10, 11.12, 12.10	Minimum and maximum gaming wagers	25 N.J.R. 3953(a)		
19:47-2	Progressive 21 wager in blackjack: temporary amendments	————	————	25 N.J.R. 4927(d)
19:47-2.8, 2.11, 2.15, 2.18	Multiple action blackjack	25 N.J.R. 2234(a)	R.1993 d.461	25 N.J.R. 4508(c)
19:47-7.2, 7.3	Minibaccarat: charging vigorish	25 N.J.R. 4474(b)		
19:47-8.2, 15	Card-o-lette	25 N.J.R. 2230(a)		
19:47-14	Poker	25 N.J.R. 2236(a)		
19:48	Exclusion of persons from casino establishments	25 N.J.R. 2661(a)	R.1993 d.462	25 N.J.R. 4510(a)
19:48-1.1, 1.3, 1.4, 1.5, 1.7, 1.8	Exclusion of persons from casino premises	25 N.J.R. 4739(a)		
19:50	Casino hotel alcoholic beverage control	25 N.J.R. 4742(a)		
19:50-1.4, 1.5	Casino hotel alcoholic beverage control: authorized locations	25 N.J.R. 3687(a)	R.1993 d.541	25 N.J.R. 4928(a)
19:50-2.2	CHAB licensee operating conditions	25 N.J.R. 3688(a)	R.1993 d.539	25 N.J.R. 4928(b)
19:50-3.1, 3.6	Alcoholic beverage service in casinos and simulcasting facilities	25 N.J.R. 3689(a)	R.1993 d.540	25 N.J.R. 4929(a)
19:51-1.2	Casino simulcasting	25 N.J.R. 4737(a)		
19:51-1.2, 1.8	Casino service industry licensure: regular and continuing business criteria	25 N.J.R. 2662(a)	R.1993 d.495	25 N.J.R. 4625(a)
19:53-1.2, 5.4	Ineligibility of successor business for provisional certification as a women or minority business enterprise	25 N.J.R. 3955(a)		
19:53-1.3, 1.5, 2.3, 4.4, 6.2, 6.6	Equal employment and business opportunity	25 N.J.R. 3690(a)	R.1993 d.538	25 N.J.R. 4929(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
19:54-1.6	Computation of gross revenue tax	25 N.J.R. 4475(a)		
19:55-1.1, 2.9, 4.3, 4.10, 6.2, 7.1, 8.1	Casino simulcasting	25 N.J.R. 4737(a)		
19:65-1.2, 2.2, 2.4–2.11, 6.1, 6.2	Hotel development and corridor region projects	25 N.J.R. 4476(a)		
19:65-1.2, 2.4, 2.5, 2.6, 2.10, 2.11	Hotel development project eligibility and conditions	Emergency (expires 10-29-93)	R.1993 d.478	25 N.J.R. 4514(a)

Most recent update to Title 19K: TRANSMITTAL 1993-8 (supplement August 16, 1993)

RULEMAKING IN THIS ISSUE—Continued

Filing Deadlines

December 6 issue:
Proposals ..... **November 1**
Adoptions ..... **November 10**
December 20 issue:
Proposals ..... **November 17**
Adoptions ..... **November 24**
January 3, 1994 issue:
Proposals ..... **December 2**
Adoptions ..... **December 9**