

NEW JERSEY REGISTER



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See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT OCTOBER 17, 1988

RULEMAKING IN THIS ISSUE

RULE PROPOSALS

| | |
|---|---------|
| Interested persons comment deadline | 2844 |
| ADMINISTRATIVE LAW | |
| Non-lawyer representatives: consent orders and stipulations | 2845(a) |
| Discovery: requests for admissions | 2845(b) |
| Interpreters for hearing impaired | 2845(c) |
| COMMUNITY AFFAIRS | |
| Uniform Construction Code: plumbing subcode | 2846(a) |
| HEALTH | |
| Cardiac diagnostic facilities: pediatric patients: new facilities | 2847(a) |
| Cardiac surgery centers: pediatric patients; surgery teams .. | 2848(a) |
| HUMAN SERVICES | |
| Contract administration: prohibited vendor activity | 2849(a) |
| Guardians for developmentally disabled persons: determination of need | 2850(a) |
| CORRECTIONS | |
| Inmate correspondence | 2854(a) |
| INSURANCE | |
| Medical Malpractice Reinsurance Recovery Fund surcharge: extension of open hearing record | 2855(a) |
| LABOR | |
| Public employee safety and health: work in confined spaces | 2855(b) |
| LAW AND PUBLIC SAFETY | |
| Commercial weighing and measuring devices | 2856(a) |
| State Medical Examiner: standards and procedures | 2856(b) |
| COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT | |
| Certificate of need for electrical facilities: public hearing .. | 2861(a) |
| TRANSPORTATION | |
| School zone along U.S. 206 in Montaque Township | 2862(a) |

| | |
|--|---------|
| Bus stop zones and no stopping or standing along Routes 4, 21, and 71, and U.S. 30 | 2862(b) |
| TREASURY-GENERAL | |
| State Health Benefits Program: enrollment policy | 2863(a) |
| HIGHWAY AUTHORITY | |
| Garden State Parkway: pre-employment screening | 2864(a) |
| TURNPIKE AUTHORITY | |
| Speed limitation on constructor vehicles | 2864(b) |

RULE ADOPTIONS

| | |
|--|---------|
| ENVIRONMENTAL PROTECTION | |
| Pesticide Control Code | 2865(a) |
| Green Acres Program | 2891(a) |
| HEALTH | |
| Reimbursement for new SHARE facilities | 2897(a) |
| HUMAN SERVICES | |
| Contract administration | 2898(a) |
| Licensed community residences for developmentally disabled | 2898(b) |
| Timely claim submittal—pharmaceutical services | 2915(a) |
| Realizing Economic Achievement (REACH) program | 2916(a) |
| CORRECTIONS | |
| Inmate discipline: appeal to Office of Administrative Law | 2928(a) |
| Psychological services at correctional facilities | 2929(a) |
| LABOR | |
| Minor employees in meat industry | 2929(b) |
| COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT | |
| Methodology for computing energy cost savings | 2929(c) |
| LAW AND PUBLIC SAFETY | |
| Board of Marriage Counselor Examiners | 2932(a) |

(Continued on Next Page)

INTERESTED PERSONS

Interested persons may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **December 21, 1988**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

RULEMAKING IN THIS ISSUE—Continued

TRANSPORTATION

| | |
|---|---------|
| Speed limits along U.S. 9 in Atlantic County and Ocean County | 2932(b) |
| Parking restrictions along U.S. 9 in Howell and Route 71 in Asbury Park and Manasquan | 2933(a) |
| Bus stop zone along Route 17 in Ho-Ho-Kus | 2933(c) |

TREASURY-GENERAL

| | |
|--|---------|
| Affirmative action and public contracts: chapter expiration date | 2934(a) |
|--|---------|

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

| | |
|--|---------|
| Deer liver consumption advisory | 2935(a) |
| Wildlife Check-Off Conservation Grant Program | 2935(b) |
| Mechanical clam dredging on Atlantic Coast lots: rulemaking petition | 2935(c) |
| 1988-89 Game Code: correction to N.J.A.C. 7:25-5.24 | 2936(a) |
| Upstream fishing license line: administrative correction to N.J.A.C. 7:25-16.1 | 2936(b) |
| Solid waste facility registration: correction to N.J.A.C. 7:26-1.7 | 2936(c) |

HEALTH

| | |
|--|---------|
| Forum on State Clean Indoor Air Laws | 2937(a) |
|--|---------|

INDEX OF RULE PROPOSALS AND ADOPTIONS

2938

Filing Deadlines

December 19 issue:

| | |
|-----------------|-------------|
| Adoptions | November 28 |
|-----------------|-------------|

January 3, 1989 issue:

| | |
|-----------------|------------|
| Proposals | December 5 |
| Adoptions | December 9 |

January 17 issue:

| | |
|-----------------|-------------|
| Proposals | December 16 |
| Adoptions | December 22 |

February 6 issue:

| | |
|-----------------|------------|
| Proposals | January 6 |
| Adoptions | January 13 |

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.

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RULE PROPOSALS

ADMINISTRATIVE LAW

(b)

OFFICE OF ADMINISTRATIVE LAW

The following proposals are authorized by
 Ronald I. Parker, Acting Director,
 Office of Administrative Law.

Submit comments by December 21, 1988 to:
 Steven L. Lefelt, Deputy Director
 Office of Administrative Law
 CN 049
 Quakerbridge Plaza, Building 9
 Quakerbridge Road
 Trenton, New Jersey 08625

(a)

Uniform Administrative Procedure Rules Conduct of Non-Lawyer Representatives Proposed Amendment: N.J.A.C. 1:1-5.5

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
 Proposal Number: PRN 1988-594.

The agency proposal follows:

Summary

The Office of Administrative Law rules on the conduct of non-lawyer representatives provide that non-lawyers may not sign a consent order or stipulation in a settled case. The settling party individually must sign the consent order or stipulation.

However, certain entities, for example State agencies and close corporations, can only act through authorized representatives. Therefore, the existing rule requires that settlement orders or stipulations be signed by the entity's lawyer. If the entity has decided to proceed without its lawyer, the existing rule complicates this decision. The proposed amendment, therefore, seeks to simplify the process by permitting non-lawyer representatives of State agencies, county or municipal welfare agencies or close corporations to sign consent orders or stipulations provided that the represented entity has authorized such action.

Social Impact

The proposed amendment would eliminate a processing requirement which could complicate the entity's decision to proceed at the hearing without legal representation. Entities choosing to be represented by non-lawyers could, under the proposed amendment, have these non-lawyers completely execute all authorized settlements.

Economic Impact

To the extent that the existing rule requires administrative costs connected with obtaining lawyers' signatures on settlement orders and stipulations, the proposed amendment should save these expenses for State agencies, county and municipal welfare agencies and close corporations.

Regulatory Flexibility Statement

The proposed amendment does not affect small businesses because it does not impose 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.

Full text of the proposed amendment follows (additions indicated in boldface thus).

1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

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

(f) In settlements, a non-lawyer may not sign a consent order or stipulation for a party, **except that non-lawyer representatives of State agencies, county or municipal welfare agencies or close corporations who have been authorized by the represented entity may sign consent orders or stipulations.**

Uniform Administrative Procedure Rules Discovery; Requests for Admissions Proposed Amendment: N.J.A.C. 1:1-10.4

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
 Proposal Number: PRN 1988-583.

The agency proposal follows:

Summary

The Office of Administrative Law rules provide for discovery on notice through interrogatories, requests for production of documents or things, permission to enter upon land or property for inspection and requests for admissions (see N.J.A.C. 1:1-10.2(a)). While the rules, at N.J.A.C. 1:1-10.4(d), provide a process for objection to a discovery notice and to compel a response, they do not clearly specify the result of a failure to respond to a request for admissions.

Under the proposed amendment, a party receiving a request for admissions must answer or object to the response within 15 days. If a party failed to take either action, each matter not responded to would be deemed admitted.

Social Impact

The proposed amendment would eliminate any confusion concerning the consequences of a failure to respond to a request for admissions.

Economic Impact

By eliminating confusion concerning the results of a failure to respond to request for admission, the proposed amendment reduces the need for motions and arguments on this point, thereby saving the parties and the Office of Administrative Law time and hearing costs.

Regulatory Flexibility Statement

The proposed amendment does not affect small businesses because it does not impose 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.

Full text of the proposed amendment follows (additions indicated in boldface thus).

1:1-10.4 Time for discovery; relief from discovery; motions to compel.

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

(c) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice; **or, in the case of a notice requesting admissions, each matter therein shall be admitted unless within the 15 days the receiving party answers, admits or denies the request or objects to it pursuant to N.J.A.C. 1:1-10.4(d).**

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

(c)

Uniform Administrative Procedure Rules Interpreters; Payment Proposed Amendment: N.J.A.C. 1:1-14.3

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
 Proposal Number: PRN 1988-582.

The agency proposal follows:

Summary

Under N.J.A.C. 1:1-14.3, a party who needs an interpreter at an Office of Administrative Law (OAL) hearing is required to pay for that interpreter. However, under P.L. 1983, c.564 (N.J.S.A. 34:1-69.7 et seq.), hearing impaired parties in legal proceedings must be provided with qualified interpreters by a court or agency without charge. The proposed amendment conforms the OAL rule to the requirements of the statute

by providing that interpreters for the hearing impaired shall be appointed by the administrative law judge and paid for by the transmitting agency.

The statute specifies that in the case of a civil or criminal proceeding before a court, the interpreter's fee shall be paid by the court, and in the case of a proceeding before a State agency, the fee shall be paid by that agency (see N.J.S.A. 34:1-69.15(b)). The OAL believes that this should be construed to mean that an agency that transmits a case to the OAL should be responsible for the cost of an interpreter for a hearing impaired party. While the OAL conducts the hearing for the transmitting agency, the case is actually "before" the agency with final decision/subject matter jurisdiction.

The proposed amendment was pre-proposed by the OAL in the August 15, 1988 New Jersey Register at 20 N.J.R. 1979(b). Only one comment, which questioned OAL's authority, was submitted in response to the pre-proposal. The OAL believes it can use its contested case rulemaking authority, N.J.S.A. 52:14F-5(e), (f), and (g), to clarify that the reasonable fee and expenses required by N.J.S.A. 34:1-69.15(a) be paid by the transmitting agency. Therefore, the OAL is now proposing the amendment and invites additional comments.

Social Impact

The proposed amendment will implement the requirements of N.J.S.A. 34:1-69.7 et seq., which entitles hearing impaired parties to a qualified interpreter in legal proceedings.

Economic Impact

The proposed amendment requires agencies which transmit cases to the OAL to assume the cost of interpreters for hearing impaired parties during OAL hearings. The current OAL rule on interpreters requires the parties themselves to obtain interpreters at their own cost. That rule must be conformed with N.J.S.A. 34:1-69.7 et seq., which requires that hearing impaired parties in proceedings before a State agency be provided with qualified interpreters paid for by that agency. Therefore, the proposed amendment imposes these costs on transmitting agencies. It is not anticipated that such costs will be excessive or burdensome. In almost 10 years of hearings at the OAL, only once or twice has an interpreter for the deaf been needed.

Regulatory Flexibility Statement

The proposed amendment does not affect small businesses because it does not impose 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.

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

1:1-14.3 Interpreters; payment

(a) **Except as provided in (d) below, [Any] any party at his or her own cost may obtain an interpreter if the judge determines that interpretation is necessary.**

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

(d) **In cases requiring the appointment of a qualified interpreter for a hearing impaired person pursuant to N.J.S.A. 34:1-69.7 et seq., the administrative law judge shall appoint an interpreter from the official registry of interpreters. The fee for the interpreter shall be paid by the transmitting agency.**

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code Plumbing Subcode

Proposed Amendment: N.J.A.C. 5:23-3.15

Authorized By: Anthony M. Villane Jr., D.D.S., Commissioner,
Department of Community Affairs.

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

Proposal Number: PRN 1988-588.

Submit comments by December 21, 1988 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 5 of the State Uniform Construction Code Act, N.J.S.A. 52:27D-123, provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." However, it is necessary, when revisions or amendments are made to model codes, for the Department to amend the appropriate sections of N.J.A.C. 5:23 so that cross-references will be correct. Accordingly, the Department proposes this rule amendment in order to enable code enforcement officials, builders, and property owners to use the 1988 Supplement to the National Standard Plumbing Code.

The 1987 National Standard Plumbing Code has been adopted by reference as the plumbing subcode of the State Uniform Construction Code. The National Association of Plumbing and Heating Contractors which sponsors the national code, engages in a public code change process and issues supplements between succeeding editions of the code. This enables the code to respond to rapidly changing plumbing technology. Modifications made to the supplement by the proposed amendments relate to the administration and enforcement procedures of the State Uniform Construction Code and do not alter the technical, substantive provisions of the national model code.

Social Impact

Adoption of the appropriate references to the plumbing subcode supplement will allow users of the State Uniform Construction Code to avoid confusion about what code provisions are in effect and to benefit from the most recent technical innovations upon which they are based.

Economic Impact

These substantive technical changes which have become effective by operation of law may decrease construction costs in some instances and increase them in others. Correct cross referencing, to the extent that it results in diminished uncertainty as to what is required may be expected to reduce the likelihood of work being done in reliance upon obsolete provisions which would then have to be corrected at greater expense.

Regulatory Flexibility Statement

Because this proposed amendment, made to ensure that the State Uniform Construction Code remains consistent, merely reflects changes at the national level supplementing the National Standard Plumbing Code, there is no identifiable differential impact on small businesses. All businesses, regardless of size, are subject to the plumbing subcode and must remain so in order to maintain uniform construction standards throughout the State.

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

5:23-3.15 Plumbing subcode

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

(c) **The 1988 Supplement to the 1987 National Standard Plumbing Code is adopted with the following amendments:**

1. Chapter 15, entitled "Tests and Maintenance", Section 15.3.1, "Testing of Plumbing Systems—General" is amended to delete "only when required by the Administrative Authority"; adding "in accordance with N.J.A.C. 5:23-2.20 and 5:23-3.3(a)3".

2. Chapter 16 of the plumbing subcode, entitled "Regulations Governing Individual Sewage Disposal Systems for Homes and Other Establishments Where Public Sewage Systems Are Not Available" and comprising sections 16.1 through 16.12 is deleted in its entirety with the exception of section 16.1.7 to remain as it is.

Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site sewage disposal systems remain in effect.

3. Chapter 17 of the plumbing subcode, entitled "Potable Water Supply System Pumps" and comprising sections 17.1 through 17.15.2 is deleted in its entirety.

Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site water supply systems remains in effect.

4. Chapter 18 of the plumbing subcode, entitled "Mobile Home and Trailer Park Plumbing Standards", is amended as follows:

i. Whenever the term "trailer", "trailer coach", "trailer park", and so forth, is used in this subcode, it shall have the same meaning as "mobile home", "mobile home park", and so forth, as used in the building subcode.

ii. Section 18.2.1 is amended to delete the last sentence beginning "Trailer home park".

iii. Section 18.2.2 is amended to delete the words "or sewerage disposal" on line 1.

iv. Section 18.2.2.3 is deleted.

v. Section 18.2.2.4 is amended to delete the last phrase, beginning "and shall, in addition, conform to all other pertinent local ordinances and State regulations".

vi. Section 18.5.8 is amended to add the phrase "and as provided by the authority having jurisdiction" after the words "chapter 10".

vii. Section 18.8.1.2 is deleted.

viii. Section 18.8.3 is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

ix. Section 18.8.4 is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

HEALTH

The following proposals are authorized by David L. Knowlton, Acting Commissioner, Department of Health; with approval of the Health Care Administration Board.

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

For the following proposals, submit comments by December 21, 1988 to:

John A. Calabria, Chief
Health Systems Services
New Jersey Department of Health
CN 360, Room 604
Trenton, New Jersey 08625

(a)

Certificate of Need: Cardiac Diagnostic Facilities

Proposed Amendments: N.J.A.C. 8:33E-1.2 and 1.11

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1988-592.

The agency proposal follows:

Summary

N.J.A.C. 8:33E-1 applies to the provision of invasive cardiac diagnostic services in settings where cardiac surgery is not also offered. A companion subchapter, N.J.A.C. 8:33E-2, establishes rules for the provision of cardiac services in cardiac surgery centers, which, by definition, offer both cardiac diagnostic and surgical services.

The Department of Health, in conjunction with the Commissioner's Cardiac Services Committee (CCSC), the Health Care Administration Board (HCAB), and the Statewide Health Coordinating Council (SHCC), is proposing amendments to its existing invasive cardiac diagnostic rules in compliance with the annual review requirement contained at N.J.A.C. 8:33E-1.5(a)2. These amendments include the retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed changes which are consistent with the recommendations of the New Jersey Cardiac Services Task Force and the CCSC:

1. Clarification of the intent of existing language regarding the provision of invasive cardiac diagnostic services provided to pediatric patients at N.J.A.C. 8:33E-1.2(e). Pediatric patients are to undergo invasive cardiac diagnostic procedures only in pediatric cardiac surgery centers.

2. Amendment at N.J.A.C. 8:33E-1.11 which permits the acceptance of certificate of need applications for new invasive cardiac diagnostic services under a waiver provision, providing specific and quantifiable evidence is documented that in the absence of a waiver serious problems of access to a needed service would result and that existing cardiac providers would not be jeopardized.

Social Impact

N.J.S.A. 26:2H-1, as amended, recognized as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospitals and health care services, and health facility cost containment programs . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as important factors contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered and for achieving cost efficiencies in the delivery of expensive and highly sophisticated health care services. The regionalization of invasive cardiac diagnostic services is essential in generating caseloads of sufficient volume to maintain professional skills, thereby reducing unnecessary risks to patients and promoting the efficient and effective delivery of this specialized service.

Historically, overall Statewide utilization of invasive cardiac diagnostic services has increased approximately 15 percent per year since 1979. As a result of this increased demand for services, three new services have been added in the State, together with the expansion of capacity at 10 existing programs. These additional approvals represent a 33 percent increase in the number of cardiac catheterization laboratories in New Jersey, expanding the capacity of these programs by approximately 13,000 cardiac catheterization procedures annually. The Department estimates that the existing and approved cardiac catheterization laboratories in New Jersey have the capacity to perform a minimum of 40,000 cardiac catheterization procedures. During 1987, a total of 26,553 adult and pediatric catheterization procedures were performed, representing roughly 66 percent of Statewide technical capacity. Only four of the State's adult invasive cardiac diagnostic programs failed to achieve the minimum level of 500 cases annually that is required in this subchapter.

Both of the existing pediatric cardiac diagnostic programs in the State meet existing minimum utilization requirements (150 cases annually) and are located at hospitals with active pediatric cardiac surgery centers. The proposal to limit the provision of invasive cardiac diagnostic services to pediatric cardiac surgery centers is consistent with the recommendations of the Commissioner's Cardiac Services Committee (CCSC), the Academy of Pediatrics, and the Inter-Society Commission for Heart Disease Resources (ICHDR). As stated by the ICHDR, "the occasional study of an infant or a young child in a laboratory that is physically or functionally isolated from the pediatric cardiac surgical program is at variance with sound medical practice".

As stated by the New Jersey Cardiac Services Task Force in its January, 1987 report, "all evidence indicates that both quality of care, as reflected in mortality, and costs, as reflected in length-of-stay and physician fees, are influenced by the volume of procedures done by and the skill of the physician". These proposed amendments are important, therefore, for quality and cost reasons. They promote sufficient utilization at each invasive cardiac diagnostic facility to maintain professional skills, thereby protecting patients from unnecessary risks. In addition, they inhibit the unrestricted growth of this service Statewide, thereby promoting appropriate utilization levels and insuring that the service is provided in a cost-efficient manner.

Economic Impact

A major finding of the New Jersey Cardiac Services Task Force report is that total costs for cardiac services are higher in New Jersey than in surrounding states. The provision of cardiac care services is becoming increasingly competitive, emphasizing the need to promote efficiencies in their delivery. These proposed amendments reduce staffing requirements and promote efficient volume levels. Since the cost of providing invasive cardiac diagnostic services is largely determined by the spreading of fixed

costs over the number of cases performed, an invasive cardiac diagnostic facility lacking sufficient patient volumes represents a less than efficient use of a costly resource.

In the absence of these amendments, the growth of new services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing facilities, offending quality of care considerations, and promoting significant cost inefficiencies in the provision of this important service.

Regulatory Flexibility Statement

Since only relatively large hospitals, having, by nature, well over 100 employees, would be capable of qualifying for a certificate of need for an invasive cardiac diagnostic facility, no recordkeeping, reporting, or other compliance requirements are placed upon small businesses by the proposed amendments.

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

8:33E-1.2 Utilization of invasive cardiac diagnostic facilities

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

(e) [Acutely ill (cardiac) infants should be definitively examined] **Pediatric patients requiring invasive cardiac diagnostic procedures must undergo these procedures only in centers with [active] invasive pediatric cardiac diagnostic and pediatric cardiac [surgical] surgery programs.**

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

8:33E-1.11 New facilities

(a) The Department of Health will process certificate of need applications for new invasive cardiac diagnostic facilities only from health service[s] areas, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities meet minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(b). **Waivers from this policy may be considered where an applicant and the local health planning agency have been able to document specific and quantifiable evidence that, in the absence of a waiver, serious problems of access to a needed service would result. Documentation should also be provided that indicates that existing area providers of this invasive cardiac service will not be jeopardized (for example, experience a significant decline in volume) by the proposed new service and the proposed new provider will meet all requirements contained in this subchapter.**

(b) No more than one new invasive cardiac diagnostic facility may be approved in each health service area, designated pursuant to P.L. 93-641 and amendments thereto, where all existing invasive cardiac diagnostic facilities are operating at minimum levels of utilization as specified [of] at N.J.A.C. 8:33E-1.2(b). Additional new facilities, beyond the first approved pursuant to this subchapter, will be considered only when both existing and approved facilities in a given health service area are operating at minimum levels of utilization as specified at N.J.A.C. 8:33E-1.2(b) or where a waiver has been granted in accordance with (a) above. **Should a new provider be approved under such a waiver, no additional waiver will be granted until such time as the new waived provider meets the minimum utilization requirements contained at N.J.A.C. 8:33E-1.2(b).**

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

(a)

Certificate of Need: Cardiac Surgery Centers Proposed Amendments: N.J.A.C. 8:33E-2.3 and 2.4

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1988-591.

The agency proposal follows:

Summary

Cardiac surgical center rules apply to the provision of open heart cardiac surgical services in settings that also include the provision of invasive and non-invasive cardiac diagnostic and therapeutic services. A companion subchapter, N.J.A.C. 8:33E-1, establishes rules for the provision of invasive cardiac diagnostic services where cardiac surgery is not offered.

The Department of Health, in conjunction with the Commissioner's Cardiac Services Committee (CCSC), the Health Care Administration Board (HCAB), and the Statewide Health Coordinating Council (SHCC), is proposing amendments to its existing cardiac surgery rules in com-

pliance with the annual review requirement at N.J.A.C. 8:33E-2.6(a)2. These amendments include the retention of Department of Health policy, standards and criteria, as reflected in the existing rules, with the following proposed changes which are consistent with the recommendations of the New Jersey Cardiac Services Task Force and the CCSC:

1. Clarification of the intent of existing language regarding the provision of invasive cardiac services for pediatric patients at N.J.A.C. 8:33E-2.3(b)3. Pediatric patients are to undergo invasive cardiac diagnostic procedures only at pediatric cardiac surgery centers.

2. Addition of a new paragraph N.J.A.C. 8:33E-2.3(b)4, which recommends the establishment of minimum annual physician volumes for pediatric invasive cardiac diagnostic procedures.

3. Amendment at N.J.A.C. 8:33E-2.3(b)1, which provides clarification that the annual pediatric cardiac surgical volume (150 open and closed heart operations) must include a minimum of 75 open heart procedures.

4. Amendment at N.J.A.C. 8:33E-2.4(a)1v, which clarifies the fact that a trained and qualified perfusionist may operate the perfusion pump in addition to a "certified" perfusionist. This proposed language is consistent with the original personnel recommendation made by the New Jersey Cardiac Services Task Force.

Social Impact

N.J.S.A. 26:2H-1, as amended, recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospitals and health care services, and health facility cost containment programs . . ."

The New Jersey State Health Plan recognizes the underutilization of inpatient beds, specialty services, and expensive equipment as important factors contributing to the rapidly escalating costs of health care. Regionalization of specialty services and equipment is viewed as an important mechanism for promoting health by improving the capabilities of services and quality of care offered and for achieving cost efficiencies in the delivery of expensive and highly sophisticated health care services.

The regionalization of cardiac surgery services is essential in generating caseloads of sufficient volume to maintain professional skills, thereby reducing unnecessary risks to patients and promoting the efficient and effective delivery of this specialized service.

Utilization of the State's nine existing adult and two existing pediatric cardiac surgery centers has increased steadily, although the rate of growth has decreased in recent years (since 1984). Pediatric cardiac surgery has in fact leveled off in recent years. To some extent the reduction in growth in adult cardiac surgery is attributable to the introduction of non-surgical therapeutic interventions (for example, balloon angioplasty or percutaneous transluminal coronary angioplasty) that now comprise nearly 37 percent of therapeutic cardiac interventions in the State (3,576 coronary angioplasties were performed in 1987 compared to 6,117 adult and pediatric open heart procedures). During the past nine years a total of four new adult cardiac surgery programs have been approved and all existing providers have been allowed to expand in order to meet the increased demand for these services.

The two existing pediatric cardiac surgery centers have provided services to a relatively stable pediatric demand. All existing adult and pediatric cardiac surgery centers were able to achieve minimum annual utilization levels during 1987. The proposed amendment to limit the provision of pediatric invasive cardiac diagnostic services to pediatric cardiac surgery centers is consistent with the recommendations of the Commissioner's Cardiac Services Committee (CCSC), the Academy of Pediatrics, and the Inter-Society Commission for Heart Disease Resources (ICHDR). As stated by the ICHDR, "the occasional study of an infant or a young child in a laboratory that is physically or functionally isolated from the pediatric cardiac surgical program is at variance with sound medical practice".

As identified in the January 15, 1987 Cardiac Services Task Force report, "all evidence indicates that both quality of care, as reflected in mortality, and cost, as reflected in length-of-stay and physicians fees, are influenced by the volume of procedures done by and the skill of the physician". The proposed amendments are important, therefore, for quality and cost reasons. They promote sufficient utilization at each adult and pediatric cardiac surgery center to maintain professional skills, there-

by protecting patients from unnecessary risks. In addition, they inhibit the unrestricted growth of this service Statewide, thereby promoting appropriate utilization levels and insuring that the service is provided in a cost-efficient manner.

Economic Impact

A major finding of the Cardiac Services Task Force report is that total costs for cardiac services are higher in New Jersey than in surrounding states. The provision of cardiac care services is becoming increasingly competitive, emphasizing the need to promote efficiencies in their delivery. These proposed amendments reduce staffing requirements and promote efficient volume levels. Since the cost of providing adult and pediatric cardiac surgery services is largely determined by the spreading of fixed costs over the number of cases performed, a cardiac surgery center lacking sufficient patient volumes represents a less than efficient use of a costly resource.

The Cardiac Services Task Force also emphasized the need to enhance quality and reduce long-term costs for cardiac services through the efficient regionalization of services, since most of these procedures are currently performed on a non-emergency basis. In the absence of these amendments, the growth of new cardiac surgery services would be unrestricted. To allow this to occur would be to encourage a reduction in the utilization of existing surgical centers, offending quality of care considerations, and promoting significant cost inefficiencies in the provision of this important service.

Regulatory Flexibility Statement

Since only large hospitals, having, by nature, well over 100 employees, would be capable of qualifying for a certificate of need for a cardiac surgery center, no recordkeeping, reporting or other compliance requirements are placed upon small businesses by the proposed amendments.

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

8:33E-2.3 Utilization of cardiac surgical centers

(a) (No change.)

(b) The following shall apply to pediatric cardiac diagnostic and surgical services:

1. An applicant for a certificate of need as a regional pediatric cardiac surgical center must provide written documentation that the proposed center will perform at least 150 pediatric open and closed heart surgery procedures per year, **at least 75 of which must be open heart procedures**, for each operating room utilized for pediatric open heart surgery by the end of the third year of operation and each year thereafter.

2. (No change.)

3. The minimum acceptable number of pediatric cardiac catheterization patients per invasive pediatric cardiac diagnostic laboratory is 150 per year. New pediatric surgical centers shall achieve this minimum level of utilization in their invasive pediatric cardiac diagnostic laboratory within three years from the initiation of the service. As cited at N.J.A.C. 8:33E-1.2(e), [actually ill (cardiac) infants should be definitively examined] **pediatric patients requiring invasive cardiac diagnostic procedures must undergo these procedures only in centers with [active] invasive pediatric cardiac diagnostic and pediatric cardiac [surgical] surgery programs.**

4. **Each invasive pediatric cardiac laboratory should establish a minimum number of procedures for each physician with laboratory privileges in order to maintain a consistent level of proficiency within the laboratory. The Commissioner's Cardiac Services Committee (CCSC) recommends that each physician perform 50 cases a year with a minimum of 100 cases over a two year period.**

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

8:33E-2.4 Cardiac surgery center personnel

(a) The following shall apply to cardiovascular surgical units:

1. Cardiac surgery is most successful when performed by a smoothly functioning team. Based on 250 open heart procedures, the basic team of the regional cardiac surgical center for each operation shall consist of the following permanently assigned staff:

i.-iv. (No change.)

v. One certified perfusionist (**a trained and qualified perfusionist who is currently part of a cardiac surgery team may be included**) shall operate the perfusion pump. A second [qualified perfusionist] **individ-**

ual capable of handling the pump should be available to assist this perfusionist as the need arises [(a trained and qualified perfusionist who is currently part of a cardiac surgery team may be included)];

vi-vii. (No change.)

2. (No change.)

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

HUMAN SERVICES

(a)

CONTRACT POLICY AND MANAGEMENT UNIT

Contract Administration

Conflict of Interest

Proposed New Rule: N.J.A.C. 10:3-1.14

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

Authority: N.J.S.A. 30:1-12; Executive Order No. 189.

Proposal Number: PRN 1988-581.

Submit comments by December 21, 1988 to:

Henrietta Small, Manager

Contract Policy and Management Unit

Department of Human Services

CN 700

Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66, the Department of Human Services Department has readopted as new rules N.J.A.C. 10:3, Contract Administration. The re-adoption as new rules appears elsewhere in this issue of the New Jersey Register. These rules were first adopted in 1978 in compliance with Executive Order No. 34.

On July 20, 1988, subsequent to submission of the proposed re-adoption with amendments to the Office of Administrative Law for publication but prior to its appearance in the New Jersey Register, Governor Kean signed Executive Order No. 189. Executive Order No. 189 requires the inclusion of language regarding certain prohibitions against conflicts of interest in State contracting. This proposed new rule is intended to conform Department of Human Services rules to the Executive Order No. 189 requirements, by adding N.J.A.C. 10:3-1.14 to N.J.A.C. 10:3-1, Debarment, Suspension and Disqualification of Person(s). A summary of the proposed new rule follows.

Subsection (a) provides that the violations of the prohibitions contained in the proposed new rule will subject the vendor to debarment.

Subsection (b) requires that all prohibitions contained in the new rule be included in all requests for proposals issued by any Department of Human Services unit, office, bureau, division or other instrumentality of the Department, or the Department itself.

Subsections (c) through (h) reflect the specific requirements of Executive Order No. 189, that is, subsection (c) prohibits compensation or gratuities by vendors to State, or special State, officers or employees of agencies, or their immediate families, with whom the vendor contracts or offers or proposes to transact business.

Subsection (d) requires that solicitation by a State, or special State, employee or officer, of compensation or a gratuity from a State vendor be reported to the Attorney General and the Executive Commission on Ethical Standards.

Subsection (e) prohibits State, or special State, officer or employee private business relationships with State vendors and provides for a waiver request procedure.

Subsection (f) prohibits vendor influence, or attempts to influence, a State, or special State, officer or employee in his or her official capacity in any manner that might affect objectivity or independence of judgment.

Subsection (g) prohibits attempts to influence and actual influence by a vendor to secure unwarranted privileges or advantages.

Subsection (h) treats relationships between vendors and State, or special State, officers or employees on the same level as the latter in their capacity as members of the general public.

Social Impact

Since the contents of the proposed new rule clarify applicability of the New Jersey Conflicts of Interest Law, N.J.S.A. 52:34-1 et seq., to vendor transactions, the addition of these provisions will not have any impact on vendors or the affected State, or special State, officers or employees. Inclusion of the material contained in this proposed rule in the Department's rules governing Contract Administration thus constitutes an additional publication and formal adoption by the Department of prohibitions against illegal contracting activity. The Department itself must revise and disseminate its request for proposal documents to reflect the requirements of the Executive Order.

Economic Impact

The proposed new rule will not result in any economic impact on the community of vendors with whom the Department transacts business. The Department will incur some expense in revising and distributing new request for proposal materials, but these expenses will be absorbed in the Department's general budget.

Regulatory Flexibility Statement

Many vendors with whom the Department transacts business qualify as small businesses, but since the proposed new rule merely clarifies applicability of existing law to vendor interactions with State, or special State, officers or employees, there is no anticipated impact on these small businesses. No reporting or recordkeeping requirements are imposed by these rules other than a duty to report solicitation of compensation or gratuities in connection with State vendor activity.

Full text of the proposal follows:

10:3-1.14 Conflict of interest

(a) The violation of any of the prohibitions contained in this section shall render any vendor committing such violation liable to debarment in the public interest.

(b) The provisions of (c) through (h) below shall be included in all requests for proposals issued by the Department of Human Services.

(c) No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

(d) The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

(e) No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(f) No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

(g) No vendor shall cause or influence, or attempt to cause or influence, any state officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

(h) The provisions cited in this section shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public, subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

(a)**DIVISION OF DEVELOPMENTAL DISABILITIES****Determination of Need for a Guardian****Proposed Repeal and New Rule: N.J.A.C. 10:43**

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

Authority: N.J.S.A. 30:1-12 and N.J.S.A. 30:4-165.4 et seq., specifically 30:4-165.16.

Proposal Number: PRN 1988-580.

Submit comments by December 21, 1988 to:

James M. Evanocho
Administrative Practice Officer
Division of Developmental Disabilities
CN 700
Trenton, N.J. 08628

The agency proposal follows:

Summary

A major revision of the statute concerning guardianship services of the Division of Developmental Disabilities occurred in April, 1985 (See N.J.S.A. 30:4-165.4 et seq.). The new rules are proposed to establish revised criteria for the Division of Developmental Disabilities to determine the need of an individual receiving its services for a guardian. In 1985, N.J.S.A. 30:4-165.4 et seq. was revised to facilitate the appointment of a member of an individual's family or other interested party as the individual's legal guardian.

Subchapter 1 of the proposed new rules establishes the purpose and authority of the rules. It defines the various terms employed in the rules. It also indicates that the rules apply only to persons who have been admitted for 30 or more continuous days of services of the Division of Developmental Disabilities and that the rules apply for guardianship of the person only.

Subchapter 2 indicates that such determinations are made on an individual basis. It describes the factors to be used in such determinations.

Subchapter 3 sets forth the requirement for an initial screening of the individual. If such screening indicates the possible need for a guardian, the rules describe the requirements for a more formal clinical evaluation.

Subchapter 4 indicates the manner in which the decision of the Division of Developmental Disabilities is communicated to the client, his or her family, or other interested persons.

Subchapter 5 establishes the requirements in terms of affidavits and supporting documentation for referral to a court of competent jurisdiction for the appointment of a guardian.

Subchapter 6 sets forth the process of evaluating the need for a guardian for individuals who are presently receiving guardianship services from the Division of Developmental Disabilities, without prior judicial review. The notification process is also described in this section.

Subchapter 7 describes the requirements of the Division of Developmental Disabilities with respect to a party other than the Division of Developmental Disabilities who applies to become a guardian.

Subchapter 8 establishes the procedures for addressing the suitability of a prospective guardian.

Subchapter 9 requires that the continued need for a guardian be reviewed at least annually by the Division of Developmental Disabilities. This section also describes the procedures to be followed when the Division does not feel that the individual continues to require a guardian.

Social Impact

The proposed rules set forth the criteria for determining the need of an individual served by the Division for a guardian. The rules should

facilitate the appointment of a family member or other interested party as the guardian of an individual. The rules allow for the appointment of a guardian without either financial expense to the family or the need to secure legal services to initiate court action.

Economic Impact

It is anticipated that the rules will have a positive impact on the families of individuals served by the Division. The rules describe a procedure whereby a family member or other interested party may be appointed as the guardian of an individual at no cost to the family. The cost of pursuing a guardianship of the person independently is estimated to exceed \$500.00.

There is an anticipated economic impact on the Department of Human Services, the Department of the Public Advocate, and the Office of the Attorney General. Each is responsible in part for implementing the procedures necessary towards the appointment of guardians. The anticipated costs to the Division of Developmental Disabilities is estimated at \$750,000, primarily for psychological consultations.

Regulatory Flexibility Statement

The proposed new rules do not require a regulatory flexibility analysis since they do not impose any requirements on small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:43.

Full text of the proposed new rules follow.

CHAPTER 43 DETERMINATION OF NEED FOR A GUARDIAN

SUBCHAPTER 1 GENERAL PROVISIONS

10:43-1.1 Philosophy

An adult individual with developmental disabilities may or may not require appointment of a guardian to act on his or her behalf. A conclusion that a guardian is required shall be founded upon a sound clinical basis and shall be regularly reviewed, in accordance with this chapter.

10:43-1.2 Authority; scope of services

(a) Pursuant to N.J.S.A. 30:4-165.5, the Commissioner of the Department of Human Services shall evaluate each minor admitted to functional or other services provided by the Division of Developmental Disabilities as he or she approaches adulthood to determine if it appears that such person will need a guardian on attainment of his or her majority.

(b) The Commissioner is also required to ascertain whether those individuals, who are already 18 years old at the time of their admission into functional or other services, are in need of guardian.

10:43-1.3 Definitions

The following words and terms shall, for the purposes of this chapter, have the meanings contained in this section unless the text clearly indicates otherwise.

"Adaptive behavior" means the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his or her age and cultural group (see N.J.A.C. 10:43-2.2).

"Bureau of Guardianship Services" means the unit within the Division of Developmental Disabilities which has the responsibility and authority to provide guardian of the person services to individuals in need of same.

"Clinical and social factors" means conditions, disabilities, impairments of a mental, psychological, and/or physical nature which diminish capacity to make judgments and decisions or to communicate decisions to others in any way, for example, use of an augmentative communication device.

"Commissioner" means the Commissioner of the Department of Human Services.

"Developmental disability" means a severe, chronic disability of a person which is attributable to a mental or physical impairment or combination of mental or physical impairments; is manifest before age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas of major

life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and are individually planned and coordinated. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida, and other neurological impairments where the above criteria are met (see N.J.S.A. 30:6D-3(a)).

"Division" means the Division of Developmental Disabilities.

"Functional or other services" means those services and programs in the Division which are available to provide persons with developmental disabilities with education, training, rehabilitation, adjustment, treatment, care and protection. Functional or other services include residential care, case management, social supervision, and day programming.

"Functional service unit" means any of the following components of the Division: a Developmental Center, a Regional Office of Community Services, or the Bureau of Special Residential Services.

"Guardian" means an individual or agency appointed by a court of competent jurisdiction or who is otherwise legally authorized and responsible to act on behalf of a minor or incompetent adult to assure provision for the health, safety, and welfare of the individual and to protect his or her rights.

"Guardianship services" means those services and programs provided by the Division of Developmental Disabilities for the purpose of implementing its responsibility toward the individual with developmental disabilities, for whom it is performing the services of guardian of the person.

"Individual Habilitation Plan (IHP)" means a document that provides an evaluation of the capabilities and needs of an individual with developmental disabilities and sets forth clearly defined and measurable goals and behaviorally stated objectives describing an individualized program of care, training, treatment, and therapies designed to attain and/or maintain the physical, social, emotional, educational and vocational functioning of which the individual is presently or potentially capable. Specific contents of an IHP are found in N.J.S.A. 30:6D-11.

"Intelligence quotient (I.Q.)" means a number held to express the relative level of intelligence of a person in terms of scores on standardized intelligence tests.

"Measured intelligence" means the level of an individual's cognitive functioning as measured by a standard intelligence test.

"Mental incompetence" means the state or condition of a person who is impaired by reason of physical disability, mental illness, or mental deficiency to the extent that he or she lacks sufficient capacity to govern himself or herself and manage his or her affairs.

"Mental retardation" means a state of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period (see N.J.S.A. 30:4-23).

10:43-1.4 Scope; applicability

(a) The provisions of this chapter shall apply to persons who have been admitted to functional or other services for 30 or more continuous days or who have been determined eligible and placed on a waiting list for such services.

(b) The Division shall initiate action for the appointment of a guardian of the person only.

SUBCHAPTER 2 GUIDELINES FOR GUARDIANSHIP DETERMINATIONS

10:43-2.1 Approach

(a) Only a person with developmental disabilities who is persistently socially dependent to such a degree that he or she either lacks the cognitive capacity to make judgments for himself or herself or to communicate decisions in any way may be determined in need of a guardian.

(b) The conclusion that an individual needs a guardian shall be based upon an assessment by a psychologist or a physician that the

individual's ability to receive and evaluate information effectively and/or to communicate decisions is impaired to such an extent that he or she lacks the capacity to meet essential requirements for his or her health, safety, and/or well-being.

10:43-2.2 Factors to be addressed

(a) The functional service unit shall address the following basic factors in determining a person's need for a guardian. Each of these factors may lead to a clinical judgment by the functional service unit that the individual lacks the capacity to govern himself or herself and manage his or her own affairs and consequently is in need of a guardian:

1. Measured intelligence, determined by a standardized intelligence test, or clinical estimate of intellectual functioning;
2. Deficits in adaptive behavior with behavioral description; and/or
3. Clinical and social factors.

SUBCHAPTER 3. PROCEDURES FOR DETERMINATION OF GUARDIANSHIP NEED

10:43-3.1 Time for guardianship need assessment

Between six and 18 months prior to the eighteenth birthday of an individual already receiving functional or other services from the Division, the administrative head of the functional service unit shall ensure that an assessment is made as to whether an individual is in need of a guardian. If the individual is determined to be eligible for services in accordance with N.J.A.C. 10:46 after having attained the age of 17, the assessment regarding the need for a guardian shall be made no later than 30 days after the date of the eligibility determination.

10:43-3.2 Initial screening

(a) The initial assessment as to whether an individual may be in need of a guardian shall be conducted according to the following guidelines:

1. Each individual is presumed competent and not in need of a guardian unless there is significant functional impairment which substantially limits the individual's ability to make decisions and/or to communicate decisions in any way.
2. Depending upon the individual's level of functioning, the assessment may be limited to a simple, informal screening, or it may further involve a formal clinical evaluation.
 - i. If a screening, consisting of a review of available records and a personal interview by one or more professional staff, such as an intake worker, case manager, or habilitation plan coordinator, leads to a reasonable conclusion that the individual is obviously competent, a written statement to that effect shall be filed in the individual's confidential record.
 - ii. If the screening raises a question about competency, the matter shall be referred for clinical evaluation of the possible need for a guardian.

10:43-3.3 Clinical evaluation

(a) When a clinical evaluation regarding the need for a guardian is determined necessary according to N.J.A.C. 10:43-3.2(a)2ii above, the following criteria are applicable:

1. A clinical evaluation shall consist of one or both of the following:
 - i. Review of clinical data; and/or
 - ii. Examination of the client.
2. An individual whose measured intelligence falls within the profoundly or severely retarded range, or who is clinically estimated by a qualified psychologist or physician to be functioning intellectually within this range, may be determined in need of a guardian on the basis of this clinical measurement or estimate alone.
3. An individual whose measured intelligence or estimated intellectual functioning level is moderately retarded, mildly retarded, or normal may be determined in need of a guardian only if there is significant impairment of adaptive behavior, or persistent clinical and social factors, or both.

(b) If a clinical evaluation has been conducted, the findings of the psychologist or physician, together with a summary of the clinical

data and other information upon which it is based, shall be provided to the administrative head of the functional service unit.

1. If the administrative head of the functional service unit concurs with a clinical finding that there is no need for a guardian, the administrative head shall sign a statement to that effect, which shall be filed in the individual's confidential record.

2. If the administrative head of the functional service unit concurs with a clinical finding that there is a need for a guardian, he or she shall initiate the process towards adjudication of incompetence and appointment of a guardian.

3. If the administrative head of the functional service unit disagrees with a clinical finding regarding the need for a guardian, he or she shall direct that a reevaluation be conducted.

SUBCHAPTER 4. COMMUNICATION REGARDING GUARDIANSHIP NEED

10:43-4.1 Communication with client and family

(a) Within 30 days after concurrence by the administrative head of the functional service unit with a clinical evaluation that an individual does or does not need a guardian, functional service unit staff shall notify the individual of the determination. The determination shall be explained at the time of notification. This explanation shall be communicated consistent with the individual's limitations and capabilities. Notification and explanation shall be documented in the individual's record.

(b) The individual's family, or, in their absence, any other interested party reflected in the functional service unit's record, shall also be notified regarding the determination concerning the individual's need for a guardian. Such notice shall be made in writing within 30 days of concurrence by the administrative head of the functional service unit.

1. If the determination is that the individual is in need of a guardian, the written communication to the family or other interested parties shall relate the following options, one of which may be selected by the recipient and indicated on a standardized reply form to be supplied by the Division:

- i. The recipient wishes to be designated guardian of the person at no personal expense for the legal costs, as the court action will be processed by the Division of Developmental Disabilities.
- ii. The recipient elects to pursue appointment as guardian privately, securing the services of a personal attorney at his or her own expense. This option shall be exercised if guardianship of property as well as person is being sought.
- iii. The recipient is not able or willing to serve as guardian of the person, but proposes another prospective appointee. The latter's name, address, telephone number, relationship to the alleged incompetent, and signature of proposed appointee, attesting to his or her willingness to be designated guardian of the person, shall be provided by the recipient to the functional service unit staff.
- iv. The recipient is not able or willing to serve as guardian of the person; he or she accepts proposed appointment of the Bureau of Guardianship Services as guardian of the person of the alleged incompetent.

2. The family or other interested party shall be instructed to return the reply form within 30 days. If there is no response within 30 days, a telephone call shall be attempted by a staff member of the functional service unit to the family or other interested party. If the matter is still unresolved, a second letter shall be sent by the functional service unit via certified mail. This second communication shall apprise the family or other interested party that the absence of any response within an additional 30 calendar days from the date of the letter shall occasion an application to Superior Court for the appointment of the Bureau of Guardianship Services as guardian of the person.

3. If the Division's conclusion is that the individual is not in need of a guardian, the functional service unit staff shall notify the family or other interested party. The written communication shall instruct the recipient to contact the functional service unit within 30 calendar days if he or she wishes to discuss the matter.

i. If a family member or interested party disagrees with the determination of the functional service unit, an informal meeting shall

be arranged within 20 working days. Participants may include the disagreeing party and his or her representative, if desired; appropriate staff of the functional service unit; and the individual in question. This informal meeting is intended to enable the parties to reach agreement on the need for a guardian.

ii. A written summary of the results of the meeting shall be forwarded to all participants within 20 working days by the functional service unit. If there is continuing disagreement, the summary shall advise of the option of initiating a court action for the purpose of requesting appointment of a guardian. The summary shall also advise that the Division may communicate its findings to the court.

SUBCHAPTER 5. APPOINTMENT OF GUARDIAN

10:43-5.1 Referral for court appointment of a guardian

(a) When the administrative head of a functional service unit concurs with a clinical finding that an individual is in need of a guardian in accordance with N.J.A.C. 10:43-4.1, and the process of identifying the recommended guardian has been completed, the administrative head shall refer the matter to the Chief, Bureau of Guardianship Services. The referral shall include:

1. An affidavit by the administrative head of the functional service unit attesting to the individual's need for a guardian;

2. An affidavit by a psychologist, who is either employed by the Division or licensed to practice in New Jersey, or by a practicing physician. The affidavit shall include information as to the clinical basis for the psychologist's or physician's professional judgment that the individual is unable to govern himself or herself or manage his or her own affairs. The affidavit shall include a statement relating a specific date when the psychologist or physician personally examined the individual;

3. A copy of the most current psychological evaluation report or other clinical examination report upon which the psychologist's or physician's affidavit is based. This report shall be no more than three years old;

4. Information and documentation regarding the proposed guardian, which shall consist of any of the following.

i. The original signed and dated reply form (see N.J.A.C. 10:43-4.1 (b)1) from the family member or other interested party indicating his or her intention relative to being appointed guardian;

ii. Copies of letters and certified mail receipts when there has been no response from the family or other interested party. An affidavit by a Division staff person attesting to the communication attempts and lack of any response shall also be developed and forwarded; or

iii. A detailed documentation of facts, events, and other information to support a conclusion by the functional service unit that a family member or other interested party, who has indicated a desire to be appointed guardian, would be unsuitable;

5. Names and addresses of immediate family members to receive notice of the guardianship action;

6. Identification of the county of settlement for the individual, if applicable;

7. A summary of the individual's current functioning and social history; and

8. If the individual is placed in a residential facility outside New Jersey, the last known address of the individual in New Jersey.

10:43-5.2 Procedure for referral to the Attorney General

Upon receipt of the referral package, the Chief, Bureau of Guardianship Services, shall review material for completeness and shall refer the matter to the Office of the Attorney General.

SUBCHAPTER 6. INDIVIDUALS RECEIVING GUARDIANSHIP SERVICES WITHOUT COURT APPOINTMENT

10:43-6.1 Procedures for individuals receiving guardianship services without court appointment

(a) Persons who have been receiving guardianship services from the Division without prior judicial review shall be evaluated regarding the continuing need for a guardian, in accordance with the provision of N.J.S.A. 30:4-165.13. The scheduling of these evalu-

ations shall be coordinated with the functional service unit by the Bureau of Guardianship Services.

(b) The same guidelines and criteria shall be applied as are delineated under N.J.A.C. 10:43-2 and 10:43-3.3.

(c) When a conclusion has been reached that an individual does or does not need a guardian, the matter shall then proceed in the same manner as delineated above under N.J.A.C. 10:43-4 and, except that the communication with the family or other party regarding their interest and ability to serve as guardian shall be the responsibility of the Bureau of Guardianship Services.

SUBCHAPTER 7. APPLICATION BY A PARTY OTHER THAN THE DIVISION FOR APPOINTMENT OF A GUARDIAN

10:43-7.1 Procedures

(a) As provided in N.J.S.A. 30:4-165.7, if a family member or other interested party initiates legal action for the appointment of a guardian, and if the functional service unit agrees that the individual is in need of a guardian:

1. The administrative head of the functional service unit shall provide upon request an affidavit attesting to the individual's need for a guardian.

2. The affidavit of a physician or licensed psychologist shall be arranged by the party filing the guardianship complaint. The standardized format developed by the Division for this affidavit may be made available for this purpose. According to availability of resources, the administrative head of the functional service unit may upon request and, at his or her discretion, direct that the affidavit be completed by a Division psychologist.

(b) If a family member or other interested party shall have filed legal action for the appointment of a guardian, and if the functional service unit does not agree that the individual is in need of a guardian:

1. The administrative head of the functional service unit shall complete and forward to the applicant for guardianship a copy of the statement signed by the administrative head of the functional service unit that the individual is not considered to be in need of a guardian.

2. The applicant for guardianship shall be informed of his or her opportunity to discuss the matter with appropriate staff of the functional service unit.

3. If the administrative head of the functional service unit ascertains that the guardianship action is nevertheless being pursued, he or she shall notify the Chief, Bureau of Guardianship Services. The Chief, Bureau of Guardianship Services, shall determine whether legal action should be initiated.

SUBCHAPTER 8. ADDRESSING SUITABILITY OF PROSPECTIVE GUARDIAN

10:43-8.1 Procedure for questioning prospective guardian suitability

(a) If the functional service unit or the Bureau of Guardianship Services, as applicable, is informed pursuant to N.J.A.C. 10:43-4.1(b)i or ii or any other method, that a family member or other interested party wishes to be appointed guardian, and conclusion is reached by the staff of the functional service unit that the prospective guardian may not be suitable:

1. The Chief, Bureau of Guardianship Services, shall be notified by applicable staff.

2. After consultation with the Chief, Bureau of Guardianship Services, the functional service unit staff may attempt to resolve the matter informally.

3. If attempts at informal resolution are unsuccessful, the administrative head of the functional service unit shall then communicate in writing with the person deemed unsuitable to be the individual's prospective guardian, conveying the Division's intention to recommend that an alternative guardian be appointed. This same correspondence shall clarify the recipient's right to contest the Division's position in a court hearing (see N.J.S.A. 30:4-165.13).

(b) If the functional service unit has some question about the suitability of a prospective guardian, this question shall be com-

municated in writing to the attorney appointed by the court to represent the alleged incompetent in accord with the provisions of N.J.S.A. 30:4-165.13. All attempts at informal resolution and their outcome shall be documented in the client record.

SUBCHAPTER 9. REVIEW OF GUARDIANSHIP STATUS

10:43-9.1 Procedure

As a part of the annual Individual Habilitation Plan process for each adult with a guardian or receiving guardianship services, the functional service unit shall review the continuing appropriateness of the individual's status with respect to guardianship. A recommendation for a change in guardianship status shall be supported by a clinical evaluation.

10:43-9.2 Individual receiving guardianship services without court appointment; staff review of guardianship

(a) If a determination is reached by the IHP review that the individual continues to require guardianship, this finding shall be noted in the individual's record and the Bureau of Guardianship Services informed within 30 days.

(b) If determination is reached by the IHP review that the individual is no longer in need of guardianship, this finding shall be communicated to the administrative head of the functional service unit. If the latter concurs with the finding, he or she shall sign a statement to that effect. The Bureau of Guardianship Services shall be notified and, if in agreement, written notification of this finding shall be provided to the client and to the client's family.

1. If all parties are in agreement, the Bureau of Guardianship Services shall terminate guardianship services immediately. This disposition shall be communicated to all parties within 30 days with an effective date of termination of guardianship services; or

2. If there is disagreement on the issue by any of the parties involved, the Division's appeal procedure shall be followed, in accordance with N.J.A.C. 10:48, to resolve the dispute.

10:43-9.3 Individual who has a court appointed guardian; staff review of guardianship

(a) If a determination is reached by the administrative head of the functional service unit that the individual continues to require a guardian, a notation to that effect shall be made in the individual's record.

(b) If a determination is made by the administrative head of the functional service unit that the individual's current functioning indicates he or she no longer needs a guardian or that the guardian should be changed:

1. This conclusion shall be communicated in writing within 30 days to the legal guardian and the individual.

2. If the legal guardian agrees with the finding, an attempt shall be made by the functional service unit to obtain a written statement of concurrence.

3. If the legal guardian disagrees with the Division's position, an effort shall be made by the functional service unit to resolve the matter informally. This attempt and the outcome shall be documented in the individual's confidential record.

(c) Whether the legal guardian has agreed or disagreed with the Division's position, the matter shall be referred to the Chief of the Bureau of Guardianship Services for referral to a court of competent jurisdiction. The Chief of the Bureau of Guardianship Services shall inform the administrative head of the functional service unit of the documentation required in each individual case.

10:43-9.4 Special review

Notwithstanding any other provisions of this subchapter, a special review of an individual's guardianship status by the IHP review team may be requested at any time by any interested party. If the administrative head of the functional service unit, or his or her designee determines that the request is appropriate, the special review shall be conducted within 30 days. The same potential disposition would be available as those delineated above under N.J.A.C. 10:43-9.2 and 9.3. Results of the special review shall be documented in the individual's confidential record.

CORRECTIONS

(a)

THE COMMISSIONER

Mail, Visits and Telephone Correspondence

Proposed Amendments: N.J.A.C. 10A:18-2.6, 2.19, 2.20 and 2.22

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

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

Proposal Number: PRN 1988-585.

Submit comments by December 21, 1988 to:

Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments modify N.J.A.C. 10A:18-2.6, 2.19, 2.20, and 2.22 to permit incoming correspondence to be delivered to an inmate when the sender's name and address are incomplete or do not appear on the outside of the incoming correspondence. The proposed amendments delete all references to destroying incoming correspondence and specify the circumstances under which incoming correspondence is marked "Refused" and returned unopened to the United States Post Office.

Social Impact

The proposed amendments permit inmates to receive incoming correspondence when the sender fails to place the sender's name and/or address on the outside of the incoming correspondence.

Economic Impact

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

Regulatory Flexibility Statement

The proposed amendments impact on inmates and the Department of Corrections and do not affect small businesses as defined in 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]).

10A:18-2.6 Inspection and identification of incoming correspondence

(a) (No change.)

(b) The sender's name and address and the inmate's name and number [shall] **should** appear legibly on the outside of all incoming correspondence.

(c) If the inmate's name [and] or number [do] **does** not appear on the outside of the incoming correspondence, [it] **the correspondence** shall be returned to the sender.

(d) **If the sender's name or address does not appear but the inmate's name and number appear on the outside of the incoming correspondence, the correspondence may be delivered to the inmate after the correspondence has been opened and inspected for contraband.**

(e) **If the inmate's name or number and the sender's name and address do not appear on the outside of the incoming correspondence, the correspondence shall be marked "Refused" and returned to the United States Post Office unopened.**

[(d)](f) If it is necessary to return correspondence to a sender and the return address is incomplete, the correspondence shall be [opened and examined to identify the sender so that the correspondence can be returned to the sender. If the sender cannot be identified, the correspondence shall be destroyed] **marked "Refused" and returned to the United States Post Office unopened.**

[(e)](g) Incoming correspondence shall be opened and inspected for contraband, but it shall not be read unless there is reason to believe that [it] **the correspondence** contains disapproved content [and

then only upon the prior authorization of the Superintendent or his or her designee]. **If there is reason to believe that the correspondence contains disapproved content, the correspondence shall be read only upon prior authorization of the Superintendent or his or her designee.**

[f](h) A confidential list of the **names of inmates whose incoming correspondence [which] is authorized to be read shall be established and maintained in the correctional facility's [investigative unit] Internal Affairs Unit or mail room, or wherever the confidentiality of the list can be maintained.**

10A:18-2.19 Forwarding correspondence to an inmate transferred to another correctional facility

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

(c) Any correspondence received after the three month period shall be returned to the sender. **If the sender cannot be identified, the correspondence shall be marked "Refused" and returned to the United States Post Office unopened.**

10A:18-2.20 Forwarding correspondence to an inmate released on parole or at expiration of maximum sentence

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

(e) Correspondence shall be forwarded for a maximum of three months from the date of the inmate's release. Correspondence received thereafter shall be returned to the sender. **If the sender cannot be identified, the correspondence shall be marked "Refused" and returned to the United States Post Office unopened.**

10A:18-2.22 Forwarding correspondence of an inmate who has escaped

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

(c) If the sender cannot be identified, the correspondence shall be [destroyed] **resealed and returned to the United States Post Office.**

INSURANCE

(a)

OFFICE OF THE COMMISSIONER

Notice of Extension of Open Hearing Record Medical Malpractice Reinsurance Recovery Fund Surcharge Public Hearing: Extension of Time for Filing Written Comment N.J.A.C. 11:18.

Take notice that the Department of Insurance hereby extends the period of time during which the record of the Medical Malpractice Reinsurance Recovery Fund public hearing, held on October 24, 1988 (see 20 N.J.R. 2010(a) and 2478(d)), will remain open for receipt of written comments, data, documentation or other material. The extension will be from Monday, October 31, 1988 through and including 5:00 P.M. Thursday, December 1, 1988.

All filings should be directed to:

Holly Bakke
Special Deputy Commissioner
Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

LABOR

(b)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees; Work in Confined Spaces

Proposed Amendment: N.J.A.C. 12:100-9.18

Authorized By: Charles Serraino, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1988-589.

Submit comments by December 21, 1988 to:

Alfred B. Vuocolo, Jr.
Chief Legal Officer
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

On September 19, 1988, adopted new rules became effective concerning work in confined spaces (see 20 N.J.R. 2391(a)). Upon reviewing the final adoption, the Department noticed a misstatement in the final paragraph of the subchapter. Thus, the Department now proposes to amend the incorrect language so that it reflects the true intent of the subchapter, that all contractors and their employees are informed of the applicable portions of the emergency action plan.

Social Impact

The proposed amendment clarifies the intent of the subchapter, which is to ensure that all contractors and their employees are informed of the applicable portions of the emergency action plan. As currently written, the language requires this information to be given only to contractors who are public employees.

Economic Impact

The proposed amendment will not have any economic impact on employers, employees or the Department, as the standards concerning means of egress are already applicable to affected parties. The proposed amendment merely eliminates an incorrect phrase, which as written erroneously limits the applicability of N.J.A.C. 12:100-4.2(a).

Regulatory Flexibility Statement

The proposed amendment will not impose any additional reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., that are not already required by other subchapters. Thus, a regulatory flexibility analysis is not required.

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

12:100-9.18 Contractors

(a) (No change.)

(b) An employer who retains the services of a contractor shall inform the contractor of the confined space program and other applicable safety rules of the facility. The employer shall inform the contractor of those portions of the emergency action plan, based on N.J.A.C. 12:100-4.2(a) Subpart E, Means of Egress, which are applicable to the employees of the contractor[s who are public employees].

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS OFFICE OF WEIGHTS AND MEASURES

Scales, Instruments and Devices; Weights and Measures

Proposed Redooption with Amendments: N.J.A.C. 13:47B

Authorized By: Thomas W. Kelly, State Superintendent, Office of Weights and Measures.

Authority: N.J.S.A. 51:1-61.

Proposal Number: PRN 1988-595.

Submit comments by December 21, 1988 to:
Thomas W. Kelly, State Superintendent
Office of Weights and Measures
187 West Hanover Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:47B expires on January 4, 1989. The Office of Weights and Measures has reviewed these rules and determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Office of Weights and Measures proposes to readopt these rules without change because these rules have functioned well in protecting New Jersey consumers from the use of false or malfunctioning weighing and measuring devices in commercial transactions.

A summary of each section in subchapters 1, 3 and 4 follows:

N.J.A.C. 13:47B-1.1 provides for standard test measures for gas station owners and operators and mandates a daily presale test of said persons' fuel pumps.

N.J.A.C. 13:47B-1.2 bans the use of counter tacks or other non-standard linear measures.

N.J.A.C. 13:47B-1.3 is reserved.

N.J.A.C. 13:47B-1.4 provides for standard measures for the sale of commodities by liquid measures and mandates certain marking requirements on these liquid measure containers.

N.J.A.C. 13:47B-1.5 provides that all new, modified or altered commercial weighing or measuring devices must be submitted to the State Superintendent of Weights and Measures for type approval and bans the use of non-type approved commercial weighing or measuring devices.

N.J.A.C. 13:47B-1.6 provides for direct customer access to the weighing, indicating or recording elements of commercial scales.

N.J.A.C. 13:47B-1.7 and 1.8 are reserved.

N.J.A.C. 13:47B-1.9 regulates the use of portable self-contained vehicle scales.

N.J.A.C. 13:47B-1.10 bans the use of household type scales for commercial transactions.

N.J.A.C. 13:47B-1.11, 1.12, and 1.13 are reserved.

N.J.A.C. 13:47B-1.14 limits the use of uncompensated spring scales to the sale of fruits and vegetables and provides for a use limitation marking for such scales.

N.J.A.C. 13:47B-1.15 is reserved.

N.J.A.C. 13:47B-1.16 provides that official inspection certificates be retained by the owner/operator of commercial weighing and measuring devices or on a vendor's vehicle, as the case may be; and mandates that these certificates of inspection are the official authority to use the officially inspected and tested weighing or measuring devices in commercial transactions.

N.J.A.C. 13:47B-1.17 sets forth the minimum height that hanging scales may be positioned to insure customer access and readability.

N.J.A.C. 13:47B-1.18 is reserved.

N.J.A.C. 13:47B-1.19 provides that converted, altered or modified gasoline dispensers previously type-approved by the State Superintendent will have that type approval rescinded. It also provides that notification of such alteration(s) be provided to all weights and measures officers.

N.J.A.C. 13:47B-1.20 adopts the National Bureau of Standards Handbook H-44 as the legal requirements for all weighing and measuring devices used for commercial and law enforcement purposes in the State

of New Jersey and reserves the State Superintendent's right to amend or supplement these requirements for cause.

N.J.A.C. 13:47B-1.21, 1.22, and 1.23 are reserved.

N.J.A.C. 13:47B-1.24 provides for a registry for security sealing devices applied to commercial weighing and measuring devices by licensed repairmen. This registry provides a means to trace faulty or fraudulent repairs and/or adjustments to commercial weighing or measuring devices through an identification system regulated by the State Superintendent. Subsection (g) is being amended to reflect that the licensing revocation or suspension hearing provided under N.J.S.A. 51:1-122 will be conducted in accordance with the Administrative Procedure Act and the Uniform Administrative Procedure Rules.

N.J.A.C. 13:47B-2 is reserved.

N.J.A.C. 13:47B-3.1 provides civil penalties for violation of or non-compliance with the provisions of the chapter.

N.J.A.C. 13:47B-4.1 sets forth the minimum training requirements for weights and measures officers prior to issuance of either a badge or credentials to that person by the State Superintendent.

Social Impact

The proposed redooption of this chapter will allow the Office of Weights and Measures to continue in full force and effect the beneficial consumer protection programs resulting from the original promulgation of the rules. Once readopted, the rules will continue to regulate the use of commercial weighing or measuring devices in New Jersey.

The public benefits which are derived is third party control of commercial weighing and measuring devices and the equitable transfer of commodities from buyer to seller within a regulated marketplace.

Economic Impact

Since the proposed redooption of the chapter would only continue the existing regulatory program, the Office of Weights and Measures foresees no additional economic impact on either businessman or consumer. Failure to readopt these rules would result in a loss of consumer confidence in the businessman and an unruly marketplace where neither buyer or seller would be afforded an opportunity to exchange goods on an equitable basis.

Regulatory Flexibility Statement

These rules establish field criteria for State and local weights and measures officials. Measuring devices used in business, regardless of whether that business is "large" or "small", are required to meet these regulatory criteria. As true and accurate measurement is essential in an equitable transfer of commodities, differing requirements based upon business size would undermine the consumer confidence the rules seek to promote. Such differentiative is, therefore, not provided.

Full text of the proposed redooption appears in the New Jersey Administrative Code at N.J.A.C. 13:47B.

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

13:47B-1.24 Registry for security sealing devices

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

(g) Any licensed repairman who shall issue a false certificate of inspection and test of a commercial weight or measure or weighing or measuring device or who shall delegate his or her authority or registry mark, to any person, shall be subject to the revocation or suspension of his or her license as provided in N.J.S.A. 51:1-122, **including 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.**

(h) (No change.)

(b)

DIVISION OF CRIMINAL JUSTICE

Office of the State Medical Examiner

Proposed Amendment: N.J.A.C. 13:49

Proposed New Rules: N.J.A.C. 13:49-1.6, 1.7, and 6.2

Authorized By: Robert Goode, M.D., State Medical Examiner.
Authority: N.J.S.A. 52:17B-78 et seq., specifically 52:17B-80.
Proposal Number: PRN 1988-590.

Submit comments by December 21, 1988 to:

Robert Goode, M.D., State Medical Examiner
Edwin H. Albano Institute of Forensic Science
325 Norfolk Street
Newark, New Jersey 07103

The agency proposal follows:

Summary

N.J.A.C. 13:49-1.1(a) specifies the situations in which postmortem examinations are mandatory. The proposed amendment to this subsection substitutes "autopsy" for "postmortem examination". This change reflects the more common use and understanding of the term "autopsy" by both the medical community and the public, and further reflects the specificity and broader inquiry connoted by the term "autopsy", which includes more than mere external examination of the body and may include extensive internal, microscopic, toxicologic, and other studies. This subsection is further amended to reflect and comport with proposed new N.J.A.C. 13:49-1.6, added in order to accommodate and resolve religious objections to autopsy.

N.J.A.C. 13:49-1.1(a)4 reflects the substitution of the term "autopsy" for "postmortem examination", and also modifies the present rule requiring autopsies to be performed on all deceased prison inmates. The proposed amendment transfers to the discretionary category certain autopsies in situations in which a prisoner was hospitalized and was being treated at the time of his or her death, and where the cause of death is otherwise readily ascertainable.

N.J.A.C. 13:49-1.2 reflects the substitution of the term "autopsy" for "postmortem examination", and is also amended to reflect the procedure for resolution of religious objections to the performance of an autopsy. The proposed amendment also transfers from the mandatory to the discretionary category certain autopsies of prisoners who were hospitalized and receiving treatment at the time of death and where the cause of death is otherwise readily ascertainable.

The proposed amendments to N.J.A.C. 13:49-1.3, 1.4 and 1.5 are for clarifying, technical purposes.

Proposed new N.J.A.C. 13:49-1.6 incorporates statutory requirements governing religious objections to autopsy (see N.J.S.A. 52:17B-88.1 et seq.). These procedures are designed to protect the rights of decedents without threatening the integrity of the autopsy, by requiring the medical examiner to postpone an autopsy for 48 hours or to seek a court order when, after determining the existence of a compelling public necessity for the procedure, he or she becomes aware of an objection to the procedure on religious grounds, or is otherwise aware that an autopsy would have been contrary to the decedent's religious beliefs. The delay created by these procedures will permit a proper party, for example, a member of the immediate family, an opportunity to contest the autopsy.

When appropriate, however, the medical examiner may make *ex parte* application to dispense with the 48-hour waiting period. In order to ensure that medically necessary autopsies are delayed only by legitimate objections, the objecting party must supplement any oral, unsworn objection with documentary evidence of the objection or with a sworn statement or affidavit, providing this information to the medical examiner, who must then evaluate the available facts, seek additional information, if necessary and appropriate, and then determine whether compelling public necessity requires the performance of a complete autopsy after consideration of all relevant evidence. This proposed new rule also details procedures used to record such a determination, and further prescribes standards for conducting the autopsy procedure in the least intrusive manner possible, as required by statute.

Proposed new N.J.A.C. 13:49-1.7 describes the investigative standards and procedures applicable to unidentified decedents. The rule clarifies the circumstances under which a decedent is to be considered unidentified and prescribes procedures for recordation, investigation, examination, and disposition. These standards promote uniform and efficient collection and transmittal of information throughout the State and follow nationally-recognized standards for identification.

N.J.A.C. 13:49-2.1 and 2.2 are amended to provide substitution of "autopsy" for "postmortem examination" and clarify the time frame in which samples and specimens are to be forwarded to the Office of the State Medical Examiner for determination of alcohol content.

The proposed amendment to N.J.A.C. 13:49-3.1 provides technical changes and details procedures to be followed when a person or agency other than those enumerated, including the Office of Public Defender and other governmental and private entities, seeks a copy of the autopsy report. This amendment clarifies that the appropriate time for disclosure of an autopsy report, in situations where the death has been referred to

the county prosecutor or Attorney General for continuing criminal investigation, is at the time that such material is provided pursuant to the established criminal discovery process. If, however, the county prosecutor or Attorney General deems it appropriate, he or she may disclose the report at an earlier time.

N.J.A.C. 13:49-3.2 is amended to allow fees charged for copies of records to be paid into the State treasury, in addition to the county treasury.

N.J.A.C. 13:49-5.1 is amended to clarify to whom the decedent's body may be released for burial. The rule is further amended to clarify that the medical examiner shall coordinate the removal of the body from the scene of death with the county prosecutor, and that the county medical examiner shall not refuse to inspect the death scene at the request of the State Medical Examiner, or the county prosecutor or his or her assistant. The amendment also provides additional technical clarification in the conduct of investigations.

N.J.A.C. 13:49-6.1, in addition to certain technical changes, is amended to clarify the procedure for the proper identification of decedents. The amendment provides that where a body is in recognizable condition, it may be identified by a relative or friend, that is, by a person who maintained close contact with the decedent before death. Another revision clarifies the requirement that a medical examiner must conduct a personal examination of the body prior to personally signing the death certificate.

Proposed new N.J.A.C. 13:49-6.2 requires a medical examiner who either determines or has reason to know that a decedent suffered from certain infectious diseases, including AIDS, to place a notice of such condition with the body and also notify the funeral director who takes charge of the body, on a form to be prescribed by the State Medical Examiner, of the specified condition.

N.J.A.C. 13:49-7.1 is amended to clarify that licensing as a physician in this State as well as the maintenance of recognized ability and good standing in the community are prerequisites for appointment to the office of county medical examiner. The amendment also specifies and expands the educational requirements to hold and maintain said position.

The amendment to N.J.A.C. 13:49-8.1 clarifies the proper procedures to be followed in situations in which a medical examiner or forensic pathologist fails to comply with the requirements of the State Medical Examiner Act and its concomitant administrative rules, specifying that the State Medical Examiner may declare him or her ineligible to perform the duties of that office, and further specifies that such medical examiners or forensic pathologists shall cease to perform their duties pending a hearing and final resolution. Other revisions are technical in nature.

Social Impact

These proposed amendments and new rules are expected to improve the quality of medical examiner death investigations; permit medical examiners to formulate more accurate opinions concerning deaths in which a compelling public necessity is found; assist county prosecutors in conducting more efficient and reliable criminal homicide investigations; improve the training and qualifications of individuals appointed to the position of county medical examiner; improve procedures for determining the identity of unidentified decedents; better balance and resolve the competing policy considerations of individual privacy as opposed to the need for disclosure of medical examiner reports and opinions to appropriate persons or agencies; and provide an appropriate mechanism to resolve religious objections to autopsies by families or friends of decedents.

Economic Impact

These proposed amendments and new rules are not expected to create any significant increases in the cost of providing medical examiner services to the public. Supplemental training requirements imposed on medical examiners by these amendments and rules will engender additional expenses to the State in conducting and providing new required training programs, but these expenses are expected to be minimal. The elimination of certain autopsies which were previously required to be performed on deceased prisoners might generate certain savings to the public. However, because the State and county medical examiners' offices are such small but highly specialized offices, their budgets ordinarily do not impact on the overall county and State budgets in any significant way.

Regulatory Flexibility Statement

The proposed amendments and new rules do not require a regulatory flexibility analysis, since they do not impose any requirements on small businesses. The amendments set forth standards and requirements applicable to the conducting of autopsies by State and county medical examiners.

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

CHAPTER 49
STATE MEDICAL EXAMINER

SUBCHAPTER 1. [POSTMORTEM EXAMINATIONS]
AUTOPSIES

13:49-1.1 Mandatory [postmortem examination] **autopsies**

(a) [Postmortem examinations] **In the absence of an objection based on the religious beliefs of the decedent, autopsies shall be performed in all cases of human death occurring in the following circumstances:**

1.-3. (No change.)

4. All deaths of inmates of jail, prison, or penitentiary[;] **and all prisoners and suspects who were in the process of being detained, arrested or transported by guards, police and law enforcement or court officers[;] unless the suspected cause of death is a known condition for which the inmate, prisoner or suspect is hospitalized and being treated at the time of death, and the medical examiner's investigation, review of hospital records, and examination of the decedent's body permit him or her to determine the cause of death beyond a reasonable doubt without an autopsy, and no other issues of public interest compel his or her conclusion that an autopsy is necessary.**

5. (No change.)

6. In all cases wherein the State Medical Examiner, the Attorney General, any assignment judge of the Superior Court, or the county prosecutor (of the county wherein the injury occurred or where the decedent expired) requests [a postmortem examination] **an autopsy.**

13:49-1.2 Discretionary [postmortem examination] **autopsies**

(a) [Postmortem examinations] **In the absence of an objection based on the religious beliefs of the decedent, autopsies may be performed when it appears in the discretion of the county medical examiner to be in the public interest to do so in all cases of human deaths occurring in the following circumstances:**

1. All cases of violent deaths which are apparently suicidal or accidental, including but not limited to deaths due to thermal, chemical, electrical or radiation injury, except as enumerated in [Section 1.1 (Mandatory postmortem examination) of this Chapter] **N.J.A.C. 13:49-1.1, Mandatory autopsies;**

2. (No change.)

3. All deaths of **suspects in police custody and inmates of a jail, penitentiary or prison who are hospitalized and being treated at the time of death and the medical examiner's investigation, review of hospital records and examination of decedent's body reveal an issue of public interest which compels his or her conclusion that an autopsy is necessary, and** [including all] deaths of inmates occurring in institutions maintained in whole or in part at the expense of the State or county [where] **when the inmate was not hospitalized therein for organic disease;**

4.-5. (No change.)

13:49-1.3 Jurisdiction between counties

(a) When the medical examiner of the county wherein the death occurred determines that the incident which is suspected of being the cause of death has occurred in a New Jersey county other than his or her own, he or she may transfer jurisdiction to that county examiner immediately for the continuance of the investigation. Any county medical examiner to whom jurisdiction is transferred pursuant to this section shall immediately take charge of the continuance of the investigation and shall perform any examinations, autopsies or other functions required by the State Medical Examiner Act.

(b) Whenever any county medical examiner office [shall have] **has** been notified of a death, that office shall take the name and address of the decedent, if known, the time of notification, time of death, time of onset of illness or injury if known, or time found, and the name and station of the person reporting the death.

1. He or she shall then determine jurisdiction, and either report the death properly to the medical examiner of the county wherein

the death occurred, if necessary; or retain jurisdiction and complete the investigation, if applicable; or transfer jurisdiction, if required.

(c) (No change.)

13:49-1.4 Armed forces aircraft victims

(a) Because of mandatory regulations of the United States Armed Services concerning [postmortem examinations] **autopsies** of military personnel killed in **military** aircraft accidents and the procedure for such examinations, it is desirable that [postmortem examinations] **autopsies** in such cases be performed where feasible by pathologists who are members of **or employed by** the armed services.

(b) The county medical examiner, or such other person designated or approved by the State Medical Examiner to perform [postmortem examinations] **autopsies**, is therefore authorized to allow transportation of bodies of armed forces personnel killed in **military** aircraft accidents in territory which is within [their] **the county's** jurisdiction to facilities designated by either the Surgeon General or other authorized member of the United States military services for such [postmortem examination] **autopsy.**

(c) The county medical examiner shall endeavor to obtain a copy of the report of the findings of such [postmortem examination] **autopsy** from the military officer in charge of same in order that a proper death certificate may be issued.

13:49-1.5 Medical examiner autopsies

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

(f) Microscopic examination shall be conducted **in the following circumstances:**

1. [in] **In** all cases of infant death[;];

2. [whenever] **Whenever** an autopsy including toxicological testing fails to disclose a cause of death[;];

3. [when] **When** the age of an injury requires further evaluation[;];

4. [whenever] **Whenever** indicated by the circumstances of the death[;]; and

5. [whenever] **Whenever** else it is deemed necessary at the discretion of the medical examiner.

(g) The slides **from microscopic examinations pursuant to (f) above** shall be retained permanently, properly labeled with medical examiner case number.

[(g)] (h) (No change in text.)

13:49-1.6 Objections to autopsy on religious grounds

(a) **When the medical examiner determines that an autopsy is a compelling public necessity, as defined by N.J.S.A. 52:17B-88.1a(1) through (4), but the circumstances of the death or the appearance or personal effects of the decedent indicate an obvious reason to believe that it would have been against the religious beliefs of the decedent to be autopsied, or a member of the decedent's immediate family, or, in the absence thereof, a friend of the deceased (as defined by N.J.S.A. 52:17B-88.1b), has objected to the autopsy, then the medical examiner shall proceed as follows:**

1. **If the medical examiner has obvious reason to believe that it is against the decedent's religious beliefs, and a member of the decedent's immediate family, or, in the absence thereof, a friend of the deceased, does not raise the religious objection, then the medical examiner shall request a judge of the Superior Court to appoint a representative to act on behalf of the decedent and shall postpone the autopsy for 48 hours.**

2. **If a member of the decedent's family, or, in the absence thereof, a friend of the deceased, objects because the procedure is contrary to the decedent's religious beliefs, the medical examiner shall postpone the autopsy for 48 hours.**

3. **After making the decision to postpone the autopsy, the medical examiner shall reevaluate all of the facts, seek any necessary additional information, and examine the body and perform any examinations that do not invade the body, including, but not limited to, external examinations, photography, X-rays, laser examination, computerized tomography, and magnetic resonance.**

4. **At the conclusion of any procedures set forth in (a)3 above, the medical examiner shall reconsider whether the autopsy is a compelling public necessity, as defined by N.J.S.A. 52:17B-88.1a(1) through (4). If the medical examiner concludes that the autopsy constitutes a com-**

elling public necessity, he or she shall notify the objecting party, shall advise the party of the party's right to institute an action in the Superior Court to determine the propriety of the autopsy, and, if any court proceeding is pending, shall notify the Superior Court judge that the autopsy constitutes a compelling public necessity. If at the end of this evaluation the medical examiner concludes that the autopsy is not a compelling public necessity, pursuant to N.J.S.A. 52:17B-88.1a(1) through (4), and that there are sufficient facts to complete a competent death certificate and to satisfy the forensic needs of the investigation, he or she shall issue a death certificate and may release the body for burial.

5. Notwithstanding the provisions of this subsection, the medical examiner may make *ex parte* application to the judge to dispense with the waiting period if the medical examiner determines that any compelling necessity exists, as defined by N.J.S.A. 52:17B-88.1a(1), (2), (3) or (4), and concludes that the delay may prejudice the accuracy of the autopsy, and makes a good faith effort to notify any court-appointed representative or objecting family member or friend.

(b) The waiting period of 48 hours shall begin upon earliest notice by the objecting party or court-appointed party that an objection to autopsy exists based on the religious beliefs of the decedent, even prior to the transfer of documentary evidence to that effect. The progress of the proceedings shall be recorded on forms provided by the State Medical Examiner Office for that purpose. If at the end of 48 hours the objecting party has not provided to the medical examiner documentary evidence or a sworn statement or affidavit that the autopsy is contrary to the decedent's religious beliefs, or the objecting party has not instituted an action in the Superior Court to determine the propriety of the autopsy, or the court grants permission to conduct the autopsy, the medical examiner may proceed with the autopsy.

(c) In any other instance of compelling public necessity, pursuant to N.J.S.A. 52:17B-88.4, the medical examiner may apply to a Superior Court judge for permission to perform an autopsy. The medical examiner shall institute such action by an order to show cause, on notice to the member of decedent's immediate family, or, in the absence thereof, a friend, who objects to the autopsy as contrary to the decedent's religious beliefs. If no family member or friend objects, but there is an obvious reason to believe that the procedure is contrary to the decedent's religious beliefs, the medical examiner shall request the judge to appoint a representative to act on the decedent's behalf. The medical examiner may then seek an order authorizing the autopsy by filing an order to show cause, on notice to the court-appointed representative, if any.

(d) No final decision regarding whether a compelling public necessity exists, pursuant to N.J.S.A. 52:17B-88.1a, shall be made by the medical examiner unless a court proceeding is instituted or the objecting party provides documentary evidence or a sworn statement of the objection, including, but not limited to, an affidavit stating that an autopsy is contrary to the decedent's religious beliefs.

(e) If the court prohibits an autopsy that the medical examiner determined was a compelling public necessity, and the medical examiner cannot establish a cause of death by other means, the cause of death shall be certified as "Cause of death undetermined", and notations shall be made in the appropriate place on the death certificate (currently Part II, section 27) that the autopsy was prohibited by court order, and shall include the name of the judge and the date of the court order.

(f) If the court grants permission to perform the autopsy, the autopsy shall be performed immediately and shall be the least intrusive procedure that is consistent with the medical examiner's finding that a compelling public necessity exists. Under such circumstances, a complete external examination, any non-invasive procedures described in (a)3 above, and an internal examination of the body viscera *in situ* and the collection of minimal samples for toxicologic and microscopic testing shall be deemed acceptable procedure. Permission may be granted by the medical examiner to a designated representative of the family to attend the autopsy and perform any religious rites that do not conflict with the compelling public necessity.

13:49-1.7 Medical examiner's investigative standards for unidentified decedents

(a) A decedent is to be regarded as "unidentified" when, at the time of initial discovery and investigation:

1. The body is visually recognizable but there is no circumstantial indication of the decedent's full name either by personal effects on the body or by personal acquaintance of those present at the scene of discovery; or

2. The body is not visually recognizable due to alteration of physical features and there is no obvious reason to suspect a tentative identity for the decedent.

(b) The unidentified decedent is to be identified initially on the medical examiner records under the alias, "(AKA) UNIDENTIFIED (race) (sex)". The name John Doe, Jane Doe, or assigned nicknames are not to be used to identify official records of unidentified decedents.

(c) A physician medical examiner shall personally visit the scene of discovery of partly or completely skeletonized unidentified bodies, as defined in (a)2 above, and shall assist in the recognition, isolation, documentation, and recovery of items that may help to determine the cause and manner of death, and the identity of the decedent, and shall direct the search for and removal of additional body parts.

(d) A detailed examination of the body, clothing, and personal effects shall be performed and shall be fully and completely documented.

(e) No unidentified body shall be released or referred for burial until the following have been performed:

1. Post mortem x-rays of skull, chest, abdomen; pelvis, and extremities are made;

2. High quality post mortem photographs of available facial and other identifying features are made;

3. A complete autopsy is performed;

4. All available post mortem fingerprints are recorded;

5. Dental examination, charting, and radiographs are completed;

6. A form entitled, "UNIDENTIFIED PERSON REPORT", is filed with National Crime Information Center (NCIC); and,

7. A minimum of 30 days has elapsed after entry of unidentified person report into the NCIC.

(f) In any event, an NCIC entry shall be made no later than three days following completion of the autopsy incorporating all features of identification, including estimations of age, time of death, height, sex, race, any known medical conditions discovered by autopsy, and a full description of clothing and personal effects. The Unidentified Person File Data Collection Entry Guide may be used as an aid.

(g) No unidentified dead body shall be cremated.

(h) All skeletonized human remains reportable to the medical examiner shall be examined or physically reviewed at the State Medical Examiner Office prior to burial. In the case of non-skeletal unrecognizable bodies and recognizable but unidentified decedents, the medical examiner's report shall be reviewed by the State Medical Examiner's Office (SMEO) prior to burial.

(i) Any medical examiner who is unfamiliar with the processing of unidentified remains shall call upon the State Medical Examiner Office for assistance.

SUBCHAPTER 2. SPECIMEN COLLECTION

13:49-2.1 Collection of specimens for alcohol determination

(a) All county medical examiners, or the person designated by the State Medical Examiner or county medical examiner to conduct investigations and perform [postmortem examinations] autopsies in a county, shall collect suitable specimens for determination of the alcohol content of the blood and brain tissue in all cases of violent death or death under unusual circumstances where death has occurred within 48 hours of the incident suspected of being the proximate cause of death.

(b) Said samples shall be properly labeled, refrigerated, and submitted [promptly to the laboratory] within two weeks to the New Jersey State Medical Examiner Toxicology Laboratory for the required analysis.

13:49-2.2 Collection of specimens for narcotic or dangerous drug determination

(a) All county medical examiners, or the person designated by the State Medical Examiner or county medical examiner to conduct the investigations and perform [postmortem examinations] autopsies in a county, shall collect suitable specimens for determination of the drug content of the body fluids and tissues in all cases of violent deaths or deaths under unusual circumstances where death has oc-

curred within 48 hours of the incident suspected of being the proximate cause of death.

(b) Said samples shall be properly labeled, refrigerated, and submitted [to the laboratory] **within two weeks to the New Jersey State Medical Examiner Toxicology Laboratory** for the required analysis.

13:49-2.3 (No change.)

SUBCHAPTER 3. REPORTS AND RECORDS

13:49-3.1 Release of autopsy findings

(a) Copies of the official report of an autopsy performed by the State Medical Examiner, any county medical examiner or other persons designated by the State Medical Examiner to perform [postmortem examinations] **autopsies** shall not be released except to the next of kin of the decedent, the [deceased's] **decedent's** legal representative, law enforcement agencies, or attorneys or insurance companies representing parties in litigation arising from the incident that caused the decedent's death[, the Office of the Public Defender,] . [or any] **Any other person or agency [having the right to the report under the laws of this State.] with a proper interest in such records may receive a copy of the report after the authorized medical examiner, in consultation with the State Medical Examiner, determines the propriety of the party's interest. If the medical examiner and State Medical Examiner reach different conclusions as to the propriety of the release of the autopsy report, the medical examiner shall abide by the final determination of the State Medical Examiner.**

(b) **Notwithstanding (a) above, if the death has been referred to the county prosecutor or Attorney General for continuing criminal investigation, only the county prosecutor or Attorney General may disclose the autopsy findings. When a party seeks the autopsy report in connection with pending or future criminal litigation, the county prosecutor or Attorney General shall provide the report through the discovery process, in accordance with court rules, or before discovery is undertaken if the prosecutor or Attorney General deems it appropriate.**

[(b)] (c) Notwithstanding [the] (a) above, the autopsy report may be furnished to any person upon written authority of the decedent's next of kin or legal representative, unless the death has been referred to the county prosecutor or Attorney General for continuing criminal investigation.

13:49-3.2 Fees for copies of records

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

(c) All fees collected by the [county] medical examiner shall be paid into the county or State treasury on or before the 10th day of each month.

13:49-3.3 (No change.)

SUBCHAPTER 4. MORGUES AND LABORATORIES

13:49-4.1 (No change.)

SUBCHAPTER 5. INVESTIGATIONS

13:49-5.1 Death investigations: conduct

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

(c) The duty medical examiner shall take complete charge of every body whose death is reported to the office, and shall not release it **to the next of kin or authorized representative** for burial or cremation until sufficient information has been accumulated, proper specimens and evidence have been collected as needed, and appropriate examinations have been conducted to establish the cause and manner of death and the identity of the decedent.

1. In cases of suspected criminal homicide, the medical examiner shall coordinate **with the county prosecutor or Attorney General** the removal of the body [with the county prosecutor] **from the scene of death** and shall not order the removal of the body from said scene until such coordination has been accomplished.

(d) (No change.)

(e) The office of the county medical examiner shall be required to inspect the scene of homicidal, unusual or suspicious deaths, decomposed bodies or unwitnessed and unexpected deaths which are reportable to the office, when the body still lies there [dead].

1. The physician medical examiner shall not refuse to [do so] **inspect the scene** when requested by the State Medical Examiner or by the county prosecutor or assistant prosecutor.

i.-iv. (No change.)

(f) It shall be the responsibility of the medical examiner to obtain information from first hand witnesses whenever possible, taking the names of these sources and recording the information in a report filed with the office.

1. (No change.)

2. Subsequent additional information shall be recorded **with date and time** and filed with the case record.

3. (No change.)

(g)-(h) (No change.)

SUBCHAPTER 6. DEATH CERTIFICATION

13:49-6.1 Medical examiner certification and amendments

(a) It shall be the responsibility of the medical examiner to require the proper identification of the decedent for the death certificate. This may be accomplished by visual recognition of **the decedent's body by next of kin or friend when [if] the decedent's body is in recognizable condition [or]. "Friend" means any person who, prior to the decedent's death, maintained close contact with the decedent sufficient to render that person knowledgeable with the decedent's activities, and who presents a sworn statement or affidavit stating the facts and circumstances upon which the claim that the person is a friend is based. Identification may also be made by a combination of scientific means, circumstances, and personal effects if the deceased is not in recognizable condition.**

(b) It shall be the responsibility of the medical examiner who issues a death certificate to conduct personally a complete physical examination of at least the external surfaces of the unclothed dead body and to make a full and complete description of this examination and to [be] file[d] it with the Office of the State Medical Examiner. The clothing and personal effects shall be viewed and an inventory prepared, and a receipt shall be obtained upon release from the medical examiner's custody.

(c) The medical examiner shall personally sign the death certificate **after examining the body**, as required by law, and shall be responsible for the truthfulness and accuracy of the medical information herein contained.

(d) (No change.)

13:49-6.2 Notification of death from contagious, infectious, or communicable diseases

(a) **When a medical examiner who makes the actual determination and pronouncement of death determines or has actual knowledge that the deceased person was infected with human immunodeficiency virus (HIV) or hepatitis B virus or that the deceased person suffered from acquired immune deficiency syndrome (AIDS), AIDS related complex (ARC) or any contagious, infectious, or communicable disease as may be determined by the Commissioner of the Department of Health, he or she shall immediately place with the remains written notification of the condition and shall provide written notification to the funeral director who is responsible for the handling and disposition of the body.**

(b) **Notification provided funeral directors pursuant to this section shall be made on a form prescribed or designated by the State Medical Examiner and shall contain a portion which provides for acknowledgment of such notification by the funeral director or his or her authorized representative.**

SUBCHAPTER 7. ELIGIBILITY STANDARDS

13:49-7.1 Eligibility standards of county medical examiner, deputy or assistant county medical examiner, and forensic pathologist

(a) Any person appointed or reappointed to the position of county medical examiner pursuant to N.J.S.A. 52:17B-83, deputy or assistant county medical examiner pursuant to N.J.S.A. 52:17B-84, or forensic pathologist authorized by the State Medical Examiner pursuant to N.J.S.A. 52:17B-88, on or after the effective date of this subchapter **shall be a physician fully licensed in the State of New Jersey of recognized ability and good standing in his or her community, and shall**

have met [within one year of the effective date of this subchapter] the following standards relating to prior training and experience:

1. Successful completion of a minimum of 30 hours of basic education in death investigation conducted or sponsored by the Armed Forces Institute of Pathology, the American Society of Clinical Pathologists, the College of American Pathologists, the National Association of Medical Examiners, or an institution of higher education or other agency approved by the State Medical Examiner.

i. In addition, all persons appointed or reappointed to the position of county medical examiner pursuant to N.J.S.A. 52:17B-83 on or after the effective date of this subchapter who are to serve in the capacity of "County Medical Examiner [Department Head]", in addition to the above educational requirement, shall have completed [within one year of appointment] a minimum of 20 hours of advanced education in death investigation conducted or sponsored by the Armed Forces Institute of Pathology, the American Society of Clinical Pathologists, the College of American Pathologists, the National Association of Medical Examiners, or an institution of higher education or other agency approved by the State Medical Examiner.

2. Successful completion of a basic course conducted by the Office of the State Medical Examiner on the laws, rules and regulations relating to the New Jersey Medical Examiner System.

3. (No change.)

[(b) Any person in office as a county medical examiner, deputy or assistant county medical examiner, or designated Forensic pathologist, on the effective date of this subchapter shall continue in office until the expiration of the term for which he was appointed, if any. If there is no term, the individual shall comply with all of the requirements of this section within one year of the effective date of this subchapter.]

[(c)] (b) Any person appointed to or holding the position of county medical examiner, deputy or assistant county medical examiner[,] or designated forensic pathologist on or after the effective date of [this subchapter] **these amendments** shall enroll in and complete a program of continuing medical education in the forensic sciences for a minimum of 20 hours of American Medical Association Category I credit, every two years while holding said position.

(c) Any person appointed to or holding the position of county medical examiner, deputy or assistant county medical examiner or designated forensic pathologist on or after the effective date of this subsection shall enroll in and complete a supplemental program conducted by the Office of the State Medical Examiner on amendments to the laws, rules and regulations relating to the New Jersey Medical Examiner System or for any other necessary training. The State Medical Examiner shall conduct such courses when necessary.

(d) Only those county medical examiners, deputy or assistant county medical examiners or forensic pathologists authorized by the State Medical Examiner as competent to perform [medicolegal] autopsies pursuant to N.J.S.A. 52:17B-88, shall perform such autopsies. Such person shall be qualified in one of the following categories:

1. Pathologists who shall have completed a two-year program of supervised training in anatomical pathology appropriate for eligibility to the American Board of Pathology are qualified to conduct death investigations and to perform postmortem examinations and autopsies under the direct guidance and supervision of a senior designated pathologist who has already been qualified to practice in an unsupervised capacity in the New Jersey Medical Examiner System, pursuant to Section 13:49-7.1(d)2, and under the general supervision of the State Medical Examiner as provided by law.

2. Pathologists who are qualified as anatomic pathologists and who have at least one year of formal supervised training or two years supervised experience in forensic pathology suitable for eligibility towards certification by the Specialty Board in Forensic Pathology may be certified to conduct death investigations and to perform postmortem examinations and autopsies under the general supervision of the State Medical Examiner as provided by law [, and without additional restrictions].

3. (No change.)

(e) Nothing in this section is intended to prevent a qualified person from serving both as a county medical examiner or deputy or assis-

tant county medical examiner and simultaneously as a designated pathologist authorized by the State Medical Examiner to perform [medicolegal] autopsies pursuant to N.J.S.A. 52:17B-88.

SUBCHAPTER 8. ENFORCEMENT

13:49-8.1 Enforcement of eligibility standards

(a) If any person appointed to or holding the position of, or being a candidate for appointment to, the position of county medical examiner, deputy or assistant county medical examiner or forensic pathologist, authorized by the State Medical Examiner to perform [medicolegal] autopsies, pursuant to N.J.S.A. 52:17B-88, does not meet any of the eligibility standards set forth in [subchapter] N.J.A.C. 13:49-7, the State Medical Examiner shall declare him or her ineligible to perform the [applicable category of professional] duties prescribed in [subchapter] N.J.A.C. 13:49-7 and the person shall cease to perform those duties pending a hearing and final resolution. If any such person fails to comply with any other provisions of the State Medical Examiner Act or administrative rules pertaining thereto, the State Medical Examiner shall declare him or her ineligible to perform the duties prescribed in N.J.A.C. 13:49-7 and the person shall cease to perform those duties pending a hearing and final resolution.

(b) If any county medical examiner, deputy or assistant county medical examiner or forensic pathologist authorized by the State Medical Examiner to perform [medicolegal] autopsies, pursuant to N.J.S.A. 52:17B-88, having met the eligibility standards set forth in [subchapter] N.J.A.C. 13:49-7, has been demonstrated professionally incompetent to perform the duties of his or her office, the State Medical Examiner shall declare him ineligible to perform the professional duties of his or her office, or shall restrict the level of professional duties in accordance with the demonstrated level of professional competence of the examiner.

(c) (No change.)

(d) Any proceeding brought under this subchapter shall provide the [officer] county medical examiner, deputy or assistant county medical examiner or designated forensic pathologist with notice of the charges against him or her and afford him or her an opportunity to be heard, which shall conform [to] with the provisions applicable to contested cases set forth in the Administrative Procedure Act, P.L. 1968, c.410 ([C.]N.J.S.A. 52:14B-1 et seq.); P.L. 1978, c.67 ([C.] N.J.S.A. 52:14-1 et seq.), and N.J.A.C. 1:1.

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(a)

DIVISION OF ENERGY PLANNING AND CONSERVATION

Notice of Public Hearing
Redoption with Amendments of Certificate of Need for Electric Facilities
Rules N.J.A.C. 14A:14.

Take Notice that the Division of Energy Planning and Conservation will conduct a quasi-legislative nonadversarial public hearing on the re-adoption of its administrative rules for the Certificate of Need for Electric Facilities on Tuesday, November 29, 1988, at 10:00 A.M. in Room 341, State House Annex, West State Street, Trenton, New Jersey 08625. The proposed re-adoption with amendments may be found in the September 6, 1988 New Jersey Register at 20 N.J.R. 2188(b).

Persons desiring to testify should indicate their intention in writing to:
Edward J. Linky, Esq.
Chief Regulatory Officer
Division of Energy Planning and Conservation
101 Commerce Street
Newark, New Jersey 07102

The hearing record will remain open until Monday, December 5, 1988 to receive original testimony or supplements to testimony submitted at the public hearing. The Department, after the close of the hearing record, will proceed to adopt the rule proposal in accord with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

TRANSPORTATION**(a)****TRANSPORTATION OPERATIONS****Speed Limits****Route U.S. 206 in Sussex County****Proposed Amendment: N.J.A.C. 16:28-1.72**

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1988-579.

Submit comments by December 21, 1988 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment will establish a school speed limit zone along Route U.S. 206 in Montaque Township, Sussex County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon a request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a school speed limit zone along Route U.S. 206 within the Montaque Elementary School zone in Montaque Township, Sussex County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.72 based upon the request from the local government and the traffic investigation.

Social Impact

The proposed amendment will establish a school speed limit zone along Route U.S. 206 in Montaque Township, Sussex County, within the Montaque Elementary School zone for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel, and equipment requirements. The Department will bear the costs for the installation of speed limit zones signs. Motorists who violate the amended rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., a regulatory flexibility analysis is not required. The amendment primarily affects the motoring public.

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

16:28-1.72 Route U.S. 206 including U.S. 206 and U.S. 130

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

(e) The rate of speed designated for the certain parts of State highway Route U.S. 206 described in this subsection shall be established and adopted as the maximum legal rate of speed [thereat]:

1. For both directions of traffic:

i.-xii. (No change.)

xiii. 40 mph to the northerly end of Route U.S. 206 in Montaque Township, Sussex County, except a 25 mph School Speed Limit within the Montaque Elementary School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours;

xiv. (No change.)

(b)**TRANSPORTATION OPERATIONS****Restricted Parking and Stopping****Routes N.J. 4 in Bergen County, N.J. 21 in Passaic County, U.S. 30 in Camden County, and N.J. 71 in Monmouth County****Proposed Amendments: N.J.A.C. 16:28A-1.4, 1.11, 1.21 and 1.38**

Authorized By: Hazel Frank Gluck, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-139 and 39:4-199.

Proposal Number: PRN 1988-544.

Submit comments by December 21, 1988 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 4 in the Borough of Paramus, Bergen County; U.S. 30 in Waterford Township, Camden County; and N.J. 71 in the Borough of Spring Lake Heights, Monmouth County, and "no stopping or standing" zone on service roads along Route N.J. 21 in the City of Clifton, Passaic County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on or off loading of passengers at established bus stops. Additionally, "no parking" zones have been changed to "no stopping or standing" zones along Routes N.J. 4, N.J. 21 and U.S. 30.

Based upon requests from local governments, in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no parking bus stop" zones along Route N.J. 4 in Bergen County; U.S. 30 in Camden County; and N.J. 71 in Monmouth County, and "no stopping or standing" zone along Route N.J. 21 in Passaic County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.4, 1.11, 1.21 and 1.38, based upon the requests from local governments and the traffic investigations. The text of N.J.A.C. 16:28A-1.38 proposed amendment was added to the rule by an adoption (R.1988 d.539) published elsewhere in this issue of the New Jersey Register.

Social Impact

The proposed amendments will establish "no parking bus stop" zones along Routes N.J. 4 in the Borough of Paramus, Bergen County; U.S. 30 in Waterford Township, Camden County; and N.J. 71 in the Borough of Spring Lakes Heights, Monmouth County, and "no stopping or standing" zone on service roads along Route N.J. 21 in the City of Clifton, Passaic County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on or off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28A-1.4 Route 4

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

1.-4. (No change.)

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

1.-6. (No change.)

7. Along the eastbound (southerly) side in the Borough of Paramus, Bergen County:

i. (No change.)

8. Along the westbound (northerly) side in the Borough of Paramus, Bergen County:

i. (No change.)

ii. Mid-block bus stops:

(1) Forest Avenue and Main Street (at cut-out in front of "The Mall at IV."), beginning 1360 feet east of the easterly curb line of Route 4 exit ramp to Forest Avenue and extending 260 feet easterly therefrom;

(2) Spring Valley Road and Fairview Avenue (at cut-out in front of C.P.I.), beginning 582 feet west of the westerly curb line of the Spring Valley Road Entrance Ramp to State highway Route 4 and extending 190 feet westerly therefrom.

9.-18. (No change.)

(c) (No change.)

16:28A-1.11 Route 21 including Old Route 21 (Passaic Place)

(a) The certain parts of State highway Route 21 described in this subsection shall be designated and established as ["no parking"] "no stopping or standing" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1. (No change.)

2. No stopping or standing in the City of Clifton, Passaic County, along both sides, for the entire length within the corporate limits of the City of Clifton, including all ramps, service roads, and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

3. (No change.)

16:28A-1.21 Route U.S. 30

(a) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as ["no parking"] "no stopping or standing" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-6. (No change.)

(b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-22. (No change.)

23. Along the eastbound (southerly) side in Waterford Township, Camden County:

i. Near side bus stops:

(1) Pinehurst Drive—Beginning at the westerly curb line of Pinehurst Drive and extending 120 feet westerly therefrom.

(2) Cooper Folly Road—Beginning at the westerly curb line of Cooper Folly Road and extending 105 feet westerly therefrom.

(3) Norris Street—Beginning at the westerly prolonged curb line of Norris Street and extending 135 feet westerly therefrom.

ii. Far side bus stop: Atco Avenue—Beginning at the easterly curb line of Atco Avenue and extending 137 feet easterly therefrom.

24. Along the westbound (northerly) side in Waterford Township, Camden County:

i. Far side bus stops:

(1) Norris Street—Beginning at the westerly curb line of Norris Street and extending 100 feet westerly therefrom.

(2) Bartram Avenue—Beginning at the westerly curb line of Bartram Avenue and extending 120 feet westerly therefrom.

ii. Near side bus stops:

(1) Atco Avenue—Beginning at the easterly curb line of Atco Avenue and extending 120 feet easterly therefrom.

(2) Pinehurst Drive—Beginning at the easterly prolonged curb line of Pinehurst Drive and extending 105 feet easterly therefrom.

16:28A-1.38 Route 71

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

(d) The certain parts of State highway Route 71 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)

3. Along the southbound (westerly) side in the Borough of Spring Lake Heights, Monmouth County:

i. Mid-block bus stop: Between Synder Avenue and 2nd Street—Beginning 268 feet north of the northerly curb line of Snyder Avenue and extending 135 feet northerly therefrom.

ii. Near side bus stop: Wall Road—Beginning at the southerly curb line of Wall Road and extending 105 feet southerly therefrom.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

**State Health Benefits Program
Employer Incentive for Non-Enrollment
Proposed New Rule: N.J.A.C. 17:9-1.8**

Authorized By: Gaius Mount, Acting Secretary, State Health Benefits Commission.

Authority: N.J.S.A. 52:14-17.27 et seq.

Proposal Number: PRN 1988-587.

Submit comments by December 21, 1988 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
20 West Front St.
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to clearly set forth the current policy of the Division of Pensions that a public employer, participating in the State Health Benefits Program, cannot offer financial or other economic enticements to its employees not to enroll in the State Health Benefits Program if they are otherwise eligible to do so.

Social Impact

The proposed rule may affect current and future employees of public employers participating in the State Health Benefits Program, as employer enticement not to enroll in the Program is no longer permitted.

Economic Impact

The proposed rule prevents selections against the Program by preserving the experience ratings of the groups of employees participating in the Program. If individual employers could selectively exclude some of their employees, the result could lead to a significant financial problem for the Program leading to increased costs for all Program participants.

Regulatory Flexibility Statement

Since the rules of the Division of Pensions only impact upon public employers and/or employees, this proposed rule will not have any adverse effect upon small businesses or private industry in general.

Full text of the proposal follows.

17:9-1.8 Employer incentives for non-enrollment prohibited

An employer shall not offer a financial enticement of cash or anything else of value to an employee who elects not to enroll or to terminate enrollment in the State Health Benefits Program.

OTHER AGENCIES

(a)

NEW JERSEY HIGHWAY AUTHORITY

Garden State Parkway

Pre-Employment Screening

Proposed New Rule: N.J.A.C. 19:8-10.1

Authorized By: New Jersey Highway Authority,
George P. Zilocchi, Executive Director.

Authority: N.J.S.A. 27:12B-5(j) and (s), 27:12B-18, and
27:12B-24.

Proposal Number: PRN 1988-584.

Submit comments by December 21, 1988 to:
George P. Zilocchi, Executive Director
New Jersey Highway Authority
Garden State Parkway
Woodbridge, New Jersey 07095

The agency proposal follows:

Summary

The proposed new rule would permit access to Criminal History Record Information (CHRI) for employment purposes pursuant to N.J.A.C. 13:59-1.8. The new rule provides that applicants for employment with the New Jersey Highway Authority shall be of good moral character and shall not have been convicted of any crime, the nature of which would indicate that employment would not be in the best interests of New Jersey Highway Authority patrons and the general public. The rule introduces appropriate flexibility in that it allows the Director of Personnel of the New Jersey Highway Authority to consider Criminal History Record Information in addition to other background information when making recommendations for employment. The rule concludes that a record of conviction of a crime in and of itself shall not be sufficient to deny employment.

Social Impact

The proposed new rule recognizes the fact that persons seeking employment with the New Jersey Highway Authority may or may not have a criminal history background which adversely impacts the public interest were they employed by the Authority. It also recognizes that certain criminal history background, depending on the nature of the job to be filled and other relevant factors, should not in every case prevent employment. The new rule strives for an effective balance of the competing social interests—on the one hand, the interest of the public in denying employment to persons where such employment may act against the public interest, while permitting employment of persons who, while they may have been convicted of a crime in the past, the nature of the crime may be such that social interest would be fostered in allowing their employment at certain occupations with the New Jersey Highway Authority.

Economic Impact

The proposed new rule, which permits public employment of persons who otherwise, owing to a criminal history background, might not be able to obtain employment, may reduce other social costs related with unemployment of persons similarly situated.

Regulatory Flexibility Statement

The proposed new rule does not require a regulatory flexibility analysis since it does not impose any requirements 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.

SUBCHAPTER 10. PRE-EMPLOYMENT SCREENING

19:8-10.1 Pre-employment screening

(a) Applicants for employment with the New Jersey Highway Authority shall be of good moral character and shall not have been convicted of any crime, the nature of which would indicate that employment would not be in the best interests of Authority patrons and the general public.

(b) The New Jersey Highway Authority shall submit requests for any Criminal History Record Information (CHRI) from the New Jersey State Police regarding any applicant for employment with the New Jersey Highway Authority.

(c) The Director of Personnel or his or her designee shall consider any Criminal History Record Information in connection with other background information when making recommendations for employment. A record of a conviction of a crime in and of itself shall not be sufficient to deny employment.

(b)

NEW JERSEY TURNPIKE AUTHORITY

Control of Traffic on the New Jersey Turnpike
Speed Limits

Proposed Amendment: N.J.A.C. 19:9-1.2

Authorized By: New Jersey Turnpike Authority,
Frank B. Holman, Executive Director.

Authority: N.J.S.A. 27:23-1 et seq., specifically 27:23-29; 39:3-20.
Proposal Number: PRN 1988-586.

Submit comments by December 21, 1988 to:
Frank B. Holman, Executive Director
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, New Jersey 08903

The agency proposal follows:

Summary

The proposed amendment is required to comply with existing motor vehicle statutes controlling the speed of constructor vehicles. Under the current Turnpike rule, constructor vehicles could not travel at speeds in excess of 40 miles per hour when fully loaded. However, because of improved vehicle design, constructor vehicles can now travel at the speed limit of 55 miles per hour. This vehicle change has been noted by the New Jersey Legislature when it amended N.J.S.A. 39:3-20 of the Motor Vehicle Code, removing the former speed limitation except when the vehicle exceeds certain load limits. For these reasons, the New Jersey Turnpike Authority proposes to delete paragraph N.J.A.C. 19:9-1.2(e) in its entirety and recodify subsection (f) as (e).

Social Impact

The proposed amendment makes the Authority's rule on constructor vehicle speeds consistent with N.J.S.A. 39:3-20 of the New Jersey Motor Vehicle Code.

Economic Impact

No economic impact is expected on citizens of the State of New Jersey as the proposed merely conforms with the existing New Jersey Motor Vehicle Code.

Regulatory Flexibility Statement

The proposed amendment imposes no recordkeeping, bookkeeping or other compliance requirements on small businesses. Therefore, a regulatory flexibility analysis pursuant to N.J.S.A. 52:14B-16 et seq. is not required.

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

19:9-1.2 Speed limits

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

[(e) No vehicle bearing "constructor" registration plates as described in N.J.S.A. 39:3-20 shall be operated at a speed greater than 40 miles per hour when fully loaded. Such vehicle when carrying a gross weight of vehicle and load 50 per cent or less shall not be operated along the turnpike at a speed greater than 50 miles per hour.]

[(f)](e) (No change in text.)

RULE ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Pesticide Control Code

Adopted Amendments: N.J.A.C. 7:30.

Proposed: March 21, 1988 at 20 N.J.R. 579(a).

Adopted: October 14, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: October 17, 1988 as R.1988 d.538, with **substantive and technical changes** not requiring additional public notice and comment see (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-9 and 13:1F-1 et seq., particularly 13:1F-4.

DEP Docket Number: 010-88-02.

Effective Date: November 21, 1988.

Expiration Date: December 4, 1992.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection (the Department) is adopting amendments to N.J.A.C. 7:30, "Pesticide Control Code", which controls the sale, purchase, transportation, storage, use, and application of pesticides which cause or may tend to cause adverse effects on man or the environment. The adopted amendments clarify some sections of the rules and address new areas identified as requiring more comprehensive and efficient regulation.

Public hearings on the proposed amendments were held at the Randolph Municipal Building in Randolph Township, New Jersey, on April 21, 1988 and at the Vineland Municipal Building in Vineland, New Jersey, on April 25, 1988. The comment period closed on April 27, 1988. The Department received comments from 56 people at the hearings and written comments from 102 people.

GENERAL COMMENTS N.J.A.C. 7:30

COMMENT: Forty-eight of the commenters presenting oral or written testimony expressed general support for the proposed pesticide amendments.

COMMENT: Six of the commenters presenting oral or written testimony expressed general opposition to the proposed pesticide amendments.

RESPONSE: The Department thanks these persons for their input into the rule promulgation process. It is noted that although these positions were either generally for or against the amendments, all of the commenters had comments regarding specific sections of the amendments. These comments will be responded to in the specific section referred to by the commenters.

COMMENT: The Department did not make hearings available to working persons.

COMMENT: Applicators were not aware of the public hearing.

RESPONSE: Hearings were held in the evenings on both dates to accommodate working persons after being advertised in 21 newspapers, the New Jersey Register and notification to certain agencies. In addition, written comments were accepted during the 37 day comment period to accommodate all interested persons.

N.J.A.C. 7:30-1.2

COMMENT: The definition of an insect is incorrect. There should be separate definitions for insects and arachnids.

RESPONSE: The current definition is meant to be all encompassing and meets the needs of the Department. It also corresponds to the definition in the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et seq. (FIFRA).

N.J.A.C. 7:30-1.3(b)

COMMENT: Charging a separate fee for each supplemental label may deter small manufacturers from registering their products.

RESPONSE: This provision has been in effect since 1971. The addition of "brand or trade names" was meant for clarification. There has been no evidence that this rule has had any negative impact on the registering of products in the State. Product registrations have steadily increased.

COMMENT: The proposed amendment to register all brand and trade names is too broad and should be limited to brands that are subject to the registration requirements of the New Jersey Pesticide Control Code. The commenter suggested inserting "subject to the registration requirements of Subchapter 1" after the phrase pesticide product.

RESPONSE: The wording in the amendment refers to pesticide products. As all pesticide products come under the jurisdiction of the Pesticide Control Code for registration purposes, it would be unnecessary to include a further reference.

COMMENT: Fee increase should be limited or there should be a total fee cap of \$500.00 so that small manufacturers will not be at a disadvantage.

RESPONSE: A fee total cap of \$500.00 for product registrations would favor the large manufacturers which have many products. The Department is studying a plan to base registration charges in part on volume of sales in the State. This may be proposed in the future.

N.J.A.C. 7:30-1.3(c)

COMMENT: Warnings should be placed on pesticide labels for those that have not been adequately tested.

RESPONSE: The U.S. Environmental Protection Agency (EPA), through the Federal Insecticide, Fungicide and Rodenticide Act, has jurisdiction over labeling information (See 7 U.S.C. §136v (b)). States are preempted from changing labels mandated by FIFRA. The EPA is currently reviewing pesticides and requiring additional testing as part of the re-registration process.

COMMENT: Manufacturers of all pesticides should be required to provide manuals, clean up procedures, and sampling methodologies for their products upon registration, as is being required for termiticides.

RESPONSE: The Department is requiring manufacturers of termiticides to provide clean up procedures and sampling methodologies because of past problems with these materials. In the future, this may also be required of other pesticides if frequent problems occur.

N.J.A.C. 7:30-1.3(g)

COMMENT: Pesticide manufacturers should pay a surcharge for registration if their products are contaminating ground water. Additional revenues should go to initiate a ground water monitoring program.

RESPONSE: At the present time, there is insufficient data to determine the extent and source of ground water contamination due to pesticides. The Department and the U.S. Geological Survey are in the process of conducting ground water surveys in New Jersey. The EPA and the states are developing a pesticide groundwater strategy to prevent contamination and mitigate any problems which have occurred. As more data becomes available, the Department will address this issue.

COMMENT: Two commenters supported registration fee increases provided fees are used for increased enforcement.

COMMENT: A commenter supported registration fee increases provided that part of increase is set aside to develop alternatives to pesticides and educate the public on the alternatives.

RESPONSE: The fee increases will be used to support a number of programs including increased enforcement, applicator training, research, and environmental monitoring.

COMMENT: The proposed increase of the registration fee to \$80.00 will cause a hardship to small manufacturers. Fee increases for products may cause a hardship for agriculture by discouraging continuation of some needed products with small but important uses. The increased cost of the registration cannot be passed on to the consumer. There should be a cap of \$500.00 for total registration fee per company.

RESPONSE: The increase in fees to \$80.00 per product is comparable with fees charged by other states. The increased fee could be passed on to the user which would result in an inconsequential cost per unit of product. Inter-regional Project No. 4 sponsored by the United States Department of Agriculture, the New Jersey Department of Agriculture, and the Rutgers Cooperative Extension will aid in securing the needed minor-use products necessary for agriculture use by providing the research needed to establish tolerances to encourage manufacturers to produce these minor use products.

N.J.A.C. 7:30-1.5(a)

COMMENT: One commenter stated that N.J.A.C. 7:30-1.5(a) requires information relative to experimental use permits, which is difficult to provide at the time a permit application is submitted to the State. The Department should add after "shall" in subsection (a) the phrase "in a timely manner and as the information becomes available".

RESPONSE: The Department has determined that certain information will not be available early in the growing season. In light of this determination, information concerning the location, total acreage treated, and the amount of experimental pesticide that will be used has been transferred to N.J.A.C. 7:30-1.5(a)5 and is required to be submitted as this information becomes available. The names, addresses and telephone numbers of co-operators and other information required by this subsection is necessary at the time of application in order for the Department to be able to monitor the experimental use program and arrange for sample collection if required. This information will continue to be required at the time of permit application.

N.J.A.C. 7:30-1.5(m)

COMMENT: Additions to the Federal label may not be legally permissible.

RESPONSE: For the reason stated in the comment, the Department did not purpose additions to the Federal label.

N.J.A.C. 7:30-1.6(a)

COMMENT: The registration for a pesticide should be revoked if it contains misleading statements on the label such as "EPA approved", "completely safe" etc. Grounds for revocation or suspension should include misrepresentation in advertising and claims to customers.

RESPONSE: The EPA reviews label information and approves pesticide product labels. Statements such as these and misrepresentation in advertising will be referred to the EPA for its action. FIFRA preempts state action on label changes. If a product label is deemed totally inadequate, the Department currently has the authority to suspend the pesticide's registration.

N.J.A.C. 7:30-2.1

COMMENT: Definition of "aquatic site". Two commenters desired a clearer definition in regards to standing water. Clarify the definition so that it can be used to distinguish between temporary, permanent or transient bodies of water especially in regards to mosquito control. Does aquatic site include tidal areas at low tide?

RESPONSE: A revised definition has been developed which will address the above concerns. It reads as follows: "Aquatic site" means those areas inundated or saturated by water at a magnitude, duration and frequency sufficient to support the growth of hydrophytes, except that those specific areas where hydrophytes are being grown as an agricultural crop shall not be considered to be aquatic sites. (Cranberry bogs are not aquatic sites but their supporting irrigation ditches or canals may be).

COMMENT: Definition of "acceptable release rate". Two commenters wanted acceptable release rate reduced to 4.0 micrograms per square centimeter per day on tributyltin (TBT), to correspond to proposed Federal standards. The Department should also address the initial and short term TBT release rates as proposed by the EPA.

RESPONSE: The Department has adopted the acceptable release rate of 4.0 micrograms per square centimeter on tributyltin (TBT). Since the Department's original proposal, the Federal proposal was signed into law at 4.0 micrograms per square centimeter. The Department will also comply with all other EPA requirements.

COMMENT: The rules on tributyltin (TBT) should be based on acceptable release rates. Research shows there is no difference between copolymer and free association formulations.

RESPONSE: The Department concurs and will base the requirement solely on the acceptable release rate. To reflect this, N.J.A.C. 7:30-1.3(c)6 and 2.3(a)5i have been modified accordingly.

N.J.A.C. 7:30-2.2

COMMENT: Chlordane should be removed from the restricted use pesticide list and placed on the banned list.

RESPONSE: The Department enforces the list of suspended and cancelled pesticides which is compiled and maintained by the EPA. Under an agreement between the EPA and the manufacturers of chlordane, the pesticide is currently suspended, pending the result of additional testing. Chlordane will remain on the restricted use list until a final decision is reached on re-registration by the EPA.

N.J.A.C. 7:30-2.3(a)

COMMENT: The pesticide Sevin should be added to the restricted use or prohibited pesticide list.

RESPONSE: After extensive testing, there is insufficient data at present to warrant placing Sevin (carbaryl) on the list of restricted use pesticides. If additional information becomes available, this will be evaluated for possible future action.

N.J.A.C. 7:30-2.3(a)1

COMMENT: One commenter expressed confusion over the provision to exclude private citizens from needing certification.

RESPONSE: The existing language in this paragraph to which additions were proposed was originally intended to cross reference the exemptions from the commercial applicator certification requirements for certain products set forth in N.J.A.C. 7:30-6.2(a). The Department agrees that this cross reference may lead to unnecessary confusion and has eliminated the duplicative language.

N.J.A.C. 7:30-2.3(a)5i

COMMENT: Why is CAS Number 26628-22-8 listed as sodium azide and azide? It should only be sodium azide.

RESPONSE: Azide is a brand name for the pesticide whose common chemical name is sodium azide. Both are listed to make the restricted use list more readily usable.

COMMENT: CAS Number 76-87-9 listed as triphenyltin hydroxide (concentrations above 10%) should read (concentration above 10%).

RESPONSE: A review of products containing triphenyltin hydroxide indicates more than one product with a concentration over 10%. Therefore the language will remain as proposed.

COMMENT: TBT should be on the restricted use list.

RESPONSE: As proposed and adopted, all concentrations and formulations of TBT are on the restricted use pesticide list.

COMMENT: Tributyltin should be placed on the restricted use pesticide list to be used only by certified applicators. Ban TBT boosters.

RESPONSE: The adopted rule restricts the use of TBT to certified applicators in all formulations including boosters.

N.J.A.C. 7:30-2.3(a)5ii

COMMENT: Sodium chlorate should be restricted only above a concentration of 2.3 percent since it is essentially a homeowner product below that percentage.

RESPONSE: After an extensive review of the products containing sodium chlorate and available information on the pesticide, it has been decided to only restrict products with a concentration above seven percent of sodium chlorate. The Department agrees that products containing low concentrations of sodium chlorate are homeowner products which are not very hazardous. Based on a computer search of all products registered in New Jersey that contain sodium chlorate, the Department has determined that products containing seven percent or less of sodium chlorate are homeowner products, with a low hazard, and thus will restrict products containing sodium chlorate only at concentrations greater than seven percent. Sodium chlorate has been a restricted-use pesticide since 1974. The intent at that time was to restrict those pesticides not used by homeowners. These pesticides normally contain a high percentage of active ingredient and thus have a high potential for contamination. The Department never intended to restrict products normally used by a homeowner, which are of low concentration and low hazard.

COMMENT: Two commenters agreed with the Department placing the proposed concentrations of the herbicide 2,4-D on the restricted use list.

COMMENT: One commenter agreed with placing 2,4-D on the restricted use pesticide list but disagreed with limiting the restriction to concentrations over 20 percent. All concentrations should be restricted.

RESPONSE: The Department has determined after careful evaluation by the Pesticide Review Committee that health effects are most likely to occur among handlers and applicators who are using the high concentrations of 2,4-D. The low concentrations sold to homeowners, generally below 20 percent, are not expected to pose a health risk. If additional information indicates otherwise, the Department will readdress the issue.

COMMENT: Restriction of the herbicide 2,4-D over 20 percent concentration will deprive 75 percent of the commenter's customers of this pesticide.

RESPONSE: The Department's review of the products containing 2,4-D prior to this proposal indicated that products with concentrations over 20 percent were commercial type products, which would only be sold to persons who would normally require certification. Therefore, this restriction should not affect the majority of these users, who would be required to be certified anyway.

COMMENT: The Department should review EPA's press release of March 15, 1988 before making a final decision on restricting 2,4-D.

COMMENT: A commenter questioned placing 2,4-D on the restricted use list since the EPA is not doing so. The Department should provide justification.

COMMENT: A commenter stated the concerns over 2,4-D are blown out of proportion. Restrictions are not necessary.

COMMENT: Two commenters stated that there is no basis for placing 2,4-D on the restricted use list, because it is not a proven carcinogen.

RESPONSE: The decision to place commercial formulations (concentrations over 20 percent) of 2,4-D on the restricted use list and require appropriate protective clothing was based on a recommendation of the Pesticide Review Committee. Although the EPA has decided for the present not to continue with the special review on 2,4-D, the Pesticide Review Committee continues to recommend the restrictions. The Committee is composed of health and environmental experts. Their recommendations are based on epidemiologic data from studies on rats and mice implying an association between 2,4-D used by farmers and various types of cancers. The Department agrees with the conclusions of the Pesticide Review Committee and has placed 2,4-D (concentrations over 20 percent) on the restricted use pesticide list.

N.J.A.C. 7:30-2.3(a)5iii

COMMENT: One commenter objected to diazinon (CAS Number 333-41-5) being classified as a restricted use pesticide. Adequacy of labeling eliminates the need for such restriction.

RESPONSE: The pesticide diazinon (concentrations over 25 percent) has been classified as a restricted use pesticide since 1974 in New Jersey. Additional restrictions concerning use on turf areas over three acres or smaller areas which are frequented by water fowl are a response to a large number of bird kills on treated areas in recent years even when label directions were followed. For additional comments on new restrictions, see the comments on N.J.A.C. 7:30-10.3(o).

N.J.A.C. 7:30-2.4(c)

COMMENT: Remove pesticides with residual effects from sale to homeowners.

RESPONSE: Persistence in the environment is one criterion currently being used to classify restricted use pesticides along with a number of other criteria. Where persistence is a substantial problem, the pesticide will be reviewed for inclusion as a restricted use pesticide.

COMMENT: Add immunotoxicity as a criteria for inclusion on the restricted or prohibited pesticide list.

RESPONSE: The Department will study this for inclusion in future rulemakings.

N.J.A.C. 7:30-3 and 4

COMMENT: Department stores, home garden centers and hardware stores should be regulated. They sell the same materials that applicators must be accountable for.

RESPONSE: Sales outlets that sell general use pesticides to the general public are not licensed but are appropriately regulated by the Department. They may be cited for violations such as improper storage or disposal or for producing a significant risk of harm, injury or damage.

N.J.A.C. 7:30-3.1

COMMENT: There is no definition for "private pesticide applicator" in subchapter 3.

RESPONSE: The Department will include this definition as suggested to clarify its meaning when used in this subchapter. The definition used will be that previously found in Subchapters 5, 6, 7, 8, 9, and 10.

N.J.A.C. 7:30-4.1

COMMENT: There is no definition for "private pesticide applicator" in subchapter four.

RESPONSE: This definition will be added to the definition section as explained in the above response.

N.J.A.C. 7:30-4.2(c)

COMMENT: Must salesmen who work out of their homes register as a pesticide dealer business? If so, the definition in this section should be tightened up.

RESPONSE: Under certain conditions, a salesman who works out of his or her home, selling restricted use pesticides, must register as a pesticide dealer business. For instance, if he or she stores a supply of unsold pesticides and maintains records of sales of these pesticides, his or her home would be considered a pesticide dealer business. The Department has not had any problems with this definition. If problems do occur, this will be reviewed.

N.J.A.C. 7:30-4.2(d)

COMMENT: Increased costs to dealers because of increased registration fees will impact on farmers. Farmers cannot pass on costs to consumers.

RESPONSE: The increase in registration fees for dealers, when spread out among the sales of restricted use pesticides, will add an insignificant cost for each sale. Therefore, the increase should not impact farmers significantly.

N.J.A.C. 7:30-4.5

COMMENT: Make the distributor of pesticides liable for selling to unlicensed applicators and businesses.

RESPONSE: This is being addressed in these amendments to the rules. Licensed dealers and dealer businesses would be responsible under N.J.A.C. 7:30-4.5 if they sold pesticides to unlicensed applicators or businesses, who they knew should be licensed.

COMMENT: Remove "they know" from the proposed rule, and place responsibility on the dealer to find out if the person is required to be registered.

RESPONSE: The Department prefers that there be some indication that the dealer had reason to believe that the purchaser was required to be licensed, but will not require the dealer to investigate if no violation is apparent.

N.J.A.C. 7:30-5.3

COMMENT: One commenter had concerns over the competency of the operator licensing program and recommends the passing of a State-approved competency test by operators or alternatively not allowing operators to apply restricted use pesticides.

RESPONSE: At the present time, the Department believes there is no justification for changing the current operator program. The Department is in the process of studying returns from questionnaires mailed to a large number of licensed operators, to determine if proper training is being provided. Complaints involving misuses have not shown an unusually high percentage of operators being at fault. The Department is developing an enforcement computer data base to determine trends. If additional information shows severe problems involving operators, the Department will address this issue. The Department is requiring that a licensed applicator be present during fumigations as is currently required with termite control due to the potentially hazardous applications (see N.J.A.C. 7:30-10.3(n)). The Department will address other areas including operators as problems become apparent.

N.J.A.C. 7:30-6.1

COMMENT: The Department should tighten the requirements for "under supervision" by including a requirement for spot checks by the responsible applicator.

COMMENT: A commenter opposed the present "under supervision" language, and recommended on-site supervision be required.

RESPONSE: The rules presently require that the responsible applicator be available when needed when not physically present. In addition, termite control applications require a certified applicator be present during the duration of the application and the Department is requiring the same for fumigations. As an incentive for proper training and supervision, the Department holds the certified applicator responsible for the actions of the persons he supervises. The Department believes these provisions are sufficient to assure adequate supervision.

N.J.A.C. 7:30-6.2(a)

COMMENT: Certification should be required for all persons who apply pesticides.

RESPONSE: The Department has determined that the current Certified Applicator and Operator programs complement each other and are working well. The Department is studying the Operator program at the present time and will make modifications as necessary. The Department does require a certified applicator to be present during termite control applications and is mandating this requirement for fumigations under the current amendments. Applications by homeowners have not been a problem to this point.

N.J.A.C. 7:30-6.2(b)

COMMENT: One commenter did not agree with the use of the word "vicariously" in N.J.A.C. 7:30-6.2(b).

RESPONSE: This subsection has been reworded to clarify that it was not intended to cover all actions of anyone working under the supervision of the applicator; only those actions which further the interests of the applicator.

N.J.A.C. 7:30-6.3(a)3iii

COMMENT: The term "interior landscaping" should be defined.

RESPONSE: The Department believes the description in the text is sufficient to describe the pest control maintenance of plants inside structures such as office buildings, malls, hotels, etc.

N.J.A.C. 7:30-6.4(b)

COMMENT: Four commenters stated that the category examinations were too easy and should be upgraded.

RESPONSE: New Jersey's certification program is reviewed on a continual basis and the exams are revised periodically. New questions are

added frequently. In 1985, the passing grades for all exams were raised from 70 percent to 75 percent and another adjustment upwards to 80 percent will occur in 1989. Failure rates for the exams indicate they are not "easy". During the past year, 37 percent of those who took the Turf and Ornamental exams and 30 percent of the Termite examinees failed. The aim of the certification program is to assure a certain minimum level of competency. The Department believes that the current program is accomplishing this goal.

N.J.A.C. 7:30-6.7

COMMENT: Awarding of certification credits should be tightened up. Persons are awarded credits for attending a meeting for only a few minutes. Re-certification should be based on minimum test results. Require additional credits per category.

RESPONSE: The Department makes every effort to insure re-certification credits are awarded only to those persons who attend the entire session. Credits have been withheld in cases where there have been abuses such as arriving late or leaving meetings before they were finished. Attending training sessions is viewed as a positive learning experience compared to simply taking exams. The Department believes the present number of required credits is sufficient.

N.J.A.C. 7:30-6.7(b)

COMMENT: The language of N.J.A.C. 7:30-6.7(b) on recertification of offenders suggests little or no deterrence to repeated pesticide misuse.

RESPONSE: This is only one of the tools to provide an incentive for compliance with the rules. In addition to this, there are fines, suspensions, and license revocations which can be applied.

N.J.A.C. 7:30-7.2(a)

COMMENT: Greater effort should be made to track down unlicensed businesses and stronger penalties cited, corresponding to liability insurance licensed businesses pay.

RESPONSE: In the past year, approximately 40 percent of the investigations performed involved unlicensed businesses. Leads supplied by the public and the licensed business community provide many of these complaints. Penalties can range as high as \$3000, plus additional payment for each year that it can be proven the business was unlicensed. Additional funding resources will be channeled into enforcement inspection efforts.

COMMENT: One commenter was confused concerning the exclusions from business registration for use of antimicrobial agents, wood preservatives and antifouling paints which are not restricted use pesticides.

RESPONSE: Persons who apply only the above pesticides, provided they are classified general use pesticides, are exempted from the requirement to become certified. This exemption is set forth in N.J.A.C. 7:30-6.2(a)5 and 6. The Department never intended to require certification or require business registration for use of the above pesticides.

N.J.A.C. 7:30-7.2(b)

COMMENT: Fee increases for businesses, applicators, and operators are exorbitant. Additional monies should come from other areas of the regulated community or the increase should be implemented more gradually.

RESPONSE: The fees have not been increased since 1983 during which time inflation and costs have steadily increased. The Department determined there are additional areas that require research and need funding. Even with the increased fee schedule, the fees will still be in line with those charged by neighboring states.

N.J.A.C. 7:30-7.2(d)

COMMENT: A commenter recommended that a minimum of two years' experience as an applicator be required before someone can open a business.

RESPONSE: This recommendation has considerable merit and will be studied for future rulemaking.

N.J.A.C. 7:30-7.3(a)

COMMENT: Three persons commented on the required diagram describing termiticide treatment and questioned what is meant by "nearby" wells and streams. The witnesses suggested that only those within 25 feet of the application site which could have potential for contamination be required. One commenter suggested that "nearby" be replaced by "within 25 feet of treatment site or known water systems further away which have significant potential for being contaminated".

RESPONSE: The Department has eliminated the term "nearby" from the subsection, but does not want to limit this requirement to any specific distance and will require it to include any wells, streams or bodies of water which could be affected, depending on actual conditions at the application site. In order to make the intent clear, N.J.A.C. 7:30-6.8(a) and N.J.A.C. 7:30-7.3(a) have been modified.

COMMENT: The actual target site should be added to the required records in N.J.A.C. 7:30-6.8(a) and N.J.A.C. 7:30-7.3(a).

RESPONSE: This is a valid comment and the Department is including the target site in N.J.A.C. 7:30-6.8(a)8 and 7.3(a)8.

N.J.A.C. 7:30-7.3(c)

COMMENT: Application records should be maintained for 15 years for termiticide applications and five years for other types. If the product is a carcinogen or other health effects show in laboratory tests, then the records should be kept for a minimum of 30 years.

RESPONSE: It would be extremely difficult and impractical to maintain records for those periods of time and would place a severe burden on the pest control industry. The proposal for maintaining termiticide records for five years and other records for three years is a more reasonable requirement. Enforcement problems typically occur within these time frames. Pesticides which are suspected carcinogens or produce other harmful effects in humans are carefully scrutinized in the regulatory review process.

N.J.A.C. 7:30-7.3(d)

COMMENT: The public should have access to pesticide application records required to be kept by the pesticide applicator business.

RESPONSE: There are provisions in place in N.J.A.C. 7:30-6.8(c) and 7.3(c) whereby, in emergencies, the application records must be made available to medical personnel. In addition, pursuant to N.J.A.C. 7:30-6 and 7, a customer is entitled to the record of application upon written request to the applicator. The records can also be made available to complainants in misuse investigations and to other individuals, if justified, through the Department. These provisions, along with the new notification requirements, should provide sufficient information on pesticide use.

N.J.A.C. 7:30-7.4(a)

COMMENT: Liability Insurance is not available to arborists and golf courses.

COMMENT: Required insurance is not available; therefore, it should not be mandated.

COMMENT: Having difficulty obtaining required insurance, cost is prohibitive. Only available from one insurance company.

COMMENT: Difficult to obtain liability pollution insurance, be careful in imposing insurance requirements.

RESPONSE: Information indicates that more companies are making liability insurance available in New Jersey which may help reduce the costs. The Department believes that insurance availability will not be a problem. Should this become a concern in the future, it will be addressed at that time.

COMMENT: Required insurance for commercial businesses of \$300/500,000 will put small businesses out of business. They are unable to get more than \$100/300,000 coverage.

COMMENT: Liability limits seem excessive.

RESPONSE: The minimum amount of coverage required has not been increased. The combined single limit of \$300,000 is equivalent to the previous minimum of \$100,000/300,000.

COMMENT: The Department should recommend to the Department of Insurance that the coverage required be made available to all New Jersey pesticide applicator businesses.

COMMENT: The Department should consult with the New Jersey Insurance Commissioner on availability of insurance and costs. Require the Insurance Commissioner to revert all (past, present, future) pest control liability policies to "occurrence" basis.

COMMENT: The Department should mandate "occurrence" policies only versus "claims made".

RESPONSE: The Department cannot regulate the insurance industry since that is the responsibility of the Insurance Commissioner. The Department did petition the Insurance Commissioner to require all companies, which insure the pest control industry, to offer chemical pollution coverage and he has required this. The Department also requested that "occurrence" policies be offered but the Insurance Commissioner has not responded to this issue.

N.J.A.C. 7:30-7.5

COMMENT: The requirement to have licensed operators should be in subchapters 6 and 8.

RESPONSE: In subchapters 6 and 8, the Department is already requiring operator training and licensing (see N.J.A.C. 7:30-6.11 and 7:30-8.10).

N.J.A.C. 7:30-7.7

COMMENT: A commenter strongly protests liability of businesses for misapplications of employees. May be unconstitutional.

COMMENT: This proposal implies double jeopardy.

ADOPTIONS

COMMENT: A commenter questioned employer responsibility for employee violations. Appears to be an open invitation to disgruntled employees. Would prefer a stiffer penalty against the employee rather than put the employer at risk.

RESPONSE: The Department does have the legal authority to penalize employers for the actions of their employees while the employees are carrying out the functions of the business. However, this does not mean that the employer would be responsible for actions of their employees outside their scope of work. Certainly the employer would not be responsible for criminal actions of disgruntled employees if it can be proven these actions were performed against the direct wishes or orders of the employer. To clarify the intent of this section, new wording has been developed for N.J.A.C. 7:30-6.2 and 7.7 and a new definition added to N.J.A.C. 7:30-7.1.

COMMENT: In order to reflect that businesses may not always be held responsible, change proposal to read "Business may be responsible for employee actions" instead of "shall be responsible".

RESPONSE: The Department has developed new wording for this section. In the new wording "shall" is appropriate. Employers are responsible for actions of their employees in the scope of their employment. N.J.A.C. 7:30-9

COMMENT: The Department should support non-pesticide control of pests and require the applicator to provide alternatives to pesticide use for the customer, including information regarding risk, effectiveness, and costs of alternatives.

COMMENT: One commenter supports rules to limit pesticide use as far as possible.

COMMENT: There is a great need for alternatives to pesticides.

RESPONSE: The Department supports the concept of reduced pesticide use or eliminating pesticide use where possible. An integrated pest management approach, which encourages alternative measures and monitoring of pest populations before pesticides are used, will result in reduced pesticide use. This approach is strongly supported by the Department. The use of biological and mechanical methods of pest control are also supported. These approaches are stressed in certification manuals and exams in addition to recertification training sessions for applicators.

COMMENT: Adequate need should be established before allowing indiscriminate spraying.

COMMENT: Government agencies should study alternatives to pesticides before conducting spraying programs and should be required to maintain and submit to the Department information on pesticide applications, including citizen complaints and a pest management plan for the upcoming year to justify why alternative methods cannot be used.

COMMENT: State agencies should study alternatives to pesticides, require gypsy moth permits, based on egg mass counts, to prevent duplicative applications, and develop criteria to determine when mosquito spraying is necessary.

RESPONSE: The Department agrees with this concept. The Department will be studying this extensively and will possibly propose rules along this line in the future. Commercial applicators doing areawide spraying and State agencies such as the Department of Transportation, Mosquito Control Commission and the Department of Agriculture, in their gypsy moth suppression program, use large amounts of pesticides. By implementing programs such as integrated pest management or alternatives to pesticides, considerable reductions in pesticide use may be realized. Development of criteria prior to spraying has been implemented by many professional government agencies and also commercial businesses.

COMMENT: The Department should establish formal policies and procedures for better communications with the Department of Health in order that health effects of pesticides and pesticide incidents can be better logged and reviewed.

RESPONSE: The Department has been working with the Department of Health on this matter and has developed a flow chart to expedite communications between the departments on health related matters.

COMMENT: The Department should encourage bio-technology research to improve plant defenses rather than increase plants pesticide tolerance.

RESPONSE: The Department agrees with this concept since it would reduce the use of pesticides and tries to encourage such research.

COMMENT: Educate school nurses to recognize pesticide type symptoms.

RESPONSE: The Department agrees and supports this concept but, due to limited resources, will have to leave the implementation to the individual school districts.

ENVIRONMENTAL PROTECTION

N.J.A.C. 7:30-9.1

COMMENT: Three commenters suggested the definition for "significant risk" be changed to read "capable of being perceived or recognized based on available scientific information on the pesticide".

COMMENT: In the definition of "significant risk of harm, injury or damage", one commenter strongly recommended that some scientific criteria be introduced as an objective basis for evaluation, to avoid value judgments.

COMMENT: One commenter suggested that "perceived" be removed from the definition of "significant risk of harm, injury or damage".

RESPONSE: The definition, which has been in subchapter 1 since 1982, is all-inclusive, includes scientific information as a criterion, and applies the information to the specific site and pesticides being utilized. The Department definition is appropriate as it stands.

COMMENT: Two commenters suggested that "harm or injury" be separated from "damage" in the definition of "significant risk of harm, injury or damage" to avoid unwarranted litigation.

RESPONSE: The Department believes "significant risk of harm, injury or damage" is appropriate terminology to cover a class of violations. The Department does include in citations a description of the violation.

N.J.A.C. 7:30-9.2

COMMENT: Permits should be required for areawide gypsy moth spraying.

RESPONSE: This was not included in these amendments but is under study by the Department. It is being considered for a possible future proposal.

N.J.A.C. 7:30-9.3(a)

COMMENT: Aquatic applications should be accounted for. The Department should require posting of signs indicating pesticide application at lakes for a minimum of three days after the application.

RESPONSE: Posting requirements for aquatic applications are contained in the aquatic use permit. A condition of an aquatic use permit will require posting if there are any water use restrictions on the label for the pesticide used. Label directions may require posting for up to 12 months for some pesticides under some circumstances, depending on water usage.

COMMENT: One commenter supports the requirement for the submission of a report addressing the effectiveness and environmental effects of aquatic applications.

RESPONSE: This requirement has been in effect since 1982 and helps the Department determine the efficacy and environmental effects of treatments. The Department uses the reports in determining future permit conditions.

N.J.A.C. 7:30-9.4

COMMENT: Present language in the rules referring to pesticide storage should be deleted and substituted by reference to the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III and the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.

RESPONSE: SARA, Title III does not currently apply to all pesticide storage situations. The New Jersey Community and Worker Right-to-Know statute currently only covers lawn and garden services, pesticide manufacturers, wholesale distributors, and public employers using pesticides. For those applicable situations, compliance with SARA or the New Jersey Right-to-Know laws would automatically be in compliance with Department's storage rules. The Department storage rules will continue to apply in all other cases.

N.J.A.C. 7:30-9.4(b)

COMMENT: Information on pesticide storage should be provided to the local fire company on at least an annual basis.

RESPONSE: The Department has modified the rule to require this notification on an annual basis.

N.J.A.C. 7:30-9.7(d)

COMMENT: Why require special protection equipment for handlers of 2,4-D when this requirement is not on the Federal label? The requirement for protective equipment should be deleted.

COMMENT: The requirement for protective equipment is for mixing and loading. Why not applicators also?

RESPONSE: The Department's Pesticide Review Committee has recommended that commercial users of 2,4-D wear certain minimum protective equipment to lessen the risk of possible chronic toxicity as a result of 2,4-D exposure. Information indicates that mixers and loaders of 2,4-D are at the greatest risk since they use the concentrated material. It is for this reason the Department is requiring protective equipment for those

ENVIRONMENTAL PROTECTION

persons. The Department has decided to go beyond the requirements on the Federal label, which states are permitted to do by FIFRA. Since applicators use diluted material, there is less need for protective equipment.

COMMENT: One commenter agrees with the 2,4-D requirement for protective equipment. The requirement should be expanded to include mixing and loading of all pesticides.

RESPONSE: Although many pesticides have this requirement on their labels, there is no scientific basis at present to require this for the mixing and loading of all other pesticides. As additional information becomes available, this may be required of other pesticides.

N.J.A.C. 7:30-9.8

COMMENT: Four commenters stated that additional notification should be required for right-of-way spraying.

COMMENT: Additional notification should be required for mosquito applications and aerial spraying.

RESPONSE: Large scale applications require notification to be carried out pursuant to N.J.A.C. 7:30-9.8 of the current pesticide code. These suggestions for additional notification requirements will be studied for future rulemaking.

COMMENT: The term of "vicinity" as used in areawide applications needs to be clarified.

RESPONSE: The term "vicinity" cannot be defined as a specific distance. It refers to persons who may be affected by either direct application or pesticide drift in the community as a whole.

COMMENT: Local schools should be notified directly concerning areawide spray programs.

RESPONSE: Schools which are in the vicinity of the area sprayed would be notified directly. The Department believes that current rules requiring newspaper notification provide sufficient notification and protection of public health for schools not in the spray area.

COMMENT: In areawide applications involving schools, notices should be distributed to parents with information including symptoms of exposure and physical reactions.

RESPONSE: The Department agrees in principle with this comment but would leave it to the individual schools involved to promulgate such a notification procedure.

COMMENT: Written notice should be sent through the mail to every person potentially affected by areawide spraying.

RESPONSE: This would be similar to the State Gypsy Moth Program coordinated by the Department of Agriculture, where registered letters are sent to persons in the spray block. The municipalities send the letters once prior to application in their town. To implement this program on a Statewide basis directed toward applicators would appear to be difficult and expensive. If the Department obtains additional resources, this will be studied for possible future rulemaking.

N.J.A.C. 7:30-9.8(a)1

COMMENT: The newspaper notice of areawide applications should be placed in another section of the newspaper in addition to the legal section.

RESPONSE: The legal section is the most appropriate section for this notice. The Department would not be adverse if it were placed in another section, in addition to the legal section, if the applicator wished to do so.

N.J.A.C. 7:30-9.8(a)3

COMMENT: Newspaper notices on areawide applications should have basic minimum precautionary information. The Department should provide guidance to applicators for precautionary statements. The same requirements should apply to N.J.A.C. 7:30-9.10 and N.J.A.C. 7:30-9.11.

RESPONSE: Precautionary information for the product label will be provided to persons residing in the vicinity of the application if they so request. This precautionary information will be provided by the person at the contact phone number listed in the newspaper notice. There is no requirement for newspaper notice in N.J.A.C. 7:30-9.10 and 9.11; however, precautionary information from the product must be provided to the contracting party and/or tenants.

N.J.A.C. 7:30-9.8(a)3vii

COMMENT: Will the Department of Health telephone number for health inquiries be staffed on a 24 hour basis, seven days a week and is it a toll free phone number?

RESPONSE: Since this number is only for general health inquiries, it will not be staffed on a 24 hour basis. The New Jersey Poison Information and Education number is staffed continuously for emergencies. No toll free number is available at the present time.

ADOPTIONS

COMMENT: In reference to the Department of Health (DOH) phone number to be provided for general health information, the focus of information should be the Department of Environmental Protection and not the DOH. The DOH is not responsible directly for pesticide data and is not in an "informed" position.

RESPONSE: The Department of Health is the recognized authority on medical matters. The Department of Environmental Protection is not equipped to handle medical information and, as a matter of standard procedure, refers these inquiries to the Department of Health.

COMMENT: Recommend an alternative to the Department of Health for health information.

COMMENT: Use the New Jersey Poison Information and Education System number for all inquiries instead of the Department of Health number.

COMMENT: The Department of Health provides alarming misinformation. Provide the New Jersey Poison Information and Education System with added funding and develop another source of information.

RESPONSE: The Department refers calls for general medical information to the DOH. Emergency calls can be handled by the New Jersey Poison Information and Education System. However, the New Jersey Poison Information and Education System is not designed nor has the resources to handle routine calls on general medical information.

COMMENT: Who will have control over Department of Health responses to callers?

RESPONSE: Since the Department of Health is the recognized authority over medical matters, they will be responsible for monitoring their responses. Because they are responsible for accurate information given out to the public, it is to their advantage to insure the information is correct and pertinent.

N.J.A.C. 7:30-9.9(a)2

COMMENT: The proposed amendment to increase the distance from the target site to bee hives from one half mile to one mile will not provide an additional margin of safety. Bees only forage for one half mile.

RESPONSE: Discussion with the Department of Agriculture indicates that increasing the distance to one mile will provide an additional margin of safety since bees will forage up to two miles from the hive. This amendment is in response to a large number of extensive bee kills which have occurred recently. The Pesticide Control Council also recommends the one mile distance.

N.J.A.C. 7:30-9.9(e)

COMMENT: Spot applications to low shrubs should not pose a problem to bees and should not require notification. The commenter suggests notification only be required when treating trees over 45 feet. This is the only time drift is a problem.

RESPONSE: Notification is still necessary because high pressure equipment may cause drift even when spraying low level shrubs.

N.J.A.C. 7:30-9.9(h)

COMMENT: The Department should not rely on the New Jersey Register to promulgate notices concerning changes of dates for the flowering stages of certain crops.

RESPONSE: The Department concurs. As proposed, the new rule will require notification during specified periods or when the specified crop is in the flowering stage. When the flowering stage differs from the specified dates, this information will be disseminated through the Cooperative Extension offices and through the Department's Newsletter. This should expedite relaying the information to the regulated community.

N.J.A.C. 7:30-9.10

COMMENT: The notification requirements will raise prices for customers and place an unreasonable burden on the industry by requiring unnecessary paperwork, record keeping, and distribution of notices. This could price the lower economic group of customers out of the market.

COMMENT: The economic impact of notification will be an estimated 38 million dollars based on 32 million structural applications.

COMMENT: Signs in malls will deter customers, which will encourage after hour treatments which will increase charges.

RESPONSE: The proposed amendment was designed to minimize the economic impact while still maintaining the required and necessary notification in order to protect public health. The notification system will be a service the industry will provide to their customers which will lead to better communication and cooperation. This may reduce liability from customers' lawsuits by providing customers and the public with all information necessary to make their own informed decisions on pesticide risk.

COMMENT: Is notification by telephone to set up an appointment sufficient for pre-notification?

ADOPTIONS

RESPONSE: The telephone call will meet one of the requirements for notification but the other notification requirements will still have to be met.

COMMENT: Several commenters strongly support the notification proposals. The public will be able to avoid risks if they desire.

RESPONSE: The Department agrees. The public will have the information necessary to make a decision to avoid a pesticide risk.

COMMENT: Two commenters requested exemption from the notification requirements for health officials who conduct health inspections unannounced.

RESPONSE: This is a valid comment. Since health officials use spot treatments of low toxicity pesticides during health inspections, the Department will provide an exemption in N.J.A.C. 7:30-9.10(e) from the notification requirements for health inspectors during the normal course of their duties.

COMMENT: Notification is not necessary for termite and structural pest control because appointments are scheduled ahead of time.

RESPONSE: Notification is still necessary for structural pest control. Making appointments ahead of time will meet only one of the requirements but the remaining requirements will still have to be met and are very important.

COMMENT: The Department should regulate homeowners and not over-regulate commercial applicators.

RESPONSE: There is a strong need to regulate commercial applicators since they may potentially apply pesticides on hundreds of properties. In addition, they may use pesticides which are more toxic and have longer residual effects, which are not available to homeowners. The Department can only regulate private homeowners if their actions significantly affect other persons or the environment. Local ordinances may be modified to include notification provisions which regulate homeowners should local officials deem this desirable.

COMMENT: Advanced notification and supplying of labels will increase costs to homeowners and it will cause public concern that service is a threat to public health. This information is better obtained by asking the applicator.

RESPONSE: In general, consumers want advanced notification because of concern about pesticides. This will be another customer service that must be supplied. Labels will only be required if requested and the cost should be minimal. A recent survey indicated a strong homeowner interest in pesticide regulation.

COMMENT: All contracts should be required to be in writing. Customers should have a right to cancel contracts.

RESPONSE: The Department does not believe it is necessary for it to be involved in the business relationship between applicators and their customers.

N.J.A.C. 7:30-9.10(a)

COMMENT: The applicator should get a signed statement from the customer that the notification information has been received.

RESPONSE: The Department strongly suggests that applicators obtain signatures from their customers, for their own protection, to indicate that the customer has received the required information. However, the Department will not mandate this through regulation.

N.J.A.C. 7:30-9.10(a)1

COMMENT: A commenter recommended the words "Prior to an application being made" replace "at the time a contract is made or renewed" regarding information to be passed on to the customer. Many contracts are made over the phone. This would allow the appropriate information to be given to the customer prior to the application.

RESPONSE: The Department agrees that the proposed language could cause unintended problems in this situation. The wording in this and other similar provisions has been modified to allow applicators to supply the required information after the contract is made provided an opportunity to review the information prior to an application is allowed.

COMMENT: There should be no commercial application of pesticides without a written contract signed at least two days prior to the first application. The Department should require that pesticide contracts be signed or updated yearly.

RESPONSE: The Department will not mandate a written contract. The Department believes the requirement that the notification information be provided to the customer with sufficient time prior to the application for the customer to review the information is sufficient.

COMMENT: One commenter suggested notification be provided to the contracting party for each application. Also, after completion of each application, a written statement to that effect should be provided.

ENVIRONMENTAL PROTECTION

RESPONSE: The provision requiring that the applicator provide the specific date of the application if the customer requests it will cover this. N.J.A.C. 7:30-9.10(a)1i

COMMENT: It is not possible to give exact dates of the application in advance. Recommend "approximate date" be used instead of proposed date, or eliminate "proposed date".

RESPONSE: The "proposed date" was not meant to indicate an exact date, which could not be deviated from, but the best estimated date. For that reason it is essentially synonymous with approximate date. The Department has determined that the proposed date is necessary so that the contracting party can request the exact date if they so desire.

N.J.A.C. 7:30-9.10(a)1ii

COMMENT: Listing the pesticides used on the contract is not practical because the need for different pesticides will vary through the year depending on the situation.

RESPONSE: A listing of the pesticides which would most likely be used, with a statement that additional pesticides may be used if required, will be sufficient.

COMMENT: The active ingredient requirement is not clear.

COMMENT: Active ingredient should mean the common name, if one is available, rather than the long and complicated chemical name.

COMMENT: Use the common name for pesticides so that the customer will not be confused.

COMMENT: Use only the trade and common chemical names for the pesticides; other information such as inert ingredients are unimportant and usually not available.

RESPONSE: The rule requires that the brand name of the product and the common chemical name(s) of the active ingredient(s) be used, if the common chemical name is available. Both the trade and common chemical names may be useful to the customer. Inert ingredients are not required by the rule.

N.J.A.C. 7:30-9.10(a)1iii through vi

COMMENT: The required information is relatively uniform from one job to the next. This information could efficiently be covered by a Consumer Information Sheet.

RESPONSE: As the following comments indicate, the Department considered this a viable option for providing certain generic information in initial discussions related to this proposal. The Department concurs with this comment for subparagraph iv-vi and has modified sections 9.10(a)1, (b), and (c), and 9.11(a) and (b), accordingly. However, the label precautions under N.J.A.C. 7:30-9.10(a)1iii would not be included on the Consumer Information sheet because these would vary from application to application.

COMMENT: Consumer fact sheets should contain complete formulation of pesticide products including inert ingredients, the Department telephone number for questions on toxicity, or the application techniques and a notice to contact a physician if flu-like symptoms persist.

COMMENT: The consumer should be provided with the following information at a minimum: both the common chemical name and active ingredient of each formulation; potential mammalian and environmental effects; toxicity to wildlife; bioaccumulation; regulatory status in EPA's special review program; antidotes in case of poisoning; a toll free number established at the Department or Health Department or EPA; and a statement discussing the unknowns surrounding inert ingredients.

COMMENT: The symptoms of pesticide poisoning should not be listed on the consumer information sheet because they may be confused with flu symptoms or other common ailments.

RESPONSE: The Department would prefer to keep the information on the consumer information sheet concise, with the basic minimum information that will be applicable to the customer. The inert ingredients would not be available in many cases because it is considered proprietary information. The consumer information sheet will contain the information which was originally proposed in N.J.A.C. 9.10(a)1iv through vi along with an additional statement to educate the consumer.

COMMENT: Put the label instructions and the applicator name and phone number on the consumer information sheet.

COMMENT: Contracting party should be notified that label directions will be available.

COMMENT: It is not necessary to supply label directions. Give the customer the label or sheet if he requests it.

COMMENT: Certain minimum information should be required in consumer information sheet in order to be consistent.

COMMENT: In order to prevent frightening customers, the consumer information sheet should contain only the phone numbers required and a statement that the complete list of pesticides, brand names and active

ingredients is available upon request. The applicator should have this information at time of the sale.

RESPONSE: The applicator name and phone number and general pesticide information will be on the consumer information sheet. General label precautions will be required to be provided. Specific label instructions can be obtained from the pesticide label which must be provided if requested.

COMMENT: The proposed consumer information sheet should reflect hazards associated with diluted end-use material. This will insure that the customer receives pertinent safety data. This comment also applies to N.J.A.C. 7:30-9.11.

RESPONSE: While the label precautions relating to the pesticide used will not appear on the Consumer Information Sheet, this is a valid point which is covered under the rules. The current rule will only require label precautions relating to public safety. Where the pesticide is applied in diluted form, this would not include hazards related to the concentrated material.

COMMENT: The consumer information sheet should contain the phone numbers of the New Jersey Poison Information and Education System, Department of Health and the Pesticide Control Element. It should also contain information on chronic and acute health effects, and the customer's right to notification and disclosure.

COMMENT: All notifications should include any possible physical reactions so the public will be aware of them.

COMMENT: The following notice should be required for indoor applications: "Within 24 hours following application if you experience symptoms similar to common seasonal illness comparable to the flu, contact your physician or Poison Control Center". This statement should be modified to include any other symptoms.

COMMENT: The pesticide label should be available as part of the contract along with information on toxicity, environmental effects, EPA regulatory status, antidotes, inert information, and toll free numbers for EPA, the Department and Department of Health.

COMMENT: Information provided to the customer should include the applicator's registration number, description of chronic and acute health effects of pesticides used, and the Department phone number so the customer knows who to call to report illegal actions and a statement informing the customers of their right to advanced notice.

RESPONSE: The required consumer information sheet will contain, at a minimum, the information which was proposed at N.J.A.C. 7:30-9.10(a)iv, v and vi and a general information statement on pesticides. Applicators are free to include further information. The Department believes that the information provided which includes notice of the right to request a copy of the label for the specific pesticides used provides adequate information. Should the need for further information become apparent, the Department will address the need in future proposals.

N.J.A.C. 7:30-9.10(a)2

COMMENT: Change the wording in the proposal from "If the contracting party desires prior notification" to read "If the contracting party requests prior notification". This change should also be made in N.J.A.C. 7:30-9.10(c)2.

RESPONSE: The Department concurs and has changed the wording in these sections.

N.J.A.C. 7:30-9.10(b)

COMMENT: Multi-family residents should have the right to refuse pest control service in their unit.

RESPONSE: In some cases, tenant leases require the tenant to allow access to an exterminator. The Department does not get involved with tenant-landlord disputes. The advanced notification requirement will give the tenant the opportunity to either resolve the pesticide application problem with the landlord or leave the apartment during the application.

N.J.A.C. 7:30-9.10(b)1

COMMENT: One commenter supported the 48 hour notification requirement for multi-family residences and would like to see it applied to office buildings.

RESPONSE: The proposed posting requirement for office buildings should hopefully resolve pesticide problems in that situation. If problems persist, then additional rules may be proposed in the future. The proposed date of the next application is one of the notice requirements to be on the bulletin board notice for public buildings and is a form of advance notification.

COMMENT: In multi-family residences, information should also be provided on the problem pest being treated, areas treated, and the manner the pesticide is applied.

RESPONSE: The Department will not mandate this information on a routine basis. The Department has attempted to provide on the required notice all information necessary to allow a tenant to make an informed decision relating to the possible risks of pesticide application.

COMMENT: Notice to multi-family tenants should include the statement "a copy of the label is available if requested".

RESPONSE: The Department concurs. The requirement to provide a copy of the label if requested will be added to this paragraph.

COMMENT: The proposed 48 hour notification to multiple family dwellings is unworkable because most service is on a complaint basis. The commenter recommended posting by the landlord in a public area with the landlord to hand out additional information if requested.

COMMENT: It is not likely that the mechanism for granting waivers on 48 hour prenotification will be available on weekends or after regular working hours. It is not clear what would constitute an emergency. Who in the Department would make the decision on a waiver?

COMMENT: In multi-family dwellings, the 48 hour notification will cause intolerable paperwork problems because of unforeseen events and the requirement for new notice if application is postponed. The commenter recommended a notice be provided at the time of application.

COMMENT: In place of the 48 hour notification, post a permanent notice in a central area of multi-family residences, advising tenants to get additional information from the landlord. The following language is recommended, "The landlord or his representative will post a notice in a public area advising tenants that pesticides will be applied in or around the building. This notice will indicate where a tenant may obtain a copy of the label of any pesticide proposed for use in or around the building and dates when such applications are scheduled. This information will be available from the landlord or his representative. The applicator company will supply the landlord or his representative with copies of the labels for pesticides to be used in or around the building and dates when such applications are scheduled".

COMMENT: The 48 hour notice is impractical, especially in emergencies.

COMMENT: Two commenters requested that the 48 hour prenotification for multi-family residences be dispensed with in case of emergencies.

RESPONSE: The Department is revising the proposal slightly. The 48 hour notice will still apply. However, if a tenant signs a waiver and requests pest control service, this will serve as compliance with the 48 hour notice and should address complaints by tenants. Posting in a central common area will not suffice because in many situations there is no central common area. Also, the 48 hour notification requirement is waived if the local public health agency declares a health emergency requiring immediate pest control application. In addition, the burden of distributing notices may be delegated to the landlords or superintendents to minimize economic impact on the applicators (see N.J.A.C. 7:30-9.10(b)1i).

N.J.A.C. 7:30-9.10(c)3

COMMENT: Listing of pesticides on a permanent notice is a duplication of effort since the records of application and customers' receipts also list them. The date of application, name and phone number of contact person, and next proposed date should be listed instead.

RESPONSE: The permanent notice is for persons who do not have access to the record of application so they can determine what pesticides were used. It is necessary to provide the pesticide used so those affected by pesticides can make an informed decision to avoid exposure without the further necessity of a phone call.

COMMENT: Posting notices at the nurse's station, motel desk or near Health Department Inspection card may be too inconspicuous and may not provide persons sufficient time to avoid exposure. Posting should be at the main entrance and should be written in Spanish and English.

RESPONSE: The Department believes the rule as proposed is adequate. The Department will reevaluate the effectiveness of these provisions once experience has been gained enforcing them. The locations chosen are the best available for providing notice.

COMMENT: Posting for a one-time application seems unwarranted in commercial or public buildings.

RESPONSE: Even for a single application, the information would still be required to be posted to indicate the date of the application and pesticide used. This will provide necessary information to potentially affected people. The Department changing the requirement for a "permanent notice" to allow removal in 60 days if no further treatments are proposed. This should allow sufficient time for pesticide degradation.

N.J.A.C. 7:30-9.10(c)4

ADOPTIONS

COMMENT: The sign should be in English. Use symbols to warn other persons.

RESPONSE: The Department agrees and for the present all signs will be in English. The Department will also require that the sign contain a minimum of a three inch diameter circular illustration, in standard international signage, depicting an adult and a child walking. The illustration will depict, with a diagonal line across the circle, that this action is prohibited.

COMMENT: Signs similar to those required for public buildings should be required for greenhouses.

COMMENT: Not requiring the posting of greenhouses, especially if used by the public, is an oversight.

RESPONSE: The Department is not addressing private applicator rules at this time. The EPA is proposing new Farm Worker Regulations which will cover greenhouses and which will be enforced by the Department.

COMMENT: In applications in public buildings, the requirement for the pesticide to settle or dry should not apply to crack and crevice or rodenticide applications.

RESPONSE: The Department agrees and did not intend for these applications to be covered by the provision. These applications have been exempted from the requirements of N.J.A.C. 7:30-9.10(c)4.

COMMENT: Malls should be posted rather than put up removable signs during applications. Most areas treated are not accessible to the public, for example, storage and shipping areas.

COMMENT: Notification should be placed on the entrance and exit doors of public buildings, advising that the building has been sprayed, for the benefit of sensitive persons.

COMMENT: In public buildings, signs should include phone numbers for the Department and applicator.

COMMENT: Notify persons in an area when spraying will take place.

COMMENT: Measures to notify persons in public buildings and places of employment should be instituted.

COMMENT: Seven commenters proposed decals be placed at entrances of public buildings.

COMMENT: Thirty-two commenters suggested use of permanent decals at entrances to public buildings with date of pesticide application.

COMMENT: One commenter stated that posting in public places should remain up longer than just drying or setting time. The commenter suggested 48 hours.

RESPONSE: The Department believes that the current rule is sufficient to notify those concerned. An assumption should be made that nearly all public buildings will have pest control work service at periodic intervals. Sensitive persons should be aware of this and take appropriate precautions, such as checking with the management of the building to find out the last date of treatment. The moveable signs in large public buildings will warn persons of the specific areas which have just been treated and allow them to avoid these areas if they so choose. In many situations, there is no main entrance, but multiple entrances, and posting at all entrances would be unduly burdensome. The Department will reevaluate the need to modify these provisions once experience has been gained enforcing them.

N.J.A.C. 7:30-9.10(d)

COMMENT: Separate fumigants and aerosols in proposed rules dealing with fumigants. They do not present the same risk to persons. The following wording should be used: "when using aerosols notification should be required for the occupants of areas sharing common walls, floors, ceilings, or ventilation systems with the area to be treated, if such occupants are likely to be present at the time of the application".

COMMENT: The section on fumigants needs reworking. Fumigants should never be applied to structures which are attached to other structures. The definition includes aerosols for crack and crevice applications which certainly was not intended.

RESPONSE: The Department concurs and will reword this section. The reference to fumigants will be removed since they are covered by specific safety instructions and precautions on the labels. The section will address aerosol generators only. Notification will have to be provided to occupied adjoining units and structures or to other occupied units in buildings containing a common air handling system. To clarify that crack and crevice applications were not intended to be included, appropriate wording has been added to N.J.A.C. 7:30-9.10(d).

N.J.A.C. 7:30-9.11

COMMENT: Notification is not necessary for application of general use pesticides.

ENVIRONMENTAL PROTECTION

RESPONSE: The commercial applicators use both general use and restricted use pesticides. The importance of notification is not confined to restricted use pesticides, since sensitive persons can be affected by either.

COMMENT: Notification for lawn care goes too far. The commenter is concerned that it may carry over to the farm/nursery industry.

RESPONSE: Nurseries and agricultural applications are not regulated by this subchapter. The Department constantly evaluates the need to improve the rules if warranted.

COMMENT: There are no provisions for homeowners to post their properties although they do 80 percent of the lawn spraying. Both use the same products. This is an unfair burden and questionably legal.

COMMENT: Notification regulations for licensed businesses and applicators are not needed. The major problem is from homeowners and unlicensed applicators.

COMMENT: Regulations and signs should apply to homeowners who apply 90 percent of lawn pesticides. Statistics on violators should be made public and will show that the homeowner and unlicensed applicator are the real problem.

COMMENT: Controls are needed over homeowners who are untrained and a danger to themselves and the environment.

COMMENT: Homeowners should be regulated. They are not required to provide notification.

COMMENT: Unregulated homeowners who perform lawn applications have a negative environmental impact. This impact will increase because of increased costs to businesses which will encourage more homeowners to do their own work.

RESPONSE: Homeowners can be cited by the Department if their applications significantly affect other properties, persons or the environment. Only a very small percentage of the complaints received have involved homeowners. Local officials may require homeowners to post warning signs under local ordinance if this is deemed desirable by the community. The commercial applicator mis-applying pesticides may affect hundreds of properties.

COMMENT: Manufacturers should be required to place a notification sign in each bag of turf pesticide they sell to homeowners.

RESPONSE: The Department does not regulate homeowners spraying their own property. Posting by homeowners could be required under the jurisdiction of the local communities through local ordinance.

N.J.A.C. 7:30-9.11(a)1.

COMMENT: Lawn posting will increase costs and limit service only to the wealthy. There will be an increase in the scare aspects of spraying.

COMMENT: Posting of signs on lawns will impose undue expenses and liability on the turf grass industry.

COMMENT: Signs will be a financial burden to the industry and customers.

COMMENT: Signs and notification will frighten customers.

COMMENT: The cost of signs will be significant to the industry. A smaller sign will reduce cost and still be visible.

COMMENT: The requirement to post signs will increase the cost to customers and will be difficult to enforce.

RESPONSE: The Department, after careful consideration, has decided to reduce the minimum size of the lettering and the symbol of the signs. This should reduce the cost while still resulting in an effective sign. The purpose of sign requirement is to warn persons that an area has been treated and allow them to avoid exposure if they so choose. The sign should be part of the industry's communication with the public. A reduction of liability should result from this "good faith" effort to inform the public.

COMMENT: Signs should be left on turf areas for at least 72 hours after application and include the telephone numbers of the Department and the applicator.

COMMENT: Signs should be posted 24 hours before the application and 72 hours after.

COMMENT: Three commenters suggested posting signs 24 hours prior to the application and 48 hours after.

COMMENT: Three commenters proposed leaving signs for 48 hours after application.

COMMENT: Thirty-five commenters suggested posting signs for 48 hours and include name of pesticide and active ingredient on the sign.

COMMENT: Post signs for 24 hours and give information to adjoining neighbors.

COMMENT: Give same information to adjacent neighbors.

COMMENT: Posting should remain on lawns for at least five days.

COMMENT: Signs are necessary. Pesticide will remain until they are washed into the soil and could be dangerous for longer than 24 hours.

RESPONSE: The potential health risk due to exposure following a 24 hour period is greatly reduced. Maintaining the signs for too long a period could result in a loss of impact and effectiveness. If label directions indicate a longer reentry period than 24 hours, it will take precedence over the 24 hour posting. Information posted prior to the application would lessen the impact and increase costs. If problems are documented in this area, the Department will readdress the issue.

COMMENT: Sign should have information on date of application, pesticides used, next application, contact phone number, and the name and phone numbers for agencies involved with emergencies, poisoning and enforcement. The skull and crossbones should also be included on the sign as children will realize the danger.

COMMENT: Information provided on the signs should include a statement that a pesticide has been used and the words "caution" or "stay off", the date the pesticide was applied, common and chemical name of the pesticide applied, phone number of business applying the pesticide, a toll free number of the Department's or EPA's Hotline, and the words "form approved by the DEP".

COMMENT: Chemical name, date of application, and the applicator's phone number should appear on lawn signs.

COMMENT: Sign should have the common name of pesticides applied and date of application. This should be on signs for residences, schools, and parks.

RESPONSE: The Department would prefer to keep the signs as simple as possible with enough information to indicate that the area has been treated. If emergency information is required, it can be more efficiently obtained through the Department hotline number available in all phonebooks. The Department has access to all information necessary. Additional information would make the sign more expensive thus increasing costs to customers. The Department does not wish to encourage trespassing or possible exposure by having individuals cross treated areas to read any "fine print" on signs.

COMMENT: Signs should be placed at the principal access points and other access points.

RESPONSE: The Department believes that posting of signs at the point of principal access provides sufficient notification. If a problem becomes apparent, the Department will address this in future rulemaking.

COMMENT: Signs detract from the appearance of property. They should be placed only at the customer's request.

RESPONSE: The purpose of the signs is to warn other persons that the area has been treated. It should also help reduce liability for the homeowner and the applicator by warning other persons. The benefit to public health outweighs aesthetic consideration.

COMMENT: The sign should be posted 24 hours prior to spraying and posting prior to the application would lessen the impact of the sign. The applicator should be prohibited from spraying if no sign is up when he or she returns to apply the pesticide.

RESPONSE: Posting prior to the application would lessen the impact of the sign. Posting signs at the time of the application will eliminate the problem of missing signs and should provide sufficient notification. N.J.A.C. 7:30-9.11(a)1i

COMMENT: Several commenters approved of lawn markers. The boldness of print and contrast is just as important as the height of the letters. One commenter recommended letters which are 3/8 inch high.

COMMENT: One commenter suggested the letter size be 5/8 inch which can be seen at 40 feet.

COMMENT: One commenter suggested that letters be 1/2 inch high. This would provide adequate visibility.

RESPONSE: After careful consideration, the Department has decided to reduce the minimum required size of the letters on the signs to 1/2 inch. This should still provide the necessary visibility.

COMMENT: The sign should be worded so that it can be used with any application not just pesticides.

RESPONSE: This rule is only addressing pesticides.

COMMENT: Posting of single family homes should not be required because it violates the constitutional right to privacy.

RESPONSE: The right to privacy is not violated by requiring the posting by contractors. The need to protect public health justifies imposition of the limited posting required outside single family homes. The individual right to privacy is not infringed.

N.J.A.C. 7:30-9.11(a)2.

COMMENT: Notification to the customer of the dates of application, pesticides used and phone numbers should only be required if the customer requests the information.

RESPONSE: The Department determined this information is important in protecting and informing the customer and is part of the customer's right-to-know. This communication is part of good public relations and good business operating procedures.

COMMENT: Provide the same information to adjacent properties that the customer gets.

RESPONSE: The sign should provide sufficient notification and, if additional information is required, it can be obtained from the homeowner.

COMMENT: The pesticide applicator should not be required to provide proprietary information in the contract.

RESPONSE: Under the adopted rules, the required information must be provided to the customer if requested. The Department does not consider any of the required information to be proprietary. In order to protect public health, information on the pesticide applied is necessary.

N.J.A.C. 7:30-9.11(a)2i

COMMENT: Many applications are weather dependent and require certain temperature ranges. Therefore, dates of applications are difficult to determine in advance.

COMMENT: Giving specific proposed dates for applications is unworkable. Recommend a range of dates for future applications.

COMMENT: Define proposed date of application.

RESPONSE: The proposed date of the application does not necessarily mean an exact or specific date but the best estimated date or dates. The Department would not require application on the proposed date if there was reason not to. The Department believes that the current wording is most appropriate.

N.J.A.C. 7:30-9.11(a)2iii

COMMENT: The Department of Environmental Protection should be consulted over pesticide use rather than the Department of Health.

RESPONSE: The Department of Environmental Protection has jurisdiction over pesticide use. The phone number for the Department of Health is being provided for obtaining general health information involving pesticides.

COMMENT: Hazard information will be alarming to customers. Notification will cause a loss of business and result in businesses closing up.

RESPONSE: Communicating potential hazards to customers is good customer relations and will indicate that you are interested in the customer's welfare. Providing this information should help build an image of business professionalism. More importantly, this notification will give the customer information necessary to avoid possible risks.

COMMENT: It is not clear what information must be passed on to customers. Precautionary and general statements for one spraying could be 10 or 12 typed pages.

RESPONSE: All that is required is a short statement on general effects which should not be extensive and would only require a paragraph or two. Precautionary statements from the label or labels dealing with the diluted material would be sufficient when the pesticide is diluted prior to the application. If a problem arises in a specific application, the Department can be consulted.

COMMENT: Product information should be supplied to customers when requested. Give required phone numbers on the consumer information sheet.

COMMENT: The requirement that label instructions be provided should be deleted. The contracting party should be notified that label instructions will be available if requested from the applicator.

RESPONSE: Label instructions must be given to the customer prior to the application where applicable. In many cases, the customer is required to take certain precautions or perform certain functions such as "watering the pesticide in". These label instructions and precautions can provide the necessary information to protect public health and the environment and can produce a more effective treatment. The pesticide labels do not have to be provided to the customer unless requested. The phone numbers will be provided on the consumer information sheet.

N.J.A.C. 7:30-9.11(b)1

COMMENT: Clarify if structural applications around outside perimeters of buildings would come under turf and ornamental regulations.

RESPONSE: If the application is made only to the perimeter of a building, as part of a structural application, it will not be considered a turf application.

ADOPTIONS

COMMENT: Posting should not be necessary on lawns because information is left with the customer.

RESPONSE: The posting would still be required, to inform other persons that the area had been treated.

COMMENT: Multi-family residents should be prenotified by a notice on the bulletin board or other prominent area in addition to the 48 hour notice.

RESPONSE: If the present rule fails to provide adequate notification, this may be considered for future rulemaking. Many multi-family residences do not have a central area for a bulletin board.

N.J.A.C. 7:30-9.11(b)liv

COMMENT: The contracting party should remove the signs. The applicator should be absolved of this responsibility by including on the sign instructions to the contracting party to remove it.

RESPONSE: This rule allows the applicator or applicator business to delegate the removal of the signs to the contracting party. This delegation must be in writing.

N.J.A.C. 7:30-9.11(c)

COMMENT: There should be a concern over pesticides washing into aquatic sites from golf courses.

RESPONSE: The Department is very concerned and requires a special permit under N.J.A.C. 7:30-9.3 if pesticides are applied to aquatic sites when there is an outlet or a potable water source involved. Applications which lead to a washing of pesticides into aquatic sites could result in citations to the applicator for pesticide drift and damage to the environment. Much of the problem could be prevented by education on the need for extreme care in applications near the sensitive aquatic sites.

COMMENT: The Department should regulate other contractors who use chemicals in their work such as carpenters, cleaners, and painters.

RESPONSE: The Department, through the Pesticide Control Element, regulates pesticide use in New Jersey including pesticides applied by contractors other than pesticide applicators. Use of chemicals other than pesticides is not regulated by the Element but may be regulated by other units in the Department.

COMMENT: Golf courses are being subjected to additional rules not required of other turf applicators. The requirement may unduly alarm people because of additional information required on signs and the special treatments often necessary at golf courses.

COMMENT: Golf courses are being unduly singled out for signs. More is being required for golf courses than for parks or schools.

COMMENT: The information required on signs on golf courses should be the same as for turf posting. Signs should not be required for spot treatments.

COMMENT: Two commenters stated that posting on golf courses was not necessary because of pesticide breakdown. One commenter stated the proposal was unclear as to how long signs should remain.

COMMENT: Add "This playing field has been treated with pesticides within the last three days. For further information contact (phone number, name of responsible party)." Signs could be removed after third day.

RESPONSE: After extensive review, the Department has determined that the section should essentially remain as proposed. The golf courses are not being singled out for unusual additional requirements since signs would only be required at the starting tees. The required information would be the basic minimum information that would allow golf course users to make "reasonable" decisions concerning pesticides prior to using the golf course. The signs would be permanent and updated as necessary.

COMMENT: One commenter feels that posting on golf courses will make them vulnerable to liability suits. It has become difficult to get pollution insurance.

RESPONSE: Posting should decrease liability because an effort is being made to inform persons about possible pesticide exposure. Pollution insurance is not required by the Department for golf courses performing their own applications. The Department has a duty to require warning where necessary to protect public health.

N.J.A.C. 7:30-9.11(c)i.

COMMENT: Two commenters suggested that signs be posted at each starting tee on golf courses.

COMMENT: The information required on signs at golf courses should be limited to a simple statement that "This playing field has been treated with pesticides within the past three days".

COMMENT: One commenter agrees with the proposed information required for golf course signs. It should be required for other lawn postings.

ENVIRONMENTAL PROTECTION

RESPONSE: The Department will change the wording to read "starting tees" in place of first and ninth tees as being more appropriate. The Department believes that the required information is necessary to give the public adequate notification concerning pesticides; a shorter statement such as the one suggested would be insufficient.

N.J.A.C. 7:30-9.11(c)lii

COMMENT: Prenotification of proposed dates of application may encourage scheduled spray practice rather than integrated pest control.

RESPONSE: The proposed date of future applications was not meant to be an exact date but a planned date for future applications. If conditions prevent the application from being performed or it is not needed, the Department will not require it to be done. If a need arises prior to the proposed date, the application would be allowed provided all other requirements of this chapter and the pesticide label are complied with.

N.J.A.C. 7:30-9.11(c)2

COMMENT: Golfers should also get the information given to the golf course superintendent.

RESPONSE: The Department will consider this comment for future rulemaking.

N.J.A.C. 7:30-9.11(d)

COMMENT: Prenotification should be given through the school nurse's office to parents who want this information.

RESPONSE: The Department believes the notification provided by posted signs should be sufficient to protect public health. Should parents in a locality desire further information about an application, this can be requested from school officials.

N.J.A.C. 7:30-9.12

COMMENT: Notification should be extended to farm workers as part of Right-To-Know.

RESPONSE: Previous amendments to this chapter addressed farm worker reentry into treated fields, warning signs, bulletin boards, and other provisions related to farm worker safety. The Department is always open for input from groups interested in farm worker safety for consideration for future rulemaking. The EPA is also proposing regulations addressing this issue.

COMMENT: One commenter is confused about "additional notification". It should be the responsibility of those wanting to be notified.

COMMENT: N.J.A.C. 7:30-9.12, additional notification, is vague. It needs to be clearer and better defined.

RESPONSE: The Department believes that the current language which requires notification of affected persons who identify themselves is appropriate. Should a problem be experienced in practice, it will be addressed in future rulemaking.

COMMENT: The Department should issue guidelines on what are to be considered sensitive areas.

RESPONSE: The Department would rather use a reasonable applicator approach rather than list all the situations that could be considered potentially sensitive. Notification will be required where persons have requested it or where a reasonable applicator perceives that a situation exists where notification should be provided.

COMMENT: The way N.J.A.C. 7:30-9.12 is worded, a person who is opposed to a pesticide application could request notification on a site that is located away from the home or work place of that person.

RESPONSE: This is correct, if the application could present a significant risk of harm, injury or damage in the eyes of the person requesting notification. If the person felt there was a reasonable potential for pesticide exposure and they wished to be notified about an application, then notification would have to be provided.

COMMENT: In N.J.A.C. 7:30-9.12(b), the wording reads "when such need for notification is identified . . ." Who is responsible for identifying the need?

RESPONSE: In situations other than when the individual requests notification, it is the applicator's responsibility to identify the need for notification, which may be determined through discussions with neighbors of the customer, as an example. The Department prefers a reasonable applicator approach rather than list all the situations that could be considered potentially sensitive. Notification will be required where persons have requested it or where a reasonable applicator perceives that a situation exists where notification should be provided.

COMMENT: Several commenters strongly opposed this section as being unnecessary and alarming to the public and stated it will drive up the cost of pest control.

RESPONSE: Notification should help alleviate the fears of the public by providing them with pertinent information on the pesticides used. This

will allow concerned persons to take appropriate action. A large segment of the public has demanded that notification be instituted. The cost of implementing notification is expected to be minimal once the program is underway.

COMMENT: This section is not necessary because posting, along with the added protection of label directions, should provide adequate opportunity for sensitive persons to seek information. Directions on pesticide labels and State rules should provide sufficient safety.

RESPONSE: The posting requirement will be implemented after the application is performed. The purpose of this section is to notify those persons who wish to be notified, and who have been identified prior to the application, so that they may take appropriate measures to minimize their exposure to pesticides. Historically, the applicator community has indicated that they can and do identify individuals who are concerned.

COMMENT: The provisions in this section, requiring the applicator to identify sensitive persons requiring notification, should also be in sections N.J.A.C. 7:30-9.10 and 9.11.

RESPONSE: The requirements in this section refer to the conditions in N.J.A.C. 7:30-9.10 and 9.11. It would be redundant to repeat them in those sections.

COMMENT: The notification of a third party, to prevent significant risk, is not applicable in structural pest control work.

RESPONSE: This requirement would apply for structural pest control also. Many situations exist in which persons in an office or apartment building may desire advance notification. Examples include pregnant women and sensitive persons.

COMMENT: A commenter was confused as to how sensitive persons were to be identified and by whom and also at what distance.

RESPONSE: Sensitive persons would identify themselves to the applicator or would be observed by the applicator. They would be persons who might be affected at whatever distance. Historically, the applicator community has indicated that they can and do identify sensitive individuals.

COMMENT: The Department should establish scientific data on all pesticide hazards and promulgate this data to educate the public so chemical hazards are understood by all.

COMMENT: The Department should review pesticides in groups, not one at a time, so that a determination could be made of toxicological and ecological effects of pesticides that may be substitutes.

RESPONSE: It is the responsibility of the EPA to review pesticide data and provide information on hazards. They have an extensive budget for this purpose. At the present time, the Department does not possess sufficient resources to undertake this task on a routine basis. However, the Department has and will review specific pesticides which may be of concern and take appropriate action.

COMMENT: This commenter is sensitive to pesticides and requires posting to know when chemicals have been used.

COMMENT: Persons suffering from environmental illness, and also other persons living in the area, need to know when pesticides are used.

COMMENT: Signs should be posted, visible to anyone living in the area, prior to spraying.

COMMENT: Sensitive persons should be notified 12 to 24 hours in advance by telephone.

RESPONSE: The provisions of N.J.A.C. 7:30-9.12, Additional notification, should help identify those sensitive persons who should be notified about pesticide applications so that they can take appropriate steps to reduce exposure. The required signs and posting will help those persons avoid areas that have been sprayed.

COMMENT: One commenter favors additional notification; it should extend out to 200 yards from the area sprayed.

COMMENT: A resident should have the right to request prior notification from all neighbors.

COMMENT: Contiguous neighbors should receive notification at least 48 hours prior to the application.

RESPONSE: The Department wished to be flexible in instituting this requirement and targeted it especially for those who really require notification. These comments will be studied for future rulemaking. Local agencies may adopt ordinances which provide the mechanism to prenotify neighbors for certain types of ornamental tree spraying.

COMMENT: Thirty-nine commenters stated that the Department should set up a registry for persons who are clinically sensitive to pesticide.

COMMENT: One commenter said a register should be set up for any one who wishes to be informed about spraying.

RESPONSE: The Department will study this closely for future rulemaking and will monitor a voluntary registry program being set up in Pennsylvania.

N.J.A.C. 7:30-9.12(a)1

COMMENT: One commenter stated that the term "exposure" should be added to the clause "significant risk to harm, injury or damage".

RESPONSE: Exposure is included in significant risk of harm, injury or damage.

N.J.A.C. 7:30-9.13

COMMENT: The Department of Health would like to work with the Department of Environmental Protection in developing farmworker regulations to conform with the new Occupational Safety and Health Act requirements.

RESPONSE: The Department would welcome this cooperation.

COMMENT: Change the farm worker regulations to be consistent with Federal Farm worker Standards which are more stringent.

RESPONSE: The Federal regulations are still in the proposal process. When they are adopted, this will be addressed.

COMMENT: Hearings on farm worker rules should be held in June or July when workers are available, and they should be allowed to comment confidentially and in Spanish.

RESPONSE: This will be considered when hearings are held concerning future farm worker rules. It should be noted that all comments made would be part of the public record. It should also be noted that in addition to the public hearings held, the Department accepts written comments during the comment period for those who cannot be present to express their views. Groups representing farm workers are on Department mailing lists and receive notification of all proposals. The Department will allow commenters to testify through translators.

N.J.A.C. 7:30-10.1

COMMENT: In the definition of "aerosol", add "and is dispersed into areas which will or may be occupied". This would exclude the application of pressurized sprays into cracks and crevices from notification requirements.

RESPONSE: The Department agrees that the notification for crack and crevice applications is not necessary. To correct this, the wording in N.J.A.C. 7:30-9.10(c)4 has been changed to exclude crack and crevice and flushing agent applications from notification requirements. The wording in the definition in subchapter 10 will stand as is, since it is used elsewhere in the rules where these exclusions do not apply.

COMMENT: Most pesticides used have a certain amount of vapor. Does that mean they are fumigants and should be treated as such?

RESPONSE: The definition of a fumigant is a substance or mixture of substances which produces matter in a gaseous state, not including aerosols. Pesticides which produce vapors composed of fine particles of liquid would not be fumigants.

N.J.A.C. 7:30-10.2

COMMENT: The Department should address the groundwater problem as soon as possible.

RESPONSE: The EPA is proposing to implement a pesticide groundwater strategy in which the states would have a role in preventing and mitigating pesticides in groundwater. Various State agencies would be involved, with the Division of Water Resources taking the lead. The Pesticide Control Element will have the responsibility of regulating pesticide use.

COMMENT: If pesticides are present in higher than tolerable levels in groundwater, it should be the landowner's responsibility to clean it up.

RESPONSE: The present provisions of N.J.A.C. 7:30-10.6 do cover this if it can be proven that the landowner is responsible.

N.J.A.C. 7:30-10.3

COMMENT: Businesses should train their employees in the use of non-pesticide control methods of pest control.

RESPONSE: The Department encourages the use of non-pesticide control methods, as well as integrated pest management, to reduce pesticide use as much as possible. This is contained in the certification training for applicators.

COMMENT: Persons contracting for turf or ornamental applications should designate the boundaries for the application and applicators should be required to determine property lines.

RESPONSE: The determination of the boundaries for the area to be treated is currently the responsibility of the applicator. The applicator can be cited if he or she applies to a non-target area. The applicator should work with the property owner to determine the boundaries.

ADOPTIONS

N.J.A.C. 7:30-10.3(h)

COMMENT: Removing the alternatives to backflow devices will require that private applicators comply. This will be costly.

RESPONSE: The cost of a backflow device is minimal. Enforcement history and citations indicate this is a major problem and potential environmental hazard. This is the reason for requiring this device.

N.J.A.C. 7:30-10.3(k)

COMMENT: Several commenters support the change to "normal commuting times" for areawide spraying near schools.

COMMENT: Notes should be sent home with children with information on spraying.

RESPONSE: The Department believes posting on bulletin boards provides sufficient notification to protect student health. The Department would encourage school officials to take the initiative in sending home information on proposed spraying where they feel such further information is desired.

COMMENT: "Normal student commuting time" needs to be defined.

RESPONSE: Normal student commuting time would be the times, determined by the local school district, when children would be commuting to and from school. The specific times were eliminated in recognition of the different starting times of different school districts.

N.J.A.C. 7:30-10.3(m)

COMMENT: Removal of rodenticide will be a major problem. Access to remove them may not be granted or they may be impossible to recover. Properly placed baits are not a risk.

COMMENT: The provision on rodenticide removal should exclude those that cannot be practically removed, such as tracking powders.

COMMENT: Three commenters opposed the requirement to remove rodenticides.

COMMENT: Rodenticide removal will increase costs and cause homeowners to do their own work which will produce a threat to safety.

RESPONSE: The Department agrees that properly applied rodenticide applications do not pose a threat to public health and, after careful study, has decided not to adopt this provision. Applicators will still be responsible for any injuries to persons or non-target animals which may occur as a result of their rodenticide applications.

N.J.A.C. 7:30-10.3(n)

COMMENT: Will any other categories suffice to meet the requirement for a certified applicator for fumigant applications?

RESPONSE: The requirements of this subsection will only be satisfied by those categories proposed.

N.J.A.C. 7:30-10.3(o)

COMMENT: Two commenters supported the ban on diazinon on turf areas over three acres.

COMMENT: Diazinon should be banned from turf areas regardless of size.

RESPONSE: The proposed ban on diazinon was initiated as a result of a number of goose kills involving the pesticide. Information indicates that geese will not normally frequent small turf areas but prefer large areas where they feel more secure. The Department has modified this section to include the phrase . . . "and other general turf areas of three acres or less that evidence indicates are frequented by waterfowl".

COMMENT: The Department should not go beyond the EPA label requirements for diazinon. Extending the ban to turf areas over three acres is unreasonable because it would require the user to consult the latest New Jersey Register for instructions. The pesticide label is the legal document by which pesticides are applied.

COMMENT: A commenter stated they cannot support provisions that go beyond the legal Federal label for diazinon.

COMMENT: Two witnesses protested the added restrictions on diazinon. The current label directions should protect wildlife.

RESPONSE: The Department must enforce the EPA restrictions on diazinon, which are to ban its use on all golf courses and sod farms. In addition, the Department may propose more stringent rules as is the case with the proposed diazinon ban on all turf areas over three acres and other general turf areas of three acres or less that are frequented by waterfowl. More stringent requirements on the use of a pesticide can be enforced by the State if deemed necessary, as is the case with diazinon.

N.J.A.C. 7:30-10.3(p)

COMMENT: One commenter suggest that the wording on school applications be changed to "no application be done in an area occupied by students". Revised the definition of school to exempt colleges or evening meetings.

ENVIRONMENTAL PROTECTION

COMMENT: Definition of schools should include grades K through 12. Applications should be allowed in sections of the school where no children are present. Nonvolatile pesticides such as rodenticides or roach baits should be allowed.

COMMENT: A restriction on treating turf on school properties will make it difficult to maintain lawns and playing fields.

COMMENT: Define "when school is in session". Applications should be allowed in areas not occupied.

COMMENT: This subsection should be deleted because it is unworkable.

RESPONSE: The Department has changed the amendment wording to read as follows: "No person shall make an application of any pesticide, except for rodenticides, roach baits, and anti-microbial agents, in or around a school covering grades preschool through 12, during normal school hours, as set by the school administration. After normal school hours, applications can be made in areas where students will not contact treated areas until sufficient time is allowed for the pesticide to dry or settle or longer if the label requires. This subsection does not apply to the application of pesticides for student instructional purposes and to public health officials during the normal course of their duties."

COMMENT: The proposed wording banning any pesticide application is not valid. This would involve disinfectants, control of flying insects, etc.

RESPONSE: The revised wording will address the application of anti-microbial agents which will be allowed. Control of flying insects will still be limited to after school hours.

COMMENT: One commenter supports the ban of applications while school is in session. Adequate time should be allowed for ventilation.

RESPONSE: The adopted subsection bans most pesticide applications during school hours which should allow sufficient time for ventilation before the school is reoccupied. If the label directions require a longer re-entry period, then this period will be required.

COMMENT: What does "in or around a school" mean. Is this 300 feet, one-half mile or one mile?

RESPONSE: This includes the school buildings and all surrounding school owned property.

N.J.A.C. 7:30-10.3(q)

COMMENT: Unless the application of TBT is restricted to certified applicators in commercial boatyards, there will be no way to enforce the boat size provisions.

RESPONSE: The Department has made TBT a restricted use pesticide which is only available to certified applicators for use in commercial boatyards.

N.J.A.C. 7:30-10.4(p)

COMMENT: This provision tends to penalize the homeowner if he has his own well. Would the homeowner be allowed to use his well for non-food irrigation?

RESPONSE: If the homeowner elects to hook up with a public water source and have the soil around the home pressure-treated, he or she would be required to have all wells within the stipulated distance from the treatment sealed according to the specifications of the Division of Water Resources. This would include wells used for irrigation of non-food plants. This provision actually gives the homeowner the option to hook up to a public water source and have the home treated according to normal procedures or to forgo the hook-up and have treatment by using the alternate precautionary method.

N.J.A.C. 7:30-10.4(q)

COMMENT: Pest control companies should be required to place a tag in homes treated with termiticides to prevent unnecessary re-treatments.

RESPONSE: This is a valid point and will be considered for future revisions.

N.J.A.C. 7:30-10.4(t)

COMMENT: One commenter supports the requirement to keep diagrams and termiticide records for five years.

COMMENT: Termite diagrams should be only required to show "visible damage" and "known wells". This comment also applies to N.J.A.C. 7:30-6.8(a)7 and 7.3(a)7.

RESPONSE: The Department concurs, but every effort should be made to uncover location of wells and termite damage. All damage which is discovered should be included on the diagram. The rule has been appropriately modified.

N.J.A.C. 7:30-10.5

COMMENT: One commenter supports a buffer zone around persons who object to a spray program.

RESPONSE: The Department agrees and believes that this provision will continue to help prevent applications to non-target sites.

COMMENT: The 100 foot buffer requirement for aerial applicators should be stricken. No other industry is so regulated.

COMMENT: One commenter was concerned about the 100 foot buffer. It is difficult to obtain consent. The Department should consider allowing a 12 hour special notification instead of the buffer.

RESPONSE: This requirement has been in effect since 1985 and is not being addressed in this rulemaking. The Department believes this requirement is necessary to reduce the incidence of drift. If there are major problems with this requirement, it will be addressed in future rulemakings.

COMMENT: Aerial applications on farms should require, at a minimum, the posting of a flag in a field to indicate that spraying will take place.

RESPONSE: The Department is not addressing aerial applications at this time and the present rules should provide adequate safety for persons in the spray area. The EPA is proposing new farm worker regulations which will provide additional information for farm workers.

COMMENT: The buffer zone should be extended to 500 feet to account for drift.

RESPONSE: The current rule requiring a 100 foot buffer from occupied homes appears to be working satisfactorily in reducing drift incidents. If problems increase in this area the Department may propose further restrictions.

N.J.A.C. 7:30-10.7

COMMENT: List the authority for assessment of fees for violative samples. They appear to be de facto fines without due process. Delete or revise. Suggest the following language, (a) "The Department may petition a court of competent jurisdiction in any situation xxx remedy said violation, for assesment of a fee for all sampling against the person found responsible for the violative application or spill, such assessment, if granted, shall reflect the actual cost incurred by the Department for the analyses of the sample(s)"; (b) "Manufacturers of pesticide products may also be subject to such petitions provided for in (a) when xxx violative as mis-formulations".

RESPONSE: The commenter misunderstands the provision. The sample analysis fees are not administrative penalties. Rather, they are costs for services prepared by the Department which the Department is allowed to collect pursuant to N.J.S.A. 13:1F-9k.

COMMENT: Sample analysis should be paid for by the plaintiff in non-violative cases. Who pays if there is no violation?

RESPONSE: The Department would pay for all sample analysis fees when there is no violation.

COMMENT: The laboratory fees listed are high. Should be allowed to use a private laboratory for analysis.

RESPONSE: A survey made by the Department, of the fees charged by a number of private laboratories, indicated that the fees listed on the proposed amendment were in the mid-range for laboratory charges. In addition, the Department requires the integrity, quality control, and chain-of-custody procedures used by the Department's laboratories.

DEPARTMENT INITIATED CLARIFICATIONS

As a result of the Department's review of the proposed amendments, the following changes have been made to clarify the meaning of the rules to avoid misunderstandings.

1. In N.J.A.C. 7:30-2.1, the definition for "agricultural crop" was added for clarification because the term appears in the definition of "aquatic site".

2. In N.J.A.C. 7:30-2.1, the definition for "aquatic pesticide" was added because it appears in this subchapter. The definition is identical to the definition which is in subchapter 9.

3. In N.J.A.C. 7:30-2.3(a)4, the word "aquatic" was inserted in this paragraph to make it clear that this provision only applies to the aquatic pesticides.

4. In the definition of "aquatic pesticide" in N.J.A.C. 7:30-9.1, the phrase "except an antimicrobial agent" has been added to clarify that applications of antimicrobial agents are exempt from the requirement for an aquatic use permit.

5. In N.J.A.C. 7:30-9.11(a)2iv, the following sub-subparagraph was added: (3) A statement, in writing, that a copy of the labels for the pesticides used will be available if requested by the contracting party."

The statement will make this section consistent with the other notification section.

6. IN N.J.A.C. 7:30-10.3(o), "Provisions of this section do not apply to the application of pesticides for student instructional purposes and to public health officials during the normal course of their duties", has been added to indicate that exemptions will be allowed for teachers of agricultural subjects and public health officials.

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

CHAPTER 30
PESTICIDE CONTROL CODESUBCHAPTER 1. PESTICIDE PRODUCT REGISTRATION
AND GENERAL REQUIREMENTS

7:30-1.1 (No change.)

7:30-1.2 Definitions

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

"Acceptable release rate" means a measured release rate not to exceed *[5.0]* ***4.0*** micrograms per square centimeter per day at steady state conditions as determined in accordance with the U.S. Environmental Protection Agency (EPA) testing procedure outlined in the EPA data call-in notice of July 29, 1986, on tributyltin (TBT) in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136.

"Misbranded" means a condition as to a pesticide wherein:

- 1.-5. (No change.)
6. The label does not bear the information designated in N.J.A.C. 7:30-1.9(a)2: or
- 7.-8. (No change.)

"Registrant" means any person whose name is on a registration issued by the Bureau of Pesticide Control.

"Restricted use pesticide" means any pesticide or pesticide use so classified under the provisions of N.J.A.C. 7:30-2, or so classified by the Administrator of the United States Environmental Protection Agency.

"Subterranean application" means the placement of any pesticide:

1. Under or adjacent to structures by trenching; or
2. Under slabs or under or within six inches of foundation walls by rodding; or
3. Within the interior voids of foundation walls.

"Supplemental registration" means an additional registration, with the EPA, of a primary registered pesticide product for the purpose of allowing a distributor to market that pesticide product under the distributor's brand name. The supplemental registered product is characterized by having the same composition and labeling claims as the primary registered product and by having a label which bears the registration number of the primary registered product and the distributor's company number as a suffix to that registration number.

"TBT antifoulant paint" means any paint formulation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

"Termiticide" means any pesticide labeled, designed, or intended for use in preventing, destroying, repelling or mitigating termites.

7:30-1.3 Registration

- (a) (No change.)
- (b) Any pesticide product containing a supplemental registration and all brand or trade names shall be registered separately.
- (c) At the time of registration*,* the registrant shall file a statement with the Department which includes:
 - 1.-2. (No change.)

ADOPTIONS

3. A complete copy of the label, which shall contain all statements, words, graphic material and any other information required by FIFRA, and the labeling accompanying the pesticide and a statement of all claims including the directions and precautions for use;

4. The use classification of the pesticide as required by Federal or State regulation;

5. For registration of pesticide products which are termiticides labeled for subterranean application, resource manuals, clean-up procedures, and sampling methodology shall be supplied; and

6. For **[registration]** ***registrants*** of any TBT antifoulant paint labeled for marine uses, a certification which states that the TBT antifoulant paint~~[:]~~ ***has an acceptable release rate.***

***[i. Is a co-polymer formulation, as opposed to the free-association formulation; and**

ii. Has an acceptable release rate, based on tests conducted in accordance with the EPA testing procedure as outlined in the EPA data call-in notice of July 29, 1986, on tributyltin in antifoulant paints under FIFRA.]*

(d)-(f) (No change.)

(g) Before holding, using, distributing, selling, or offering for sale any pesticide in this State, the applicant or registrant shall pay an annual registration fee of \$80.00 to the Department or its authorized representative for each pesticide to be registered. All such registrations shall expire on December 31 of each calendar year.

(h)-(l) (No change.)

7:30-1.4 (No change.)

7:30-1.5 Experimental use permits

(a) The holder of a Federally issued experimental use permit shall:
1.-2. (No change.)

3. Submit to the Department the names, locations, and acreage of the site(s) in New Jersey where the experimental pesticide will be used, and the addresses and telephone numbers of any persons who will be applying an experimental pesticide in the State of New Jersey;

4. Submit to the Department the names and addresses of any person(s) whose property in the State of New Jersey will be used for the experimental use program~~[],~~ and the location, total acreage treated, and amount of experimental pesticide that will be used at each site; and~~]*;~~*

5. Submit to the Department the location, total acreage treated, and amount of experimental pesticide that will be used at each site as this information becomes available; and

[5.]*6. (No change in text.)

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

7:30-1.6 through 1.8 (No change.)

7:30-1.9 General requirements

(a) No person shall hold, use, distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State:

1. (No change.)

2. Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container and there is affixed to such container and to the outside container or wrapper of the retail package, if there is one through which the required information on the immediate container cannot be clearly read—a label bearing the following information:

i.-v. (No change.)

vi. The EPA establishment number assigned to each establishment in which it was produced and the EPA registration number, and supplemental registration number, if applicable, assigned to the pesticide, if required by regulations under FIFRA;

vii-ix. (No change.)

3.-5. (No change.)

(b)-(j) (No change.)

7:30-1.10 (No change.)

ENVIRONMENTAL PROTECTION

SUBCHAPTER 2. PROHIBITED AND RESTRICTED USE PESTICIDES

7:30-2.1 Definitions

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

"Acceptable release rate" means a measured release rate not to exceed ~~*[5.0]*~~ ***4.0*** micrograms per square centimeter per day at steady state conditions as determined in accordance with the U.S. Environmental Protection Agency (EPA) testing procedure outlined in the EPA data call-in notice of July 29, 1986, on tributyltin (TBT) in antifoulant paints under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136.

"Agricultural crop" means a food produced by cultural treatment of land which is intended for human consumption, or for livestock the products of which are intended for human consumption.*

"Aquatic pesticide" means any pesticide, except an antimicrobial agent, that contains labeling instructions indicating that the pesticide is intended for use in the waters of the State or to aquatic sites.*

"Aquatic site" means any target site outside a structure where water is physically and visibly present on the surface of the site at the time a pesticide is applied.]*

"Aquatic site" means those areas inundated or saturated by water at a magnitude, duration, and frequency sufficient to support the growth of hydrophytes, except that those specific areas where hydrophytes are being grown as an agricultural crop shall not be considered to be aquatic sites.*

"CAS number" means the Chemical Abstract Service Registry number.

"TBT antifoulant paint" means any paint formation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

7:30-2.2 Prohibited pesticides

(a) No person shall distribute, sell, offer for sale, purchase, or use any pesticide which has been suspended or cancelled by the EPA, except as provided for in the suspension or cancellation order.

(b) All marine uses of free association formulations of antifoulant paints and co-polymer formulations with release rates greater than the acceptable release rate as defined in this subchapter are prohibited.

7:30-2.3 Restricted use pesticides

(a) The following pesticides are restricted use pesticides which can be purchased and/or used only by certified and registered responsible pesticide applicators or persons working under their direct supervision. Unless it is otherwise provided, all formulations and uses of the following pesticides are restricted use.

1. Any pesticide if its labeling bears any restriction which would cause any user who was not certified and registered, by virtue of the very fact that he or she was not certified and registered, to use the pesticide in a manner inconsistent with its labeling. ***[Provisions of this subsection shall not apply to any pesticide classified as an antimicrobial agent, a wood preserving agent, or an antifouling paint or agent, the commercial applicator of which is not required to be certified and registered under the provisions of N.J.A.C. 7:30-6.2(a)5, 6, and 7 to purchase and use these pesticides.]***

2. (No change.)

3. Any fumigant except:

i. Any pesticide containing naphthalene, ortho-dichlorobenzene, and/or para-dichlorobenzene as the sole active ingredient or in combination with another active ingredient which is not classified for restricted use if the pesticide product is used to control mosquitoes or clothes moths, or to repel warm blooded animals;

ii-iv. (No change.)

4. Any ***aquatic*** pesticide which contains labeling instructions indicating that the pesticide is intended for use in the waters of the State or on aquatic sites.

5. Any pesticide with one or more of the active ingredients listed below:

i. Fungicides, nematicides, and other materials as follows:

| CAS Number | Common Name |
|------------|--|
| 7440-43-9 | cadmium products (containing salts or metal complexes) |
| 534-52-1 | DNOC, DNC |
| 131-89-5 | DNOCHP, dinitrocyclohexylphenol |
| 22224-92-6 | fenamiphos |
| 140-56-7 | fenaminosulf (concentrations above 5%) |
| 7439-97-6 | Any pesticide containing mercury as an inorganic or organic compound except those used as a drug as defined in N.J.S.A. 24:21-2, those used as a fungicide in the treatment of textiles and fabrics intended for continuous outdoor use, those used as an in-can preservative in water-based paints and coatings, or those used as a fungicide in water-based paints and coatings used for exterior application. |
| 87-86-5 | pentachlorophenol, PCP (concentrations above 5% for non-wood preservative uses) |
| 26628-22-8 | sodium azide, azide (concentrations above 0.5%) |
| 297-97-2 | thionazin |
| various | tributyltin (marine uses of *[co-polymer]* formulations with acceptable release rates) |
| 76-87-9 | triphenyltin hydroxide (concentrations above 10%) |

ii. Herbicides/growth regulators as follows:

| CAS Number | Common Name |
|------------|---|
| 94-75-7 | 2,4-dichlorophenoxy-acetic acid (2,4-D) (concentrations above 20%) |
| 5742-19-18 | 2,4-D diethanolamine salt (concentrations above 20%) |
| 2008-39-1 | 2,4-D dimethylamine salt (concentrations above 20%) |
| 2702-72-9 | 2,4-D sodium salt (concentrations above 20%) |
| 1929-73-3 | 2,4-D butoxyethanol ester (concentrations above 20%) |
| 1928-45-6 | 2,4-D, propylene glycol butyl ether esters (concentrations above 20%) |
| 1928-43-4 | 2,4-D 2-ethylhexyl ester (concentrations above 20%) |
| 25168-26-7 | 2,4-D isooctyl ester (concentrations above 20%) |
| 533-23-3 | 2,4-D ethyl ester |
| 94-11-1 | 2,4-D, isopropyl ester |
| 1928-38-71 | 2,4-D methyl ester |
| 94-80-4 | 2,4-D, mixed butyl esters |
| 1713-15-1 | 2,4-D mixed isobutyl esters |
| 93-76-5 | 2,4,5-T |
| 50-31-7 | 2,3,6-TBA and related polychlorobenzoic acids, dimethylamine salts |
| 15972-60-8 | alachlor |
| 61-82-5 | amitrole |
| 21725-46-2 | cyanazine (concentrations above 30%) |
| 596-84-5 | daminozide |
| 88-85-7 | dinoseb |
| 7784-46-5 | sodium arsenite |
| 7775-09-9 | sodium chlorate *(concentrations above 7%)* |

iii. Insecticides as follows:

| CAS Number | Common Name |
|------------|---|
| 390-00-2 | aldrin |
| 86-50-0 | azinphos-methyl |
| 22781-23-3 | bendiocarb (concentrations above 15%) |
| 122-10-1 | bomyl (concentrations above 1%) |
| 57-74-9 | chlordane |
| 2921-88-2 | chlorpyrifos (concentrations above 15%) |
| 56-72-4 | coumaphos (concentrations above 5%) |
| 333-41-5 | diazinon (concentrations above 25%) |
| 62-73-7 | dichlorvos (concentrations above 3%) (Note 3iv. above) |
| 60-57-1 | dieldrin |
| 60-51-5 | dimethoate (concentrations above 25%) |
| 298-04-4 | disulfoton (concentrations above 2%) |
| 115-29-7 | endosulfan |
| 72-20-8 | endrin |
| 563-12-1 | ethion (concentrations above 6% Granular and 3% other formulations) |
| 55-38-9 | fenthion (concentrations above 0.5%) |
| 76-44-8 | heptachlor |
| 7440-38-2 | inorganic arsenicals (above 0.5 oz. active ingredient) |

| | |
|------------|--|
| 112-56-1 | lethane 384 (concentrations above 10%) |
| 58-89-9 | lindane (concentrations above 20%) |
| 2032-65-7 | mercaptodimethur, methiocarb (concentrations above 2%) |
| 919-86-8 | methyl demeton (concentrations above 7%) |
| 315-18-4 | mexacarbate (concentrations above 2%) |
| 311-45-5 | paraoxon |
| 2310-17-0 | phosalone (concentrations above 12%) |
| 732-11-6 | phosmet (concentrations above 20%) |
| 23103-98-2 | pirimicarb (concentrations above 15%) |
| 23505-41-1 | pirimiphos-ethyl (concentrations above 20%) |
| 114-26-1 | propoxur (concentrations above 2%) (Note (a)3iv above) |
| 7681-49-4 | sodium fluoride |
| 8001-35-2 | toxaphene |
| 52-68-6 | trichlorfon (concentrations above 15%) |

iv. Rodenticides as follows:

| CAS Number | Common Name |
|------------|--|
| 86-88-4 | antu (concentrations above 4%) |
| 1327-53-3 | arsenic trioxide (concentrations above 1.5% in rodenticides) |
| 504-24-5 | avitrol |
| 56073-10-0 | brodifacoum (concentrations above 0.005%) |
| 28772-56-7 | bromadiolone (concentrations above 0.01%) |
| 3691-35-8 | chlorophacinone (concentrations 0.2% and above) |
| 117-52-2 | coumafuryl (concentrations above 3%) |
| 535-89-7 | crimidine |
| 82-66-6 | diphacinone (concentrations above 3%) |
| 7723-14-0 | phosphorus (yellow, white) |
| 83-26-1 | pindone (concentrations above 3%) |
| 507-60-8 | red squill (concentrations above 30%) |
| 81-81-2 | warfarin (concentrations above 3%) |

Note: Chemical Abstract Service (CAS) numbers of 7440-43-9, 7439-97-6, and 7440-38-2 are for the elemental form.

(b) (No change.)

7:30-2.4 Amending prohibited and restricted-use pesticide lists

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

(c) The Department shall consider the following criteria when evaluating a pesticide for placement on the prohibited or restricted use pesticide list:

1. (No change.)

2. Neurotoxicity;

Renumber 2. through 5. as 3. through 6. (No change in text.)

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

SUBCHAPTER 3. PESTICIDE DEALERS

7:30-3.1 Definitions

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

... "Commercial pesticide operator" means any person who applies pesticides by equipment other than aerial under the direct supervision of a responsible commercial pesticide applicator.

... "Pesticide operator" as used in this subchapter means both a commercial pesticide operator and private pesticide operator.

"Pesticide outlet" means any site, location or place at or through which restricted use pesticides are distributed to an end user. This term does not include any site, location, or place used solely for the storage of restricted use pesticides or solely as a holding area where an end user takes physical possession of a restricted use pesticide after it has been purchased.

****Private pesticide applicator" means any person who uses or supervises the use of any pesticide for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.***

"Private pesticide operator" means any person who applies pesticides by equipment other than aerial under the direct supervision of a responsible private pesticide applicator.

... "Under direct supervision" means under the instructions and control of another person who is responsible for actions taken and who is available if and when needed, even if not physically present. For the purposes of this subchapter, a person is "under direct supervision" only if the person supervising and the person supervised are employed at the same pesticide outlet.

7:30-3.2 General requirements

(a) No person shall distribute, sell, or offer for sale or supervise the distribution, sale, or offering for sale of any restricted use pesticide to an end user without first meeting the requirements of certification and registration as a pesticide dealer unless:

1. Such person is working under the direct supervision of a responsible pesticide dealer and where an employer-employee relationship exists between the person supervising and the person actually distributing pesticides;

2. Such person is a pesticide applicator who distributes pesticide only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application;

3. Such person is a State or county agent or instrumentality thereof and is providing pesticides to its employees for its own programs;

4. Such person is a duly licensed pharmacist dispensing a prescription pharmaceutical which contains a substance which could be classified as a restricted use pesticide;

5. Such person is a veterinarian administering or dispensing a restricted use pesticide for use on animals as a part of his or her practice;

6.-7. (No change.)

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

7:30-3.3 (No change.)

7:30-3.4 Registration

(a) Within 12 months after a person has become certified and eligible to register as a pesticide dealer, the certified pesticide dealer shall complete and file with the Department an application to register and shall include as an integral part of the application an annual registration fee of \$30.00. A fee not to exceed \$10.00 may be charged for each duplicate registration certificate issued. Any certified pesticide dealer who fails to file within the 12 month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

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

7:30-3.5 Registration

(a) A certified pesticide dealer shall reregister annually with the Department and pay the reregistration fee of \$30.00.

(b) (No change.)

7:30-3.6 (No change.)

7:30-3.7 Records

(a) A pesticide dealer shall keep, for each distribution or sale of restricted use pesticides with which he or she is associated, a record containing the following information:

1. (No change.)

2. The brand/trade name and the EPA registration number of each restricted use pesticide distributed or sold;

3.-4. (No change.)

5. The certified pesticide applicator registration number used by the purchaser at the time of sale or distribution. If any of the acceptable alternatives to a State of New Jersey pesticide applicator's registration, as specified in N.J.A.C. 7:30-3.8 below, are used, the certification or license number or other proof used shall be recorded in lieu of the certified pesticide applicator registration number.

(b) (No change.)

7:30-3.8 Sale of restricted use pesticides

(a) No pesticide dealer shall distribute or sell a restricted use pesticide to an end user unless the purchaser presents a valid pesticide applicator registration.

1.-2. (No change.)

3. For the purposes of this section, one of the valid operator licenses or certifications listed below is acceptable in lieu of a State of New Jersey pesticide applicator's registration for obtaining chlorine gas, a restricted use antimicrobial:

i. Certified Pool Operator;

ii. Public Water Treatment System license;

iii. Public Water Distribution System license;

iv. Public Wastewater Treatment System license;

v. Public Wastewater Collection System license; or

vi. Industrial Wastewater Treatment System license, except NN license.

4. For the purpose of this section, proof that the end user is a veterinarian is acceptable in lieu of a State of New Jersey pesticide applicator's registration if the veterinarian is obtaining the restricted use pesticides for use on animals as part of his or her practice.

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

7:30-3.9 Sale of pesticides

No pesticide dealer shall sell any pesticide to a person who they know should be certified and registered under the provisions of N.J.A.C. 7:30-6 or N.J.A.C. 7:30-7 unless such person is so certified and registered.

7:30-3.10 (No change in text.)

7:30-3.11 Reciprocity

(a) The Department may waive initial certification testing where an applicant has previously been certified in another state or territory pursuant to a valid certification test given in that state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a dealer certification program substantially equivalent to New Jersey's.

(b) A New Jersey pesticide dealer registration will be issued pursuant to this section if the following conditions are satisfied:

1. The Department receives proof of a valid certification from any state or territory which has been officially recognized by the State of New Jersey as having a dealer certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide dealers and the reciprocal acceptance thereof;

2.-3. (No change.)

7:30-3.12 (No change in text.)

SUBCHAPTER 4. PESTICIDE DEALER BUSINESSES

7:30-4.1 Definitions

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

... "Pesticide dealer business" means any person, as defined in this subchapter, who ultimately controls the transactions conducted at and the operation of a pesticide outlet.

"Pesticide operator" as used in this subchapter means both a commercial pesticide operator and a private pesticide operator.

"Pesticide outlet" means any site, location, or place at or through which restricted use pesticides are distributed to an end user. This term does not include any site, location, or place used solely for the storage of restricted use pesticides or solely as a holding area where an end user takes physical possession of a restricted use pesticide after it has been purchased.

****Private pesticide applicator** means any person who uses or supervises the use of any pesticide for purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.***

"Private pesticide operator" means any person who applies pesticides by equipment other than aerial under the direct supervision of a responsible private pesticide applicator.

...
 "Under direct supervision" means under the instruction and control of another person who is responsible for actions taken and who is available if and when needed, even if not physically present. For the purposes of this subchapter, a person is "under direct supervision" only if the person supervising and the person supervised are employed at the same pesticide outlet.

7:30-4.2 Registration

(a) No person shall cause, suffer, allow or permit the operation of a pesticide dealer business which distributes restricted use pesticide to end users in the State of New Jersey without first registering such business with the Department, on forms provided by the Department, unless:

1. Such person is a duly licensed pharmacist dispensing a prescription pharmaceutical which contains a substance which could be classified as a restricted use pesticide;

2. Such person is a veterinarian administering or dispensing a restricted use pesticide for use on animals as a part of his or her practice;

3. Such person is a pesticide applicator who sells or distributes pesticides only as an integral part of his pesticide application service when such pesticides are dispensed only through equipment used during a pesticide application;

4. Such person is a State or county agency or instrumentality thereof and is providing pesticides to its employees for its own programs;

5.-6. (No change.)

(b) (No change.)

(c) A location, such as the home of a salesperson or agent of a pesticide dealer business, which is different from the main location of the business with which he or she is associated and from which transactions, other than those specifically excluded in the definition of a pesticide outlet, are conducted, shall be considered to be a separate pesticide outlet which must be registered with the Department as a pesticide dealer business.

(d) An annual registration fee of \$75.00 shall be paid to the Department at the time of registration for each separate registration. The registration period shall end on June 30 of each calendar year.

(e)-(i) (No change.)

7:30-4.3 Records

(a) A pesticide dealer business shall keep, for each distribution or sale of restricted use pesticide to an end user, a record containing the following information:

1.-4. (No change.)

5. The certified pesticide applicator registration number used by the purchaser at the time of sale or distribution. If any of the acceptable alternatives to a State of New Jersey pesticide applicator's registration, as specified in N.J.A.C. 7:30-4.4, are used, the certification or license number, or other proof used, shall be recorded in lieu of the certified pesticide applicator registration number; and

6. (No change.)

(b) (No change.)

7:30-4.4 Sale of restricted use pesticides

(a) No pesticide dealer business shall distribute or sell a restricted use pesticide to an end user unless the purchaser presents a valid pesticide applicator registration.

1.-2. (No change.)

3. For the purpose of this section, one of the valid operator licenses or certifications listed below is acceptable in lieu of a State of New Jersey pesticide applicator's registration for obtaining chlorine gas, a restricted use antimicrobial:

- i. Certified Pool Operator;
- ii. Public Water Treatment System license;
- iii. Public Water Distribution System license;
- iv. Public Wastewater Treatment System license;
- v. Public Wastewater Collection System license; or
- vi. Industrial Wastewater Treatment System license, except NN license.

4. For the purpose of this section, proof that the end user is a veterinarian is acceptable in lieu of a State of New Jersey pesticide

applicator's registration if the veterinarian is obtaining the restricted use pesticides for use on animals as part of his or her practice.

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

7:30-4.5 Sale of Pesticides

No pesticide dealer business shall sell any pesticide to a person who they know should be certified and registered under the provisions of N.J.A.C. 7:30-6 or N.J.A.C. 7:30-7 unless such person is so certified and registered.

7:30-4.6 (No change in text.)

7:30-4.7 (No change in text.)

SUBCHAPTER 5. PESTICIDE OPERATORS

7:30-5.1 (No change.)

7:30-5.2 General requirements

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

7:30-5.3 (No change.)

7:30-5.4 Registration

(a) At the completion of training, the pesticide operator shall file with the Department, on forms provided by the Department, an application to register. The applicator shall be co-signed by a certified and registered responsible pesticide applicator who was responsible for the training and shall indicate that the co-signer will be the responsible pesticide applicator for pesticide applications performed by the pesticide operator. An annual registration fee of \$10.00 shall be included as an integral part of the application to register a commercial pesticide operator.

(b) (No change.)

(c) Applications for new registrations will be accepted from pesticide operators throughout the calendar year but, for commercial pesticide operators, a full year's registration fee will be required. All such registrations will expire on September 30 following the date of application, except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

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

7:30-5.5 Reregistration

A pesticide operator shall re-register annually with the Department and, for commercial pesticide operators, pay the reregistration fee of \$10.00.

7:30-5.6 through 5.9 (No change.)

SUBCHAPTER 6. COMMERCIAL PESTICIDE APPLICATORS

7:30-6.1 Definitions

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

...

"Termiticide" means any pesticide labeled, designed, or intended for use in preventing, destroying, repelling or mitigating termites.

...

7:30-6.2 General requirements; variances

(a) No commercial pesticide applicator shall engage in, cause, suffer, allow, or permit the use or application of, or supervise the use or application of, any pesticide in any category or subcategory in which he or she has not been certified and registered unless:

1.-2. (No change.)

3. Such person is applying pesticides by equipment other than aerial under the direct supervision of a responsible commercial pesticide applicator and where an employer-employee relationship exists between the person supervising the application and the person applying the pesticide;

4. Such person is applying a pesticide on property or premises owned or rented by the Federal government:

i. If such person is a Federal employee engaged in the performance of his official duties; and;

ADOPTIONS

ii. If such person has been certified as an applicator of pesticides under a Federal agency plan which has been approved by the United States Environmental Protection Agency pursuant to the provisions of Section 4 of the FIFRA, as amended;

5. Such person is applying antimicrobial agent unless such agents have been classified as restricted use pesticides;

6. Such person is applying wood preserving agents unless such agents have been classified as restricted use pesticides;

7. Such person is applying antifouling paints or agents unless such paints or agents have been classified as restricted use pesticides;

8. Such person is a veterinarian, or is working under the direct supervision of a veterinarian, and is applying pesticides to animals as part of his or her practice; or

9. Such person is applying chlorine gas, a restricted use antimicrobial agent, and is a holder of, or is working under the direct supervision of a holder of, one of the valid operator licenses, or certifications listed below, provided that the operator license held is the one required for the facility where the chlorine gas is being used:

i. Certified Pool Operator;

ii. Public Water Treatment System license;

iii. Public Water Distribution System license;

iv. Public Wastewater Treatment System license;

v. Public Wastewater Collection System license; or

vi. Industrial Wastewater Treatment System license, except NN license.

[(b) Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any pesticide applicator may be vicariously and jointly and severally responsible for any aspect of any pesticide application in which he or she is involved.]

*** (b) Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any pesticide applicator may be jointly and severally responsible for any aspect of the pesticide application in which he or she is involved including acts taken by others to, at least in part, further the interests of the pesticide applicator.***

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

7:30-6.3 Categories

(a) Any commercial pesticide applicator who satisfactorily completes the requirements for Core certification may become certified in one or more of the following categories or subcategories:

1. Agricultural pest control:

i. (No change.)

ii. Animals: This subcategory includes commercial pesticide applicators using or supervising the use of pesticides on animals, including, but not limited to, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places on or in which animals are confined.

2. (No change.)

3. Ornamental and turf pest control:

i.-ii. (No change.)

iii. Interior Plantscaping: This subcategory includes commercial applicators using or supervising the use of pesticides to control pests in the maintenance of interior plantscapes.

4.-6. (No change.)

7. Industrial, institutional, structural pest control:

i.-v. (No change.)

vi. Antifoulants: This subcategory includes commercial pesticide applicators using or supervising the use of restricted use antifouling paints or other agents on boat hulls and other areas to control barnacles, algae, and other marine pests.

8. Public health pest control:

i.-iii. (No change.)

iv. Cooling tower pest control: This subcategory includes commercial pesticide applicators using or supervising the use of pesticides to control microbial and other pests in cooling towers or related areas.

v. Antimicrobial pest control: This subcategory includes commercial pesticide applicators using or supervising the use of restricted use antimicrobial agents in swimming pools, for sterilization of medi-

ENVIRONMENTAL PROTECTION

cal supplies and instruments, for water or wastewater treatment, or for other uses.

vi. Pet grooming: This subcategory includes commercial pesticide applicators using or supervising the use of pesticides to control pests on animals normally kept as pets, including, but not limited to, fleas, ticks, or mites.

9.-11. (No change.)

(b) (No change.)

7:30-6.4 (No change.)

7:30-6.5 Registration

(a) Within 12 months after a person has become fully certified and eligible to register as a commercial pesticide applicator, the certified commercial pesticide applicator shall complete and file with the Department an application to register, and shall include as integral part of the application an annual registration fee of \$30.00. A fee not to exceed \$10.00 may be charged for each duplicate registration certificate issued. Any certified pesticide applicator who fails to file within the 12 month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

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

(g) Rutgers University Cooperative Extension personnel who participate as instructors or in the preparation of subject matter for applicator certification and/or recertification training programs shall be exempt from the fee requirements as provided in (a) above and N.J.A.C. 7:30-6.6(a).

(h) (No change.)

7:30-6.6 Reregistration

(a) A certified commercial pesticide applicator shall reregister annually with the Department and pay the reregistration fee of \$30.00.

(b) (No change.)

7:30-6.7 Continuing certification

(a) (No change.)

(b) Persons registered as commercial pesticide applicators whom the Department determines are responsible for a pesticide misuse under the provisions of the Act or this chapter, may be required by the Department to provide evidence of continued competency to apply or supervise the application of pesticides by repeating the certification requirements of N.J.A.C. 7:30-6.4.

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

7:30-6.8 Records

(a) A commercial pesticide applicator shall keep, for each application of pesticides made by him or her or under his or her direct supervision, a record of application containing the following information:

1.-4. (No change.)

5. The dosage or rate of each pesticide used;

6. The name of the person making the application; *[and]*

7. The site of the application; and

[7.]*8. For applications by a commercial applicator of a termiticide, the record shall ***also*** include a diagram of the structure treated, depicting the lower level of the structure, the location of the termite infestations and ***visible*** damage, areas treated, and any significant items such as location of ***known*** wells, drainage systems and streams and ponds ***[nearby.]*** ***which may be affected by the application.***

(b) (No change.)

(c) All records and information required to be kept pursuant to this section shall be kept for a minimum of three years except that all records of termiticide applications shall be kept for a minimum of five years. The records shall be immediately available upon request by the Department, and by medical personnel in emergency cases. In non-emergency cases, medical personnel may request this information through the Department. These records may be kept by a business pursuant to N.J.A.C. 7:30-7.

(d) (No change.)

7:30-6.9 (No change.)

7:30-6.10 Purchase of restricted use pesticides

No person shall purchase a restricted use pesticide unless he or she presents a valid certified pesticide applicator registration or a valid substitute as allowed in N.J.A.C. 7:30-6.2(a)4, 8, or 9.

7:30-6.11 (No change.)

7:30-6.12 Reciprocity

(a) The Department may waive initial certification testing where an applicant has previously been certified in another state or territory pursuant to a valid certification test given in that state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a certification program substantially equivalent to New Jersey's.

(b) A New Jersey pesticide applicator registration will be issued pursuant to this section, if the following conditions are satisfied:

1. The Department receives proof of a valid certification from any state or territory which has been officially recognized by the State of New Jersey as having a certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide applicators and the reciprocal acceptance thereof;

2.-3. (No change.)

7:30-6.13 (No change.)

SUBCHAPTER 7. PESTICIDE APPLICATOR BUSINESSES

7:30-7.1 Definitions

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

... "Antimicrobial agents" mean:

1. Disinfectants intended to destroy or irreversibly inactivate infectious or other undesirable bacteria, pathogenic fungi, or viruses on surfaces or inanimate objects;

2. Sanitizers intended to reduce the number of living bacteria or viable virus particles on inanimate surfaces, in water, or in air;

3. Bacteriostats intended to inhibit the growth of bacteria in the presence of moisture;

4. Sterilizers intended to destroy viruses and all living bacteria, fungi, and their spores, on inanimate surfaces;

5. Fungicides and fungistats intended to inhibit the growth of, or destroy, fungi (including yeasts) pathogenic to man or other animals on inanimate surfaces; or

6. Commodity preservatives and protectants intended to inhibit the growth of, or destroy, bacteria in or on raw materials (such as adhesives and plastics) used in manufacturing, or manufactured products (such as fuel, textiles, lubricants, and paints), but not in wood treatment, the pulp and paper process or cooling towers.

... "Reentry time" means the period of time that must elapse after a field is treated with a pesticide, and before farm workers are permitted to enter to engage in an activity requiring substantial contact with treated plants, as provided in N.J.A.C. 7:30-9.13.

... "Restricted use pesticide" means any pesticide or pesticide use so classified under the provisions of N.J.A.C. 7:30-2 or so classified by the Administrator of the United States Environmental Protection Agency.

"Scope of employment" means acts carried out which are so closely connected with what a servant is employed to do and so fairly and reasonably incidental to it that they may be regarded as methods, even though improper, of carrying out the objectives of the employment and at least in part furthering the interests of the employer.*

"Termiticide" means any pesticide labeled, designed, or intended for use in preventing, destroying, repelling or mitigating termites.

"TBT antifoulant paint" means any paint formulation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

...

7:30-7.2 Registration

(a) No person shall cause, suffer, allow or permit the operation of a pesticide applicator business as defined by this subchapter in the State of New Jersey without first registering such business with the Department on forms provided by the Department, unless the only pesticides used are antimicrobial agents, wood preservatives, or antifouling paints or agents which are not classified as restricted use pesticides.

(b) An annual registration fee of \$75.00 shall be paid to the Department at the time of registration. The registration period shall end on September 30 of each calendar year except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

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

7:30-7.3 Records

(a) Every business required to register pursuant to the provisions of N.J.A.C. 7:30-7.2 shall keep, for each application of pesticides made by that business, a record of application containing the following information:

1.-4. (No change.)

5. The dosage or rate of each pesticide used;

6. The name of the person making the application; *[and]*

7. The site of the application; and

[7.]*8.*** For pesticide applicator business applications of a termiticide, the record shall include a diagram of the structure treated, depicting the lower level of the structure, the location of the termite infestations and ***visible*** damage, areas treated, and any significant items such as location of ***known*** wells ***[nearby.]****, **drainage systems and streams and ponds which may be affected by the application.*****

(b) (No change.)

(c) All records and information required to be kept pursuant to this section, or copies thereof, shall be kept for a minimum of three years except that all records of termiticide applications shall be kept for a minimum of five years at the place of business. The records shall be immediately available upon request by the Department, and by medical personnel in emergency cases. In non-emergency cases, medical personnel may request this information through the Department.

(d) (No change.)

7:30-7.4 Financial responsibility

(a) Businesses required to register pursuant to N.J.A.C. 7:30-7.2 shall submit proof of financial responsibility with the application for registration to the Department and, upon obtaining a registration, shall maintain financial responsibility at all times while such registration is in effect. The financial responsibility shall meet or exceed the standards set forth below:

1. For pesticide applicator businesses which do not engage in fumigation pest control:

[i. Liability insurance coverage with a \$300,000 combined single limit of liability for bodily injury and property damage, including completed operations; and]

i. Liability insurance coverage with the equivalent of a \$300,000 combined single limit of liability for bodily injury and property damage, which includes coverage for completed operations; and

[ii. As part of the coverage required in (a)i above, an endorsement for Pesticide or Herbicide Applicator Coverage is required. This endorsement shall be the Insurance Services Office standard endorsement GL 04 09 or equivalent.]

ii. As part of the coverage required in (a)i above, coverage for chemical liability is required, for the types of pesticide application performed. This chemical liability coverage shall provide coverage equivalent to that provided by the Insurance Services Office (ISO) standard endorsement GL 04 09 (which provides chemical liability coverage for the ground application of pesticides by Pesticide Applicator Businesses).

2. For pesticide applicator businesses engaged, wholly or in part, in fumigation pest control:

[i. Liability insurance coverage with a \$500,000 combined single limit of liability for bodily injury and property damage, including completed operations; and]

i. Liability insurance coverage with the equivalent of a \$500,000 combined single limit of liability for bodily injury and property damage, which includes coverage for completed operations; and

[ii. As part of the coverage required in (a)2i above, an endorsement for Pesticide or Herbicide Applicator Coverage is required. This endorsement must be the Insurance Services Office standard endorsement GL 04 09 or equivalent.]

ii. As part of the coverage required in (a)2i above, coverage for chemical liability is required, for the types of pesticide application performed. This chemical liability coverage shall provide coverage equivalent to that provided by the Insurance Services Office (ISO) standard endorsement GL 04 09 (which provides chemical liability coverage for the ground application of pesticides by Pesticide Applicator Businesses).

3. (No change.)

7:30-7.5 and 7.6 (No change.)

7:30-7.7 Responsibility of applicator business for the actions of employees

[Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any pesticide applicator business shall be vicariously and jointly and severally responsible for any violation of the Act committed by an employee.]

Notwithstanding the responsibility of any other person or the exemption from the provisions of any other section of this subchapter, any pesticide applicator business shall be responsible for any violation of the Act committed by an employee in the scope of his or her employment. This responsibility shall be joint and several.

7:30-7.8 (No change in text.)

SUBCHAPTER 8. PRIVATE PESTICIDE APPLICATORS

7:30-8.1 through 8.3 (No change.)

7:30-8.4 Registration

(a) Within 12 months after a person has become fully certified and eligible to register as a private pesticide applicator, the certified private pesticide applicator shall complete and file with the Department, on forms provided by the Department, an application to register. Any certified pesticide applicator who fails to file for registration within the 12 month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

(b) Applications for new registrations will be accepted from certified private pesticide applicators throughout the calendar year. All such registrations will expire on September 30 following the date of application, except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

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

7:30-8.5 Reregistration

(a) A certified private pesticide applicator shall renew his or her registration every year on a form supplied by the Department.

(b) (No change.)

7:30-8.6 through 8.10 (No change.)

7:30-8.11 Denial, suspension, or revocation of private pesticide applicator documents

(a) (No change.)

(b) Each of the following acts shall constitute a ground for which any of the disciplinary actions described in (a) above may be taken:

1.-6. (No change.)

7. Failing to comply with reentry time requirements as provided in N.J.A.C. 7:30-9.13 and any days to harvest interval as stated on a pesticide label(s);

8.-10. (No change.)

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

7:30-8.12 Reciprocity

(a) The Department may waive initial certification testing where an applicant has previously been certified in another state or territory

pursuant to a valid certification test given in that state or territory of the United States, provided that the Commissioner, by cooperative agreement, has previously recognized such state or territory as having adopted a certification program substantially equivalent to New Jersey's.

(b) A New Jersey pesticide applicator registration will be issued pursuant to this section if the following conditions are satisfied:

1. The Department receives proof of a valid certification from any state or territory which has been officially recognized by the State of New Jersey as having a certification program substantially equivalent to New Jersey's and which has signed a cooperative agreement with the State of New Jersey relating to the certification of pesticide applicators and the reciprocal acceptance thereof.

2.-3. (No change.)

7:30-8.13 (No change.)

SUBCHAPTER 9. PESTICIDE EXPOSURE MANAGEMENT

7:30-9.1 Definitions

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

"Agricultural crop" means a food produced by cultural treatment of land which is intended for human consumption, or for livestock the products of which are intended for human consumption.

...
"Aquatic pesticide" means any pesticide *except an antimicrobial agent,* that contains labeling instructions indicating that the pesticide is intended for use in the waters of the State or on aquatic sites.

["Aquatic site" means any target site outside a structure where water is physically and visibly present on the surface of the site at the time a pesticide is applied.]

"Aquatic site" means those areas inundated or saturated by water at a magnitude, duration, and frequency sufficient to support the growth of hydrophytes, except that those specific areas where hydrophytes are being grown as an agricultural crop shall not be considered to be aquatic sites.

...
"Flowering stage" means when plants bear any portion of a blossom as part of the blooming process associated with pollen and nectar production.

...
"Significant risk of harm, injury or damage" means a potential for harm, injury or damage which is not purely remote or highly speculative, but capable of being perceived or recognized based on the location, type and amount of pesticide involved, and available scientific information about the pesticide and its effects on persons, property, and the environment.

...
"Treated area" means the target site for a pesticide application.

7:30-9.2 (No change.)

7:30-9.3 Aquatic use permits

(a) No person shall apply an aquatic pesticide to any waters of the State or on any aquatic site without having obtained an aquatic use permit from the Department prior to the proposed date of application.

(b) An aquatic use permit shall not be required if the application is to waters of the State which are not used as a source of potable water and:

1. The application is made to waters which have no outlet and which are bounded by land wholly owned or rented, and controlled, by one person;

2.-3. (No change.)

(c) Applications for an aquatic use permit shall be made on forms supplied by the Department at least 21 days prior to the proposed application date.

1.-2. (No change.)

3. The Department may require the submission of a report addressing the effectiveness of the treatment and any environmental effects as a condition for approval. The person performing the application shall submit such information to the Department at the time and in the format as specified on the approved aquatic use permit.

4. The applicant shall notify the Department of any proposed changes in the approved aquatic use permit and receive approval for such changes prior to the application.

(d) Failure to submit any requested information or the falsification of any information may result in the denial or revocation of an aquatic use permit.

(e) All conditions for approval specified in an aquatic use permit shall be fulfilled.

(f) A \$5.00 fee may be charged for each aquatic use permit.

(g) The Department may exempt any person from the formal application provisions of (c) above if the Department determines that such person has already satisfied the requirements necessary to obtain an aquatic use permit.

(h) The Department will respond to any application for an aquatic use permit within 21 days after the Department receives the information deemed necessary to evaluate the application.

7:30-9.4 Storage of pesticides

(a) (No change.)

(b) Any person who stores any pesticide shall maintain a list of the pesticides stored or likely to be stored during the calendar year and shall ***annually*** send a copy of this list to the local fire company along with a designation of the actual location of the storage area; provided that the provisions of this subsection shall not apply to individuals who are storing pesticides for their personal use on their private residence or persons who are storing pesticides for less than seven calendar days at loading or application sites in connection with their use.

1.-2. (No change.)

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

(f) No person shall store or transport pesticides in any service vehicle unless:

1.-6. (No change.)

7. The pesticides are stored in a compartment separate from the driver, such as the bed of a pick-up truck or a van equipped with a partition to limit movement of the pesticide containers.

8.-9. (No change.)

7:30-9.5 and 9.6 (No change.)

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

(d) No person shall mix or load any 2,4-D compound unless the appropriate safety equipment is worn, a minimum of which shall be gloves and eye protection.

7:30-9.8 Notification; community or areawide applications

(a) No person shall apply any pesticide on a community or areawide basis unless prior notification of the proposed application has been given to persons residing in the vicinity of the proposed target site.

1. The notification shall be made through advertisement in at least two newspapers having the greatest likelihood of informing the public within the area of application. The notice shall be placed in the legal advertisement section.

2. The newspaper notification shall be given a maximum of 30 days and a minimum of seven days prior to the proposed application date.

3. The notification shall contain at least:

i.-iv. (No change.)

v. Application equipment to be used;

vi. The name, address and phone number of a person who may be contacted and is responsible for supplying updated information on the advertised pesticide applications to those persons requesting it; and

vii. The New Jersey Poison Information and Education System telephone number for emergencies and the New Jersey Department of Health telephone number for routine health inquiries.

4. Upon the request by a person residing in the vicinity of the proposed target site, to a person designated pursuant to (a)3vi above,

such designated person shall provide, at a minimum, the following information at least 12 hours prior to the application, except that if a reasonable attempt to provide notice is unsuccessful, an attempt to notify such person, by telephone, shall be made immediately prior to the application.

i.-ii. (No change.)

iii. Any precautionary statement(s) on the product's Federal registered label relating to homeowner or general public safety.

5.-6. (No change.)

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

7:30-9.9 Notification to apiarists (beekeepers)

(a) No person shall make an outdoor application of a pesticide product which has information on its label or labeling noting that the product is toxic to bees unless such person first notifies, at least 36 hours prior to the application, each apiarist who:

1. (No change.)

2. Maintains an apiary which is located within one mile of the target site; and

3. (No change.)

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

(e) The provisions of this section shall not apply to any person using a pesticide on an aggregate area less than three acres; provided that the application is not made with hydraulic spraying equipment capable of operating at a rate greater than 300 psi and 10 gpm, airblast sprayers, or aerial equipment.

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

(h) The provisions of this section shall not apply to any pesticide application which is made for agricultural purposes, except to the following crops within the dates stated below or when in the flowering stage:

1.-3. (No change.)

4. Peaches April 15 to May 15

Re number 4. through 8. as 5. through 9. (No change in text.)

7:30-9.10 Notification; household or structural pest control

(a) At single family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out:

1. ***[At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the residents of the property:]*** ***No application shall be made until the residents of the property are given the opportunity to review the following information which shall be provided by the applicator business in writing:***

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and ***common chemical names, if available, of the* active ingredient*s***);

iii. Label instructions relating to resident or general public safety, including precautions;

iv. A copy of a Consumer Information Sheet which shall contain, at a minimum, the following:

[iv.](1)*** The name, address and ***tele*phone number of the applicator or applicator business;**

[v.](2)*** The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; ***[and]***

[vi.](3)*** A statement, in writing, that a copy of the labels for the pesticides used will be available, if requested by the contracting party³**]; and***

*** (4) The statement: "Pesticides are chemical substances used to control living organisms and vary in degree of toxicity. Pesticides may be a part of a good pest control program. Sanitation, as well as physical and biological control measures, should be considered as another part of a good pest control program."****

2. If the customer ***[desires]*** ***requests*** prior notification of the specific date of the application, such notification shall be provided by the applicator business.

(b) At multiple family residences, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out:

ADOPTIONS

1. At least 48 hours prior to the proposed date of the application, the applicator or applicator business shall provide a notice to each occupied unit to be treated, containing the information listed in (b)2i-v**iv* below. ***If a tenant signs a waiver and requests pest control service, this will serve as compliance with the 48 hour notice. The 48 hour notice requirement is also waived if the local public health agency declares a health emergency requiring immediate pest control.***

i. The applicator or applicator business shall be responsible for distributing the notices, but may delegate the distribution to the contracting party, in writing, in order to expedite the distribution;

ii. If the application is postponed, a new notice shall be issued prior to the next proposed date*]; and]**.*

[iii. In an emergency involving pest infestations, the requirements for the 48 hour pre-notification may be waived upon approval of the Department.]

2. ***[At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the contracting party:]* **No application shall be made until the contracting party has been given the opportunity to review the following information which shall be provided by the applicator business in writing:*****

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and ***common chemical names, if available, of the* active ingredient*s*);**

iii. Applicable label instructions including precautions;

iv. A copy of a Consumer Information Sheet which shall contain, at a minimum, the following:

*[iv.]****(1)*** The name, address and ***tele*phone number of the applicator or applicator business;**

*[v.]****(2)*** The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations: ***[and]***

*[vi.]****(3)*** A statement, in writing, that a copy of the labels for the pesticides used will be available, if requested by the contracting party ***and his or her tenants**[.]*; and***

*****(4) The statement: "Pesticides are chemical substances used to control living organisms and vary in degree of toxicity. Pesticides may be a part of a good pest control program. Sanitation, as well as physical and biological control measures, should be considered as another part of a good pest control program."*****

(c) At institutions, commercial or public buildings, no commercial application of pesticides shall be made for the control of household or structural pests without the following provisions being carried out:

1. ***[At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the contracting party:]* **No application shall be made until the contracting party has been given the opportunity to review the following information which shall be provided by the applicator business in writing:*****

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and ***common chemical names, if available, of the* active ingredient*s*);**

iii. Label instructions relating to building user or general public safety, including precautions;

iv. A copy of a Consumer Information sheet which shall contain, at a minimum, the following:

*[iv.]****(1)*** The name, address and ***tele*phone number of the applicator or applicator business;**

*[v.]****(2)*** The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations: ***[and]***

*[vi.]****(3)*** A statement, in writing, that a copy of the labels for the pesticides used will be available if requested by the contracting party; ***and***

*****(4) The statement: "Pesticides are chemical substances used to control living organisms and vary in degree of toxicity. Pesticides may be a part of a good pest control program. Sanitation, as well as physical and biological measures, should be considered as another part of a good pest control program."*****

ENVIRONMENTAL PROTECTION

2. If the customer ***[desires]* **requests*** prior notification of the specific date of the application, he or she may obtain this from the applicator business.**

3. The applicator or applicator business shall post permanent notices as specified below, such notice to include the date of latest application, the pesticide used (brand name and active ingredient), the name of a contact person and a telephone number for additional information, and the proposed date of next application. ***The Department will allow removal of the notice after 60 days if no further treatments are projected.***

i. At health care facilities, the notice shall be permanently posted at the nurse's station adjacent to the areas treated;

ii. At restaurants, the notice shall be permanently posted next to the Health Department inspection card;

iii. At hotels and motels, the notice shall be permanently posted at the main desk;

iv. At schools, places of worship and public meeting places, the notice shall be prominently posted at the central bulletin board; and

v. At commercial work places, the notice shall be posted in a prominent place for the benefit of the employees.

4. At malls, stores, airports and other large public places, the applicator or applicator business shall post signs during the application, where the public may come in contact with the treated area, and the posting shall remain until the pesticide has settled or dried. ***This does not apply to crack and crevice treatments.***

i. The signs shall bear the following information in letters at least one inch high **"Pesticide Treated Area"*[.]* **and the signs shall contain a three inch or greater diameter circular illustration, in standard international signage, depicting an adult and a child walking. The illustration shall indicate by a diagonal line across the circle, that this action is prohibited.*****

ii. The signs shall be placed at the entrance to the treated areas.

[(d) The application of fumigants or the use of aerosol generators in structures which are attached to or part of other occupied structures shall require the notification of the occupants of those attached structures in the manner prescribed by (b) above.]

[(d) The use of aerosol generators in structures which are attached to or adjoining other occupied structures, or structures which have a common air handling system, shall require the notification of the occupants of those adjoining structures in the manner prescribed by (b) above. Crack and crevice applications and flushing agents are exempt from this requirement.

(e) Public health officials are exempt from the notification requirements, during the normal course of their duties.*

7:30-9.11 Notification; turf or ornamental applications

(a) At single family residences, no commercial application of pesticides shall be made for the control of turf or ornamental pests on residential properties without the following provisions being carried out:

1. Signs shall be posted on the treated property, at the start of the application and for at least 24 hours following the application, or longer if required by re-entry directions on the label;

i. The signs shall bear the following information in letters at least ***[one]* **one-half* inch high: "Pesticide Treated Area";****

ii. The signs shall also contain a ***[three and one-half]* **minimum two* inch diameter circular illustration, in standard international signage, depicting an adult and a child on a lawn walking a dog on a leash. The illustration shall depict, with a diagonal line across the circle, that this action is prohibited;****

iii. The signs shall be placed in such a manner that they are clearly ***[visible]* **legible*** from all streets fronting the treated property and principal accesses to the property; and**

iv. The applicator business shall be responsible for posting and removing the signs; however, the applicator business may delegate to the contracting party, in writing, the removal of the signs.

2. ***[At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator or applicator business, in writing, to the contracting party:]* **No application shall be made until the contracting party has been given the opportunity to review the following information which shall be provided by the applicator business in writing:*****

- i. The proposed dates of the application;
- ii. The pesticides to be used (brand name and ***common chemical names, if available, of the*** active ingredients);
- iii. Label instructions relating to contracting party or general public safety, including precautions;

iv. A copy of a Consumer Information Sheet which shall contain, at a minimum, the following:

[iv.](1) The name, address and telephone number of the applicator business; ***[and]***

[v.](2) The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations***[.]**;**

(3) A statement, in writing, that a copy of the labels for the pesticide used will be available if requested by the contracting party; and*

(4) The statement: "Pesticides are chemical substances used to control living organisms and vary in degree of toxicity. Pesticides may be a part of a good pest control program. Sanitation, as well as physical and biological control measures, should be considered as another part of a good pest control program.*"

3. If the customer ***[desires]* *requests*** prior notification of the specific date of the application, such notification shall be provided by the applicator business.

(b) At multi-family residences and commercial buildings, no commercial application of pesticides shall be made for the control of turf or ornamental pests without the following provisions being carried out:

1. Signs shall be posted on the treated property at the start of the application and for at least 24 hours following the application, or longer if required by re-entry directions on the label.

i. The signs shall bear the following information in letters at least ***[one]* *one-half*** inch high: "Pesticide Treated Area";

ii. The signs shall also contain a ***[three and one half]* *minimum two*** inch diameter circular illustration, in standard international signage, depicting an adult and a child on a lawn walking a dog on a leash. The illustration shall depict, with a diagonal line across the circle, that this action is prohibited;

iii. The signs shall be placed in such a manner that they are ***[visible]* *legible*** from the principal access points to the treated area; and

iv. The applicator shall be responsible for posting and removing the signs; however, the applicator may delegate to the contracting party, in writing, the removal of the signs.

2. ***[At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator or applicator business, in writing, to the contracting party:]* *No application shall be made until the contracting party has been given the opportunity to review the following information which shall be provided by the applicator business in writing:***

i. The proposed date of the application;

ii. The pesticides to be used (brand name and ***common chemical names, if available, of the*** active ingredients);

iii. Label instructions relating to contracting party or general public safety, including precautions;

iv. A copy of a Consumer Information Sheet which shall contain, at a minimum, the following:

[iv.](1) The name, address and telephone number of the applicator or applicator business;

[v.](2) The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; ***[and]***

[vi.](3) A statement, in writing, that a copy of the labels for the pesticides used will be available if requested by the contracting party***[.]**;** **and***

(4) The statement: "Pesticides are chemical substances used to control living organisms and vary in degree of toxicity. Pesticides may be a part of a good pest control program. Sanitation, as well as physical and biological control measures, should be considered as another part of a good pest control program."**

3. If the customer ***[desires]* *requests*** prior notification of the specific date of application, such notification shall be provided by the applicator ***or applicator*** business.

(c) At golf courses, no commercial application of pesticides shall be made for the control of turf or ornamental pests on golf courses without the following provisions being carried out:

1. Signs shall be posted at the ***[first and ninth]* *starting*** tees so that the signs are visible to persons using the course.

i. The signs shall bear the following information in letters at least one inch high: "Pesticide Treated Area"; and

ii. The signs shall also include the following information which shall be changed as necessary:

(1) The dates of last application;

(2) The areas treated;

(3) The pesticides used (brand name and ***common chemical names, if available, of the*** active ingredient);

(4) The proposed dates of next application; and

(5) The name and telephone number of the person to contact for additional information.

2. If the golf course owner desires prior notification of the specific date of application, such notification shall be provided by the applicator business.

(d) At schools, institutions, parks and similar sites, no commercial application of pesticides shall be made for the control of turf or ornamental pests without the following provisions being carried out:

1. Signs shall be posted at the start of the application and remain for at least 24 hours following the application. The signs shall be posted in such a manner that they are ***[visible]* *legible*** from the principal access points to the treated areas such as athletic fields, play grounds and recreation areas.

i. The signs shall bear the following information in letters at least ***[one]* *one-half*** inch high: "Pesticide Treated Area";

ii. The signs shall also contain a ***[three and one half]* *minimum two inch*** diameter circular illustration, in standard international signage, depicting an adult and a child on a lawn, walking a dog on a leash. The illustration shall depict with a diagonal line across the circle that this action is prohibited;

iii. The signs shall be posted for at least 24 hours following the application, or longer if required in re-entry directions on the label; and

iv. The applicator or applicator business shall be responsible for posting and removing the signs; however, the applicator may delegate to the contracting party, in writing, the removal of the signs.

2. ***[At the time an oral or written agreement for pesticide application is made or renewed, the following information shall be provided by the applicator business, in writing, to the contracting party:]* *No application shall be made until the contracting party has been given the opportunity to review the following information which shall be provided by the applicator business in writing:***

i. The proposed dates of the application;

ii. The pesticides to be used (brand name and ***common chemical names, if available, of the*** active ingredient***s*)**;

iii. Label instructions relating to building or site user or general public safety, including precautions;

iv. A copy of a consumer information sheet which shall contain, at a minimum, the following:

[iv.](1) The name, address and telephone number of the applicator or applicator business;

[v.](2) The telephone number of the New Jersey Department of Health for general health information and the New Jersey Poison Information and Education System telephone number for emergency situations; ***[and]***

[vi.](3) A statement in writing that a copy of the labels for the pesticides used will be made available, if requested, by the contracting party***[.]**;** **and***

(4) The statement: "Pesticides are chemical substances used to control living organisms and vary in degree in toxicity. Pesticides may be a part of a good pest control program. Sanitation, as well as physical and biological measures, should be considered as another part of a good pest control program."**

ADOPTIONS

7:30-9.12 Additional notification

(a) The following applies to all applications covered by the household, structural, turf and ornamental notification rules at N.J.A.C. 7:30-9.10 and 9.11:

1. No person shall make a commercial application of pesticides for household, structural, turf or ornamental pest control without complying with (b) below where a person not previously notified requests to be notified of such an application or conditions indicate that notification in addition to that specified in this subchapter is necessary to prevent a significant risk of harm, injury or damage.

(b) When such need for notification is identified, notification shall be made and reasonable precautions taken, including the allowance of sufficient time for those notified to take appropriate precautions, before application may commence.

7:30-9.13 Farm worker safety

(a)-(l) (No change.)

7:30-9.14 Reporting of pesticide spills

(a) (No change.)

(b) The report shall be made to the Department immediately and may be made by telephone to the Bureau of Pesticide Control or the Department Hotline at (609) 292-7172. A written report of the pesticide spill by the person responsible for the report pursuant to (a) above, shall be mailed to the Department within 10 days of the date of occurrence.

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

7:30-9.15 Accidental pesticide misapplications and spills

(a) When, during the application of a pesticide, an accidental reportable pesticide spill has occurred, or if movement of a pesticide to a non-target site within a structure has occurred, no violation of this chapter shall be cited provided:

1. The person responsible for the application reports the spill or movement of the pesticide to the Department in accordance with N.J.A.C. 7:30-9.14;

2. Necessary procedures to cleanup the pesticide to a level deemed acceptable by the Department are immediately implemented to reduce or remove resultant contamination at the non-target site. The Department may, at its discretion, extend the time period of initiation of the cleanup; and

3. It can be adequately demonstrated to the Department that the following conditions relevant to the application were met:

i. No injury to persons or the environment resulted from the incident or the presence of the pesticide at the non-target site;

ii. All persons involved in the application were properly licensed under the provisions of this chapter;

iii. Equipment used during the application was properly maintained and/or calibrated;

iv. The record of pesticide application contains all mandated information; and

v. The application was performed in a manner consistent with the provisions of the Federal registered label of the pesticide used and other restrictions as contained in the Act or this chapter.

SUBCHAPTER 10. PESTICIDE USE

7:30-10.1 Definitions

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

...
"Aerosol" means a suspension in air of fine liquid or solid particles between 0.1 to 100 microns in size which is produced by blasts of heated air, or exhaust gas, or rapid volatilization of a liquified gas or propellant, or mechanical aerosol generators.

...
"Basement" means any accessible space under a structure, wholly or partly below the surface of the ground, that is greater than six feet in height and contained by foundation walls.

...
"Commercial boat yard" means any facility which engages for hire in the construction, storage, maintenance, repair, or refurbishing of

ENVIRONMENTAL PROTECTION

vessels or any licensed independent marine maintenance contractor who engages in such activities.

...
"Crawlspace" means any space under a structure that is six feet or less in height and contained by foundation walls.

...
"Fumigant" means a substance or mixture of substances which produces matter in a gaseous state, not including aerosols, intended to prevent, control, or destroy pests.

"Heating unit" means a furnace and any associated duct work.

"Inaccessible crawl space" means any space under a structure which is not open to normal ingress from within and/or without the structure.

...
"Low pressure injection" means the minimum amount of pressure required for the termiticide to clear the hose at the nozzle.

...
"TBT antifoulant paint" means any paint formulation containing any tributyltin compounds having three normal butyl groups attached to a tin atom and with an anion such as chloride, fluoride or oxide.

...
"Vessel" means every description of watercraft, other than a sea-plane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

7:30-10.2 (No change.)

7:30-10.3 Pesticide use and/or application

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

(h) No person shall add water to any pesticide handling, storage, or application equipment via a hose, pump, or other equipment unless such hose, pump, or other equipment is fitted with an effective valve or device to prevent backflow of pesticides or liquids containing pesticides into water supply systems, streams, lakes, other sources of water or other areas.

(i)-(j) (No change.)

(k) No person shall perform a community or areawide pesticide application for gypsy moth control during normal student commuting times, as determined by the local school district, within two miles of a school including part or all of grades K through 8 and within two and one-half miles of a school including part or all of grades 9 through 12. Provisions of this subsection shall not apply on those days when a school is not in session.

(l) (No change.)

[(m) No person shall fail to remove a rodenticide after a rodenticide contract has been fulfilled or terminated.]

*[(n)**(m)* No person shall make an application of a fumigant unless at least one applicator certified and registered in the fumigation subcategory as described in N.J.A.C. 7:30-6.3(a)7iii or the food manufacturing and processing subcategory as described in N.J.A.C. 7:30-6.3(a)7iv is present at the application location for the duration of the application.

*[(o)**(n)* No person shall make an application of a pesticide containing diazinon to sod farms, golf courses, or other turf areas greater than three acres*, or to other general turf areas of three acres or less that evidence indicates are frequented by waterfowl*.

[(p) No person shall make an application of any pesticide in or around a school when students are on the school premises.]

[(o) No person shall make an application of any pesticide, except for rodenticides, roach baits and antimicrobial agents, in or around a school in grades preschool through 12, during normal school hours, as set by the school administration. After normal school hours, applications can be made in areas where students will not contact treated areas until sufficient time is allowed for the pesticide to dry or settle or longer if the label requires. This subsection is not applicable to the application of pesticides for student instructional purposes and to public health officials during the normal course of their duties.

*[(q)**(p)* No person shall make an application of a TBT antifoulant paint unless applied:

1. Within a commercial boat yard; and
2. To vessels which exceed 25 meters (82.02 feet) in length or which have aluminum hulls.

7:30-10.4 Restrictions on use of termiticides

- (a) (No change.)
- (b) No person shall apply any termiticide without first pressurizing the application equipment and inspecting for leaks, including but not limited to observation of the tank, pump, hose, fittings, and injection apparatus. Any leak detected during this inspection shall be repaired prior to starting the application. If any leaks are detected during the application, the application shall immediately cease until the leak has been repaired and the spill soaked up with an absorbent material. Provisions of N.J.A.C. 7:30-9.15 shall also apply.
- (c)-(h) (No change.)
- (i) No person shall make an application of a termiticide into voids of foundations unless done pursuant to the following restrictions listed by foundation type:
 1. Hollow block, brick, and tile foundations shall:
 - i.-ii. (No change.)
 - iii. Have any paneling or other wall covering, as in the case of (i)ii above or, have a member of the termite application crew inside the basement during treatment observing for evidence of leaks. If a leak is observed by such crew member, application shall immediately cease, the spill be absorbed, the paneling or other wall covering removed, and any visible holes or cracks sealed prior to continuing treatment. If this second option is selected, other clean-up procedures, to be determined by the Department when discovered or reported pursuant to N.J.A.C. 7:30-9.14, may be required in addition to absorption of the termiticide.
 2. Rubble and stone foundations shall:
 - i.-ii. (No change.)
 - iii. Be injected only with low pressure injection; and
 - iv. (No change.)
- (j) (No change.)
- (k) No person shall make a subterranean application of any termiticide to a basement floor, unless applied pursuant to the following restrictions listed by structural floor type and/or condition:
 - 1.-3. (No change.)
 4. Concrete slab floors with a French drain system shall be treated by low pressure injection beneath the slab and/or expansion joint with a pesticide, other than an organo-chlorine, labeled for this site.
 5. (No change.)
- (l) No person shall make a subterranean application of a termiticide to a crawlspace unless applied pursuant to the following restrictions listed by structural type and/or other conditions:
 - 1.-3. (No change.)
 4. Accessible plenum crawlspaces shall be treated consistent with (l)1 or 2 above, but only with a termiticide other than an organo-chlorine which is labeled for this site and only in conjunction with positive ventilation during and for 24 hours following the end of the plenum crawlspace treatment. Only low pressure injection shall be used and the point of termiticide injections shall be at least four inches beneath the crawlspace floor. Immediately following treatment, cover treated soil with at least 4 mil polyethylene or equivalent sheeting as may be approved by the Department. Occupants of the treated structure shall be advised to vacate during treatment and for the 24 hour aeration period.
- (m) No person shall make a subterranean application of a termiticide to an inaccessible crawl space unless applied pursuant to the following restrictions:
 - 1.-3. (No change.)
 - (n) No person shall make a subterranean application of a termiticide to a slab unless applied in accordance with the following restrictions by slab type and/or other conditions:
 - 1.-3. (No change.)
 4. Wood on slab construction shall be drilled and treated as in (n)2 and 3 above, except only low pressure injection shall be used and the quantity of termiticide pumped into each hole shall not be great enough to cause excess termiticide to emerge from adjacent holes.

5. (No change.)

6. Slabs covering or containing air ducts may be treated with a termiticide, other than an organo-chlorine, without sealing of the duct openings and installation of an alternative air circulation/heating system provided:

- i.-ii. (No change.)
- iii. Application under the slab is limited to gravity or low pressure injection;
 - iv.-vi. (No change.)
 - (o) Accidental duct contamination resultant from an application performed in strict accordance with (n)6i-vi above shall be subject to reporting and review under the provisions of N.J.A.C. 7:30-9.14.
 - (p) No person shall make a subterranean application of a termiticide to a property on which wells and/or related water sources are located unless applied pursuant to the following restrictions:
 1. If the well or other water source is within the linear distance of the treatment site as provided in (p)4 below and if a connection is made to a public water supply system the well shall be sealed according to the specifications of the Division of Water Resources at N.J.A.C. 7:9-9.9.
 - 2.-5. (No change.)
 - (q) Retreatments with termiticides are allowed only when there is evidence of reinfestation subsequent to the initial treatment, or if there is a disruption of the pesticide barrier in the soil due to construction, excavations, or landscaping. In cases of disruption of the soil barrier, only those locations where this occurred may be re-treated. In cases of evidence of termite infestations, the entire premises may be treated if:
 1. (No change.)
 2. Live termites are found on or within the structure.

(r)-(s) (No change.)

(t) A diagram of the structure to be treated, depicting the lower level of the structure, the location of termite infestations and ***visible*** damage, areas treated and any significant items such as location of ***known* wells*, drainage systems, streams and ponds which may be affected by the application*** shall become a part of the termite application records and shall be maintained by the applicator for a minimum of five years.

7:30-10.5 Aerial application of pesticides

- (a)-(r) (No change.)
- (s) No pesticide shall be deposited by aircraft within 100 feet of any private residence unless the aerial pesticide applicator and/or applicator business has written consent of an inhabitant of said private residence of legal age. The aerial pesticide applicator and/or applicator business shall obtain the written consent, or the party who is contracting for the services of an aerial pesticide applicator and/or applicator business shall obtain the written consent and forward it to the aerial pesticide applicator and/or applicator business for record keeping purposes. The consent agreement shall include:
 1. The date of agreement;
 2. The time period for which the consent is valid;
 3. The location or designation of the private residence; and
 4. The signature of the consenting inhabitant of the private residence.
 - i. Any consenting inhabitant may withdraw consent by notifying, in writing, the party which requested the consent. Consent may be withdrawn following the application season or at any time for a pesticide misapplication involving the consenting inhabitant's property under this chapter. Upon such notification, the previous consent shall be invalidated. Copies of all consent agreements shall be maintained by the aerial pesticide applicator and/or applicator business and made immediately available, upon request, to the Department.
- (t) No person shall be exempt from any of the provisions of this section except under these conditions:
 - 1.-2. (No change.)
 3. The provisions of (s) above shall not apply to any private residence that is occupied by the person contracting to have the spray performed and which is located on a property which includes the target site.

7:30-10.6 (No change.)

7:30-10.7 Assessment of fees for sample analysis

(a) In any situation involving a suspected misapplication or spill of a pesticide, where the sample(s) routinely collected during the initial inspection and sampling date define a violation of the Act or rules promulgated thereunder and show the need for collection of additional samples to define the extent of the contamination as required by the Department to fully evaluate the procedures necessary to remedy said violation, a fee for all sampling may be assessed against the person responsible for the violative application or spill, such fee to reflect the actual cost incurred by the Department for the analyses of the sample(s).

(b) A manufacturer of pesticide products shall be responsible for sample analysis fees when analysis of products collected at the manufacturer's facility indicate the samples are violative as misformulations.

(c) Fees for pesticide sample analysis of formulations are as follows:

- 1. Liquids, except detergents: \$300.00 per sample.
- 2. Powders: \$340.00 per sample.
- 3. Aerosols, baits, traps, and detergents: \$400.00 per sample.
- 4. User dilution: \$500.00 per sample.

(d) Fees for pesticide sample analysis of residues are as follows, reflecting a cost per analyte. Each additional analyte increases the applicable fee by 10 percent.

- 1. Swab: \$125.00 per sample.
- 2. Air (puf): \$150.00 per sample.
- 3. Air (chromosorb): \$100.00 per sample.
- 4. Water: \$150.00 per sample.
- 5. Soil and other solids: \$225.00 per sample.
- 6. Biological tissue: \$250.00 per sample.

(e) The fee for a pesticide scan shall be \$250.00 per group.

(f) Any sample requiring extra preparatory work or special analysis shall be charged \$100.00 per hour for the preparatory work or special analysis in addition to the fees specified in (c), (d) or (e) above.

7:30-10.8 (No change in text).

(a)

OFFICE OF GREEN ACRES

Green Acres Program

Adopted Repeal and New Rules: N.J.A.C. 7:36-1, 4 and 7

Adopted New Rules: N.J.A.C. 7:36-2, 3, 5 and 6

Proposed: December 21, 1987 at 19 N.J.R. 2358(b).

Adopted: October 25, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Filed: October 26, 1988 as R.1988 d.549, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 13:8A-1 et seq., 13:8A-20 et seq., 13:8A-35 et seq., and P.L. 1983, c. 354.

DEP Docket Number: 061-87-11.

Effective Date: November 21, 1988.

Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:

The proposed repeals and new rules were published on December 21, 1987. The comment period, which was extended by notice published on March 7, 1988 at 20 N.J.R. 552(b) and on April 18, 1988 at 20 N.J.R. 869(a), to allow additional opportunity for public input, ended on May 18, 1988. During that time a comment was received from within the Department concerning a minor change at N.J.A.C. 7:36-1.4(c) which describes the rate of interest for Green Trust loans. In order to be consistent with the Green Acres Bond Act of 1983, P.L. 1983, c. 354, that subsection should read "an interest rate of not more than two percent." The adopted rule has been modified in accordance with this suggestion.

Full text of the adoption follows (additions to the proposal are indicated in boldface with asterisks *thus*).

SUBCHAPTER 1. PRIORITIES AND OBJECTIVES

7:36-1.1 Introduction

(a) The purpose of the New Jersey Green Acres and Recreational Opportunities Program administered by the Department of Environmental Protection is to increase and preserve permanent outdoor recreational areas for the public's use and enjoyment.

(b) The Local Assistance provisions of P.L. 1974, c.102, P.L. 1978, c.118 and P.L. 1983, c.354 make State funds available for the development of outdoor recreation facilities and for the acquisition of open space lands.

7:36-1.2 Definitions

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

"Acquisition project" means a single parcel of land or several parcels of land that form a contiguous public recreation or conservation open space area.

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Development project" means outdoor recreation development, renovation or redevelopment on one site, several types of recreation development, renovation or redevelopment on one site, or development of several sites for similar activities.

"Diversion" means the use of public parkland contrary to restrictions or encumbrances placed upon such land which limit its use to public recreation and conservation in accordance with applicable law and with this chapter. This definition includes, but is not limited to, permanent easements, rights-of-way, leases or sales of such land granted or made for other than public recreation or conservation uses.

"Local unit" means a municipality or county within the State of New Jersey.

"Permanent" means the use of lands for public outdoor recreation and/or conservation in perpetuity.

"Project" means the acquisition or development activity for which Green Acres financial assistance is being sought.

"Recreation and conservation purposes" means use of lands for parks, natural areas, historic areas, forests, camping, fishing, water reserves, wildlife, reservoirs, hunting, boating, winter sports, and similar uses for either public outdoor recreation or conservation of natural resources, or both. (See P.L. 1975, c.155, Section 3, N.J.S.A. 13:8A-37)

"Statewide Comprehensive Outdoor Recreation Plan" (SCORP) means that document, developed by the Department, which sets forth the policies for recreation and the use of open space in the State. The plan provides the guidelines for the coordination of outdoor recreation projects throughout the State.

"State House Commission" means that entity created by N.J.S.A. 52:20-1 et seq.

"Urban aid area" is an urban area as defined in P.L. 1978, c.14 (N.J.S.A. 52:27D-178).

7:36-1.3 Eligible applicants

(a) Any local unit authorized to acquire, administer, protect, develop and maintain lands for recreation and conservation purposes is eligible to make application under the program.

(b) School boards, parking authorities, housing authorities, and similar public agencies without primary recreation or conservation responsibilities are not eligible for Green Acres assistance.

(c) An open space project that complements a non-eligible agency's program may be approved under the Green Acres program if such open space project is sponsored by an eligible local unit.

(d) A Green Acres application shall be prepared with the assistance of various local agencies such as the park and recreation commission, the planning board, and/or the environmental commission.

7:36-1.4 Green Acres loans and grants

(a) To the extent that funds are available pursuant to the Green Acres bond issues enacted in 1961, 1971, 1974 and 1978 (P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; and P.L. 1978, c.118), local assistance grants will be made, in accordance with the provisions of this Chapter, to eligible local units in amounts of up to 50 percent of the total allowable cost of the project.

1. In the event that the sums available pursuant to P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102 and P.L. 1978, c.118 have been appropriated and obligated, the Department will make grants to local units for eligible urban aid and environmental incentive projects from funds available pursuant to P.L. 1983, c.354 in amounts not to exceed 25 percent of the total allowable cost of the project.

(b) Loans in amounts of up to 100 percent of the total allowable costs are available to eligible local units pursuant to the Green Acres Bond Act of 1983 (P.L. 1983, c.354).

(c) All Green Trust loans shall bear an interest rate of ***not more than*** two percent and shall be repaid within a 20 year period, as provided by P.L. 1983, c.354.

1. Initial development project limits are established at the time of the funding offering and are based on the cost estimate of a New Jersey licensed professional engineer, landscape architect, or architect.

2. Initial acquisition project limits are established at the time of funding offering and are based on the estimated fair market value of the land to be acquired.

(d) Pursuant to the Green Acres bond issues passed in 1961, 1971, 1974 and 1978 (P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; and P.L. 1978, c.118), a local unit may use as its matching share any other source of funding which may be available from a private agency, group or foundation, or from a Federal program, as well as local capital funds, bond revenues, surpluses or specific appropriations.

(e) When submitting an application for development or acquisition funding under the Green Acres bond programs, a local unit shall consider the financial burden it will incur to operate, maintain, police and protect the site.

(f) The following categories of funding are available pursuant to the 1983 Green Acres Bond program:

1. Green Trust loans covering 100 percent of the project cost are available in the following funding categories:

i. The development of county parks and major municipal facilities. Available funds will be based on yearly appropriations;

ii. Acquisition or development projects not to exceed \$100,000 in total project cost; or

iii. The acquisition of small projects, inholdings, and neighborhood parks. Generally, no maximum dollar amount is set. However, available funds are based on yearly appropriations.

2. The "urban aid" category for urban aid areas as defined in P.L. 1978, c.14, consisting of a Green Trust loan covering up to 75 percent of the cost of an acquisition or development project, together with a Green Acres grant of up to 25 percent of the total eligible cost for the remaining cost. Generally, no maximum dollar amount is set. Available funds will be based on yearly appropriations and will, in no event, exceed 100 percent of the total project cost.

3. "Environmental incentive" assistance consisting of both a Green Trust loan covering up to 75 percent of the cost of an acquisition project and Green Acres grant covering up to 25 percent of the total eligible project cost. Generally, no maximum dollar amount is set. However, available funds are based on yearly appropriations and will, in no event, exceed 100 percent of the total project cost.

7:36-1.5 Application procedures

(a) For both the acquisition and development programs, the following three basic steps are required as part of the loan and grant funding application procedures:

1. The local unit shall submit a written application package for a project and shall meet with the Department concerning the specifics of the particular loan or grant application.

2. Upon approval of the application, funds will be distributed in accordance with an agreement between the State and the local unit which addresses, among other items, the following:

i. The loan and/or grant amount;

ii. The time period; and

iii. The project scope.

3. A notice of receipt of applications shall be sent by the Department to State, county and municipal officials.

(b) State funds will be disbursed in accordance with a schedule established by the Department, subject to availability and appropriations.

(c) The Department will accept applications on an annual basis from local units according to the following schedule:

1. June: The Department will request the submission of applications from county and municipal governments.

2. October: Local units must submit applications no later than October 31.

3. January: Priority lists and funding offerings will be made by the Department.

(d) In the case of acquisitions, schedule requirements set forth in (c) above may be modified by the Department for good cause provided that funds are available.

(e) All applications shall be submitted on a form provided by the Department.

7:36-1.6 Distribution of funds

The Department will distribute funds according to a priority ranking established by the Department. When more than one eligible funding request is submitted by the local unit, the Department reserves the right to limit funding to less than all project applications submitted.

7:36-1.7 General program criteria

(a) Decisions on applications reflect the extent to which applications meet the criteria established by the Department on the basis of the New Jersey Statewide Comprehensive Outdoor Recreation Plan (SCORP). The Department will determine the extent to which the project:

1. Serves multiple recreation and conservation purposes;

2. Serves recreation needs of a wide variety of citizens and provides for the special needs of groups such as the handicapped, elderly, disadvantaged, and/or low-income families and individuals;

3. Provides public access by economical and energy conserving means including public transit (existing or to be established), pedestrian or bicycle access;

4. Meets the most critical and under-supplied recreation needs as defined in the Statewide Comprehensive Outdoor Recreation Plan;

5. Combines with other public facilities;

6. Represents a regional program of joint municipal or county/municipal efforts;

7. Includes active public participation in the planning phase;

8. Evidences construction readiness;

9. Enhances, preserves or restores unique natural areas or land types; and

10. Has acquired development rights, life estates, remainder interests, conservation easements, or other interests not amounting to fee simple interest.

(b) No minimum or maximum acreage restrictions are placed on lands to be acquired or developed.

(c) No established minimum or maximum dollar grants are required by the Department except as provided in N.J.A.C. 7:36-1.4.

(d) No project shall receive financial assistance unless it:

1. Is a recreation and/or conservation unit;

2. Can be accomplished within a specific time; and

3. Provides a net increase in outdoor recreation conservation activity.

7:36-1.8 General provisions

(a) Green Acres loan or grant approval is contingent upon the local unit's compliance with all Federal, State and local laws, codes, and ordinances, including, but not limited to, the local unit's obtaining all necessary permits, licenses and grants.

(b) Prior to the final payment of a loan or grant by the Department, the local unit shall:

1. Adopt a comprehensive park ordinance which governs conduct and use of the public park facility; and

ADOPTIONS

2. Have submitted and obtained Department approval of a mapped inventory of environmental, recreational and open space resource related information and submitted a concise concept plan or strategy for the provision of open space, recreation and natural resource protection.

(c) A local unit receiving any Green Acres funding shall recognize, evaluate, and protect water quality and the historic, cultural and natural features of the site.

(d) Once Green Acres assistance has been approved for a project, no development or change in use shall occur on the project site or on any other lands within the local unit that are used for recreation or conservation purposes at the time of the funding approval without prior approval of the Department.

1. Prior to the submission of a request for the Department's approval of a change in use, the local unit shall conduct a local public hearing pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12) so that all interested parties may present comments concerning the proposed change. A record of the public hearing shall be submitted to the Department along with the request for approval.

(e) Any fees charged by a local unit for the use of Green Acres funded facilities shall be established in accordance with the following requirements:

1. The local unit may charge a fee for the use of a recreation facility;

2. All fees shall be reasonable and non-restrictive;

3. Any conditions for registration, scheduling or membership shall be clearly posted at the site;

4. Provisions shall be made for use fees, on a daily basis, without the requirement of seasonal or yearly membership fees;

5. Differential fee rates based on family and seasonal registrations are permitted;

6. No fee over \$2.00 per person shall be charged without prior approval of the Department. A fee schedule may include the following categories:

i. Yearly, seasonal, monthly, weekly, daily;

ii. Individual, group, family;

iii. Resident, non-resident (when any per person fee exceeds \$2.00, non-resident fees shall not exceed double the rate charged to a resident); and/or

iv. Handicapped, senior citizen, disadvantaged.

7. Fees may be developed for each individual project and will be considered on an individual case basis.

8. Fees collected shall be used only for the operation, maintenance and/or for capital expenses related to the recreation facility or program as a whole provided, however, that priority shall be given to the facility for which the fee revenues were taken. A trust account shall be established by the local unit for this purpose.

i. Fees collected or revenues from facilities leased for an approved temporary use (see N.J.A.C. 7:36-6.9) shall be used only for the operation, maintenance, and/or for capital expenses related to the recreation facility or program as a whole.

9. No change in the approved fee schedule shall be made without prior approval of the Department.

(f) Facilities may be operated through a concession awarded by competitive bidding in accordance with applicable law. Any payments, fees or rentals shall be charged and collected directly by the local unit and shall be used to offset the operating cost of the recreation program as a whole in accordance with N.J.A.C. 7:36-1.8(e)8 above.

(g) Use of the Green Acres funded facilities shall not be restricted on the basis of residency, race, creed, color, sex, or national origin and local units shall comply with the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.).

(h) Any liabilities incurred as a result of ownership, construction or operation of a facility shall be the responsibility of the local unit.

(i) Scheduling the use of a facility to accommodate organized sports, recreation or conservation activities is permitted and is the responsibility of the local unit.

1. Exclusive use agreements or discriminatory programming based on residency or upon factors which are in violation of the Law Against Discrimination (N.J.S.A. 10:5-1) are prohibited.

ENVIRONMENTAL PROTECTION

2. Facilities shall not be programmed for the sole use of a particular conservation group, sporting association or athletic club.

(j) Pursuant to N.J.S.A. 13:8A-1 et seq., lands acquired and/or developed with Green Acres funds may not be diverted to non-recreation or non-conservation uses or disposed of without the prior approval of the Commissioner and the State House Commission. (See N.J.A.C. 7:36-7.)

(k) Upon receipt of an acquisition or development loan or grant, all lands owned, dedicated or maintained for public recreation or conservation purposes by the local unit shall not be diverted or disposed of for uses other than those of public recreation or conservation without the prior approval of the Commissioner and the State House Commission. (See N.J.A.C. 7:36-7.)

1. A local unit sponsoring a new public recreation facility on open space and recreation lands not funded with Green Acres assistance may adopt fees and schedules for that recreation facility without being considered to have diverted its lands as described above provided that the facility is operated by the local unit itself or an agent or agency thereof having primary recreation responsibilities.

2. Development and operation of any new activities, such as a private club facility which would limit use of lands or facilities exclusively to members thereof and which restricts public use and enjoyment of a public recreation or conservation area is considered a diversion and requires Commissioner and State House Commission approval.

3. Change of any public recreation or conservation facility to a non-recreation/non-conservation use although remaining a public facility is a diversion and requires Commissioner and State House Commission approval.

(l) Rules concerning signs are as follows:

1. A sign available from the Department shall be posted in a prominent place indicating that the site was acquired and/or developed with State of New Jersey Green Acres financial assistance.

2. Where appropriate, signs indicating the accessibility of the facility to the handicapped shall be posted.

3. The local unit shall be responsible for the erection, maintenance and replacement of all project signs.

4. Permanent commercial billboards or any other type of displayed advertising or promotion of products or services is prohibited.

5. Posting of political campaign signs on the site is prohibited.

6. Posting of signs that restrict public access or use shall be approved by the Department in advance of posting.

(m) Rules concerning reservoir/flood control project are as follows:

1. A Green Acres loan or grant may be used for the acquisition or development of the recreation portion of a reservoir, flood detention area or storm water retention basin.

2. Recreation provided at Green Acres funded portion of the reservoir/flood control facilities shall be available for public use and enjoyment.

7:36-1.9 Public access to files

(a) Access to development files is permitted pursuant to N.J.S.A. 47:1A-1 et seq.

(b) Acquisition project files are public records under N.J.S.A. 47:1A-1 et seq., and public access is allowed except to those items concerning appraisal, fair market value, or other matters involving price.

(c) Any application materials or project information will, upon written request, be provided for a fee as set forth in N.J.S.A. 47:1A-1 et seq.

7:36-1.10 Contract compliance

(a) The Department will determine contract compliance at the time of loan or grant reservation by evaluating the following items:

1. For development projects, the local unit shall conform to the specific time limitations of the loan or grant contract by:

i. Completing a standard development project in 24 months;

ii. Completing an extraordinary development project in accordance with a schedule agreed upon at the time of project approval.

2. For acquisition projects, the local unit shall conform to the specific time limitations of the loan or grant contract by:

i. Completing a standard acquisition project within 12 months after the fair market value certificate acceptance date.

ii. Completing an extraordinary acquisition project in accordance with a schedule agreed upon at the time of project approval.

3. For development projects under normal circumstances, the local unit shall:

i. Have plans and specifications certified by a licensed professional engineer, landscape architect or architect within 150 days after the date of funding offering;

ii. Advertise for bids within 180 days after the date of funding offering; and

iii. Award all contracts within 210 days after the date of the funding offering.

4. For an acquisition project, the local unit shall enter into a purchase agreement or institute condemnation proceeding within 150 days after the Fair Market Value Certificate acceptance date.

5. In the event that the local unit fails to meet the established time limits, the Department may cancel the reservation of loan or grant funds established for a specific project. Any financial obligations incurred by the local unit prior to and as of the date of cancellation are the sole responsibility of the local unit.

6. Upon the request of the local unit, a loan or grant reservation of funds for a specific project involved in a court action will be maintained by the Department until the completion of such court actions.

7. The loan or grant reservation period may be extended by the approval of the Commissioner based on a review of extenuating circumstances on a project by project basis.

(b) The Department will conduct on site inspections and the local unit shall allow access to do so to insure compliance with the chapter.

(c) Upon the local unit's acceptance of a loan or grant the Department may conduct inspections of all other recreation/conservation lands in the open space inventory.

(d) The local unit shall submit additional information as may be required by the Department during its on-going compliance review.

(e) If the local unit refuses or fails to comply with this chapter, the Department may institute a suit to enjoin such violation, ex parte, by temporary and/or permanent injunction. The Department is not precluded from taking any other legal action as may be necessary to insure compliance by the local unit with this chapter.

SUBCHAPTER 2. FUNDING ALLOCATIONS IN COORDINATION WITH UNITED STATES DEPARTMENT OF INTERIOR

7:36-2.1 Eligibility

Subject to the availability of resources, the Department may combine Green Acres funding with available United States Department of the Interior Land and Water Conservation Funds.

SUBCHAPTER 3. BASIS FOR ASSISTANCE: DEVELOPMENT OF LAND FOR RECREATION AND CONSERVATION PURPOSES

7:36-3.1 Terms of loan or grant

(a) No commitment of funds shall be made by the local unit prior to the Departmental funding offering. Costs incurred before the funding offering will not be eligible except as provided by (a)1 below.

1. If a project is approved, costs incurred for preliminary planning and engineering which are directly related to the project site may be reimbursed.

(b) Pursuant to the Green Acres bond issues passed in 1961, 1971, 1974 and 1978 (P.L. 1961, C.46; P.L. 1971, C.165; P.L. 1974, C.102; and P.L. 1978, C.118), the Department may reimburse the local unit only after the project has been completed and all outstanding obligations paid by the local unit. Reimbursement shall be based on amounts up to 50 percent of the lowest qualified bid or up to 50 percent of the actual cost, whichever is lower; however, interim reimbursements based on costs incurred may be made by the Department for up to 90 percent of the grant amount prior to audit by the Department.

(c) Pursuant to the Green Acres bond issue passed in 1983 (P.L. 1983, C.354), financial assistance disbursed pursuant to that law shall be maintained in a separate bank account established at the time the funding offering is accepted, and shall be used only for the purpose of administering the project for which the financial assistance was made. This account shall be subject to audit by the Department.

7:36-3.2 Allowable costs

(a) Construction project contracts shall be awarded in accordance with N.J.S.A. 40A:11-1 et seq.

(b) The following costs are eligible for funding in the manner provided by this chapter:

1. Construction costs included in an accepted bid;

2. Engineering plans and specifications, and supervision and inspection costs not to exceed 13 percent of the total cost of actual construction of the project. Incidental costs, individually itemized, such as legal fees and advertising fees which are directly related to the project may be eligible for funding, but shall not be included in the total actual construction cost; and

3. Equipment required to make a facility initially operational.

(c) Force account labor (employees of the local unit) expenses are not allowable costs and will not be approved by the Department except under extraordinary circumstances. Each request will be reviewed on a project-by-project basis.

7:36-3.3 Control of land

(a) Projects shall be:

1. Located on land which is owned in fee simple by the local unit; or

2. Leased by the local unit for a minimum of 25 years of an irrevocable lease or easement agreement.

7:36-3.4 Development project elements

Development projects shall increase outdoor recreational opportunities and may include necessary support elements.

7:36-3.5 Renovation or rehabilitation projects

(a) Renovation or redevelopment of an existing facility is eligible for a Green Acres grant or loan.

(b) If insurance compensation covers a portion of the cost of the renovation or redevelopment, loan and grants will be reduced by the amount of the insurance payment.

7:36-3.6 Park/school development

The development of facilities on leased public school grounds for school as well as general public use is eligible for a Green Acres grant or loan provided that the facilities so developed are not exclusively used for the normal and usual activities of the educational institution.

7:36-3.7 Non-eligible projects

Assistance shall not be provided for amusement parks, employee residences, lodges, luxury cabins, or wholly indoor recreational facilities.

SUBCHAPTER 4. DESIGN CRITERIA

7:36-4.1 Structures

(a) Structures necessary and directly related to an outdoor recreation activity to be constructed within the project area will be eligible.

(b) Structures required for the proper administration and maintenance of project facilities will be eligible.

(c) Except as provided by (c)1 below, structures which are primarily intended for a recreational activity to be conducted wholly within the structure are not eligible.

1. Exceptions may be made for structures which partially enclose an outdoor recreation facility for the purpose of extending the season of use. Requests will be reviewed on a project-by-project basis.

(d) The local unit shall maintain a standard insurance policy. The policy shall cover structural damage and other losses due to fire and lightning, resultant damages caused by smoke and water, windstorm, hail, riot attending a strike or damages from falling aircraft. The face amount shall be adequate to cover the cost of replacing the structure and shall be periodically adjusted to reflect changing costs. The Department shall be named additional insured in the policy or poli-

ADOPTIONS

cies to the extent of its matching grant, or for the amount of the loan balance for the term of the loan, whichever is applicable.

7:36-4.2 Vandalism

Design criteria shall consider elements that will help to prevent or will reduce the effects of vandalism.

7:36-4.3 Underground utility service

(a) The local unit shall, to the extent practicable, place all new utility lines underground in the general area of developed recreation facilities.

(b) The burial, relocation, or screening of existing overhead utility lines may be eligible for loan or grant assistance.

7:36-4.4 Stormwater runoff

(a) To the greatest extent practicable, every project shall be designed to provide a system whereby all stormwater runoff created by the development will be retained on site for a period of time equal to the natural site runoff and absorption time. This plan shall comply with the guidelines set forth in the Stormwater Management Rules, N.J.A.C. 7:8.

(b) A stormwater runoff plan which includes both drawings and a narrative shall be prepared by a licensed professional engineer, architect or landscape architect and submitted to the Department for approval prior to the commencement of construction and shall be coordinated with the local soil conservation district.

7:36-4.5 Dredging of lakes and ponds

(a) Green Acres funds for dredging and the rehabilitation of lakes and ponds will be considered only if:

1. The lake or pond is owned by the local unit;
2. Substantial public access to the water area is provided;
3. A clear outdoor recreational benefit is shown in addition to any flood control advantages;
4. It is a first time Green Acres dredging project, and once funded, maintenance will be the responsibility of the local unit;
5. The project incorporates long-term corrective features including, but not limited to, sedimentation basins and other methods of maintaining the depth of the dredged areas;
6. The entire watershed has been taken into account, considering upstream and downstream conditions, particularly stormwater management and sediment/erosion control practices;
7. The activities of upstream and downstream governments and/or projects have been coordinated;
8. Project design includes equipment and procedures for sedimentation and siltation controls; and
9. The project is planned in consultation with the applicable State Soil Conservation Service District.

(b) Any dredging and spoils disposal shall be done in conformance with all State laws, rules and regulations and those of the United States Army Corps of Engineers, where applicable.

SUBCHAPTER 5. BASIS FOR ASSISTANCE: ACQUISITION OF LAND FOR RECREATION AND CONSERVATION PURPOSES

7:36-5.1 Terms of funding award

Lands to be acquired shall be consistent with a comprehensive master plan program for the municipality, county or region as a whole.

7:36-5.2 Eligible and ineligible acquisition costs

- (a) The following costs are eligible:
1. Cash amounts expended to acquire title or permanent interest in the land based on approved amount of loan or grant;
 2. Reasonable relocation payments for persons, families or businesses displaced by the acquisition are eligible, subject to the availability of funding. Evidence of an approved Workable Relocation Assistance Plan (WRAP) from the New Jersey Department of Community Affairs shall be provided;
 3. Appraisal costs prepared under the direction of Department of Environmental Protection and the Department of Transportation for initial Fair Market Value Certifications and any Departmentally approved updates; and

ENVIRONMENTAL PROTECTION

4. Survey costs incurred for the actual field determination of acquired acreage.

(b) The following costs will not be eligible:

1. Administrative and operating costs related to acquisition;
2. Real property taxes; and
3. Increases in land costs in excess of the approved fair market value as a result of negotiations.

(c) Increases resulting from condemnation may be eligible for a supplemental or loan. (See N.J.A.C. 7:36-5.5).

7:36-5.3 Eligible acquisitions

(a) Acquisition may include the purchase of title, development rights, life estates, remainder interests, conservation easements, or other interests in real property suitable for open space purposes.

(b) Areas of historic significance, areas having unique natural features (such as ravines, outstanding overlook sites, etc.) or areas for recreational use or future development to enhance civic, community or recreation centers may be acquired.

(c) Sites with existing buildings or structures that will be utilized or renovated for the support of outdoor recreation are eligible if there is evidence that the sites will be properly maintained and operated by the local unit.

(d) Sites with existing buildings or structures that will be demolished to provide an open space area are eligible.

(e) Acquisition of an open space area that includes, but is not substantially occupied by, a library, an art gallery, or a museum is eligible. Such facility, if included, would be subject to all of the rules governing a standard recreational facility as described in N.J.A.C. 7:36-1.8 (General provisions).

(f) The funding of loans and grants for the acquisition of perpetual conservation easements that are in conformance with a comprehensive local master plan may be eligible when a clear public use or benefit is demonstrated, only if the easement:

1. Is contiguous and beneficial to significant public lands; or
2. Provides for public pedestrian or vehicular use; or
3. Provides for the acquisition of those rights necessary to serve as a buffer or protective area to existing permanent open space or to a unique natural or wildlife habitat.

(g) Environmental incentive assistance consisting of grants and loans as provided in N.J.A.C. 7:36-1.4(f)3 will be limited to projects predominantly in and which shall remain in a natural state, except for areas suitable for development such as waterfront recreation areas.

1. Future development of projects having received environmental incentive assistance consisting of grants and loans as provided in N.J.A.C. 7:36-1.4(f)3 is prohibited unless specifically approved by the Department in advance.

7:36-5.4 Non-eligible acquisitions

(a) Non-eligible acquisitions are sites which will remain predominantly covered by buildings or structures.

(b) The acquisition and development of former landfill sites is ineligible.

7:36-5.5 Supplemental loan or grant payments

(a) A supplemental loan or grant may be approved, if funds are available, to help reduce the financial impact of condemnation awards providing that the following criteria are met:

1. The local unit has demonstrated significant progress and efficient use of the time between loan or grant approval and the initiation of a condemnation action. (See N.J.A.C. 7:36-1.10(a)4).
2. The final price paid is the result of a condemnation action.
3. Appeals from condemnation awards or court judgments shall be taken whenever either the State or local unit deems it necessary or advisable.
4. All updates or revisions of appraisals necessitated by the court action or condemnation award shall be completed in accordance with procedures outlined in the New Jersey Department of Transportation (DOT) and Department of Environmental Protection Memorandum of Agreement entered into July 12, 1976 and amended August 27, 1985. (See Appendix A of this chapter).

SUBCHAPTER 6. ACQUISITION REQUIREMENTS

7:36-6.1 Appraisal procedures

(a) The local unit shall follow the New Jersey Department of Transportation (DOT) appraisal procedures as outlined in the Department of Transportation and Department of Environmental Protection Memorandum of Agreement entered into July 12, 1976 and amended August 27, 1985. (See Appendix A of this chapter).

(b) When advisable, the Department at its discretion, will review project appraisals.

7:36-6.2 Acquisition procedures

(a) After issuance of a fair market value certificate by DOT, negotiations are the responsibility of the local unit. The local unit should make every reasonable effort to acquire real property expeditiously by negotiation.

(b) If the property is acquired for more than the established appraised value, a statement of justification shall be submitted to the Department by local unit.

(c) All pertinent records documenting conformance to the provisions of this chapter shall be accurately and permanently kept on file by the local unit and shall be available for audit and review by the Department for a period of at least three years.

(d) The local unit must show the full cost of the acquisition as a local purchase expenditure. The loan or grant and any other grant contributions, gifts or donations must be noted and shown on all accounting records.

7:36-6.3 Relocation procedures

(a) Any relocation procedures, if applicable, shall be the administrative responsibility of the local unit.

(b) All pertinent records documenting conformance to N.J.S.A. 20:4-1 et seq. (Relocation) shall be kept on file by the local unit for a period of at least three years.

7:36-6.4 Eminent domain

(a) Condemnation proceedings shall be the responsibility of the local unit.

(b) The local unit shall notify the Department prior to initiating court action for condemnation.

(c) All pertinent records documenting conformance to N.J.S.A. 20:3-1 et seq. (Eminent Domain) shall be kept on file by the local unit for a period of at least three years.

(d) The Department will not disburse Green Acres assistance until the local unit has taken title to the subject property.

7:36-6.5 Closings

Closings and all real estate acquisition procedures related to the subject property shall be the sole responsibility of the local unit.

7:36-6.6 (Reserved)

7:36-6.7 Purchase concessions

(a) Purchase concessions such as temporary leasebacks, life rights, life estates, remainder interests and similar techniques may be allowed if approved by the Department on a project-by-project basis.

1. Prior to any final settlement, any final arrangement on life rights, life estates, remainder interests or any other purchase concession shall be submitted to the Department for review, comment and approval.

7:36-6.8 Donations

(a) Pursuant to the 1983 Green Acres Bond issue (P.L. 1983, c.354), donations of land received by a local unit may be used as a credit, on a dollar for dollar basis, towards a grant up to 25 percent of a specific project cost.

(b) Pursuant to the Green Acres Bond issues passed in 1961, 1971, 1974 and 1978 (P.L. 1961, c.46; P.L. 1971, c.165; P.L. 1974, c.102; P.L. 1978, c.118), the Department will accept lands acquired by the local unit through donation or gift as an in kind credit to be used as all or part of the local share of a specifically designated approved acquisition project.

7:36-6.9 Temporary use

(a) Lands, buildings or structures that have been acquired as part of a local Green Acres acquisition or other municipally owned lands

and facilities used for public recreation and conservation purposes (see N.J.S.A. 13:8A-47) may be used or leased for non-recreational uses on a temporary basis to a private individual or public agency when there is a clear public benefit and when the public use does not conflict with the park master plan for the development of the site. Terms of lease will be negotiated at the time of contract on a project-by-project basis.

1. Fees collected or revenues from leased facilities shall be in conformance with N.J.A.C. 7:36-1.8(e)8i.

(b) Before leasing any land, building or structure on Green Acres regulated lands, the local unit shall file with the Department, for review and approval, a copy of each of the following:

1. A statement as to the purpose and need for the lease;
2. The proposed lease agreement identifying the lessee and the use to which the building, structure or land will be put;
3. The park master plan; and
4. A park capital improvement program for the next five years indicating when the park will be developed.

7:36-6.10 Acquisition of a developed recreational facility

(a) A loan or grant for the acquisition of a developed outdoor recreation facility including but not limited to a marina, ski area or golf course is eligible under the Green Acres Program only when the local unit agrees to maintain and preserve the land and its physical improvements in a condition equal to or better than that which existed at the time of funding. This condition is to be determined by a qualified, unbiased third party on an annual basis. For example, in the case of a golf course, the United States Golfing Association.

(b) Specific provisions to assure compliance with this chapter will be included in the Green Trust Project Agreement or Green Acres Grant Contract.

(c) Any acquired developed facility shall be operated under the same provisions, rules and regulations governing a similar facility developed with Green Acres funds.

7:36-6.11 Waterfront acquisitions

In addition to private land above the high waterline, waterfront acquisitions shall include all private lands and interests below the current mean high waterline and continue to where the public interest begins.

7:36-6.12 Loan and grant payments

Loan and grant payments shall be made only to the local unit.

SUBCHAPTER 7. STATE HOUSE COMMISSION: BASIS FOR REVIEW

7:36-7.1 Retention and use

(a) Upon receipt of a loan or grant, all municipal or county lands and facilities used for public recreation and conservation purposes shall remain as public park, recreation, conservation and/or open spaces.

(b) The property described in (a) above and all lands and facilities developed or acquired with Green Acres assistance shall not be converted in whole or part for other than public recreation and conservation purposes without the approval of the Commissioner and the State House Commission.

(c) Approval as required in (b) above may be granted by the Commissioner and State House Commission only when, singularly or combined, the local unit has agreed to:

1. Substitution of other outdoor properties of at least equal fair market value and of reasonably equivalent public recreation or conservation usefulness, size, quality, and location;
2. Cash repayment based on at least the current appraised fair market value in accordance with N.J.A.C. 7:36-6.1; and
3. In cases dealing with permanent easements, even though individual cases may appear to be insignificant, the perpetual nature of public lands and the cumulative effect over a long period of time is significant. In an effort to discourage this type of diversion, a minimum cash value of \$10,000.00 will be placed on any consideration for easements on such property, when the request is made on behalf of a non-public agency. Charges above this minimum will be determined by the Department on an individual project basis.

HEALTH

(a)

FACILITIES RATE SETTING

Standard Hospital Accounting and Rate Evaluation (SHARE) Manual

Adopted Amendments: N.J.A.C. 8:31A-7.2, 7.4, 7.5, and 7.11

Proposed: July 18, 1988 at 20 N.J.R. 1633(a).

Adopted: October 20, 1988 by David L. Knowlton, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: October 24, 1988 as R.1988 d.544, with substantive change 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.

Effective Date: November 21, 1988.

Expiration Date: March 18, 1990.

Summary of Public Comments and Agency Responses:

The Department received two written comments during the comment period on the proposed new rules concerning the reimbursement methodology for new SHARE providers. The comments were received from Mr. Thomas M. Russo, Director, Division of Medical Assistance and Health Services, Department of Human Services; and from Mr. Louis P. Scibetta, President, New Jersey Hospital Association.

COMMENT: The Division of Medical Assistance and Health Services supports the proposed changes to the SHARE Manual. It is the Division of Medical Assistance and Health Services' opinion that, "the proposal will have a beneficial impact on the system and one which is positive on the Division of Medical Assistance and Health Services." This commenter also states that the proposed rules will, "provide a reasonable reimbursement to a new SHARE provider at the same time placing it on a comparable level with other existing SHARE facilities."

The New Jersey Hospital Association is in general agreement with the proposed reimbursement methodology for new SHARE providers. This commenter, however, is of the opinion that the use of an 80 percent occupancy rate is excessive. The New Jersey Hospital Association suggests the use of the "overall statewide hospital percentage", which they report as being "approximately 70 percent."

RESPONSE: The Department does not agree that an 80 percent occupancy is "excessive" and that the overall statewide occupancy percent of "approximately 70 percent" be utilized. The Department continues to be of the opinion that an 80 percent occupancy is a reasonable level at which to set the Statewide median unit costs for a new SHARE provider for the following reasons:

1. The reimbursement rate associated with an 80 percent occupancy versus a 70 percent occupancy is only a positive cash flow advantage for the new SHARE facility. It will be adjusted to actual occupancy.

2. An 80 percent occupancy rate is a closer approximation of the overall SHARE program facilities, to whom these proposed rules would apply.

3. An 80 percent rate occupancy is a more efficient level of operation.

The Department has added text on adoption to clarify that these rules apply to hospitals which have entered the SHARE system since January 1, 1986, as set forth in the proposal Summary.

Full text of the adoption follows (additions indicated in boldface with asterisks *thus*).

8:31A-7.2 Hospital Rate Review Guidelines

(a) The Commissioner of Health, pursuant to the authority of N.J.S.A. 17:2H-1 et seq. and with the approval of the Health Care Administration Board, adopts the following rules concerning the rate review for Specialized and Rehabilitation Hospitals.

1.-2. (No change.)

3. Definitions:

"Alternate Rate" means the rate determined by applying these rate review guidelines to the lower of the base year actual costs or base year approved costs, or the Methodology for new or non-SHARE

base year hospitals, as described in N.J.A.C. 8:31A-7.5 and all subsequent sections.

4. (No change.)

8:31A-7.4 Methodology for Calculating Global Rates

(a) Global Rate will be developed from the hospital's prior year Global Rate or from the Methodology for new or non-SHARE base year hospitals described in N.J.A.C. 8:31A-7.5(c), established pursuant to the SHARE Guidelines. Acceptance of the Global Rate shall constitute a waiver of any Right of Appeal concerning the rate and no adjustments to any prior rate shall affect the Global Rate.

1.-7. (No change.)

(b) (No change.)

8:31A-7.5 Methodology for Alternate Rates

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

(c) For hospitals *which have entered the SHARE system since January 1, 1986* *[with]* *and which have* no historical statistics and costs in the base year and which do not have an "Approved Rate" in accordance with N.J.A.C. 8:31A-7.2 of the Hospital Rate Review Guidelines, the Alternate rate will be developed from equalized median unit costs from base year actual costs in accordance with Appendix A cost centers, peer groups and units of service; and base year median cost per admission for the Other Physical Medicine and the Education and Research cost centers. Certificate of Need square feet projections will be utilized as the units of service for the Plant and Housekeeping cost centers. Depreciation and lease costs reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application. Interest expense on long-term debt reportable in the Plant cost center will be reimbursed for the covered inpatient portion of Certificate of Need approved costs stated in the Certificate of Need approval letter and application.

1. During the median methodology years an occupancy rate of 80 percent and projected admissions and plant square feet, adjusted for the period of operation in a calendar year, will be applied to the median unit costs to develop covered inpatient costs (CIP) and an approved per diem. The approved CIP base year costs will be adjusted to actual occupancy for the period of operation for the calculation of subsequent year rates. Median methodology years will be calculated as follows:

i. Year 1 is the initial period of operation of 12 calendar months or less. The SHARE base year median methodology described in N.J.A.C. 8:31A-7.2(a) and 8:31A-7.6(b-3i) will be used to establish the Year 1 Alternate Rate.

ii. The Year 2 rate is an Alternate Rate based on the Year 1 Alternate Rate adjusted for measured inflation as described in N.J.A.C. 8:31A-7.9 and a management adjustment of two percent.

iii. The Year 3 Global Rate will be developed from the Year 2 Alternate Rate, in accordance with N.J.A.C. 8:31A-7.4, if a facility has an initial period of operation of 12 complete calendar months in Year 1. The Year 3 Alternate Rate will be developed in accordance with 8:31A-7.6 unless 8:31A-7.5(c) applies.

1. If a facility in Year 1 did not have an initial period of operation of 12 complete calendar months in Year 1, a Year 2 Global Rate will not be developed but a Year 3 Alternate Rate will be developed from Year 2 Approved Covered Inpatient Costs (CIP) adjusted for measured inflation and a management adjustment of two percent.

iv. The Year 4 Global Rate will be developed from the Year 3 Global or Alternate Rate in accordance with 8:31A-7.4. The Alternate Rate will be developed in accordance with 8:31A-7.6.

v. Rate Appeals Process during the Median Methodology years will be as follows:

(1) Hospitals with an initial period of operation in Year 1 of 12 complete calendar months, (January through December) may reject the Global Rate in Year 3 and elect the Alternate Rate and pursue an appeals process described in 8:31A-7.5 and 8:31A-7.13.

(2) Hospitals with an initial period of operation in Year 1 of less than 12 complete calendar months, (January through December) may reject the Global Rate in Year 4 and elect the Alternate Rate and pursue an appeals process described in 8:31A-7.5 and 8:31A-7.13.

8:31A-7.11 Reasonableness Tests—Education/Physician Coverage
 (a)-(b) (No change.)
 (c) Physician Compensation for new or non-SHARE base year hospitals will be reimbursed the median physician hours per patient day from base year actual costs at 80 percent occupancy applied to the median average physician compensation in accordance with N.J.A.C. 8:31A-7.11(b).

HUMAN SERVICES

(a)

CONTRACT POLICY AND MANAGEMENT UNIT

Contract Administration

Adopted New Rules: N.J.A.C. 10:3

Proposed: August 1, 1988 at 20 N.J.R. 1771(a).

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

Filed: September 30, 1988, as R.1988 d.513, **without change**.

Authority: N.J.S.A. 30:1-12.

Effective Date: November 21, 1988.

Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

N.J.A.C. 10:3 was proposed for re-adoption with amendments in the August 1, 1988 New Jersey Register. As N.J.A.C. 10:3 expired on September 19, 1988, prior to the filing of the re-adoption, the chapter with amendments is adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

AGENCY NOTE: On July 20, 1988, the Governor signed Executive Order No. 189, which requires the inclusion of certain language regarding conflicts of interest in agency rules on debarment, suspension and disqualification of vendors contracting with the State. Proposed amendments in conformance with that Executive Order appear elsewhere in this issue of the New Jersey Register.

Full text of the adopted new rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:3.

Full text of the amendments and new rules follows.

10:3-1.13 Appeals

Any appeals under the provisions of this Subchapter 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).

10:3-2.2 Capital Funding Agreement for Construction, Purchase, or Purchase and Renovation of Community-Based Facilities

(a) The Departmental efforts to consolidate division-specific contracts/agreements has culminated in the development of a Standard Contract/Agreement Document for the Construction, Purchase, or Purchase and Renovation of Community-Based Facilities. Copies of the Standard Document and updates may be obtained from:

Contract Policy and Management Unit
 Department of Human Services
 CN 700
 Trenton, New Jersey 08625

(b) In the event of a conflict between the standard document referred to in (a) above and any other agency rule in title 10, the standard document shall prevail. Contract administration rules or documents formerly adopted or adopted in the future pertaining to specific divisions within the Department shall apply to the extent that they are not inconsistent with the standard document.

OFFICE OF ADMINISTRATIVE LAW NOTE: A copy of the Standard Contract/Agreement Document in (a) above was submitted as part of this proposal but is not reproduced herein. This document may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey 08625 or the Contract Policy and Management Unit, 222 South Warren Street, Trenton. This document will not be reproduced in the New Jersey Administrative Code.

10:3-2.3 Capital Funding Agreement for Renovation, Remodeling, Extension or Other Improvements to Agency-Owned or Leased Community Facilities

(a) The Department efforts to consolidate division-specific contracts/agreements has culminated in the development of a Standard Contract/Agreement Document for Renovation, Remodeling, Extension or Other Improvements to Agency-Owned or Leased Community Facilities. Copies of the Standard Documents and updates may be obtained from:

Contract Policy and Management Unit
 Department of Human Services
 CN 700
 Trenton, New Jersey 08625

(b) In the event of a conflict between the standard document referred to in (a) above and any other agency rule in title 10, the standard document shall prevail. Contract administration rules or documents formerly adopted or adopted in the future pertaining to specific divisions within the Department shall apply to the extent that they are not inconsistent with the standard document.

OFFICE OF ADMINISTRATIVE LAW NOTE: A copy of the standard contract/agreement document in (a) above was submitted as part of this proposal, but is not reproduced herein. This document may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey 08625 or the Contract Policy and Management Unit, 222 South Warren Street, Trenton, New Jersey 08625.

10:3-2.4 Capital Funding Agreement for Community-Based Facility Planning and Design Services

(a) The Department, continuing in its efforts to consolidate contracts and agreements, has developed the Funding Agreement for Community-Based Facility Planning and Design Services document to be used by all divisions for preliminary planning/design services. Copies of the standard documents and updates may be obtained from:

Contract Policy and Management Unit
 Department of Human Services
 CN 700
 Trenton, New Jersey 08625

(b) In the event of conflict between the standard document referred to in (a) above and any other agency rule in Title 10, the standard document shall prevail. Contract administration rules or documents formerly adopted or adopted in the future pertaining to specific divisions within the Department shall apply to the extent that they are not inconsistent with the standard document.

OFFICE OF ADMINISTRATIVE LAW NOTE: A copy of the standard contract/agreement in (a) above was submitted as part of this proposal, but is not reproduced herein. This document may be reviewed at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey 08625 or the Contract Policy and Management Unit, 222 South Warren Street, Trenton, New Jersey 08625.

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES Manual of Standards for Licensed Community Residences for the Developmentally Disabled Adopted New Rules: N.J.A.C. 10:44A

Proposed: January 19, 1988 at 20 N.J.R. 149(b).

Adopted: June 22, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: October 25, 1988 as R.1988 d.546, **with substantive changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 20:11B-1 et seq.

Effective Date: November 21, 1988.

Expiration Date: November 21, 1993.

ADOPTIONS

Summary of Public Comments and Agency Responses:

Comments were received from the Association for the Advancement of the Mentally Handicapped; the Association for Retarded Citizens; the Division of Housing and Development in the Department of Community Affairs; Developmental Services of New Jersey Inc.; and the Office of the Ombudsman for the Institutionalized Elderly. The comments and responses follow, grouped by commenter. The agency's response to a comment made by more than one commenter is found the first time that comment occurs.

Association for the Advancement of the Mentally Handicapped.

COMMENT: In general, the new standards represent an improvement over the present ones.

COMMENT: The Purpose and scope section should be expanded to include not only improvement of the quality of life but also training towards, and the achievement of, independent living in less restrictive housing and service settings.

RESPONSE: The Department disagrees with the appropriateness of including specific provisions on these issues. The issues of training and independent living are addressed through many different requirements within the rules, for example, at N.J.A.C. 10:44A-2.6 and 2.7.

COMMENT: In N.J.A.C. 10:44A-1.3 definitions of "emotional harm" and "neglect" are needed in order to set parameters and prevent arbitrary interpretation of the term.

RESPONSE: The definition of abuse has been expanded on adoption to include examples of "emotional harm" and "neglect", among others.

COMMENT: In N.J.A.C. 10:44A-1.9(a)2 the five areas listed under "substantial noncompliance" might include examples so as to set parameters for inspections.

RESPONSE: The Department considers examples in this area more appropriately supplied in the required orientation provided by the Division, since examples of substantial noncompliance in rule form may be considered the only application of the rule.

COMMENT: In N.J.A.C. 10:44A-2.2(e), "multiple handicapped" persons should be defined more clearly.

RESPONSE: This subsection has been clarified on adoption. This provision now applies to individuals who have documented mental health or medical problems requiring staff supervision for their protection.

COMMENT: In N.J.A.C. 10:44A-2.2(f), supervision for volunteers should be interpreted the same as supervision for paid staff, and not that volunteers cannot be left alone. Often volunteers are experienced and need only minimal supervision.

RESPONSE: N.J.A.C. 10:44A-2.2(f) does not permit volunteers to be considered in lieu of paid staff. It is the responsibility of the agency to ensure that there are adequate paid staff assigned to meet the minimum coverage requirement. Given the needs of the individuals participating in the Group Home programs, the Department considers it appropriate to allow volunteers to augment or supplement paid staff, but not to take the place of fully trained personnel.

COMMENT: In N.J.A.C. 10:44A-2.7(b)3iv, it is unclear at what frequency evacuation drills are to occur after occupants can evacuate within 2-1/2 minutes. This also contradicts N.J.A.C. 10:44A-2.15(a)3, which requires a "record of monthly fire drills".

RESPONSE: This rule has been revised to require monthly fire drills.

COMMENT: In N.J.A.C. 10:44A-2.10(a)2, review of the daily log by a manager every 72 hours is excessive. Once a week is more reasonable, or a requirement for a review by the manager or other supervisor every 72 hours.

RESPONSE: The Department disagrees. The rule requires that a daily log document any problems encountered, the action taken, and a summary of activities and events. The intention of such a log is that it be reviewed on a daily basis by supervisory staff. The limit of 72 hours between reviews is to allow for weekends, when the manager may not be on duty.

COMMENT: In N.J.A.C. 10:44-2.15(d), The location of records in a supervised apartment should be specified to allow for these to be maintained in a staff apartment.

RESPONSE: The rule has been amended as requested, since supervised apartments, unlike group homes, have no office area.

COMMENT: In N.J.A.C. 10:44A-2.15(i)14, who determines when a seizure record is indicated?

RESPONSE: A record of seizures is begun on the first instance of a seizure and is maintained thereafter. A seizure condition can be diagnosed only by a licensed physician, which diagnosis would be documented in the client record.

COMMENT: In N.J.A.C. 10:44A-2.16(a) and (b), these requirements

HUMAN SERVICES

appear to be contradictory in that each person shall have the right to manage his or her personal funds, yet an individual may be determined to be incapable of doing so.

RESPONSE: In order to clarify these requirements, the Department has reordered these subsections. Every developmentally disabled person has the right to manage his or her own funds, unless a process governed by law or rule restricts that right. The IDT, governed by N.J.S.A. 30:60-10, in developing a program for an individual, may restrict access to funds, and in these cases, a record of expenditures is required.

COMMENT: N.J.A.C. 10:44A-3.1(h)2 would appear closer to the principle of normalization if it read: "Licensee shall offer the opportunity to each individual . . . in accordance with an individual's religious practices and preferences of food and personal beliefs and choices."

RESPONSE: The Department has not amended the rule. Due to its concern for the health of the individuals residing in the group home, the Department deems it inadvisable to alter the requirement for a nutritionally-balanced diet, except in light of that individual's religious practices. Personal belief and choices should be accommodated, within the context of a balanced diet, through the participation of the individuals in meal-planning activities.

COMMENT: In N.J.A.C. 10:44A-4.1(f)2, the requirement for a medical exam within 48 hours of admission contradicts N.J.A.C. 10:44A-2.15(i)9, which requires an admission physical within 30 days of admission and N.J.A.C. 10:44A-5.1(b), which requires a complete physical examination within the past year.

RESPONSE: There is no contradiction. N.J.A.C. 10:44A-4.1(f)2 requires that an individual be seen by a physician to determine that the individual is free from contagious disease. N.J.A.C. 10:44A-2.15(i)9 requires documentation in the record of the admission physical examination. N.J.A.C. 10:44A-5.1(b) states that a licensee shall admit only individuals who have been determined by a physician to be free from contagious disease (as in N.J.A.C. 10:44A-4.1(f)2) and have had a complete physical examination within the past year.

COMMENT: Does N.J.A.C. 10:44A-5.1(g) mean that any size gauze and non-surgical scissors are acceptable?

RESPONSE: Yes. Additionally, the Department has amended the requirement for rolled gauze bandage to permit any size bandage.

COMMENT: In N.J.A.C. 10:44A-6.9, each supervised apartment should have a telephone.

RESPONSE: The Department agrees and has added that requirement on adoption, since a telephone must be available for individual use as well as for emergencies.

COMMENT: In N.J.A.C. 10:44A-7.1(a)2, must leftovers be discarded, even in supervised apartments? Can leftovers be used, if labeled?

RESPONSE: Food left over from serving platter or bowl may be labeled, stored appropriately, and served again within a reasonable time period. Food from an individual's plate may be labeled and stored appropriately, but must be consumed within a reasonable time by that individual only.

COMMENT: The requirements of N.J.A.C. 10:44A-7.2(f)2 are unduly harsh, as many individuals have limited funds.

RESPONSE: The individuals are only required to pay for laundromat services if they use them and there is no provision for this in the contract. Individuals may use laundromats, but are not required to do so, since the licensee is required to provide laundry facilities without charge and these are available to the individuals.

COMMENT: N.J.A.C. 10:44A-7.5(a) should be clarified to read "vehicles owned by the licensee for use to transport".

RESPONSE: The Department has clarified this requirement on adoption to read "vehicles used under the auspices of the licensee to transport".

COMMENT: In N.J.A.C. 10:44A-8.1(a), it is more appropriate for Community Services' staff to review and approve IHPs which recommend less than constant supervision of particular individuals than it is for the Office of Licensing and Inspection to do so.

RESPONSE: The Department agrees, and has amended the rule to reflect this.

COMMENT: Does N.J.A.C. 10:44A-8.2(a) mean a licensee cannot own, and/or live in, a multiple-unit dwelling in which supervised apartments are located?

RESPONSE: No, this means that a supervised apartment must be a separate dwelling place.

Association for Retarded Citizens

COMMENT: In N.J.A.C. 10:44A-1.3 the definition for supervised apartments should include "owned by the licensee".

RESPONSE: This provision means apartments which are leased to the developmentally disabled individual by the licensee (who may own the apartment or may rent it from another person).

COMMENT: Regarding N.J.A.C. 10:44A-2.15(a), the licensee should be permitted to maintain duplicate records in the licensee's administrative offices. Records must be temporarily removed for duplication and mailing to the DDD regional office staff and other authorized persons.

RESPONSE: The Division has proposed rules concerning access to individual records at 20 N.J.R. 2435(a). Access is also governed by N.J.S.A. 30:4-24.3.

COMMENT: Regarding N.J.A.C. 10:44A-2.15(b), due to confidentiality concerns, clients should not have access to the records listed in subsection (a), which contain the names of other clients and related information. The individual receiving services should only be able to inspect the manual of standards, a copy of the license and any admission and/or discharge record or any fire drill records relating to himself or herself.

RESPONSE: The purpose of review of discharge information is to allow the individual to determine if the agency maintains accurate census information. The Manual of Standards and current license are a matter of public record. The fire drill records demonstrate the level of fire safety attained by the agency.

COMMENT: What is the section referred to in N.J.A.C. 10:44A-2.15(g)?

RESPONSE: The section referred to in subsection (g) is all of N.J.A.C. 10:44A-2.15.

COMMENT: In N.J.A.C. 10:44A-2.15(d), circumstances under which an individual may be denied access to all or part of his or her records should be delineated. For example, there are clients with psychiatric disorders for whom reviewing records may be clinically contraindicated. This information should be included in the IHP, with evidence of consultation with a mental health professional.

RESPONSE: The division has proposed rules concerning access to individual records in 20 NJR 2435(a). This process is also governed by N.J.S.A. 30:4-24.3.

COMMENT: At N.J.A.C. 10:44A-2.15(i)9, clarification is needed regarding when the mantoux test must be done. A clear statement needs to be included indicating that a person does not have to have a Mantoux test repeated on admission to a residence, if it has been done in the past three years. A clear statement needs to be included for clients who transfer from one group home to another or from a group home to a supervised apartment, indicating that, if they have had an annual physical, they do not need to have it repeated for the transfer. Clients who move within the same agency should not need to have contagious diseases certification either.

RESPONSE: The requirement for TB testing has been modified on adoption to conform to Department policy.

COMMENT: Regarding N.J.A.C. 10:44A-2.16(b), there are many clients, especially those who are mentally retarded, who need assistance with managing their funds but who have not had a specific determination to this effect. Since guardianship is generally guardianship of the person, not of the property, this is not necessarily a criteria. A clarification is needed here.

The rule should state that this is a right commensurate with ability and as documented in the individual's IHP, and that it is the licensee's responsibility to provide the level of training and assistance needed to allow the clients the greatest independence possible in managing the funds, commensurate with ability.

RESPONSE: Under New Jersey law, an individual is presumed competent until adjudicated incompetent. N.J.S.A. 30:6D-10 requires the development of an Individual Habilitation Plan by an Interdisciplinary Team. It is within the authority of the Interdisciplinary Team to recommend assistance in money management.

COMMENT: Regarding N.J.A.C. 10:44A-2.16(e)3, the client should have access to all records of financial transactions involving his/her funds; however, it will be difficult, and in many cases not meaningful, to present a report of, in many cases, transactions of less than \$5.00 and, at times, even less than a dollar. A client who receives \$35.00 a month PNA and earns less than \$5.00 a month at an Adult Training Center may have numerous transactions of 50 cents for soda, etc., which are made as part of the process of training the client to utilize funds, beginning with small amounts. The rule should require the licensee to provide quarterly reports if desired by the client. The client's right to receive such statements, if they so choose, should be presented as part of the explanation required by N.J.A.C. 10:44A-2.16(c).

RESPONSE: Licensure requirements apply to the actions of the agen-

cy. This rule does not apply to monies expended by the individual. It does apply to expenditures made by the agency on the individual's behalf.

COMMENT: Regarding N.J.A.C. 10:44A-2.16(e)6, clients who cannot write should have a means for requesting return of their funds.

RESPONSE: If the individual is competent, the individual is presumed to have a means of making known his or her desires. If the individual is incompetent, this request can be made by his or her legal guardian.

COMMENT: In N.J.A.C. 10:44A-3.1(b), the licensee should not be required to establish house rules. Not everyone who lives in a home wants or needs house rules. The standard should state that any house rules which are developed should be consistent with the principles identified in this chapter and should include the input of residents.

RESPONSE: The residence is licensed for a specific number of individuals, whose interests and needs may conflict. House rules need to be as specific or general as the individuals housed in the residence require.

COMMENT: At N.J.A.C. 10:44A-3.2(a), there should be a statement that, in addition to presenting credentials, the persons identified can access the residence with the approval of clients. It is the client's home and they should have the authority to determine whether they are or are not interested in meeting with the identified individuals.

RESPONSE: The individuals referenced in this rule have a statutory or regulatory access to the information requested. In their official capacity, these representatives are expected to respect the wishes of individual clients.

COMMENT: Regarding N.J.A.C. 10:44A-3.3(c), it is not always possible for the guardian to be present while rights are reviewed with clients. Clients often have out-of-State guardians or guardianship workers who cannot be present and thus would not be able to provide written acknowledgement. Provision for this very real and prevalent situation must be included.

RESPONSE: If the guardian of an incompetent individual cannot be physically present when the rights are presented to the individual, it is acceptable that the agency communicate the rights to the guardian and the individual at the same time and obtain the necessary acknowledgement as soon as possible.

COMMENT: Regarding N.J.A.C. 10:44A-4.3(b), the Individual Habilitation Plan is a cooperative effort between the Residential Program, the Day Program, and other interested persons, which is convened by the case manager. Thus, the licensee is responsible for participating and providing the necessary information to complete their portion, but should not be responsible for the development of the entire plan. The standard should simply state that a plan should be developed within thirty days of admission.

RESPONSE: N.J.S.A. 30:6D-10 requires the development of an Individual Habilitation Plan within 30 days after an individual is admitted to service. The IHP is the responsibility of the licensee, in accordance with this statute and these rules.

COMMENT: Who specifically does N.J.A.C. 10:44A-4.3(f) refer to, in a situation where the licensee is an agency and responsibility for the program lies with the manager of the home?

RESPONSE: N.J.S.A. 30:6D-11 requires that the Individual Habilitation Plan identify the personnel necessary to provide the services indicated in the plan, and the responsibilities of those personnel. If the manager is designated in the IHP, then the manager is responsible for the program.

COMMENT: At N.J.A.C. 10:44A-4.3(f)2, Monthly Progress Reports should be made available to the Office of Licensing on request, or at the time of inspection. There is no clear reason for them to be forwarded monthly for a client that is not placed there by the Division and for whom the service has no direct interest.

RESPONSE: In the case of Division individuals, staff other than those in the Office of Licensing and Inspections are assigned responsibility for monitoring these reports. In the absence of Division involvement, reports should be forwarded to the Office of Licensing and Inspections to assure compliance.

COMMENT: In N.J.A.C. 10:44A-4.3(g), the term "non-professional" should be removed and replaced with the term "para-professional". No one on staff should be called "non-professional". All received training which gives them the skills to work in the program in a "para-professional" capacity.

In many cases everyone attending the IHP is a professional, thus the word "and" is misleading in that it seems that all staff are required to attend.

The standard should read "an interdisciplinary team comprised of representatives (either professional and/or para professional as designated by licensee) of the residential and day program staff, as well as

ADOPTIONS

representatives from any other agency providing services to the client".

RESPONSE: The term non-professional is not intended to be derogatory. It is merely a means of distinguishing between recognized disciplines and other individuals who provide necessary services. The rule requires the attendance at IHP meetings of professional and non-professional staff who provide services to the individual.

COMMENT: N.J.A.C. 10:44A-4.3(m) should state monthly report supplied "to" the Division not "by" the Division.

RESPONSE: We agree that there are several printer's errors which should be corrected. This has been done on adoption.

COMMENT: N.J.A.C. 10:44A-4.3(m) should state that the opportunity to participate in recreational activities with other facilities serving the developmentally disabled and/or community program and/or community organization and/or other programs identified to meet client's needs and interests should be provided to all individuals who can benefit from them. (emphasis supplied).

RESPONSE: The Individual Habilitation Plan must address the needs of the whole individual. The Interdisciplinary Team must consider the individual's recreational needs and abilities.

COMMENT: Regarding N.J.A.C. 10:44A-4.3(o), there are many programs which develop recreation planning through the process of a monthly client meeting, whereby clients, on a monthly basis, present interests and needs and the program is developed accordingly. A six month survey, in this instance, is not necessary or beneficial, for the information is obtained on an ongoing basis and incorporated immediately.

There should simply be a statement in the rule that clients' needs and interests should be the basis for all recreation planning and that clients should participate in the planning process as part of the residential program. The individual licensee should develop a system which meets the needs of specific clients and programs to ensure this occurs.

RESPONSE: The rule sets up a minimum requirement and specifically indicates that it may be exceeded. Monthly meetings would satisfy the rule.

COMMENT: Regarding N.J.A.C. 10:44A-5.1(f), the local hospital and emergency squad services all people who live in the community. Clients in residences are no different than any other citizen of the community; therefore, special arrangements should not be necessary.

RESPONSE: It is agreed that individuals have the same needs as others in the community. However, the individuals may have specific needs which warrant having the necessary resources located before an emergency occurs.

COMMENT: Regarding N.J.A.C. 10:44-5.2(b), there is concern over a staff member "administering" medication. Staff are not trained to administer medication, as they are not nurses or physicians. Staff assist and supervise clients in the administration of their own medication. The rule should reflect this subtle, but very important, difference throughout this subsection.

RESPONSE: The wording has been amended as suggested.

COMMENT: Does N.J.A.C. 10:44A-5.2(i) relate to clients who are not independently self-administering medication?

RESPONSE: The licensee has a responsibility to assure the availability of an adequate supply of medication, regardless of whether or not the individual can take his or her own medication.

COMMENT: Does N.J.A.C. 10:44A-5.2(j) apply to prescription medication or over-the-counter medication?

RESPONSE: The entire section, N.J.A.C. 10:44A-5.2, applies only to prescription medication.

COMMENT: Regarding N.J.A.C. 10:44A-6.16(a), garbage containers utilized in the kitchen (kitchen garbage cans) are difficult to maintain with lids. Clients cannot manipulate the lids and often throw out the lids or don't replace them properly. This is an ongoing difficulty. It is not at all unusual for a normal home not to have a lid on the garbage can; thus, it is recommended that this standard clarify that kitchen cans are not included.

RESPONSE: Kitchen garbage cans with attached lids are readily available for purchase.

COMMENT: Regarding N.J.A.C. 10:44A-7.1(o), all meals in a residence are not served family-style. For example, clients may choose to individually make and eat breakfast as they get up. The rule should refer to the main meal (dinner meal), and then defer to individual preference for breakfast and lunch, as this is quite normal.

RESPONSE: It is agreed that the preparation of individual meals is a common practice in many families and therefore in compliance with this rule.

HUMAN SERVICES

COMMENT: N.J.A.C. 10:44A-7.1(o) should accommodate the rights of clients in supervised apartments to plan, prepare, and eat their meals individually, and not family-style.

RESPONSE: This is an acceptable practice. Further information regarding this subject will be available in the training sessions for licensees.

COMMENT: Please clarify whether N.J.A.C. 10:44A-7.3(d) is a minimum ceiling height of 7 1/2 feet.

RESPONSE: This is a minimum.

COMMENT: At N.J.A.C. 10:44A-7.5(b), clarify that the licensee is responsible for their own vehicles. Not every vehicle used to transport developmentally disabled individuals is owned or operated by the licensee, as often clients are transported by county, state, etc., transportation for which the licensee has no responsibility.

RESPONSE: It is the responsibility of the licensee to verify that all vehicles used comply and are inspected annually. Methods which may be used to verify can be discussed in the training sessions for licensees.

COMMENT: AT N.J.A.C. 10:44A-7.5(d), a provision needs to be made for staff who do not reside in New Jersey, and thus do not have a New Jersey license.

RESPONSE: Any driver's license acceptable to the New Jersey Division of Motor Vehicles as valid will be accepted, including out-of-State licenses.

COMMENT: At N.J.A.C. 10:44A-8.2, please substitute "may reside" for "housed". The word "housed" is very institutional and depersonalizing in focus.

RESPONSE: This change has been made on adoption.

Department of Community Affairs

COMMENT: Regarding N.J.A.C. 10:44A-7.4, the Department of Community Affairs submitted a written comment to the effect that fire safety standards required by the proposed rules exceed those established under the Uniform Fire Safety Acts, and that a comment letter setting forth specific recommendations as to changes in wording would be submitted shortly. The Department of Community Affairs also requested a public hearing, pursuant to N.J.S.A. 52:14B-4(a)(3).

RESPONSE: The Department of Human Services has reviewed the proposed requirements as set forth in subchapter 7 with respect to the Uniform Fire Safety Act, and has exceeded that Act in some instances. The Department feels, however, that it is within the powers of the Commissioner to set standards above those minimum requirements set forth in the Act, in the interests of protecting the health, safety, and welfare of the developmentally disabled individuals who are residents of the facilities in question.

With regard to the public hearing requested by the Department of Community Affairs, the Department of Human Services acknowledges its obligations under the cited statute to provide a public hearing at the request of a governmental agency or subdivision, provided that such request is made within 15 days following publication of the proposed rule in the New Jersey Register. The Department of Community Affairs comment letter was received after the time period specified in N.J.S.A. 52:14B-4. The Department, therefore, in lieu of a public hearing, has offered to meet with the staff of the Department of Community Affairs regarding resolution of their concerns.

Developmental Disabilities Council

COMMENT: N.J.A.C. 10:44A-2.15(i)8 requires that an individual folder shall be maintained for each client which will include a psychological evaluation. The new intake eligibility procedures under Project Redirection do not include a psychological evaluation on all new intakes.

RESPONSE: The Department agrees that requiring a psychological evaluation may not be appropriate in all instances. The wording "as appropriate" has therefore been added on adoption.

COMMENT: N.J.A.C. 10:44A-4.3 states that each client shall have an IHP that is developed by an interdisciplinary team. The Service Assessment work group under Project Redirection determined that not every client would need an extensive habilitation plan and that an IHP in certain instances could be an agreement of service provision between the client and case manager.

RESPONSE: N.J.S.A. 30:6D-10 requires that "every agency, organization or institution providing services for persons with developmental disabilities shall cause a written, individualized habilitation plan to be developed and placed into effect for each person . . ." (emphasis supplied) The Division thus cannot alter the statutory requirements. The Division acknowledges, however, that the IHP will vary according to each individual needs.

Developmental Services of New Jersey, Inc.

COMMENT: At N.J.A.C. 10:44A-1.9, the terms "significant number" and "great frequency" need further clarification.

RESPONSE: The Department feels that these terms will vary in the sense of what may or may not be reasonable under the circumstances. Issues of non-compliance vary significantly between situations. The introduction of specific numbers or ratios would limit the Department's ability to respond promptly to issues affecting the individual's health, safety, and welfare. Department actions depend upon the nature of the violation.

COMMENT: N.J.A.C. 10:44A-2.6(d) should be amended to specify that training records are to be located at each program site.

RESPONSE: The Department disagrees. Staff training is an administrative requirement of the agency. Therefore, training records should be located in the administrative offices of the agency.

COMMENT: N.J.A.C. 10:44A-2.7(c) seems to be out of context.

RESPONSE: Subsection (c) follows subsection (b) and is appropriately located in this section, entitled "Policy and procedure manuals".

COMMENT: N.J.A.C. 10:44A-2.15(d) should be further specified or clarified. Certain documents should only be at the administrative office.

RESPONSE: This rule is quite specific in requiring that, unless otherwise noted in this chapter, all records shall be maintained in the community residence. Questions regarding specific documents may be directed to the Office of Licensing and Inspections.

COMMENT: In N.J.A.C. 10:44A-7.5(a)4, where is the chemical extinguisher to be located?

RESPONSE: The extinguisher should be located in a safe, readily accessible place. Further discussion of this subject can take place during the licensee training sessions.

COMMENT: N.J.A.C. 10:44A-7.5(a)8 is overprotective.

RESPONSE: The Department feels this provision is appropriate. Specific situations which are problematic may be brought to the attention of the Office of Licensing.

COMMENT: Regarding N.J.A.C. 10:44A-7.5, if a vehicle is purchased with State funds, must the State of New Jersey be listed as co-insured?

RESPONSE: No, this is not necessary.

Office of the Ombudsman for the Institutionalized Elderly

COMMENT: N.J.A.C. 10:44A-2.2(b) does not require staff to be on-site when all individuals are in a weekday program; a trained, paid agency staff shall be available for emergencies. Further clarification should be provided for "weekday programs" because trained agency staff should be on-site at all times to provide for the guidance, care, and comfort of the developmentally disabled.

RESPONSE: The intent of the rule was misunderstood. N.J.A.C. 10:44A-4.4 requires that each individual shall be afforded an opportunity to participate in an organized program of habilitation, rehabilitation or employment. It is intended that these programs be provided outside the community residence. Therefore, staff are not required to be present when individuals receiving services are not in the home.

COMMENT: N.J.A.C. 10:44A-2.8(a)3 states that, in the case of individuals 60 years of age and over, allegations of abuse shall be reported to the Office of the Ombudsman for the Institutionalized Elderly. The toll-free number in this rule is incorrect. The present hotline, toll-free number is 1-800-624-4262. Furthermore, it is mandatory that allegations of abuse shall be reported to the Office of the Ombudsman pursuant to N.J.S.A. 52:27G-7.1.

RESPONSE: Since telephone numbers may change without the Department's knowledge, all telephone numbers have been deleted on adoption. It should be noted that the rule continues to require that allegations of abuse of an individual 60 years of age and over be reported to the Office of the Ombudsman. Additionally, the rules require the posting of the telephone numbers of the Ombudsman, DYFS, etc. in each licensee location.

COMMENT: N.J.A.C. 10:44A-2.15 does not allow the licensee to distribute copies or allow distribution of an individual's record without explicit written permission of the involved agency representative and the individual or his/her legal guardian or guardianship worker. However, an individual's records should be made available to State investigators or surveyors, as provided by State law.

RESPONSE: The rule does permit limited access to an individual's records for limited purposes, including State investigations or an accreditation survey.

COMMENT: N.J.A.C. 10:44A-4.1(d) provides that all admissions or discharges of privately-placed individuals must be reported in writing to the Office of Licensing and Inspections within five days. However, 30

days advance notice should be given to the privately-placed individual. Furthermore, there must be substantive evidence given to the privately-placed individual if the licensee determines that he/she is no longer suitable for residence.

RESPONSE: The Department agrees that a 30-day advance notice permits appropriate planning, and will amend the rule in a future rulemaking. The provision cannot be changed on adoption, as the change suggested requires an opportunity for public comment to be provided.

COMMENT: N.J.A.C. 10:44A-6.9(b) states that the telephone numbers of the Division of Developmental Disabilities hotline, as well as the hospital, fire department, ambulance service, and police department shall be posted by each phone. The hotline number for the Office of the Ombudsman for the Institutionalized Elderly should also be posted by each phone. In addition, a poster explaining the Ombudsman Office's role should also be placed in a conspicuous area in the residence.

RESPONSE: The Department agrees and has added this requirement on adoption. The Department has made additional changes on adoption, some of which were technical and corrected typographical and codification errors. Changes which were more substantive follow.

At N.J.A.C. 10:44A-1.1, the word "supervision" has been substituted for the word "oversight", as this is considered more appropriate in the context of this chapter.

At N.J.A.C. 10:44A-1.3, the definition of "case manager" was clarified, to include the coordination of habilitation services. Service areas of regional offices were added to the definition of "Community Services". The definition of "Division circular" was removed, as references to Division circulars have been deleted on adoption and replaced with New Jersey Statute or Administrative Code citations. "Individual" has been defined for clarity of the term's usage within the rules.

At N.J.A.C. 10:44A-1.4(d), clarification has been added regarding the effect the commission of a crime will have on a licensee application.

N.J.A.C. 10:44A-2.14, regarding unusual incidents, has been reserved and new text will be proposed in the near future which will conform to Department policy.

N.J.A.C. 10:44A-2.15(b) has been deleted, as the provisions are duplicated by subsection (g).

N.J.A.C. 10:44A-3.1(j) has been clarified to indicate that individuals have the right to use common living areas (such as living or dining rooms), differentiated from a right to use other private spaces (such as bedrooms).

N.J.A.C. 10:44A-5.1(h) has been amended, in accordance with Department policy, to delete the requirement for the intradermal test for tuberculosis. The Mantoux test is considered more reliable, in the circumstances covered by this chapter.

At N.J.A.C. 10:44A-6.2(a)2, 6.10(c) and 6.12(a) changes have been made to conform to the requirements of the Uniform Construction Code.

At N.J.A.C. 10:44A-6.7, the word "variance" has been replaced by the more appropriate "waiver".

At N.J.A.C. 10:44A-6.11(c), text has been added regarding insect screening which conforms to generally accepted public health and safety standards.

At N.J.A.C. 10:44A-6.17(c), clarifying text was added.

N.J.A.C. 10:44A-6.18(a)1 has been changed to conform to the New Jersey Sanitation Code.

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 44A**STANDARDS FOR LICENSED COMMUNITY RESIDENCES FOR THE DEVELOPMENTALLY DISABLED****SUBCHAPTER 1. GENERAL PROVISIONS****10:44A-1.1 Purpose and scope**

The purpose of ***[the rules]*** ***this chapter*** is to provide for the protection of persons with developmental disabilities who require such ***[oversight]*** ***supervision***, and to provide for overall improvement of the quality of life for individuals residing in Community Residences for the Developmentally Disabled such as group homes and supervised apartments. If all persons living in a particular place of residence are developmentally disabled, and where all such individuals do not require personal guidance, as determined by the interdisciplinary teams, licensure is available on a voluntary basis, in accordance with the expressed preferences of the developmentally disabled individuals.

ADOPTIONS

10:44A-1.2 Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect and to this end the provisions of this chapter are severable.

10:44A-1.3 Definitions

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

["Abuse" means any act or omission of an act that willfully deprives an individual of his or her rights or which may cause or causes actual physical injury or emotional harm, and is not limited to physical injury. Examples of physical abuse are acts that cause pain, cuts, bruises, temporary loss of a body function, temporary or permanent disfigurement, or death.]

"Abuse" means any act or omission that willfully deprives a client of his or her rights or which may cause or causes actual physical injury or emotional harm, and is not limited to physical injury. Examples of abuse include, but are not limited to: acts that cause pain, cuts, bruises, loss of a body function, sexual abuse, temporary or permanent disfigurement or death; striking with a closed or open hand; pushing to the ground or shoving aggressively, twisting a limb, pulling hair; dousing with water; intentionally ignoring a client; withholding food; forcing a client to eat obnoxious substances; use of verbal or other communications to curse, vilify, degrade or threaten a client with physical injury.

"Advocate" means a public or private officer, agency, or organization designated by state legislation, state plan, or the governor to represent the interests of persons with developmental disabilities and speak on behalf of such individuals.

"Age Appropriateness" means that aspect of normalization which reinforces recognition of an individual as a person of a certain chronological age.

"Capacity" means the maximum number of developmentally disabled individuals who may reside in the licensed residence.

"Case *[Manager]**manager*" means the authorized representative of any agency who coordinates the provision of social services *and/or habilitation services* to developmentally disabled individuals.

"Chores" means those duties which are normally performed by members of a household as a matter of routine.

"Community residence for the developmentally disabled" means any community residential facility housing up to 16 developmentally disabled persons which provides food, shelter, personal guidance, and/or training. Such residences shall not be considered health care facilities within the meaning of the "Health Care Facilities Planning Act," P.L. 1971 c.136 (C.26:2H-1 et seq.), and shall include, but not be limited to, group homes, halfway houses, supervised apartment living arrangements, and hostels. Skill development homes and family care homes are also community residences for the developmentally disabled; however, these owner-occupied living arrangements are governed by N.J.A.C. 10:44B.

"Community Services" means a component of the Division of Developmental Disabilities which provides work and training programs, housing and supportive services to aid persons with developmental disabilities in establishing themselves in the community.

***Geographic regions and counties served are as follows:**

Northern Regional Office, serving Sussex, Warren, Morris, Bergen, Passaic, and Hudson Counties;

Upper Central Regional Office, serving Essex, Somerset, and Union Counties;

Lower Central Regional Office, serving Mercer, Middlesex, Ocean, Hunterdon, and Monmouth Counties; and

Southern Regional Office, serving Camden, Atlantic, Salem, Gloucester, Cumberland, Cape May, and Burlington Counties.*

"Department" means the Department of Human Services.

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;

HUMAN SERVICES

4. Results in substantial functional limitations in three or more of the following areas of major activity: self care, receptive and/or expressive language, learning, mobility, self-direction, and capacity for independent living or economic self-sufficiency; and

5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

"Division" means the Division of Developmental Disabilities.

["Division circular" means a document issued by the Director, Division of Developmental Disabilities, which provides detailed policies and procedures of the Division, and which may be obtained from the Office of Licensing and Inspections, Capitol Place One, 222 South Warren Street, Trenton, New Jersey 08625.]

"Exploitation" means any unjust or improper use of another person for one's profit or advantage.

"Fire official" means a person certified by the Commissioner of the Department of Community Affairs, and appointed or designated to direct the enforcement of the Uniform Fire Safety Code (N.J.A.C. 5:23) by the appointing authority of a local enforcing agency and also means any certified fire inspector working under the direction of the fire official.

"Group Homes" are community residences which provide the opportunity for developmentally disabled individuals to achieve optimal independence. Staff in the Group Home provide supervision, training, and/or assistance as needed in personal care tasks and activities of daily living.

"Human Rights Committee" means a group comprised of professionals, developmentally disabled persons, advocates, and interested individuals from the community at large who function as an advisory body to the Chief Executive Officer (Licensee) or Regional Administrator on issues directly or indirectly affecting the rights of individuals with developmental disabilities.

"Imminent danger" means the existence of a hazard which could reasonably be expected to cause death or serious physical harm to persons in the residence.

"Individual" means a person with developmental disabilities residing in a licensed community residence for the developmentally disabled. "Individual with developmental disabilities" will be used as necessary to distinguish between such persons and others, such as staff of the agency or staff of the Division of Developmental Disabilities.

"Individual Habilitation Plan" (IHP) means a document that provides an evaluation of the individual's capabilities and needs and sets forth clearly defined goals and measurable, behaviorally stated objectives describing an individualized program of care, training, treatment, and therapies designed to attain and/or maintain the physical, social, emotional, educational and vocational functioning of which the individual is presently or potentially capable.

"Interdisciplinary Team" (IDT) means a group of persons with a variety of skills and services knowledge who assist in the development of a habilitation plan appropriate to a specific individual who is being served.

"Least Restriction" means that interventions in the lives of individuals with developmental disabilities are carried out with a minimum of limitation, intrusion, disruption, or departure from commonly accepted patterns of living.

"License" means the authorization issued by the Department of Human Services to operate a community residence providing services to developmentally disabled persons.

"Licensee" means the individual, partnership, or corporation responsible for the overall operation of the home, and who is named on the license.

"Licensing agency" means the Office of Licensing and Inspections, within the Department of Human Services, Division of Developmental Disabilities.

"Mobile non-ambulatory" means an individual capable of independent bed to wheelchair transfer and capable of following procedures for evacuation from the facility.

"Negative licensing sanction" means an action taken which imposes a restriction on a licensee and may include suspension of admissions, issuance of a Provisional License, a reduction in the

licensed capacity, a non-renewal of license, a suspension of the license, or a revocation of the license.

"Neglect" means the failure of an individual to provide for or maintain the care and safety of individuals under his or her supervision, including, but not limited to, failure to provide and maintain proper and sufficient food, clothing, health care, shelter and/or adult supervision.

"Normalization" means making commonly accepted patterns and conditions of everyday life available to people with developmental disabilities. Age-appropriateness and least restriction are two key aspects of normalization. Age-appropriateness refers to that aspect of normalization which reinforces recognition of an individual as a person of a certain chronological age.

"Pattern of non-compliance" means the recurrence of licensing violations over time.

"Personal guidance" means the assistance provided to an individual with developmental disabilities in activities of daily living because he or she routinely requires help completing activities of daily living and/or cannot direct someone to complete such activities when physical handicaps prevent self-completion; or there is a documented health or mental health problem requiring supervision of the person for the protection of the individual or others. In the absence of a court determination, the IDT shall determine the need for personal guidance for each individual.

"Private placement" means the status of an individual who does not receive services from the Division of Developmental Disabilities at the time of his or her admission to a community residence governed by these regulations.

"Provisional license" is a negative licensing sanction used to prompt corrective actions in existing residences. A provisional license shall be for less than 12 months.

"Respite care" means a temporary placement intended to not exceed 30 days.

"Supervised Apartments" means apartments which are variants of the Group Home model. These apartments are occupied by developmentally disabled individuals and leased by the licensee. Staff provide supervision, guidance, and training as needed in activities of daily living as defined by the individual's needs and targeted future goals.

"Variance" means recognition that the licensee has complied with the intent of a standard in a Division-approved alternative manner.

"Waiver" means the temporary suspension of a standard, which is granted in writing by the licensing agency.

10:44A-1.4 Application for license

(a) All inquiries related to applications for group homes and supervised apartments should be made to:

Program Development Unit
N.J. Division of Developmental Disabilities
Capital Place One
222 South Warren Street—CN 700
Trenton, New Jersey 08625

(b) All applicants must submit an application (Letter of Intent), to the Program Development Unit on the forms provided upon application.

(c) Falsification of any information required on the application shall be a basis for the denial of the application or revocation of a license.

(d) Conviction of a crime by an applicant *[shall]* ***may*** be sufficient cause to deny an application for license ***(see N.J.A.C. 10:44A-2.4(a))***.

(e) In collaboration with representatives of the Department of Human Services, the Program Development Unit shall ensure compliance with geographic and population saturation limits, as identified in N.J.S.A. 40:55D-66.1 et seq.

(f) The Program Development Unit shall inform an applicant, in writing, of the decision regarding a Letter of Intent. The Program Development Unit shall send copies of applicable Division Circulars to approved applicants.

10:44A-1.5 Initial inspection

(a) An initial inspection of the proposed residence shall be conducted by a representative of the Office of Licensing and Inspections prior to the opening of any Community Residence for the Developmentally Disabled.

(b) The following documents, which must be legible, shall be supplied by the applicant to the Office of Licensing and Inspections before an initial inspection will be conducted:

1. Proof of residential and vehicle insurance;
2. A Certificate of Use and Occupancy, if required by the municipality, in accordance with the Uniform Construction Code (N.J.A.C. 5:23). This provision is not applicable to supervised apartments;

3. If the building is not serviced by a public water supply, the applicant shall request that the local health department inspect these services and submit a written statement of approval which shall be filed with the Office of Licensing and Inspections. This provision is not applicable to supervised apartments:

i. Upon approval by the appropriate enforcing agency, that is, the New Jersey Department of Health or local health department, an inspection by a licensed home inspection service shall be acceptable;

4. Staff schedule, identifying the 24 hour coverage to be provided;

5. Copy of the licensee's approved Policy and Procedures Manual which meets the content requirements as provided in N.J.A.C. 10:44A-2.7.

10:44A-1.6 Issuance of license

(a) The Department shall issue a non-transferable license, effective for one year from the date of the on-site inspection.

(b) The license shall specify the maximum number of developmentally disabled persons to be placed in the home.

(c) The license shall be available on the premises and the licensee shall submit a copy of the license to the local construction official.

(d) The group home or supervised apartment shall be subject to inspection by the Division of Developmental Disabilities, without limitation or prior notice.

10:44A-1.7 Renewal of license

(a) Subsequent licenses will be issued effective for one year from the expiration date of the preceding license with the following exceptions:

1. Upon determination that a negative sanction in the form of a provisional license, reduction in licensed capacity, suspension of license, failure to renew a license, or a revocation is appropriate.

2. Upon receipt of full accreditation by an Accreditation Body deemed acceptable by the Director, Division of Developmental Disabilities, a license effective for a two year period will be issued.

i. An organization granted full accreditation shall be responsible for conducting a complete self-survey utilizing the rules in this chapter.

ii. The Office of Licensing and Inspections shall review the self-survey and conduct an abbreviated inspection using the self-survey document during the year when an accreditation survey is not conducted.

10:44A-1.8 Voluntary closure

The licensee shall give at least 90 days notice to the appropriate Regional Office of Community Services, Division of Developmental Disabilities of any intention to close.

10:44A-1.9 Non-compliance and negative sanctions

(a) The Department of Human Services may revoke, suspend, or reduce the license whenever the licensee or designated administrator is found to be violating the laws of the State of New Jersey or when residences fall below the standards established by the Division of Developmental Disabilities.

1. Substantial violation of any subchapter, that is, Administrative Policies and Practices, Advocacy and Rights, Habilitation and Health Services, Physical and Social Environment shall be reason for revocation or reduction in the status of the license.

2. Substantial non-compliance exists when:

i. The unmet licensing requirements directly endanger the health, safety, or well-being of *[a customer(s)]* ***an individual***;

ii. When the unmet requirements exist in significant number;

- iii. When the degree of the condition(s) is severe;
- iv. When one or more requirements have been left unmet with great frequency; and/or
- v. When the terms of the license have been violated;

3. Willful non-compliance exists when the applicant or licensee has knowledge of the violations of licensing rules and/or terms of the license, has been advised of the consequences of not achieving compliance and has not achieved compliance after being given an adequate opportunity to do so.

(b) The licensee shall be given 30 days notice by the Division of Developmental Disabilities of intentions to revoke, reduce, or suspend a license, unless the Division determines that the individuals in residence may be in danger of abuse, neglect, or other life-threatening conditions.

(c) If minor renovations or programmatic changes are required to correct violations, a plan of correction shall be submitted to the Program Development Unit within 30 days after notification to the agency. For each deficiency noted in the licensing report, the plan of correction shall provide:

- 1. Target dates for compliance;
- 2. Details of plans to correct violations.

(d) Major violations shall be corrected within the time frame established by the Division of Developmental Disabilities. If deficient conditions are not corrected within the time period designated by the Division of Developmental Disabilities, the residence may have its license reduced, revoked, or suspended under appropriate regulations in accordance with N.J.S.A. 30:11B-1 et seq. The licensee shall be informed of the specific action.

(e) Admissions may be suspended by the Division until the deficient conditions are corrected.

(f) The standards found in this chapter shall apply to supervised apartments as well as group homes, unless otherwise noted in the standard. N.J.A.C. 10:44A-8 provides specific standards for the staffing and physical plant requirements in supervised apartments.

10:44A-1.10 Appeal process

(a) A licensee aggrieved by a ruling, action, order, or notice of the licensing agency which results in a negative sanction, as defined in these rules shall be entitled to an administrative hearing. The application for the hearing shall be filed with the Director, Division of Developmental Disabilities, by the fifteenth day after receipt by the licensee of notice of the ruling, action, order, or notice.

1. All hearings shall be conducted pursuant to N.J.A.C. 10:48. The final decision shall be issued by the Director of the Division of Developmental Disabilities.

(b) An informal conference shall be granted regarding those matters involving the licensee and the licensing agency which do not constitute negative sanctions against the licensee.

(c) Upon receipt of notice from a licensee of a grievance, the licensing agency shall forward a copy of the Division's appeal procedure (Division Circular #37) for the licensee's reference.

10:44A-1.11 Waiver or variance

(a) A waiver or variance may be granted by the licensing agency provided that such a waiver or variance would present no danger to the health, safety, welfare, or rights of the individuals receiving services. The waiver must be requested by the licensee with substantial detail justifying the request. Issuance of a waiver or variance will be limited to the following circumstances:

- 1. Where strict enforcement of the standard would result in unreasonable hardship on the residence; or
- 2. Where a waiver or variance is in accordance with the particular needs of the developmentally disabled individuals.

SUBCHAPTER 2. ORGANIZATION AND ADMINISTRATION

10:44A-2.1 General requirements

(a) The licensee shall monitor the efficiency and effectiveness of its organization by:

- 1. Adhering to specifications of its governing documents such as the Letter of Intent, charter, bylaws, etc., and reviewing and amending such documents annually or as necessary.

2. The licensee shall conduct a systematic assessment of its effectiveness on an annual basis.

(b) The purposes of the organization, a description of the program and services which it provides shall be made available to individuals with developmental disabilities, parents, guardians, advocates, and the general public.

1. This document shall describe, in general terms, who is served, the services provided, and the goals of the organization.

2. Although common language rather than legalistic or professional terminology shall be used, the information shall not be inconsistent with the organization's legal documents, for example, its character or statement of incorporation.

(c) The licensee may choose to employ an administrator to manage the community residence(s).

1. The relationship between the licensee, Board of Directors/Trustees (if any), and the administrator shall be documented and available for review by authorized officials of the Division.

2. The administrator's duties shall be defined in writing.

3. The administrator shall be delegated the authority and responsibility necessary to direct the organization in accordance with its policies/procedures.

(d) A licensee having non-profit status shall have a Board of Trustees which *[means]* ***meets*** the following criteria:

1. A minimum of five persons shall comprise the board.

2. Provisions shall exist for the orientation of new board members.

3. Meetings shall be held with a frequency sufficient to discharge their responsibilities effectively; in no event should the full governing body meet less than three times per year.

10:44A-2.2 Staff coverage

(a) The staff schedule shall be initially approved as part of the Letter of Intent process and reviewed at each inspection.

1. Reduction of staff coverage shall be justified in writing and sent to the Office of Licensing and Inspections and the Program Development Unit for Division approval.

2. Reduction of staff coverage shall not be implemented until approval is granted by the Office of Licensing and Inspections.

(b) Staff are not required to be on-site when all individuals are in a weekday program, but trained paid agency staff, familiar with the program, shall be available for emergencies.

(c) Staff coverage may be adjusted in accordance with documented approval(s) by the Interdisciplinary Team that an individual or individuals can be left alone for specific amounts of time.

(d) A written staff schedule for at least a two week period shall be available at each group home or at the supervisor's office for supervised apartments. The employee in-charge *[should]* ***shall*** be designated on the schedule for each shift.

(e) ***[In special situations, staff shall be awake at night, including, but not limited to, residences housing multiple handicapped individuals and/or individuals who exhibit behavior problems, which present a danger to self or others.]******If there is documentation that an individual has health or behavioral problems which present a danger to self or others, awake overnight coverage may be required.***

(f) Volunteers shall have planned duties and be supervised at all times by paid staff.

(g) Residences utilizing students for field placements/internships shall have a written plan for using their services.

10:44A-2.3 Personnel and staff development

(a) Personnel practices shall comply with all applicable Federal, State, and local laws, ordinances, rules, and regulations pertaining to employment, including civil rights, retirement plans or social security, minimum wages, hours, workmen's compensation.

(b) Prior to employment, all direct care staff shall have a physical examination and a Mantoux Skin Test for tuberculosis administered within three years.

1. A Mantoux Skin Test is required every three years for the duration of employment.

10:44A-2.4 Staff qualifications

(a) Except as otherwise provided in the Rehabilitated Offenders Act (N.J.S.A. 2A:168A-1 et seq.), no license will be issued to any applicant who, at any time, has been convicted of forgery, embezzle-

ment, obtaining money under false pretenses, extortion, criminal conspiracy to defraud, crimes against the person or other like offense(s).

(b) Except as otherwise provided in the Rehabilitated Offenders Act (N.J.S.A. 2A:168A-1 et seq.), no licensee shall employ any person who has been convicted of any of the offenses listed in (a) above.

(c) The licensee or the administrator shall have a Bachelor's Degree or a high school education and two years of experience working with the developmentally disabled population.

(d) The House Manager, that is, the on-site supervisor responsible for the operation of the community residence, shall have a high school education and one year of experience working with the developmentally disabled population.

(e) Direct care staff shall be high school graduates and shall be at least 18 years of age.

(f) Direct care staff shall have the ability to communicate with the individuals for whom they are responsible.

(g) Direct care staff shall be capable of providing any direct assistance required by individuals for whom they are responsible.

(h) Falsification of information submitted to the Division of Developmental Disabilities, Department of Human Services, shall constitute justifiable grounds for immediate termination of the license or the licensure process.

(i) The licensee shall verify that all persons providing a professional service, either through direct employment or contract, possess credentials required by federal or state law.

10:44A-2.5 Orientation

(a) Immediately upon employment, all staff shall receive an orientation to acquaint them with:

1. The organization's philosophy, goals, programs, and practices;
2. Abuse, neglect, and unusual incident reporting and investigating procedures;
3. Emergency procedures as identified in the policy and procedures manual, for example, the fire evacuation plan, emergency medical treatment, etc. (Also see Emergency Policy and Procedure, N.J.A.C. 10:44A-2.7(b)3i);
4. An overview of developmental disabilities and the special needs of the individuals being served, for example, medical or behavioral problems requiring specific, tailored attention;
5. The appropriate job description and the personnel policies of the organization.

(b) Records of the orientation provided shall include a dated, signed acknowledgement by the employees receiving and providing the orientation.

10:44A-2.6 Staff training

(a) Basic staff training programs shall either be offered by the Division of Developmental Disabilities, or provided by the licensee after obtaining approval from the Division, to ensure staff competency, personal growth, and development. Within 120 days of employment, each employee shall receive in-service training which shall address, at a minimum:

1. Training in the principles of normalization;
2. Review of all policies and procedures not covered during orientation which are relevant to the employee's job;
3. First aid procedures;
4. Multimedia First Aid Training offered by the American Red Cross and have a certificate on file at the residence; and
5. Cardio-Pulmonary Resuscitation and have a valid certificate on file.

(b) The licensee may conduct, at its own discretion, and without specific prior approval from the Division, training programs in addition to training required by this chapter.

(c) Specialized training programs, identified as necessary during the application process or, subsequently, by the IDT, shall be provided as follows:

1. Persons who work with individuals who require specialized feeding techniques shall receive training in the use of those techniques.
2. Persons who work with individuals who use mobility devices shall receive training in mobility procedures and the safe use of mobility devices.

3. Persons who work with individuals with seizure disorders or physical disabilities shall receive training in the provision of training, assistance, and care to those individuals.

4. Persons who work with individuals with visual impairments or blindness shall receive training in orientation and mobility.

5. Persons who work with individuals who use alternative means of communication shall receive training in the means of communication used by the individual.

6. Persons who work with individuals with other special needs shall receive training which specifically addresses the special needs.

(d) Training records shall be maintained in the administrative offices and shall contain the following:

1. The curriculum and training plan;
2. Documentation of attendance through a report which includes the dated signatures of the trainer and the trainee; and
3. Results of those training programs which the Division requires.

10:44A-2.7 Policy and procedure manuals

(a) The licensee shall develop and implement written policies and procedures to ensure that the service delivery system complies with *[state]**State* law and rules governing community residences for the developmentally disabled as follows:

1. The policy and procedure manual shall be reviewed ***annually*** and revised as necessary*[, but at least annually]*.
2. Each policy and/or procedure shall be designed in accordance with the principles of normalization, age-appropriateness, and least restriction and shall be consistent with the licensee's organizational structure and management philosophy.

3. While specific content for inclusion in a policy or procedure shall be identified on an as-needed basis in these rules, to ensure consistency, each policy and/or procedure shall provide:

- i. A descriptive title;
- ii. A title of purpose;
- iii. Standards of expected performance;
- iv. A description of sequential steps required;
- v. Assignment of staff responsibilities at each level of the operation;
- vi. Reporting and recording requirements.

4. Group Home/Supervised Apartment Managers shall carry out administrative responsibilities in keeping with policies established by the governing body and by the Chief Executive.

5. All staff shall be able to describe the key elements of each policy and procedure for which they are responsible.

6. Policies and procedures which, by their nature, do not deal with the daily routine or do not place clients in imminent danger must only be readily accessible for staff's reference and use in complying with procedure.

(b) The licensee shall issue a policy and procedure manual to supply the following documents and procedures to all staff:

1. A statement of philosophy, values, and goals so as to govern the organization's direction and character;
2. A table of organization illustrating lines of authority, responsibility, and communication;
3. A procedure for implementing a plan to deal with major emergencies requiring evacuation from the residence, such as a fire or a gas leak. The procedure shall address, at a minimum*[,]**:
 - i. Evacuation ***drills*** of all persons to safe areas outside the building*[;]**, except in inclement weather when the drills shall follow procedure only to the point where the participants would normally leave the building.

ii. ***[Monthly evacuation drills must be conducted for the first six months of operation;]**Fire drills shall be conducted once a month. Drills should be held at varying times of the day and night and the location of the imaginary fire should also be changed periodically. Evacuation time shall be two and one-half minutes or less.***

iii. ***[Monthly drills shall continue for three consecutive months until all occupants can evacuate within 2½ minutes;]**Records of these drills shall be maintained and shall include the date and time of drill, time required for evacuation, and names of persons involved.***

iv. ***[Drills shall be conducted every two months for three consecutive months until all occupants can evacuate within 2½**

ADOPTIONS

minutes.]**A fire drill shall be conducted for each individual within 48 hours of admission.*

4. The process for the reporting and investigation of suspected abuse, neglect, or exploitation of the individuals receiving services, as required at N.J.A.C. 10:44A-2.8. The following information shall be included:

i. A statement expressly prohibiting abuse, neglect, or exploitation.

ii. A statement regarding the obligation to report, each allegation involving an adult to Community Services' emergency telephone answering service immediately and provide to the extent possible the information required in 10:44A-2.8(a).

5. A written statement of policies and procedures which protect the financial interests of the developmentally disabled persons as required in N.J.A.C. 10:44A-2.9.

(c) The policy and procedure manual shall be available at each community residence in a convenient location, accessible for staff use.

10:44A-2.8 Reporting and investigation of suspected abuse, neglect or exploitation of individuals receiving services

(a) Abuse, neglect or exploitation of individuals receiving services shall be prohibited. In the event these occur, staff shall:

1. Report each allegation involving an adult to Community Services emergency telephone answering service and provide, to the extent possible:

i. The name of the alleged victim(s), date, and time of the incident;

ii. Names of the persons involved, including participants and witnesses;

iii. A description of the incident, including any medical treatment administered;

iv. Appropriate sanctions that were invoked when the allegation was substantiated; and

v. Any immediate corrective actions taken to prevent a reoccurrence or to provide additional protection;

2. In the case of minors, allegations of abuse shall also be reported ***immediately*** to the local district office of the Division of Youth and Family Services or to the Office of Child Abuse Control*[, telephone (800) 792-8610]* ***(see N.J.S.A. 9:6-8.10)***.

3. In the case of individuals 60 years of age and over, allegations of abuse shall also be reported to the Office of the Ombudsman*[, 800-792-8820]* ***(see N.J.S.A. 52:27q-7.1)***.

(b) An internal investigation shall be conducted within 24 hours unless otherwise instructed by a party empowered by statute to investigate.

(c) A preliminary report regarding the internal investigation shall be forwarded to the casemanager or, in the absence of a casemanager, the Office of Licensing and Inspections within 72 hours of the incident.

10:44A-2.9 Client financial records

(a) A system of separate accounting for each individual, or for his or her interest if a common trust or fund is used, shall be maintained.

(b) Account balances and records of transactions shall be provided to the individual or the individual's fiscal representative upon request, but at least annually.

10:44A-2.10 Daily log

(a) The system for internal communication shall include the maintenance of a daily log documenting problems encountered, the action taken, and a summary of activities and events during each shift, signed and dated by the person recording the information.

1. The daily log shall be signed and dated by the person recording the information prior to the end of each shift.

2. The daily log shall be reviewed by the manager of the group home or supervised apartment, and signed and dated every 72 hours or more frequently as needed.

10:44A-2.11 Grievance process/appeal of agency decisions

(a) A statement shall be provided to residents and/or their representatives and included in the policy procedure manual delineating how the licensee shall ensure the rights of the individuals it serves, to include:

1. The development and revision of house rules to include participation by individuals being served to the fullest extent possible;

HUMAN SERVICES

2. The means to identify individuals who need or want a personal advocate and/or wish to participate in self-advocacy groups;

3. The schedule and process for conducting house meetings, unless the individual's functioning level renders them unable to participate, as confirmed and documented by the Interdisciplinary Team;

4. The written procedures for grievances or appeals, which shall have a minimum of two levels of appeal, the last of which shall involve the administrator or the licensee.

10:44A-2.12 Interdisciplinary team process

(a) The interdisciplinary team shall function as required in N.J.A.C. 10:44A-4.3.

10:44A-2.13 Medication

(a) A statement shall be included in the policy and procedure manual concerning the administration and storage of medication which includes, at a minimum:

1. Separate requirements for prescription and over-the-counter drugs;

2. Handling emergencies; and

3. The monitoring and recordkeeping systems employed.

10:44A-2.14 ***[Unusual incidents]**(Reserved)***

***[(a) Statements shall be included in the policy and procedure manual which ensure that appropriate action is taken in accordance with Division Circular #14.**

(b) In addition to the documents required in the policy and procedure manual, the licensee shall develop policies regarding:

1. Death of an individual receiving services;

2. Admission of an individual to a hospital or emergency room;

3. Emergency removal of an individual due to inappropriate behavior;

4. A missing person;

5. Serious injuries such as fractures, lost teeth, or those requiring sutures;

6. Confirmation of reportable diseases (see N.J.A.C. 8:57);

7. Report of any fire or major property damage.]*

10:44A-2.15 Administrative records

(a) The licensee shall keep on file the following administrative records:

1. A record of all admissions and discharges, including names and dates, for the previous 12 month period;

2. A current copy of N.J.A.C. 10:44A, Manual of Standards for Licensed Community Residences for the Developmentally Disabled;

3. A record of monthly fire evacuation drills;

4. A copy of his or her current license.

[(b) During normal business hours, each individual receiving services shall have the right to inspect and copy, or have a copy provided for him or her by the licensee, any or all of the records referred to in (a) above.]

***[(c)]**(b)* No inspection, investigative report or written complaint, when made accessible to the public, shall disclose the identity of the developmentally disabled person.**

[(d)]**(c)* Unless otherwise noted in a specific *[regulation]* ***rule, all records shall be maintained in the licensed community residence ***[for the developmentally disabled]**, group home, or in the office of staff for the supervised apartment***. Maintenance of records in any other place, either permanently or temporarily, is prohibited.**

***[(e)]**(d)* The licensee shall protect and maintain the confidentiality of all records in accordance with Division Circular #46.**

1. The licensee shall not distribute copies or allow distribution of any individual's records without explicit written permission of the involved agency representative and the individual or his/her legal guardian or guardianship worker.

2. Persons who will be or who are providing a necessary service to an individual shall be permitted access to information relevant to providing the specified service.

***[(f)]**(e)* No inspection, investigative report or written complaint, when made accessible to the public, shall disclose the identity of the developmentally disabled person.**

***[(g)]**(f)* During normal business hours, each individual receiving services shall have the right to inspect and copy, or have a copy**

HUMAN SERVICES

provided for him or her by the licensee, any or all of the records referred to in this section.

*[(h)]***(g)* An individual folder shall be maintained for each developmentally disabled person. The folder shall be legibly marked with the person's name.

*[(i)]***(h)* Individual records shall include:

1. Full name, date of birth, and sex;
2. Social Security and Medicaid numbers;
3. Date(s) of admission and re-admission;
4. Names and addresses of persons or agencies responsible for placement;
5. Names and addresses of all personal physicians and dentists;
6. Name, address, and telephone number of legal guardian (or guardianship worker), next of kin, and other interested person(s), and a copy of the guardianship determination;
7. Religious preference;
8. Pre-admission data including diagnosis, a psychological evaluation, ***as appropriate*** and developmental history, including behavioral characteristics;
9. Admission physical examination and the results of the Mantoux Skin Test or Intradermal Test for tuberculosis, completed within the past three years, obtained within 30 days prior to admission;
10. Immunization record, if below the age of 18 years;
11. An annual physical examination and the results of the Mantoux Skin Test or Intradermal Test for tuberculosis, re-administered every three years;
12. Annual reports from the dentist of dental examinations and corrective work done;
13. Reports of accidents, illnesses, and unusual incidents;
14. Seizure records, where indicated;
15. The current Individualized Habilitation Plan;
16. Monthly reports of individuals' social and behavioral progress to correspond to the current Individualized Habilitation Plan;
17. A medically-prescribed diet, if required;
18. Documentation of known allergies;
19. A record of all personal property and funds entrusted to the licensee.

*[(j)]***(i)* Individual records shall be transferred to the Division when the client leaves the agency service.

10:44A-2.16 Consumer funds

[(a)] If the individual is determined by the IDT to be not capable of managing his or her own funds, the licensee shall maintain a record of all expenditures of the individual's personal funds according to the licensee's written policies and procedures.*

*[(b)]***(a)* Each developmentally disabled person shall have the right to manage his or her personal funds unless his or her rights are otherwise restricted under *[state or federal]* ***State or Federal*** law.

[(b) If the individual is determined by the IDT to be not capable of managing his or her own funds, the licensee shall maintain a record of all expenditures of the individual's personal funds according to the licensee's written policies and procedures.

(c) At the time of admission, each person shall be provided with a written statement:

1. Explaining his or her rights regarding personal funds; and
2. Listing the services regarding the safekeeping and management of funds.

(d) The licensee shall obtain a signed acknowledgement from each person that he or she has received this statement. A copy of this acknowledgement shall be placed in the individual record for each person and forwarded to the Region.

(e) If an individual wishes to entrust funds to the licensee, the licensee shall:

1. Receive written authorization from the individual. The authorization shall be attested to by a witness who has no pecuniary interest in the licensee or its operations, and who is not connected to the licensee in any manner whatsoever;

2. Maintain and allow each individual access to a written record of all financial arrangements and transactions involving his or her funds;

ADOPTIONS

3. Provide each individual with a written itemized statement, at least quarterly, of all financial transactions involving his or her funds;

4. Keep any funds received from an individual for safekeeping in an account separate from all funds of the home;

5. Deposit any funds received from an individual in excess of \$100.00 in an interest-bearing account insured by agencies of, or corporations chartered by, the state or federal government. The account shall be in a form which clearly indicates that the licensee has only a fiduciary interest in the funds and any interest from the account shall accrue to the developmentally disabled person. The licensee may keep up to \$100.00 of an individual's money in a non-interest bearing account or petty cash fund, to be readily available for current expenditures. Upon written request from an individual, the home may increase the amount of that individual's money in a non-interest bearing account or petty cash fund, up to \$200.00;

6. Return to the individual, upon written request, all or any part of the individual's funds given to the licensee for safekeeping, including the interest accrued from deposits;

7. Place any monthly allowance to which an individual is entitled in that individual's personal account, or give it to the individual, unless the licensee has written authorization from the individual to handle it differently;

8. Unless otherwise provided by state law, upon the death of an individual, provide the executor or administrator of the individual's estate with a complete accounting of the individual's funds and personal property, including any funds and personal property of the individual being held by the licensee.

(f) The licensee to whom the individual entrusts his or her funds should assure that management of such funds does not jeopardize the individual's entitlements to any appropriate federal or private annuity benefit.

SUBCHAPTER 3. ADVOCACY AND RIGHTS

10:44A-3.1 General requirements

(a) An individual's civil, human, and legal rights shall not be abridged solely on the basis of their diagnosis, nor without due process.

1. An individual's exercise of his or her rights shall not be prohibited or be used as a cause for retribution against him or her.

2. The licensee shall be responsible for utilizing a Human Rights Committee in accordance with Division Circular #5, "Human Rights Committees".

(b) The licensee shall establish reasonable house rules consistent with the principles identified in this chapter.

(c) ***[On an]**An* individual *[basis]* or *[as]* a collective group*[,] *of* individuals receiving services *[have]* ***has*** a right to challenge house rules as to their appropriateness.**

(d) The house rules shall include provisions to ensure that individuals exercise their rights in such a way as not to infringe upon the rights of or endanger others.

(e) The licensee shall make certain that the private life of the individual is respected at all times, as follows:

1. The licensee shall avoid any unreasonable schedule concerning the hours at which individuals shall rise or retire.

2. Individuals shall be permitted to rest in their homes for such periods as may be consistent with personal needs.

3. Complete privacy shall be afforded during visits.

(f) Visiting is to be permitted during reasonable hours as identified in the house rules.

(g) Individuals shall have the opportunity to associate with members of the opposite sex.

(h) Individuals shall have the right to participate in social, religious, or community groups of their choice.

1. Licensees and/or staff shall not impose their religious beliefs on individuals under their care.

2. Licensees shall provide each individual with a nutritionally-balanced diet, modified in accordance with an individual's religious practices.

(i) Individuals shall have an opportunity to register and vote, if competent to do so.

ADOPTIONS

(j) Individuals shall have free use of all ***common*** living areas within the home without infringing on the privacy of others.

(k) Individuals shall have the right to use the community for recreation, education, shopping, and employment.

(l) Developmentally disabled individuals shall have access to a telephone within the residence for unmonitored incoming and outgoing calls.

1. Pay telephones shall not be employed in a licensed community residence unless such conditions are fully reviewed by the individuals' IDT and a Human Rights Committee.

2. An individual may be charged for toll calls, provided the licensee has informed the individual, in writing and in advance, of the fees to be charged.

(m) Individuals shall have the right to open their own mail and packages without surveillance.

(n) Licensees shall not read the individuals' incoming or outgoing mail unless requested by the individual.

(o) If the individual requests, he or she shall receive assistance in reading and writing letters.

10:44A-3.2 Access by advocates and community organizations

(a) Upon the presentation of proper identification and/or signed authorization to a licensee, advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to individuals, shall be granted access to the residence at reasonable times in order to:

1. Visit, talk with, and make personal, social, and legal services available to all individuals;

2. Inform individuals of their rights and entitlements, and their corresponding obligations under state, federal, and local laws by distribution of educational materials and discussion in groups and with individuals;

3. Assist individuals in asserting their legal rights regarding claims for public assistance, medical assistance, and Social Security benefits, as well as in all other matters in which individuals are aggrieved, which may be provided individually, or in a group basis, and may include organizational activity, counseling, and litigation; and,

4. Engage in all other methods of assisting, advising, and representing individuals so as to extend to them the full enjoyment of their rights.

10:44A-3.3 Notice of rights

(a) The Division shall give each home licensed under this chapter a copy of the rights document used by the Division and the names, addresses, and telephone numbers of the advocates who are available to assist the individual in understanding and enforcing these rights.

(b) If an individual is unable to read the list of rights, the rights shall be read to the individual in a language the individual understands. The licensee or administrator shall explain to the individual any portions of the rights which the individual does not understand and shall answer any questions the individual may have regarding the rights.

(c) After a copy of the rights has been given or read to the individual, he or she or his or her guardian shall sign and date a written acknowledgement that the individual has read or has been read the rights, that the individual understands the rights, and that any questions which the individual has regarding the rights have been answered by the licensee. A copy of the written acknowledgement signed and dated by the individual shall be placed in the individual's records.

(d) The home shall ensure that the staff is familiar with and observes the rights and responsibilities enumerated in these rules.

(e) Any policy, procedure, or rule of the home which is inconsistent with or contrary to a right enumerated in these rules shall be null and void.

(f) Developmentally disabled individuals shall be given the opportunity to participate in self-advocacy groups.

SUBCHAPTER 4. HABILITATION

10:44A-4.1 Preadmission and admission

(a) A licensee shall not refuse admission to any individual on the grounds of race, religion, or ethnic origin.

HUMAN SERVICES

(b) A licensee shall have written statements regarding the admission criteria and fee policies for general admission to the program, as well as requirements specific to a particular residence.

(c) Admissions to, discharges from, or transfers between residences operated by the licensee shall be approved in advance by the appropriate Regional Office of the Division.

(d) All admissions or discharges of privately placed individuals must be reported in writing to the Office of Licensing and Inspection within five days.

1. All individuals admitted shall be developmentally disabled prior to his or her admission.

2. Licensees shall not admit individuals who do not comply with their own admission criteria.

3. All individuals and their parents and/or legal guardian shall be afforded the opportunity of making a pre-placement visit to the residence prior to admission.

(e) The number of individuals admitted to a program shall not exceed its licensed capacity.

(f) The following shall be provided for new admissions:

1. A package of information which complies with N.J.A.C. 10:46, addressing eligibility for services, as determined by the appropriate Regional Office of Community Services;

2. A medical examination conducted within 48 hours of admission, determining the individual to be free from contagious disease;

3. A current immunization record and hepatitis-B screening in accordance with Division Circular #9;

4. A Mantoux Skin Test or Intradermal Test for Tuberculosis, administered less than three years prior to the date of admission;

5. Lead level testing, as required by and in accordance with Division Circular #49, shall be conducted to ensure that individuals exhibiting pica behavior will not be admitted or transferred to leaded environments.

(g) At the time of admission, each individual shall be provided by the licensee, at no cost to the individual, the following:

1. A copy of the written procedures for safekeeping of valuable personal possessions;

2. A written statement explaining the individual's rights;

3. A copy of the house rules and grievance procedures.

(h) If an individual is unable to read the list of rights, the rights shall be read to the individual in a language the individual understands. The licensee or administrator shall explain to the individual any portions of the rights which the individual does not understand, and shall answer any questions the individual may have regarding the rights.

1. The individual's guardian/guardianship worker shall be notified, in writing, that the list of rights has been explained to the individual.

2. A copy of the notification sent to the guardian/guardianship worker shall be maintained at the residence.

(i) If it is in the developmentally disabled person's best interest to remain in the Respite Care placement beyond 30 days, the individual shall be treated as a regular admission and all regulations of the appropriate program category, that is, group home or supervised apartment, shall apply. A group home or supervised apartment may be used exclusively for respite care or may choose to reserve a limited number of the total approved beds as identified as the licensed capacity.

10:44A-4.2 Transfer or discharge

(a) Should a licensee/agency determine that an individual is no longer suitable for the residence, the individual shall not be maintained at that residence, provided substantive evidence is given to the placing agency.

1. A review by the Regional Advisory Board of Community Services of the Division may be requested by the licensee or the licensing agency.

2. The licensee or the licensing agency may request a final decision from the Division Director by filing objections or exceptions to the decision by the Regional Advisory Committee.

(b) In the case of a planned release, at least 30 days prior to the anticipated discharge date, a new Individual Habilitation Plan shall be developed or an addendum shall be added to update an existing

plan, specifying the plan to be followed upon the transfer or discharge.

1. The licensee shall participate in the development of the plan in consultation with the individual, case manager, parent or legal guardian/guardianship worker.

2. The release plan shall assess the individual's continuing needs and recommend a plan for provision of follow-up services in the individual's new environment.

10:44A-4.3 Individualized Habilitation Plan

(a) An Individualized Habilitation Plan shall be developed for each individual in accordance with Division Circular #45, "Individualized Habilitation Plans", and guidelines supplied by the Division for each licensee. (The rules relating to Individualized Habilitation Plans do not apply to Respite Care.)

(a) An Individualized Habilitation Plan shall be developed for each individual in accordance with N.J.S.A. 30:6D-10, 11 and 12. The rules relating to Individualized Habilitation Plans do not apply to Respite Care.

1. A copy of the Individual Education Plan for school age individuals shall be available. (This does not apply to Respite Care Homes.)

(b) Within 30 days of admitting an individual, the licensee shall develop an Individualized Habilitation Plan (IHP) as required by N.J.S.A. 30:6D-10.

(c) The Individualized Habilitation Plan shall include a written statement setting forth clearly defined and measurable goals and behaviorally stated objectives describing an individualized program of care, training, treatment, education, and therapies designed to attain or maintain the optimal physical, social, educational, and/or vocational functioning of which the individual is presently or potentially capable.

(d) The Individualized Habilitation Plan shall address the individual's development in the following areas, as appropriate:

1. Perceptual skills;
2. Sensorimotor skills;
3. Self-help skills;
4. Communication skills;
5. Social skills;
6. Self-direction;
7. Emotional stability; and,
8. Effective use of time, including leisure time.

(e) The Individualized Habilitation Plan shall include the following elements:

1. Cover page to be provided by, or approved by the Division;
2. Statement of present level of functioning;
3. Identification of individuals' needs;
4. Long-term goals;
5. Short-term goals (obtainable in a year or less);
6. Behaviorally stated objectives;
7. Method of achieving goals;
8. Personnel responsible for providing services described in plan;
9. Specific service with dates of initiation and anticipated duration;
10. Barriers to achieving goals.

(f) The licensee shall be responsible for reviewing and evaluating those Individual Habilitation Plans for which the licensee's staff are responsible for implementing.

1. When the Division is the placing agency, copies of the individual's monthly report of progress or regression shall be sent to the appropriate Regional Office of Community Services.

2. In the case of private placements, the monthly progress reports shall be sent to the Office of Licensing and Inspections.

3. Copies of the monthly progress reports shall be maintained on file at the residence for a period of one year.

(g) Each plan shall be developed by an interdisciplinary team consisting of professional and non-professional staff providing service to the individual. Documentation of who participated in the plan shall be provided on the standard cover page of the IHP.

(h) The individual shall participate in decisions regarding his or her IHP, to the extent that he or she is capable.

1. The individual's parent(s), guardian, and/or guardianship worker shall be offered the opportunity to participate. Attempts to solicit their input should also be documented.

(i) Parents, legal guardian or guardianship worker or another interested party shall be provided a copy of at least the cover page of the Individual Habilitation Plan, as well as the long and short-term goals.

1. Other parts of the Individual Habilitation Plan shall be made available upon request, within the limitations of confidentiality.

(j) The Individualized Habilitation Plan must be reviewed and revised as necessary but no less than annually.

(k) Each individual IHP, including evaluation reports, shall be completely rewritten at least every three years.

1. If the IHP is not completely re-written each year, the annual reviews done in the interim and any modifications made shall be added to the IHP.

(l) The current IHP shall be filed in the central record of the individual.

1. A copy of the current IHP shall be accessible to each staff person working with the individual. This copy should contain progress notes by each discipline providing services to the individual.

(m) Written monthly progress notes must be available at the residence and correspond to the IHP goals and objectives currently being implemented for each individual. The progress notes shall sufficiently describe the individual's progress or regression to give a clear picture of the individual's functioning in the skill area.

1. All IHP goals shall be reported on in the progress notes of the monthly report supplied by the Division.

2. Any discontinuation of goals shall be indicated by the IHP Coordinator in the plan itself.

(n) An active social and recreational program shall be established for the development and training of the individual.

1. There shall be cooperative recreation activities held with other facilities serving developmentally disabled individuals, community programs, and community organizations for all individuals who can benefit from them.

2. Recreational activities shall be provided for each individual consistent with his or her interests, abilities, and capabilities.

(o) The licensee shall conduct a survey of recreational needs and interests every six months, unless otherwise indicated by the individual's abilities to participate.

1. The survey shall include interviews of the individuals in residence.

2. Documentation of the results of the survey shall be kept on file at each residence, to include changes implemented in accordance with the results of the survey.

(p) Religious services and instruction shall be arranged consistent with the individual's interests.

10:44A-4.4 Day programs

(a) Each individual shall be afforded an opportunity to participate in an organized program of habilitation or rehabilitation or employment.

1. Every individual between the ages of 3 and 22 years shall receive an appropriate education in accordance with Federal and State laws.

2. All individuals over 22 years of age shall be provided with a program, unless a physician certifies in writing that such activity is medically inadvisable.

3. If employed, individuals 55 years or older may elect to retire; however, involvement in age-appropriate activities outside the residence shall be encouraged by the licensee.

(b) In the absence of community day programs, an individual may be provided with an individualized program within the residence for a period up to three months, upon the approval of the placing agency and the licensee.

1. Individualized programs must be oriented toward individual adjustment and approved by the individual and the placing agency.

2. An extension may be granted after review and approval by the IDT.

SUBCHAPTER 5. HEALTH SERVICES

10:44A-5.1 General *[medical]* health care

(a) A personal, primary physician or medical group shall be provided for each individual.

ADOPTIONS

(b) A licensee shall not admit anyone who has not been certified by a physician to be free from contagious disease and has not had a complete physical examination within the previous year.

(c) Each individual shall have an annual medical examination.

1. A copy of the annual examination, signed and dated by the physician, shall be kept in the individual's file at the residence.

(d) Each individual shall have at least an annual dental examination.

i. A copy of the dental examination, signed and dated by the dentist, shall be kept in the individual's file at the residence.

(e) The licensee shall follow-up on all individual health needs including medical treatment, pharmaceutical, dental, or other needed services.

(f) The licensee shall make arrangements with a local rescue squad and an area hospital for emergency medical care.

(g) The licensee shall have a first aid kit to include:

1. Antiseptic;
2. *[Two-inch rolled]**Rolled* gauze bandage*s*;
3. Sterile gauze bandages;
4. Adhesive paper or ribbon tape;
5. Scissors;
6. Adhesive bandage (for example, bandaids);
7. Either a standard type or a digital thermometer.

(h) A Mantoux Skin Test *[or Intradermal Test]* for Tuberculosis shall be administered to every individual every three years.

1. If the Mantoux *[or Intradermal]* Test for Tuberculosis is negative, the test shall be repeated at three year intervals or upon exposure to a case of tuberculosis.

2. If the Mantoux *[or Intradermal]* Test for Tuberculosis is positive, certification by a physician that the individual is contagion-free shall be obtained initially and at three year intervals.

(i) Upon confirmation of any reportable diseases (N.J.A.C. 8:57), the licensee shall ensure such exposed individual is placed under a physician's care. The physician shall determine further medical treatment and precautions to be taken.

10:44A-5.2 Prescription medication

(a) Individuals receiving medication shall be trained to take their own medication, to the extent that it is possible, as assessed and determined by the Interdisciplinary Team.

(b) If an individual is not responsible or capable of taking his or her own medication, the licensee or designee shall *[administer]* ***assist and supervise the administration of*** the medication exactly as prescribed.

1. A written record shall be maintained of all medication administered by the licensee or the designee. This record must include the individual's name, date, type of medication, dosage frequency, initials and corresponding signatures of staff administering the medication.

2. The reason for PRN medication (to be taken as needed) shall be clearly indicated by the physician on the prescription and reflected on the prescription label.

(c) If an individual is capable of taking medication without assistance, no daily medication record is required. The determination of whether a particular individual is capable of self-administering medication shall be made by the Interdisciplinary Team.

1. When an individual is determined capable of administering his/her own medication, the following must be observed:

i. Staff must record in each individual folder the date of the prescription, the name of the medication, dosage, frequency, and where the medication is stored.

ii. Documentation as specified by the IDT of the individual's ability to self-administer the medication shall be contained in the IHP.

(d) Life-sustaining drugs such as injectable insulin may be self-administered if the individual has had training from licensed medical personnel and documentation of such training is maintained on file at the residence.

(e) If the individual is unable to be trained to self-administer injectable medication, a staff member who has documented medical training, approved by the Office of Licensing and Inspections, may administer the medication. The training program provided shall be

HUMAN SERVICES

approved by a physician associated with the Division of Developmental Disabilities or the Department of Human Services.

(f) All prescribed medication must be re-evaluated by a physician at least annually.

(g) Staff shall have access to a medication reference book, current within three years and written for lay persons, which shall include information on side effects and drug interaction. Suspected side effects shall be noted on the medication record, and reported as soon as possible to the physician who prescribed the medication.

(h) Any change in medication dosage from the physician shall be immediately noted on the current medication record by staff consistent with the licensee's policy. Verbal orders from the physician shall be confirmed in writing. The prescription shall be revised at the earliest opportunity.

(i) A supply of medication, adequate to insure no interruption in the medication schedule, shall be available to individuals at all times.

(j) The licensee, or designee, shall supervise the use and storage of prescription medicines.

1. A storage area of adequate size for prescription medication shall be provided and kept locked.

2. The key to the locked medication area shall be accessible only to those staff designated by the licensee.

3. Each individual's prescribed medication shall be separated within the storage area, that is:

i. Oral medication shall be separated from other medications.

ii. Medications which require refrigeration shall be maintained in a locked box in a refrigerator.

4. All medications shall be kept in their original containers from the pharmacy and shall be properly identified with the pharmacist's label.

5. No stock supply of prescription medicines shall be kept.

6. Medications which are outdated or no longer in use shall be destroyed by the licensee.

7. Non-prescription drugs shall not be stored with prescription drugs and shall be properly safeguarded.

8. When medication is prescribed "as needed" (PRN), the prescription label shall include the following:

i. The individual's name, date, name of medication, dosage, specification of interval between dosages, maximum amount to be given during a 24 hour period, a stop date, and under what conditions the PRN medication shall be administered.

ii. The administration of PRN medication shall be documented on the medication record with the time of administration and will be communicated to the oncoming shift of residential staff.

10:44A-5.3 Over-the-counter drugs

(a) Prior to the administration of over-the-counter drugs, a statement from the individual's physician regarding the usage and contraindications shall be available.

(b) Over-the-counter drugs shall be documented on the individual's medication record when administered.

10:44A-5.4 Discharge

(a) The licensee shall provide the following documentation to the Division upon the individual's discharge:

1. Physical exam;
2. Immunization record;
3. Mantoux Skin Test;
4. Hepatitis B testing;
5. Lead level; and
6. Other pertinent medical records.

SUBCHAPTER 6. PHYSICAL ENVIRONMENT

10:44A-6.1 General home requirements

(a) The exterior of the residence and the surrounding grounds shall be properly maintained and free from any hazard to health or safety.

(b) The interior of the residence shall be properly maintained and free from any hazard to health or safety.

(c) Each community residence shall conform to the requirements contained in the Barrier-Free Subcode, N.J.A.C. 5:23-7.

HUMAN SERVICES

(d) Group homes housing six to 16 developmentally disabled individuals shall meet the requirements of Use Group R-2 of the Uniform Construction Code (see N.J.A.C. 5:23).

(e) Group homes housing five or fewer individuals shall meet the requirements of Use Group R-3 of the Uniform Construction Code (see N.J.A.C. 5:23).

(f) For residences with physically handicapped individuals, accommodations must be made to ensure the maximum physical accessibility feasible for entrance to, and movement within, the residence based upon individual characteristics.

10:44A-6.2 Special home requirements

(a) Special requirements shall be met by group homes and supervised apartments serving non-ambulatory individuals as determined by and documented in a contract or agreement with the Division.

1. A sufficient number of doors, corridors, ramps, or walkways and landings shall be provided and be wide enough to permit use by individuals' wheelchairs, braces, walkers, or any other prosthetic equipment or devices.

2. Ramps shall have an incline not greater than the equivalent of one foot rise for every 12 feet of length. Handrails shall be provided on both sides of the ramps.

3. Accessible, adequate storage for personal items shall be provided.

10:44A-6.3 Certificate of Occupancy

(a) A Certificate of Occupancy shall be obtained by the licensee from the local construction official when:

1. The group home seeks to change its use group from other than that documented on the original Certificate of Occupancy; or

2. The group home seeks to make a major alteration or renovation as defined by the Uniform Construction Code (see N.J.A.C. 5:23) of the building or premises in which the group home is located; or

3. The group home seeks to increase its floor area or the number of stories to the building or premises in which the group home is located.

10:44A-6.4 Exits

(a) Exit/evacuation areas to be used for mass evacuation during an emergency shall not be permitted through furnace areas, storage areas, or bedrooms.

(b) Exit from a bedroom directly to the outside shall be permissible when the exit is provided as added protection for the individuals residing in the bedroom.

(c) Doors used as the approved means of egress shall be unlocked from the inside of the building at all times.

10:44A-6.5 Fire extinguishers; fire evacuation plans

(a) Fire extinguishers shall be fully-charged at all times, and shall be of a type and number as determined by the Fire Official designated to enforce the Fire Safety Act (N.J.S.A. 52:27-192 et seq.).

(b) A legible fire evacuation plan must be posted on each floor in a prominent location.

(c) The manager in-charge shall insure that each staff person is properly trained in the use and operation of fire extinguishers as of the first day of employment at the residence.

(d) Fire extinguishers shall be checked monthly by staff and documentation shall be available on the fire extinguisher or at the residence as part of the administrative records.

1. Fire extinguishers shall be serviced at least annually by a qualified person or service company.

10:44A-6.6 Occupancy

(a) Non-ambulatory individuals shall not have bedrooms above or below the first floor of any residence, unless a specific variance is granted by the Office of Licensing and Inspections.

(b) Occupancy shall not be permitted for staff or individuals above the second floor in buildings, unless a specific waiver is granted by the Office of Licensing and Inspections.

10:44A-6.7 Heat sources

(a) Space heaters, including but not limited to electrical, kerosene, and quartz heaters, shall be prohibited, unless a *[variance]* *waiver* is granted by the Office of Licensing and Inspections.

ADOPTIONS

1. Documentation must be obtained from the local enforcing authority for the Fire Safety Code stating such use is locally acceptable.

(b) Every home shall have heating facilities which are properly installed, maintained in good and safe working condition, and capable of maintaining all habitable rooms at a temperature of 65 degrees Fahrenheit (18 C) when the outdoor temperature is 0 degrees Fahrenheit (-18 C).

(c) Heat sources exceeding 110 degrees Fahrenheit (43 C), which are accessible to individuals requiring personal guidance must be equipped with protective guards or insulated to prevent individuals from coming into direct contact with the heat source.

10:44A-6.8 Water

Hot and cold running potable water shall be available in adequate supply at all times.

10:44A-6.9 Telephones

(a) *[The licensee]**Each group home or apartment* shall have at least one telephone for use by the *[residents]* *individuals receiving services*.

(b) The telephone number of the Division of Developmental Disabilities' hotline, as well as the nearest hospital, fire department, ambulance service, and police department shall be posted by each *[phone]* *telephone*.

1. If a minor is in residence, the telephone number for the Division of Youth and Family Services' Institutional Abuse Unit and the Office of Child Abuse Control shall also be posted at the telephone.

2. If an individual 60 years of age or older is in residence, the telephone number for the Office of the Ombudsman for the Institutionalized Elderly shall also be posted at the telephone.

10:44A-[6.9]**6.10* Stairs and hallways

(a) Stair treads shall be at least nine inches deep and have risers no more than 8¼ inches high.

(b) All stairways and hallways shall be kept free and clear of obstructions at all times.

(c) Stairways shall be a minimum of two feet eight inches wide from handrail to handrail or wall.

10:44A-[6.10]**6.11* Windows

(a) Every bedroom shall have at least one operable window opening directly to the outside.

(b) First floor windows shall have an operable window space of five square feet. Second floor windows shall have an operable window space of 5.7 square feet.

(c) From May through October, all openable windows and doors used for natural ventilation shall be provided with easily removable insect screening in good condition.

10:44A-[6.11]**6.12* Railings

(a) Every porch, balcony, staircase, or place higher than 30 inches off the ground shall be provided with adequate railings. Such railings shall be no less than 30 inches nor more than 34 inches in height.

(b) All outside stairways consisting of four or more steps shall be provided with a secure handrail.

10:44A-[6.12]**6.13* Furniture; living space

(a) Separate living and dining areas shall be provided which are large enough to provide seating for all occupants of the home at one time.

(b) All furniture must be clean and in good repair.

10:44A-[6.13]**6.14* Decoration

All rooms used by individuals with developmental disabilities shall be suitably decorated in accordance with the individual's wishes and with consideration of the principles of normalization, age-appropriateness, and least restriction.

10:44A-[6.14]**6.15* Non-slip surface requirements

(a) Non-slip surfaces shall be provided as follows:

1. As non-skid backing for scatter or throw rugs;
2. On hard-finished floors;
3. On stairs and landings; and
4. In each shower or bathtub.

ADOPTIONS

HUMAN SERVICES

10:44A-[6.15]**6.16* Bathrooms

(a) Every residence shall be provided with one flush-type toilet, lavatory, and bathtub or shower for every eight persons living in the home.

(b) Every toilet, lavatory, bathtub, or shower shall be accessible without passing through any other sleeping unit and shall be available within one floor above or below the individual's room, unless it is a master bedroom type suite where the bathroom is used solely by that bedroom's occupants.

(c) Toilet paper shall be available at each toilet.

(d) Bathroom doors shall be equipped with standard hardware which provides a privacy lock and which can be readily opened from the outside in an emergency. Hooks and eyes, bolts, bars, and other similar devices shall not be used on bathroom doors.

10:44A-[6.16]**6.17* Maintenance requirements

(a) The accumulation of garbage or waste shall be prevented. Garbage containers shall be non-corrosive and non-combustible, leak-proof, and provided with tight fitting covers.

(b) Floors, walls, ceilings, and other interior surfaces shall be kept clean and in good repair.

(c) ***At each residence, doors opening to the outside and* * [O]* *o* outside walkways shall be kept free of ice, snow, leaves, and other hazards * [at each residence]*.**

(d) When there is evidence of infestation, exterminator services shall be arranged and documentation retained by the licensee.

10:44A-[6.17]**6.18* Basement use

(a) Basements may be used for storage, laundry, heating, water supply equipment, and other utilities.

(b) Basements may be used as activity rooms so long as they are dry, warm, and adequately lighted and have two independent means of egress.

10:44A-[6.18]**6.19* Kitchen facilities

(a) Kitchen storage space shall be clean and well ventilated.

1. Containers of food shall be covered and appropriately stored *** [at least 12 inches]*** above the floor on shelves or other clean surfaces.

(b) The kitchen shall have sufficient floor space and equipment to meet dietary needs and shall be conveniently located to dining areas.

(c) Disposable dinnerware shall not be used except as accessories to picnics or special occasions.

(d) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit (7**C). Freezer compartments shall operate at no more than 32 degrees Fahrenheit (0**C).

SUBCHAPTER 7. SOCIAL *LIVING* ENVIRONMENT

10:44A-7.1 Food

(a) All food and drink shall be prepared and served in a sanitary manner.

1. All food and drink shall be safe for human consumption, clean, wholesome, and free of spoilage.

2. Food returned after the completion of an individual's meal shall be discarded.

(b) All equipment and utensils used for eating, drinking, preparation and serving of food shall be kept clean and in good condition.

1. All equipment and utensils used for eating, drinking, preparation and serving of food shall be thoroughly washed after each use.

(c) The licensee shall ensure that each individual is provided with three meals daily, either in the home itself or in the community.

(d) There shall not be more than a 14 hour span between the evening meal and breakfast.

(e) There shall be reasonable adjustment to the food preferences, habits, customs, and appetites of all individuals.

(f) Individuals shall not routinely eat meals in their bedrooms.

(g) A variety of foods shall be provided.

(h) Food shall meet the medical and dietary needs of the individuals receiving services, and be served in a manner which is culturally normal.

(i) Individuals shall be allowed to eat at their own pace.

(j) Snacks shall be available for individuals who desire them, unless there is a documented medical or programmatic reason not to supply them.

(k) Menus, to include all meals and available snacks shall be dated, prepared at least one week in advance, and retained on file for a period of 30 days.

1. Consistent with their abilities, the individuals receiving services shall be consulted for preferences in determining the weekly menu.

(l) Any substitution of food from the menu must be of equal nutritional value and must be documented on the menu prior to serving the meal.

(m) If a medically prescribed diet is required, the menu planning shall be appropriate to individual needs, and be properly documented.

(n) The daily diet for each individual shall include food from ***each of*** the four basic food groups:

1. Milk, cheese, and other dairy products;

2. Vegetables, fruits;

3. Meats, fish, poultry, and eggs;

4. Bread, cereals, and grains.

(o) Food shall be wholesome, stored in a manner to keep it clean and safe for human consumption, prepared in the form that meets the individuals' medical and dietary needs, and served family-style.

10:44A-7.2 Clothing

(a) Each individual shall have the opportunity to select and purchase his or her own clothing as independently as possible.

(b) Individuals' clothing shall be clean and in good repair.

(c) Each individual shall have an adequate supply of properly fitted clothing to allow for laundering. Clothing shall not be shared or taken from a common pool.

(d) Each individual shall have adequate, clean, well-fitting and attractive clothing appropriate to age, gender, individual needs, preferences, and season.

(e) The licensee shall assist the individual in maintaining a good appearance.

(f) The licensee shall provide laundry facilities without additional charge to the individuals.

1. Laundromats may be used for individuals residing in supervised apartments.

2. Unless provided for in a contract, the individuals residing in supervised apartments shall be expected to pay for laundry cared for at the laundromat.

10:44A-7.3 Individual Rooms

(a) Occupancy shall be limited to floors on or above grade level. Exceptions may be granted as follows:

1. More than half the height of the room is above grade level;

2. The room is provided with two or more independent means of egress, at least one of which leads directly outside; and,

3. There are no other conditions which might be adverse to health, safety, or welfare of developmentally disabled individuals.

(b) A maximum of three individuals shall share a bedroom.

(c) Bedrooms shall contain the following minimum space per person:

1. 70 square feet for occupancy by one person;

2. 130 square feet for occupancy by two people;

3. 190 square feet for occupancy by three people;

(d) At least one half of the floor area of every individual room shall have a ceiling height of 7½ feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered allowable floor space.

(e) Each individual shall be provided with a bed light and night stand or a shared area with a desk and sufficient lighting to allow for hobbies.

1. No temporary wiring shall be used except U.L. listed extension cords, rated appropriate to the anticipated load.

2. Extension cords shall not run under rugs, through walls, or through doorways.

(f) Each developmentally disabled individual shall be provided:

1. A standard bed or a platform bed in good repair which is at least 30 inches wide and six inches longer than the individual's height.

i. High hospital beds shall not be used except where documentation is obtained from a physician authorizing their use.

ii. Fold-up convertible type beds, roll-aways, cots, hide-a-beds, trundle beds, double deck beds, and day beds shall be prohibited, unless an emergency situation warrants short-term use.

2. A clean, comfortable mattress of fire resistant material not less than four inches thick.

3. A bed spring in good repair, unless a platform bed is being used.

4. A clean pillow, of non-allergenic material if necessary.

5. Drawers or a closet for the storage of personal possessions and in-season clothing shall be provided in the individual's room.

i. Out-of-season clothing may be stored in a place other than the individual's room.

6. Two sets of bed linens and pillow cases, one mattress cover, one bedspread, and one blanket.

i. Bed linen shall be changed a minimum of once a week, or more frequently as necessary.

7. One mirror of sufficient size, securely fastened to the wall and/or fastened to a dresser at a height appropriate for the use of the persons occupying the room.

10:44A-7.4 Fire safety

(a) Each community residence for the developmentally disabled shall comply with the provisions of N.J.S.A. 52:27D-192 et seq. (Uniform Fire Safety Act).

1. The Division of Developmental Disabilities shall identify, in a contract with the licensee, any additional fire safety precautions required.

(b) Variances from rules shall be requested in accordance with N.J.S.A. 52:27D-200 as follows:

1. Upon the application of the owner of a building, structure, or premises, the enforcing agency may grant variances from the requirements of a rule. No variance shall be granted in a particular case unless the enforcing agency shall find that:

i. Strict compliance with the rule would result in undue hardship to the owner; and,

ii. The variance, if granted, will not unreasonably jeopardize the safety of intended occupants, fire fighters, and the public generally.

2. An application for a variance pursuant to this section shall be filed in writing with the enforcing agency and shall set forth specifically:

i. A statement of the requirements of the rule from which a variance is sought;

ii. A statement of the manner by which strict compliance with the rule would result in undue hardship;

iii. A statement of the nature and extent of the undue hardship; and

iv. A statement of feasible alternatives to the requirements of the rule which would adequately protect the safety of the occupants or intended occupants, fire fighters, and the public generally.

3. Within 30 days for receiving the application for a variance, the enforcing agency shall grant or deny the application in writing, stating the reason for granting or denying the application. If the application is not granted within 30 days, the applicants shall consider it to have been denied and shall have the same appeal rights as in the case of a written denial.

4. The enforcing agency shall maintain records of all applications for variances and the action taken on them, and shall make the records reasonably available for public inspection. An enforcing agency other than the department shall provide copies of the records to the commissioner.

(c) In accordance with N.J.S.A. 52:27D-206, a person shall have the following rights regarding the Fire Safety Act:

1. A person aggrieved by a ruling, action, order, or notice of the commissioner shall be entitled to an administrative hearing. The application for the hearing shall be filed with the commissioner by the fifteenth day after receipt by the person of notice of the ruling, action, order or notice.

2. All hearings shall be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A.

52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq. and Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq. The final decision shall be issued by the Commissioner.

(d) A person aggrieved by any ruling, action, order or notice of a local enforcement agency, shall be entitled to an administrative hearing before the construction board of appeals created pursuant to N.J.S.A. 52:27D-127, having jurisdiction in the municipality in which the building, structure, or premises is located. The application for the hearing shall be filed with the construction board of appeals by the 15th day after the receipt by the person of notice of the ruling, action, order or notice complained of.

10:44A-7.5 Transportation

(a) All vehicles used ***under the auspices of the licensee*** to transport developmentally disabled individuals shall have the following:

1. Emergency equipment which shall include spare tire, jack, and at least three portable red reflector warning devices;

2. A first aid kit meeting the same requirements as indicated in N.J.A.C. 10:44A-5.1(f);

3. Snow tires, all-weather tires, or chains when weather conditions dictate their use;

4. A 10:BC dry chemical extinguisher;

5. Operable defroster and heater which will maintain an internal vehicle temperature of at least 50 degrees Fahrenheit;

6. Operable windshield wipers and horn;

7. Non-skid material on floor;

8. All seats forward facing;

9. Exhaust pipe not to exit near a window which is openable.

(b) The licensee shall verify that all vehicles used to transport individuals with developmental disabilities comply with all applicable safety and licensing rules established by the New Jersey Division of Motor Vehicles and shall be inspected annually.

(c) The licensee shall maintain valid liability insurance on all vehicles used to transport developmentally disabled individuals.

(d) All drivers shall have a driver's license which is valid in the State of New Jersey.

(e) Young children and developmentally disabled individuals with a documented history of behavior which presents a danger to themselves or others shall not be left unattended in a vehicle.

(f) The interior of each vehicle shall be maintained in a clean, safe condition, and free of obstacles obstructing clear passage to operable doors.

(g) All vehicles purchased prior to the promulgation of this chapter shall be evaluated on an individual basis by the Office of Licensing and Inspections.

10:44A-7.6 Special requirements for residences serving non-ambulatory individuals

(a) The following shall be provided in residences serving non-ambulatory individuals:

1. A ramp device to permit entry and exit of a client from a vehicle. A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.

2. Wheelchairs shall be securely fastened to the vehicle's floor and face forward. The arrangement of the wheelchairs shall provide adequate aisle space and shall not impede access to the exit door.

SUBCHAPTER 8. SUPERVISED APARTMENTS

10:44A-8.1 Supervision

(a) Staff shall be on the grounds of the apartment complex whenever ***[an]* *any*** individual receiving services is present, unless otherwise stated in the individual's IHP ***[which has been reviewed and approved by the Office of Licensing and Inspections]***. The individual's ability in this area will be reviewed annually or more frequently if there is a need.

1. Individuals who demonstrate an ability to remain unsupervised over a 24 hour period for a period of three months shall be referred, by the licensee^[,] to the IDT for development of a transfer or release plan which promotes a planned movement to a less restrictive living arrangement.

***2. Documentation shall be provided in the IHP that approval has been granted to permit the individual to remain unsupervised. This**

approval shall be reviewed annually or more frequently if there is a need.*

(b) At least one staff member must be available on the grounds of the apartment complex during the night for emergencies.

(c) Staff shall visit each apartment during waking hours at least once within every eight hour period, or more frequently as required by the developmentally disabled person's individual needs for more intense supervision.

1. Documentation of staff visits shall be recorded in the daily log, noting any problems encountered or special services rendered.

10:44A-8.2 Physical plant and safety

(a) Supervised apartments shall not be located in the home of the licensee or designee.

(b) Each supervised apartment shall be the home of the individual; therefore, the individuals' right to privacy shall be respected at all times.

(c) Up to four individuals may *[be housed]* *reside* in a single apartment.

(d) No more than two individuals shall *[be housed]* *reside* in a bedroom.

(e) A supervised apartment may reserve a bed or beds for respite use, or use a vacant bed for respite according to circumstances delineated in the annual operating contract.

(f) No more than 16 individuals shall *[be housed]* *reside* in a single complex.

(g) The staff residence/office shall be located within 1,000 feet of the farthest licensed apartment unit and shall contain the necessary sanitary, hygiene, and sleeping accommodations.

(h) In multi-story buildings, the staff shall be located within two floors of the farthest apartment unit.

(i) Non-ambulatory individuals shall not have bedrooms above or below the first floor of any residence, unless a variance is granted by the Office of Licensing and Inspections.

(j) For apartments with physically handicapped individuals, accommodations must be made to ensure the maximum physical accessibility feasible for entrance to, and movement within the apartment, based upon characteristics of the individuals.

(k) All electrical wiring and equipment shall comply with local or municipal requirements.

(l) When maintenance is the responsibility of another party, there must be documented evidence that the licensee has informed the building owner of the need to correct any deficiency.

10:44A-8.3 Physical accommodations

(a) Individual occupancy shall be limited to ground floors and above floors.

(b) There shall be at least one toilet and sink for every four individuals. These facilities shall not be further than one floor from any living area.

1. The sink shall be located in or adjoining the toilet area.

(c) There shall be at least one bathtub or shower for every four individuals.

10:44A-8.4 Maintenance and sanitation

(a) The supervised apartment shall be maintained in a safe and sanitary manner.

(b) Combustible materials shall be stored in non-combustible containers.

(c) Floors, walls, ceilings, and other surfaces shall be kept clean and in good repair.

(d) Chimneys, flues, and vent attachments shall be structurally sound, free from defects, and cleaned and maintained as necessary.

(e) Exterminator services shall be provided immediately when there is evidence of any infestation.

(f) The accumulation of garbage or waste shall be prevented. All waste containers shall be provided with tight fitting covers, sufficient in size and number to contain the accumulated waste.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual Timely Claim Submittal—Pharmaceutical Services

Adopted Amendment: N.J.A.C. 10:49-1.12

Proposed: July 18, 1988 at 20 N.J.R. 1642(a).

Adopted: October 20, 1988 by Drew Altman, Commissioner, Department of Human Services.

Filed: October 21, 1988 as R.1988 d.541, **without change**.

Authority: N.J.S.A. 30:4D-6b(6), 7a, b, c; 30:4D-12; 30:4D-20, 22, 24.

Effective Date: November 21, 1988.

Operative Date: December 1, 1988.

Expiration Date: August 12, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:49-1.12 Timeliness of claim submission and claim inquiry

(a) A claim is a bill which indicates a request for payment for a Medicaid-reimbursable service provided to a Medicaid-eligible individual. The claim may be submitted hard copy or by means of an approved method of automated data exchange.

1. It is the responsibility of a long-term care provider to submit a claim to the Bureau of Claims and Accounts in the Division of Medical Assistance and Health Services in conformance with the time frames as indicated in this section. It is the responsibility of all other providers to submit a claim, make a follow-up inquiry, or supply information to the appropriate Fiscal Agent, in conformance with the time frames as indicated in this section.

i. A claim will not be reimbursed if submitted outside the prescribed time frame. This policy also applies to inquiries concerning a claim or claim related information supplied outside the prescribed time frames.

(b) The policy for submitting an institutional claim is as follows:

1. An institutional claim is a claim submitted by a hospital, a special hospital, a home health agency, or a long-term care facility.

2. A claim for payment of an institutional service rendered to a Medicaid-eligible individual must be submitted to the appropriate Fiscal Agent, either Blue Cross and Blue Shield of New Jersey, Inc., or The Prudential Insurance Company of America, within:

i. One year of the date of discharge on an inpatient hospital claim; or

ii. One year of the date of service entered on an outpatient hospital claim or home health claim; or

iii. One year of the earliest date of service entered on an outpatient hospital claim or home health claim, if the claim carries more than one date of service.

3. All claims for services performed in skilled nursing facilities, intermediate care facilities, ICFs/MR and State and county psychiatric hospitals must be received by the Division of Medical Assistance and Health Services no later than:

i. Six months from the last day of the billing month in which services were initially provided; or

ii. Six months from the last day of the billing month in which an improperly submitted claim was rejected; but

iii. Never later than 11 months from the last day of the billing month in which services were initially provided.

(c) The policy for submitting a noninstitutional claim is as follows:

1. A noninstitutional claim is a claim submitted by all providers except a hospital, a special hospital, a home health agency or a long-term care facility.

2. A claim for payment of a noninstitutional service (excluding a pharmaceutical service) provided to a Medicaid-eligible individual must be submitted to the Fiscal Agent, The Prudential Insurance Company of America, within:

i. One year of the date of service; or

- ii. One year of the earliest date of service entered on the claim form if the claim carries more than one date of service.
- 3. A claim for payment of a pharmaceutical service provided to a Medicaid-eligible individual must be submitted to the Fiscal Agent, Blue Cross and Blue Shield of New Jersey, Inc., within 365 days of the dispensing date.
- (d) The policy for a claim that requires follow-up information is as follows:
 - 1. A provider may inquire about a claim that has been paid or denied but must make the inquiry within 90 days of the date of adjudication as indicated on the Statement of Payment Voucher.
 - 2. A provider may inquire about the status of a claim for which neither payment nor denial has been received. The inquiry may be made at any time after the claim is submitted, but not more than 90 days after the end of the timely submission period.
 - 3. If additional information is required in order to process a claim, the provider should supply the information as soon as possible, but not more than 90 days after the end of the timely submission period.

(a)

DIVISION OF PUBLIC WELFARE
Public Assistance Manual
Realizing Economic Achievement Program
Adopted Amendments: N.J.A.C. 10:81-14

Proposed: September 6, 1988 at 20 N.J.R. 2222(b).
 Adopted: October 26, 1988 by Drew Altman, Commissioner,
 Department of Human Services.
 Filed: October 26, 1988 as R.1988 d.551, **with technical changes**
 not requiring additional public notice and comment (see
 N.J.A.C. 1:30-4.3).
 Authority: N.J.S.A. 44:10-1 et seq., especially 44:10-13.
 Effective Date: November 21, 1988.
 Expiration Date: October 15, 1989.

Summary of Public Comments and Agency Responses:
COMMENT: Comments were received from a county welfare agency director. The commenter objects to the requirement that REACH participants utilize "day care centers or homes" registered pursuant to the Family Day Care Registration Act because, in his view, such a requirement constitutes an unwarranted limitation on REACH participants' freedom of choice in the selection of child care providers. He also characterizes the requirement that unregistered relatives, friends or neighbors must achieve "approved home status" to be eligible for child care payments under REACH as "unwarranted governmental intrusion into family life".
 The commenter further protests that the approval process for becoming a child care provider under REACH goes beyond the requirements for other State and Federally funded child care programs, and that the evaluation checklist for home approvals included in the proposed amendments contains questions which are subjective, inordinately technical, and infringe on the right to privacy of relatives, friends or neighbors.
 The commenter also cites an omission from the regulatory proposal of a provision that approved home child care providers be reimbursed at 60 percent of the Statewide maximum child care rates set by the Department for child care centers and registered child care providers. The establishment of such differential rates is discriminatory and arbitrary, he asserts.
 In conclusion, the commenter requests that the entire section (N.J.A.C. 10:81-14.18) be withdrawn from the proposal and rewritten to address his concerns.
RESPONSE: Since payment for child care services is made directly to the child care provider through the REACH program, the program itself has the responsibility, through local agencies, to ensure to the maximum extent possible the suitability and safety of the caregiver's facility as well as the quality of the care provided. That goal can best be achieved by utilizing registered child care providers or approved homes whose operators have provided documentation indicating that the appropriate standards have been met.

Since the commenter has not presented specific information as to where REACH child care provider requirements are at variance with other State

and Federally funded child care programs, the Department is not in a position to comment knowledgeably on the observation.
 Questions on the "REACH Home Approval Checklist" elicit information essential to ensure the protection and safety of children and the quality of care provided and, as such, the utilization of the checklist is a warranted approach.
 Reimbursing child care providers in approved home status (family day care providers) at 60 percent of the Statewide maximum voucher rate is neither discriminatory nor arbitrary; it is an approach that has been developed in consultation with State, county and private agencies. Since providers in approved home status meet requirements less strict than those who are registered, a lower rate for such providers is appropriate and, as the amendment states, is set by the Department.
 The Department cannot agree with the request that proposed amendments at N.J.A.C. 10:81-14.18 be withdrawn and substantially altered because, as written, they enhance program objectives, benefit REACH participants and ensure quality care compatible with standards of health and decency.

Summary of Changes Subsequent to Proposal:
 The only changes to the proposed text are technical in that they correct errors in publication at time of proposal.

Full text of adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

10:81-14.2 Definitions
 The following definitions shall apply to REACH:

...
 "Lead child care entity" means the lead child care agency or other agency or administrative entity established in each county to assist the case manager and REACH participant in obtaining child care.
 ...

- 10:81-14.3 REACH participation
- (a) (No change.)
 - (b) Exemptions: Individuals classified as exempt are not required to participate in employment or REACH employment-directed activities. However, they may participate on a voluntary basis. An individual may claim at any time that he or she is entitled to an exemption. The following categories of individuals are exempt from participation in REACH:
 - 1.-3. (No change.)
 - 4. Teen PROGRESS participants: Individuals who have become part of the Teen PROGRESS study are subject to the participation requirements of that program (see N.J.A.C. 10:81-12).

- (c) Temporary deferrals: Participation in REACH may be temporarily deferred for circumstances likely to change that make current participation impossible or impracticable. Unless otherwise specified, individuals classified as temporarily deferred will be subject to monthly review as part of the case management function for changes in circumstances that make them eligible to participate again. The following categories of individuals are temporarily deferred from participation in REACH:
 - 1. Ill: When determined on the basis of medical evidence or on some other sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training. Reasons for deferral on a temporary basis include observation of a cast on a broken limb, or information of scheduled surgery, recuperation from surgery, or other instances where the condition will be of limited duration. This deferral will not exceed 90 days. Minor ailments and injuries do not normally defer the individual under this criterion.
 - i. (No change.)
 - 2. Caretaker of young child: The parent or other caretaker relative of a child under two years of age who personally provides care for the child with only brief and infrequent absences from the child. For purposes of deferral from REACH participation, absence means that the parent and child are apart, one from the other. Individuals temporarily deferred due to care of a young child will be subject to review at least every three months as part of the case management function to determine if the parent wants to voluntarily participate in REACH before the deferral expires.
 - i.-ii. (No change.)

3. (No change.)

4. Extreme hardship: Deferral from participation will not ordinarily be given for circumstances other than those in (c)1 through 3 above. However, if the individual can demonstrate that extreme hardship to the children would result if the individual were required to participate, despite the provision of support services, participation should be temporarily deferred on a case by case basis. Circumstances which would result in extreme hardship if participation was not deferred include but are not limited to the following:

i.-iii. (No change.)

5. Homelessness: REACH participation shall not be required of any individual who is without a permanent residence; however, such individuals may volunteer to participate in REACH.

6. Participation in a client-selected activity: Individuals who participate in a client-selected program or activity, that is, a training or education program or activity in which the individual has enrolled himself or herself and which has not been authorized or approved by the county and is not in accordance with N.J.A.C. 10:81-14.14(a) and 10:82-5.6(c), shall be temporarily deferred from participation in REACH.

(d) Excused participation: REACH participants shall be temporarily excused from participation if the component (including social services) for which they are scheduled as set forth in the REACH Agreement is not currently available or if a support service set forth in the REACH Agreement is not available. Excused participation is reviewed once every week up to once every month, depending on the circumstances surrounding the excuse.

1.-2. (No change.)

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

(i) Client-selected activity: Individuals classified as mandatory participants who are scheduled to begin REACH participation but who are enrolled in a client-selected education or training program or activity shall be treated in accordance with (i)1 and 2 below:

1. As part of the individual evaluation, the case manager shall determine whether the client-selected activity is in accordance with N.J.A.C. 10:82-5.6(c).

i. If the case manager determines that the client-selected activity is in accordance with N.J.A.C. 10:82-5.6(c), participation in the activity shall be considered participation in REACH and the activity shall be included in the final REACH Agreement. However, if REACH funds are not available to pay the tuition for the client-selected activity, the individual assumes responsibility for all tuition costs.

ii. If the case manager determines that the client-selected activity is not in accordance with N.J.A.C. 10:82-5.6(c), participation in the activity shall not be considered participation in REACH and the activity shall not be included in the final REACH Agreement. The individual shall be deferred from REACH until the client-selected activity has been completed or until the individual stops participating in that activity.

2. An individual who disagrees with the temporary deferral may appeal this determination through the process set forth at N.J.A.C. 10:81-14.7 and 10:81-6.

10:81-14.4 REACH case management

(a) General: Case management is a structured approach to the delivery of multiple and interrelated services to assure that the goals and objectives of REACH are met. Case management functions will ensure that the principles of REACH set forth at N.J.A.C. 10:81-14.1 are applied in the development of the REACH Agreement, evaluation and monitoring, and during an individual's participation in REACH. Staff included in the case management function are the REACH case manager, supervisory staff, clerical staff, and other support staff. Case management functions include but are not limited to:

1.-10. (No change.)

11. Reevaluating a participant's post-AFDC needs; and

12. Monitoring continued eligibility and provision of services to post-AFDC participants who receive REACH services of child care and Medicaid, where necessary.

(b) Case manager: A REACH case manager will be assigned to coordinate the activities of the REACH program participants. For

a participant, the case manager is the integral link among the differing service subsystems of income maintenance, employment, training, child support enforcement and support services. Case managers or interpreters fluent in a participant's primary language will be provided when a participant is not fluent in English.

1. Responsibilities of case manager: The case manager is responsible for contact with the participant. Specific responsibilities of the case manager include:

i. Conducting the individual evaluation with the participant;

ii. Making appropriate referrals;

iii. Developing and signing the REACH Agreement;

iv. Approval of eligibility of payments for child care, transportation and training-related expenses;

v. Imposing and suspending a sanction for noncompliance with REACH participation requirements; and

vi. Maintaining responsibility for the case record during sanction. After a participant is referred for the imposition of a sanction as set forth in N.J.A.C. 10:81-14.8, the case manager shall retain the original REACH case file and shall have responsibility for making all decisions about exemption, deferrals, excused participation, placements and modifications to the REACH Agreement, communications with the participant (other than those directly involved with the imposition of the sanction), and overall handling of the REACH case.

(c) Other support staff: Case management functions other than those in (b) above may be provided by case management staff and other support staff.

(d) Case management support functions: Certain administrative functions are essential to support REACH case management but need not be performed as part of the case management function. These case management support functions include but are not limited to: processing of payments for support services, training, outreach to potential participants, providing information about REACH to community groups, and data entry of participant information into non-REACH automated management information systems. The case management agency and county may designate the appropriate entities or agency units to perform these functions.

(e) (No change in text.)

(f) Case management functions within REACH program client flow: Upon application or redetermination of AFDC eligibility, AFDC clients will proceed through the REACH program client flow. The REACH program client flow begins with an overview of REACH by the income maintenance worker and proceeds through case management as set forth below.

1. AFDC eligibility determination: The income maintenance worker at intake or active case unit will determine eligibility for AFDC. The worker will also provide an overview of the REACH program and determine whether the individuals are exempt from participation, in accordance with N.J.A.C. 10:81-14.3(b).

i. Individuals exempt from participation will be given the opportunity to volunteer for the REACH program.

ii. All volunteers and individuals who are not exempt will be referred for REACH orientation. This referral will initiate assignment of the individual to REACH case management.

2. REACH orientation: As part of REACH participation, all potential REACH participants will receive orientation to the REACH program. Orientation will include a general description of the REACH program, the employment, training and educational opportunities available, the support services available, and the participation required under the principle of mutual obligation and the REACH Agreement.

i. Orientation is a case management function and may be conducted in a group setting or at an individual interview. Orientation, individual evaluation, and development of the REACH Agreement may take place at one or more interviews.

ii. Support services of child care and payment for transportation are available to a participant during orientation, even though a REACH Agreement has not been signed.

iii. During the orientation process, voluntary participants may decide whether to continue in REACH. All mandatory participants and voluntary participants continuing in REACH will be referred for case management.

3. Individual evaluation: Individual evaluation involves an initial assessment of a REACH participant's existing employment-related skill levels, education level, and similar characteristics related to employability and the job market, and of support service needs. The case manager will meet individually with each participant and conduct an initial evaluation of barriers to job readiness and of the need for social services, such as mental health services, vocational rehabilitation, drug and alcohol treatment programs, and health care.

i. Temporary deferral: At the individual evaluation, the case manager will determine whether the individual is eligible for temporary deferral under N.J.A.C. 10:81-14.3(c) and will explain the benefits of REACH participation during the period of deferral. (See *[(f)3ii]*(1) below for possible waiver of deferral and client flow.)

ii. Initial REACH Agreement: As part of the individual evaluation, the case manager and participant will jointly develop the initial REACH Agreement. The initial REACH Agreement will indicate whether the participant has been temporarily deferred or referred to social services, REACH job search, or assessment. The initial Agreement will also contain the support services necessary to enable the individual to participate in social services, job search or assessment.

(1) If the individual has been referred to REACH job search, the initial Agreement will be the final REACH Agreement. Individuals temporarily deferred or referred for social services will have signed only an initial Agreement.

(2) If the individual has been referred for assessment, the initial Agreement will be followed by the final REACH Agreement after assessment (see (f)5 below).

4.-5. (No change.)

6. Participation in employment and employment-directed activities: The participant will pursue activities as scheduled in the REACH Agreement. Participation will be monitored as part of the case management function.

(g) (Reserved)

(h)-(k) (No change.)

(1) Waiver for the reassignment of case management functions: It is recognized that the phase-in of AFDC families into REACH may result in a high workload for the case management agency, with the possibility that REACH participants may not be served timely. To alleviate this temporary workload and to ensure that all participants receive REACH services timely, the case management agency may request that certain case management functions set forth in the REACH program client flow in (d) above, be temporarily reassigned to another work unit in that agency. For example, the orientation and individual evaluation of parents with children under age two who are eligible for temporary deferral of up to 18 months could be performed by the income maintenance unit as part of the AFDC eligibility determination. To request a waiver of reassignment of case management functions, the case management agency must write to the Director, Division of Public Welfare, including the following:

1. The specific case management function(s) to be waived;
2. The agency unit to which they will be reassigned;
3. The duration of this reassignment;
4. Assurances that the unit will perform the function and provide the same information and service that the case manager would; and
5. A description of the REACH client flow with the reassigned function, affirming that monitoring and case review will be conducted with the same adequacy as by case management, and will *interface* with the REACH automated management information system.

10:81-14.5 REACH Agreement

(a) Purpose and scope: The REACH Agreement will set forth provisions for both the REACH participant and the agency to comply with under the principle of mutual obligation. Each REACH participant will sign a REACH Agreement with the case manager affirming participation, provision of support services (such as child care and transportation) and commitment to self-sufficiency. The REACH Agreement will be tailored to each participant's skills and necessary employment activities. A Spanish language version of the REACH Agreement is available for any participant whose primary language is Spanish.

1.-2. (No change.)

3. Post-AFDC REACH participants: All REACH participants no longer receiving AFDC will be required to complete and sign a REACH Agreement as a condition of receiving post-employment child care. All REACH participants receiving post-AFDC Medicaid (see N.J.A.C. 10:81-14.20), should complete and sign a REACH Agreement. Exceptions may be granted where the participant would be penalized by the employer for taking time off from work. Absence of a REACH Agreement will not relieve the participant of complying with eligibility requirements for extended Medicaid benefits (see N.J.A.C. 10:81-14.20).

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

(d) Specifications: The REACH Agreement shall conform to the following specifications:

1. (No change.)

2. Duration and expiration date: The REACH Agreement is continuous and has no automatic or periodic expiration date. Once signed, it remains in force until any of the following occurs: the individual becomes ineligible for AFDC for a reason other than employment or receipt of unemployment insurance benefits or temporary disability insurance, a sanction is imposed, the individual moves to another county, or the participant completes the last scheduled activity with no subsequent activity scheduled. In absence of a change in AFDC eligibility, the Agreement will expire on the ending date of the last activity unless the case manager and participant amend the Agreement with a new activity. To ensure continuous participation in REACH, the case manager shall review the individual's progress in REACH, schedule an appointment with the participant, and jointly update the Agreement with the participant within two weeks of the ending date of the last REACH activity set forth in the Agreement.

i. Example: On January 2, a participant and case manager signed the REACH Agreement for the following activities: training from January 3 through February 28, group job search from March 1 through March 15, and individual job search from March 16 through May 15. The time period covered by the REACH Agreement is January 2 through May 15. The case manager and participant should update the Agreement by May 30 with an additional REACH activity to ensure continuous REACH participation.

(e) (No change.)

(f) REACH Agreement review: A review of the REACH Agreement shall be completed at time of the redetermination of AFDC eligibility. At a minimum, the case manager and the participant shall review compliance with the existing Agreement, discuss changes that may be needed, and make the necessary amendments. The effective date and duration of the amendments to the REACH Agreement shall conform to (d) above.

10:81-14.6 Income maintenance functions

(a) General: The functions and tasks of the income maintenance workers concerning the REACH program are set forth in this section. The functions include but are not limited to:

1. (No change.)
2. Provide an overview of the REACH program to applicants and recipients, and determine the exempt status of REACH participants;
3. Referral of AFDC applicants and recipients who do not meet the criteria for exempt participation at N.J.A.C. 10:81-14.3(b) for REACH orientation;
4. Explaining voluntary participation in REACH and referral of interested individuals to case management for families determined presumptively eligible for AFDC;

Renumber 4 through 7 as 5 through 8 (No change in text.)

9. Informing exempt REACH participants of their right to voluntarily participate in the REACH program.

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

10:81-14.8 Noncompliance; good cause; sanctions

(a) The REACH principles of self-sufficiency through employment, mutual agency/participant obligation, dignity and self respect of the individual, and flexible program design, are all directed to encouraging individual participation in his or her future. However, it is recognized that situations will occur in which the individual will not comply with the REACH participation requirements. In instances where noncompliance by a mandatory participant is *[in-

ADOPTIONS

dicted]* ***indicated***, the case manager will begin a series of procedures designed to assist the participant in complying with the REACH Agreement before any decision is made as to whether to impose a sanction for noncompliance.

1. (No change.)

2. Indications of noncompliance: Indications of noncompliance may be reported to the case manager or may become apparent to the case manager while monitoring client participation. Indications of noncompliance with REACH program requirements include, but are not limited to, situations in which the participant:

i. Did not attend a REACH orientation session after one notice has been mailed to the participant and has not been responded to;

ii. Did not attend a REACH assessment session after one notice has been mailed to the participant and has not been responded to;

iii.-x. (No change.)

3.-5. (No change.)

(b) (No change.)

(c) Notification of participant: When participant noncompliance is indicated, the case manager will proceed as follows:

1. Orientation and assessment: After failure to appear at the scheduled appointment, the case manager will send a conference letter notifying the participant of noncompliance and the penalty for willful refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conference. Form PA-15, Important Notice, may be used for this purpose. In addition, the case manager shall attempt to contact the participant by telephone.

2. Other activities: The case manager will send a conference letter notifying the participant of noncompliance and the penalty for willful refusal to comply with the requirements of REACH and the REACH Agreement, and asking the participant to come to the agency for a conference. Form PA-15, Important Notice, may be used for this purpose. In addition, the case manager shall attempt to contact the participant by telephone. If the participant does not contact the agency within 10 days of the date of this letter, the case manager will send a second conference letter. In addition, the case manager shall attempt to contact the participant by telephone.

(d) (No change.)

(e) Imposition of the sanction: Sanctions will be imposed if a mandatory REACH participant has willfully refused to comply with the requirements of REACH or the REACH Agreement and the circumstances suggest that this willful refusal will be continued and repeated in the future.

1.-2. (No change.)

3. If, after application of the above procedures, the individual still does not comply with REACH participation requirements, or if the participant has not contacted the agency within 10 calendar days of the date of the last conference letter and the individual has not been reached by telephone, the case manager will impose the sanction. The case manager will notify the income maintenance worker to take action regarding AFDC eligibility and grant amount, subject to timely and adequate notice.

4.-5. (No change.)

(f)-(l) (No change.)

10:81-14.10 REACH job search

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

(e) Additional job search requirements: The following additional requirements apply to participation in REACH job search activities.

1. (No change.)

2. Job contacts: For early intervention job search and individual self-directed job search, a job contact is defined as a contact with a prospective employer. The county selected entity may assist the participant by providing a list of employers. The following apply to job contacts:

i.-ii. (No change.)

iii. Depending upon the position sought, the job contact requirements may be fulfilled by either a personal visit to the prospective employer or another method of application which is considered by the county selected entity to be a generally accepted practice, including telephone contacts where the job offer or advertisement lists a telephone number.

HUMAN SERVICES

iv. (No change.)

v. Reporting job contacts: The ***[participation]* *participant*** will be required to report the result of all job contacts to the county selected entity at a prescheduled time. The time may vary with the job search participation requirements set forth in the REACH Agreement, but must be at least once every four weeks.

(1) Job contacts shall be reported in writing in a manner prescribed by the county selected entity at the time the REACH Agreement is signed. This writing requirement shall be reasonable given the participant's language abilities. While such reporting will not require the employer's written confirmation of the job contact, the participant shall be required to sign written documentation to attest to its validity. The written report shall be submitted to the county selected entity at the participant's follow-up interview. The participant shall be responsible for providing the county selected entity with any additional information concerning job contacts.

vi. County selected entity review of job contacts: The county selected entity shall review the participant's job contacts at least once every four weeks and determine if the participant has completed the assigned number of job contacts, as set forth in the REACH Agreement. If the participant missed any contacts or if any of the reported contacts are disallowed (for reason such as suitability or manner of contact), the participant shall have one additional week for every four weeks of scheduled job search activity to complete any missed or disallowed contacts.

vii. It is a goal of REACH to help and ensure that all participants are prepared to apply for and secure employment. Therefore, before a participant is placed and required to participate in job search activities, the case manager shall take such steps, including referrals, as are necessary, including employment counselling, to ensure that the participant can read and complete a job application, and is otherwise able to present himself or herself properly for employment.

3. (No change.)

4. Review of job search: At least once every four weeks the county selected entity shall review the individual's participation in job search, and determine if participation in job search should continue or if assignment to another REACH employment-directed activity is appropriate. If reassignment is appropriate, the county selected entity must notify the case manager so that the REACH Agreement may be updated.

(f) (No change.)

10:81-14.11 REACH Work Supplementation Program

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

(c) Eligibility: Mandatory and voluntary REACH participants are eligible to participate in the WSP if they are eligible for AFDC.

1. There is no specific limit on the number of times an individual may participate in WSP, but participation in WSP shall not exceed a cumulative total of nine months for each individual.

(d) Types of jobs: Any appropriate job may be provided or subsidized under the WSP, but acceptance of any such position by a REACH participant shall be voluntary. The job position which may be provided for AFDC recipients must be of the following general types:

1. (No change.)

2. A job position provided to an eligible individual by any other employer for which all or part of the wages are paid by the entity selected to administer the WSP wage pool.

(e) Providing or subsidizing jobs: The county selected entity may use whatever means are appropriate to provide or subsidize jobs for participants in WSP. The county selected entity may make whatever arrangements it deems appropriate with regard to the type of work provided, the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient receiving the work supplemented job, the amount of subsidy to be provided and the conditions of participation.

(f) Conditions of employment: The following provisions apply to conditions of employment under REACH WSP:

1. (No change.)

2. The county selected entity is not required to provide that eligible individuals filling job positions provided by other entities under WSP

HUMAN SERVICES

be provided employee status by such entity during the first 13 weeks during which they fill such position.

3. Wages: Participants in the REACH WSP will be paid wages which shall be counted as earned income and are subject to the monthly reporting requirements set forth at N.J.A.C. 10:90-2.3.

(g) Application of AFDC earned income disregards under WSP: The application of earned income disregards as set forth at N.J.A.C. 10:82-4.4 differs for WSP participants. (See N.J.A.C. 10:81-14.21(d) for calculation*[s]* of AFDC grant under WSP.)

1. The \$75.00 work expense disregard shall apply to earned income of WSP participants.

2. The child care disregard is not applied to WSP earned income. Payment for child care will be made directly to the provider as a vendor payment as set forth at N.J.A.C. 10:81-14.18.

3. The \$30.00 and one-third disregard shall be extended for the entire period of an individual's participation in WSP, up to a maximum of nine months. The participant is eligible for the \$30.00 and one-third disregard under WSP regardless of the prior application of that disregard to non-WSP earned income while receiving AFDC.

i. Example: A REACH participant has received AFDC benefits for three years. During the first year of public assistance, the REACH participant was employed for a period of six months; the participant received four months of the \$30.00 and one-third disregard and two months of the \$30.00 disregard during that time. The *[participation]* *participant* has remained continuously on assistance. Under WSP participation, this individual is entitled to the \$30.00 and one-third disregard for each month of participation in WSP up to a maximum of nine months.

ii. Example: A WSP participant completed four months of WSP participation in January and subsequently continued to receive AFDC benefits. Participation in WSP resumed on June 1 and continued through October 31, completing a total of nine months in WSP. The participant is eligible for the \$30.00 and one-third disregard for the entire nine months of WSP participation even though entitlement to that disregard had been exhausted under previous non-WSP employment.

4. The WSP participant who has never had the benefit of the \$30.00 and one-third disregard is entitled to the \$30.00 and one-third disregard for each month of WSP participation and may, at the end of this WSP participation period, be eligible for any of the remaining months of the \$30.00 and one-third disregard or the \$30.00 disregard regularly applied to earned income as set forth at N.J.A.C. 10:82-4.4.

i. Example: An individual who has had no previous employment participates in WSP from January 1 through September 30 (the nine month maximum*[s])* time permitted for WSP participation) and receives the \$30.00 and one-third disregard during the entire nine month period. The individual then enters unsubsidized employment on October 1 and is eligible for the \$30.00 disregard for three months (through December 31).

ii. Example: An individual who has had no previous employment participates in WSP from January 1 through March 31 and receives the \$30.00 and one-third disregard for those three months. The individual then enters unsubsidized employment on April 1 and is eligible for the \$30.00 and one-third disregard for one additional month (through April 30) and for the \$30.00 disregard for another eight months (through December 31).

(h) Diversion of calculated earned income (CEI) to WSP wage pool: The WSP wage pool is used to provide wage subsidies to employers who hire WSP participants.

1. After application of WSP earned income disregards, the resulting CEI monies are diverted to the WSP wage pool. The WSP participant will receive a residual grant equal to the difference between the CEI and the maximum AFDC assistance payment for the family unit.

2. If the resulting CEI monies are greater than or equal to the maximum AFDC assistance payment for the family unit, then the entire assistance payment is diverted to the WSP wage pool and the participant will receive no residual grant; however, extended Medicaid benefits may be continued as set forth at N.J.A.C. 10:81-14.20.

ADOPTIONS

10:81-14.12 REACH Community Work Experience Program

(a) (No change.)

(b) The following categories of AFDC recipients may not be required to participate in REACH CWEP, in accordance with Section 409(b) of the Social Security Act:

1. An individual who is exempt from participation in REACH in accordance with N.J.A.C. 10:81-14.3;

2.-5. (No change.)

(c) Participation services and reimbursement: The services of child care and transportation that are necessary to CWEP participation will be provided as part of the REACH Agreement. In cases where the county selected entity is unable to provide these necessary services, the county selected entity must provide reimbursement for necessary transportation and child care costs that are incurred by the recipient and directly related to participation in CWEP.

1. Transportation costs: Participants shall be reimbursed for transportation costs directly related to their participation by mutual agreement between the CWEP participant and the REACH case manager based on the availability of transportation in *[the]* *that* locality.

2. Child care costs: Participants shall be reimbursed for child care costs in such amounts as are determined by the CWA to be reasonable, necessary, and cost-effective. Rates are determined on a State-wide basis through analysis of costs incurred for special needs care, full day care, before and after school care and summer rates for programs for school-age children as set forth at N.J.A.C. 10:82-14.18. However, in no event shall the reimbursement using CWEP funds exceed \$160.00 per month per child for full-time participation or \$110.00 per month for part-time participation (see N.J.A.C. 10:82-2.8(a)).

3. Additional \$10.00 CWEP reimbursement: The CWA must provide reimbursement for costs other than transportation and child care that the CWA determines are necessary and directly related to participation in CWEP incurred by the participant. Such costs include clothing and personal care items, materials and supplies and similar expenses related to applying for or accepting employment. For purposes of Federal Financial Participation, this amount shall not exceed \$10.00 per month per participant.

4. (No change.)

(d) (No change.)

(e) Participation requirements: The following additional participation requirements shall apply to CWEP:

1. (No change.)

2. Maximum monthly participation: No eligible family may be required to participate in CWEP more than the number of hours which would result from dividing the family's monthly grant amount by the Federal minimum wage.

3.-5. (No change.)

6. CWEP participants who claim "good cause" for refusing or failing to participate in CWEP must meet the criteria set forth at N.J.A.C. 10:81-14.8(b).

7. Reevaluation of CWEP participation: Participation in CWEP shall be reevaluated at least once every three months by the case manager to determine if CWEP and the specific worksite are still appropriate for that individual.

(f)-(h) (No change.)

10:81-14.13 Vocational assessment and counselling

(a) (No change.)

(b) Parent with a child under age two: A special vocational assessment and counselling component may be required for any parent whose full participation in REACH is temporarily deferred due to care of his or her child under age two. The REACH orientation may be used to satisfy this requirement.

1.-2. (No change.)

10:81-14.14 REACH employment and training services

(a) Purpose and scope: REACH employment and training services are designed to provide job training and other preparatory services for REACH participants. Such services include, but are not limited to, instructional skills training, on-the-job training, work experience and retraining. Education or training should be utilized wherever there is potential for upgrading a participant's skills and employment prospects.

ADOPTIONS

1.-2. (No change.)

3. REACH funded employment and training programs are intended to supplement, not supplant, existing programs and resources available to the REACH participant.

4. (No change.)

(b) On-the-job training: REACH on-the-job training (OJT) is an employment opportunity which includes training. Under this component, a REACH participant is hired by a private or public employer and provided training which is subsidized under agreement between the employer and the county-designated provider agency.

1.-3. (No change.)

4. The funding source for REACH OJT will be the WSP resources, to the maximum extent feasible.

(c) (No change.)

10:81-14.15 REACH educational services

(a) (No change.)

(b) The following educational services are available through the REACH program:

1. (No change.)

(c) (No change.)

10:81-14.18 REACH support services: child care

(a) The case manager, the participant, and the lead child care entity will mutually arrange for child care for the REACH participant's child(ren) while the individual is employed or participating in an employment-directed activity, as set forth in the REACH Agreement. Child care arrangements shall be in the best interests of the child. Additional responsibilities of the case manager and lead child care entity are set forth in (g) and (h) below.

1. Child care arrangements shall be located within reasonable commuting distance from the participant's home, place of employment or site of employment-directed activity. The hours provided must be sufficient to accommodate the hours required by the employer or employment-directed activity. The arrangements, including the site, must be agreeable to the participant, but any objections must be held in good faith.

(b) Payment for the cost of child care to support participation is available through the REACH program at rates established by the Department of Human Services.

1. When child care that is in the best interests of the child has been arranged, the case manager has the responsibility to determine eligibility and authorize payment for the child care that will obtain the maximum Federal financial participation for the particular employment-directed activity. In determining payment of the cost of child care, the following sequence will be applied:

i. The participant's own sources of child care *[[*involving no REACH child care payment;

ii. (No change in text.)

iii. Federally-matched child care costs while an individual is participating in training for employment or in a program of vocational rehabilitation; and

iv. State REACH funds.

2. Payment for child care using State REACH funds may be made when the participant's own source or Federally matched child care are not available or not sufficient to pay for the cost of child care. The priority of funding sources in (b)iii through iv above will be automatically incorporated into every REACH child care payment through fiscal procedures and reporting from the CWA to DPW, unless otherwise specified.

3. Effective date: In all counties, REACH child care payments will be available as each begins the operation of the REACH program, as defined by the Department of Human Services.

(c) Types of care and payments: REACH child care payments are available for care of an infant, toddler, preschool child, school-aged child or child with special needs in various types of arrangements, including full and part-time day care and care before and after school. The rates for REACH child care payments are available from the Department of Human Services, CN 700, Trenton, NJ 08625, or the local Division of Youth and Family Services District Office or the county welfare agency.

HUMAN SERVICES

1. "Special needs" is defined as serious physical, emotional, mental or cognitive conditions for which day care is recommended as part of a treatment plan.

i. Records of children referred because of special needs situations shall contain documentation of the result of a standardized developmental or psychological test given by a certified individual, written verification by a physician identifying and delineating the special needs of the child, or documentation by the case manager, approved by the case management supervisor, attesting to a child's special social or emotional needs.

2. Care during summers and school vacations: Payment for care of school-aged children, which is normally limited to part-time or after school care during the school year, shall be made at the full-day rates during summer vacations and recognized vacations and holidays during the school year, for example, Christmas, spring vacation, and so forth.

3. Costs of transportation: Payment in addition to the REACH training-related expenses allotment may be made for the cost of transportation of a child to and from a day care center in accordance with N.J.A.C. 10:82-5.3(d)3.

(d) Duration of payment: REACH child care benefits are routinely available to participants for one year of participation in a REACH employment-directed activity and for one year post employment. One year is defined as 52 consecutive weeks.

1. The one year period of participation in a REACH employment-directed activity will start with the first week in which an individual participates in any employment-directed activity set forth at N.J.A.C. 10:81-14.2. Participation in orientation, individual evaluation and assessment do not count toward this one year period.

2. The one year post-employment period will start with the first week in which a participant is employed. For employed participants receiving AFDC, State REACH funds will be used for any month in which the cost of child care exceeds \$160.00 for any child (see (g)3 below). For employed participants no longer receiving AFDC, State REACH funds will be used for the entire cost of child care.

3. If an employed participant becomes ineligible for AFDC for a reason other than employment, payment of child care through the REACH program will continue for the number of weeks remaining in the 52-week period that the participant is employed.

4. Post-assistance child care: Eligibility for payment of child care through the REACH program will continue after a participant becomes ineligible for AFDC due to income from employment. Payment for child care will continue if needed for the number of weeks remaining in the 52-week period. Before AFDC is terminated, the case manager will evaluate the need for post-assistance child care.

i. Additional eligibility requirements: In addition to demonstrating need, in order to be eligible for post-assistance child care the participant must:

(1) Sign a REACH Agreement covering the period the child care is to be provided;

(2) Participate in post-AFDC activities set forth in the Agreement; and

(3) Comply with REACH program requirements to report participation in post-AFDC activities.

ii. If an employed participant loses employment and returns to the assistance rolls within the one year post-employment period, payment of child care through the REACH program will continue for the weeks remaining in the 52-week period.

5. Exceptions and waiver: Exceptions to the one year limit on REACH child care payment*s* for participation in a REACH employment-directed activity may be allowed in exceptional circumstances and must be approved through waiver procedures determined by the Department of Human Services.

i. At the end of the first year of REACH participation in an employment-directed activity, the case management shall complete an evaluation of participation and support services to determine if the activity will continue and if the participant's child care benefits should be continued to support participation in that activity. If extended child care payments appear to be needed, the case manager may initiate the waiver process.

ii. Waiver: The case manager must secure supervisory approval to initiate the waiver process. Once approved, the case manager will

prepare a written waiver. The waiver will list the activity, child care needed, the expected duration of both the activity and extended child care payments, and will contain an evaluation by the case manager of the circumstances warranting the extended child care payments.

iii. Case manager responsibilities upon disposition of waiver: If the waiver is approved, child care payments shall be issued as authorized in the waiver. The case manager shall review and evaluate the participant's progress and circumstances at three month intervals to determine the appropriateness of continued child care benefits. If the waiver is not approved, the case manager will advise the participant and make any adjustments or changes to participation and the REACH Agreement.

iv. Child care payments shall not be extended beyond the 52-week post employment period.

(e) Provider requirements: REACH payments to providers of child care are available according to the following conditions:

1. Child care centers: To qualify for REACH child care payments, a child care center or program shall meet one of the following:

i. Centers providing care for pre-school children shall be licensed by DYFS, Bureau of Licensing or shall have a letter of exemption from DYFS, Bureau of Licensing; or shall be operated under the auspices of the public school system;

ii. Child care programs for school-age children shall meet local occupancy building and fire codes and shall have satisfactorily completed an inspection using the DHS' "Check List of Standards for School Age Child Care Programs"; or shall be operated under the auspices of the public school system; or

iii. Summer camps shall be approved by the New Jersey Department of Health. (See N.J.A.C. 8:25)

2. Family day care providers—registered homes: All family day care providers who serve three or more nonsibling children must be registered pursuant to the Family Day Care Provider Registration Act (see N.J.A.C. 10:126) in order to qualify for payment through the REACH program for child care provided to children of REACH participants.

i. Family day care providers of one or two children may choose to register under the Family Day Care Provider Registration Act or to provide family day care as an approved home.

ii. Payment shall be made to the provider who has secured a temporary registration certificate, as defined by rules promulgated under the Family Day Care Provider Registration Act.

3. Family day care providers—approved homes: Providers of family day care who are not living in the home of the REACH participant and who are not registered under (e)2 shall be approved by the Department of Human Services in order to qualify for payment through the REACH program. Unregistered relatives, friends or neighbors are eligible for approved home status.

i. The minimum requirements for approval of the home are an inspection of the home using the "REACH Family Day Care Home Approval Checklist" (see Appendix A, incorporated herein by reference), and standard interview procedure with the provider and family members.

ii. As an approved home, providers may receive payment for a maximum of two nonsibling children or of all the sibling children of one family.

4. Providers of in-home care: Providers of in-home care, that is, care of a REACH participant's children in the participant's own home, shall be evaluated using the "REACH In-Home Care Checklist", in order to qualify for payment through the REACH program.

5. Providers of child care not in categories (e)1 through 4 above are not entitled to payment through the REACH program for child care provided to children of REACH participants.

(f) Payment methods: The two methods in the REACH program for issuing payments for child care are vendor payments to the provider and direct payments to the participant.

i. Vendor payments to providers are the primary method for issuing child care payments in REACH. Under this method, a voucher is issued to the child care provider. The provider completes the voucher, lists the hours of care and payment required, and returns it to the agency responsible for issuing payment. Upon verification of the information, the agency issues a REACH child care payment to the provider.

i. To be eligible for vendor payments, each participant scheduled to participate in training or an educational activity shall complete a Form PA-59A, Request for Voluntary Restricted Payment, authorizing the case management agency to make payment directly to the provider.

2. Direct payment to participant: Payment for child care provided may be made directly to the participant when the provider of child care is an unregistered household member. As with the child care voucher, payment is issued upon verification of attendance and care provided.

3. Special payments for child care: Payments for child care at other than the standard payment rates may be made for special circumstances such as, emergency needs, drop-in care, approved interim care and care for extended hours, as deemed appropriate by the case manager.

4. Special requirements for employed participants: The Social Security Act requires that for any employed AFDC recipient, the actual cost of child care up to and including \$160.00 per month per child shall be disregarded from the participant's earnings, before that income is used to compute the monthly AFDC grant. Therefore, an employed participant shall pay the first \$160.00 in child care directly to the provider. The balance of the REACH payment for child care provided will be issued as a vendor payment to the provider or as a direct payment to the participant, in accordance with (f)1 and 2 above. However, any amount in excess of \$160.00 per month per child that is paid directly to the participant is income to the AFDC family and shall be used to compute the AFDC grant.

i. When a participant begins employment and is deemed prospectively eligible for AFDC, REACH child care payments may be continued for the first and second months of employment to assist transition of the family from prospective to retrospective budgeting. Because the participant will not have paid for child care during those months, the child care disregard of earnings will not be applied to AFDC grants for the third and fourth months of employment.

ii. For participants in Work Supplementation, the child care disregard and payment of child care shall be handled in accordance with N.J.A.C. 10:81-14.11(g) and 14.21(d).

(g) Case manager responsibilities: The case manager shall be responsible for assessing and determining the need for child care and authorizing issuance of REACH child care payments. Since the REACH program will be the payor of last resort, before payments may be issued, a REACH participant shall be required to certify that no other acceptable family members or other resources for child care that are in the best interest of the child are available. The case manager shall document this certification in the REACH case record. The welfare of the children and the quality of their care shall be considered.

1. Before the one year period of post-employment child care expires, the case manager shall advise the participant, the provider and the lead child care entity of the expiration date of REACH child care payments and that the participant shall be responsible for payment of the entire cost of child care. The case manager, with the assistance of the lead child care entity, will work with the participant to ease the transition to payment of child care not subsidized by REACH.

(h) Lead child care entity responsibilities: The lead child care entity will assist the case manager and participant in obtaining appropriate child care based on the parent's and child's needs; will assist in identifying child care resources available for a participant during orientation, assessment, participation in employment-directed activities and employment; and shall verify and document that the child care arrangements meet the criteria as specified in (e) and (f) above.

(i) If the total amount of the REACH child care payment for a given period is insufficient to secure appropriate and agreed upon child care necessary to support participation in REACH, then the participant shall be under no obligation to participate in REACH for the time period that such child care is unavailable.

10:81-14.19 REACH support services: transportation and related expenses

(a) (No change.)

(b) Transportation: Reimbursement for costs of transportation that are reasonably necessary for attendance at orientation and

ADOPTIONS

assessment, participation in REACH job search and community work experience programs shall be provided for the duration of participation in such activities and programs. The \$75.00 work expense disregard of earnings in work supplementation covers the cost of transportation in WSP.

(c) (No change.)

(d) Amounts of allowances: The allowance for expenses related to training and transportation is \$6.00 per day of participation in a REACH activity.

1. If actual transportation costs or training-related expenses exceed the limits in (d)li and ii below, a higher amount to cover actual costs may be provided. Such amounts shall be approved by the supervisor of the case manager and documented in the REACH case record.

i. If actual costs of transportation for orientation or assessment exceed \$6.00 per day, or for job search or community work experience programs exceed \$30.00 in a week, a higher amount may be provided to cover actual expenses for transportation by the most reasonably available means. In determining reasonably available means, the case manager shall consider the accessibility of available public and private transportation to the participant's home and site of the orientation and assessment.

ii. If actual training-related expenses exceed \$30.00 in a week, a higher amount to cover actual costs may be provided, but only if expenses are required for training, for example, a uniform required by an employer as a condition of accepting an on-the-job training position.

2. (No change.)

(e) Vendor payments for transportation and training-related expenses: If a county has arranged for transportation for REACH participants by means other than established public transportation, the participant may request a voluntary restricted payment by signing Form PA-59A, Request for Voluntary Restricted Payment, to use this source of transportation and direct that his or her transportation or training-related expense allowance be paid directly to the county or provider of transportation as a vendor payment. The participant may discontinue the voluntary restricted payment by signing Form PA-59B, Request to Discontinue Voluntary Restricted Payment (see N.J.A.C. 10:81-4.5).

1. Example: A rural county with minimum public transportation has contracted with a vendor to provide transportation in a specific geographic area for REACH participants from their homes to training and job search sites. To offset the cost of this transportation and to ensure availability of transportation, the participant would request a voluntary restricted transportation/TRE payment, so that the \$6.00 per day transportation allowance would be paid directly to this vendor. Once the participant completed the activity in the geographic area served by this vendor, he or she would discontinue the voluntary restricted payment.

10:81-14.20 REACH support services: medical assistance

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

(c) Additional requirements: The following additional requirements apply to the 12-month Medicaid extension:

1.-3. (No change.)

4. Periodic reporting: The Department of Human Services may require that the individual or family periodically report certain information, such as health insurance coverage from an employer or absent parent, earnings and continued employment, to ensure that the individual or family continues to be eligible for Medicaid. Eligibility for the 12-month Medicaid extension will be discontinued if the individual or family does not comply with such reporting requirements.

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

10:81-14.21 Need and amount of assistance in REACH

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

(d) Disregard of earned income in REACH Work Supplementation Program: In determining the calculated earned income for a WSP participant, from the total gross earnings deduct the WSP disregards as set forth at N.J.A.C. 10:81-14.11.

1. The CWA shall disregard from the earned income of the WSP participant the first \$75.00 of such earnings.

HUMAN SERVICES

2. The CWA shall disregard the first \$30.00 from the WSP participant's remaining earned income. After that disregard is taken, an additional one-third of the remaining earned income shall be disregarded. The \$30.00 and one-third disregards are applicable up to a maximum of nine months.

3. The remaining calculated earned income shall be deducted from the maximum AFDC assistance payment for the family unit to determine the WSP participant's residual grant.

10:81-14.23 County planning

(a) (No change.)

(b) Minimum county requirements: Each county is required to establish a REACH Planning Committee, appointed in accordance with established county procedures and designated as a standing committee of the County Human Services Advisory Council, and to submit a REACH County program implementation plan in accordance with deadlines established by the Department of Human Services for each county.

1. REACH Planning Committee: The purpose of the county REACH Planning Committee is to determine the most effective way to plan and organize services for REACH participants in that county.

i. Required membership: The planning committee shall, at a minimum, include the following as voting members: the Director of the County Welfare Agency, the Director of the Private Industry Council or Service Delivery Area established pursuant to the Job Training Partnership Act, the Chairperson or a designee of the County Human Services Advisory Council, a representative of the Board of Chosen Freeholders or County Executive or a designee. In addition, the planning committee shall include as non-voting ex officio members representatives of the following agencies: the Division of Public Welfare in the Department of Human Services, the Division of Employment Services in the Department of Labor, the Bureau of Adult Education in the Department of Education, the Division of Housing and Development in the Department of Community Affairs, and the county representative of the Department of Human Services.

ii. Additional members: The planning committee may also include as voting members the following: a representative of the local community college; a representative of the county vocational school; a representative of private business or industry in the county; two or more recipients of Aid to Families with Dependent Children residing in the county, whose costs of participation in the planning committee will be reimbursed by the REACH program, in accordance with procedures established by the Division of Public Welfare; county residents who represent the nonprofit and religious communities in the county; representatives of the lead REACH child care agency or other providers of child care in the county; and other individuals and/or organizations that the county believes would provide a valuable contribution to the REACH program planning and implementation process.

2. (No change.)

(c) Planning and program management: Additional requirements for counties will be specified by the Department of Human Services for REACH planning and program management as follows:

1. REACH Program Coordinator: The Department will contract with the county governing body to provide an amount of funding for REACH program planning and implementation activities, with no county match required. Primarily these funds must be applied toward support of a full time REACH Program Coordinator who will be responsible for centrally managing implementation of the program and coordinating the planning process to the extent possible. Demonstration that a REACH Program Coordinator has been designated will be required for final approval of the REACH county program implementation plan (see (b)2iv above).

2. To assure that REACH services are productive in terms of reducing welfare dependency and increasing the employment and earnings of the REACH participants, the Department of Human Services will establish performance standards for the REACH program.

i. Payments of REACH monies to a county may be linked to achievement of these performance standards. Bonuses for exceeding standards and deferral of payment for failure to meet mutually

HUMAN SERVICES

ADOPTIONS

agreed-upon goals will be proposed for county review and comment prior to adoption.

ii. (No change.)

(d) Submittal and approval of REACH county implementation plan: Upon completion of the REACH county implementation plan by the county, the following submittal and approval process shall occur:

1. County process: At the county, the plan shall be submitted to the Private Industry Council/Service Delivery Area (PIC/SDA), County Welfare Agency (CWA), and County Human Services Advisory Council (CHSAC) for review and endorsement of the plans as consistent with respective agency goals, objectives, and service delivery plans. Signatures of the PIC/SDA Director, CWA Director, and CHSAC Chairperson are required as evidence of endorsement. The plan shall be submitted to the county governing body for review and approval, with signature of the County Freeholder Director or County Executive and freeholder resolution required as evidence of approval. The county shall provide for public input on the plan in

accordance with existing county public input procedures, with confirmation of input received included in the plan. The REACH County Plan with required endorsements and approvals and required number of copies shall be submitted to the Department of Human Services in accordance with deadlines established by the Department for each county.

2. (No change.)

3. Department of Human Services process: The review and approval process set forth below will begin upon receipt of the REACH county implementation plan by the Department of Human Services.

i. (No change.)

ii. The Committee will determine if the REACH County Plan is incomplete or does not contain adequate information for approval. For any plan determined incomplete or inadequate, the Committee may request additional information from the county, conditionally approve the plan, or formally return the plan to the county with specific instructions.

iii.-iv. (No change.)

**APPENDIX A
REACH HOME APPROVAL CHECKLIST**

This checklist shall be used by agency conducting evaluation at a preliminary visit to home of new caregiver applicant.

Agency conducting evaluation _____

Evaluator _____ Date of Visit _____

Applicant _____

Address _____

City _____ State _____ Zip Code _____

County _____ Telephone _____

Applicant's Social Security Number _____

| | (Children's Name) | (Date of Birth) | (Sex) | (Case Numbers) |
|--|-------------------|-----------------|-------|----------------|
| Referred by _____ (REACH Participant) | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |
| | _____ | _____ | _____ | _____ |

Language Spoken In Home _____ Case Manager _____

| |
|--|
| For office use only: Approved: _____ Denied: _____ |
|--|

A. INSPECTION CHECKLIST

Mark each item: C = compliance NC = Non-compliance NA = Not applicable

| <u>Physical environment</u> | <u>Compliance</u> | <u>Comments</u> |
|--|-------------------|---|
| 1. Adequate floor space | | |
| 2. Minimum temperature 65°F | | |
| 3. Surfaces clean, in good repair | | |
| 4. Adequate ventilation | | |
| 5. Warm and cold running water available | | |
| 6. Working indoor toilets accessible | | |
| 7. Indoor and outdoor equipment sturdy, safe non-toxic, easy to clean, free of hazards | | |
| 8. Sufficient furniture and equipment for children | | be provided by REACH program YES/NO |
| 9. Working telephone in home | | |
| 10. If no working telephone in home | | |
| i. Provider demonstrates inability to afford telephone | | |
| ii. If able to afford telephone, provider agrees to install in 90 days | | |
| iii. Working telephone accessible within 5 minutes at all times when enrolled children present | | |
| <u>II. Fire Safety</u> | | |
| 1. Working smoke detector on each floor | | |
| 2. Lockable interior doors can be unlocked from outside | | |
| 3. Heating/cooling devices vented, protected by guards, kept clear of combustible materials | | |
| 4. Woodburning stoves have barriers, are not accessible to children | | |
| 5. Portable liquid fuel-burning appliances are not used when children are in care | | |
| 6. Stairways, hallways, exits unobstructed | | |
| 7. Electrical cords in good condition | | |
| <u>III. General Safety</u> | | |
| 1. Home and furnishings present no hazard | | |
| 2. All toxic substances out of reach | | |
| 3. Non-permanent barriers on stairs, ramps, balconies, porches, elevated play areas | | To be provided by REACH Program YES/NO |
| 4. Electrical outlets accessible to children are covered | | To be provided by REACH program YES/NO |
| 5. Working flashlight available | | To be provided by REACH Program YES/NO |
| <u>IV. Outdoor Space</u> | | |
| 1. Adequate, safe outdoor play area adjacent to or within walking distance of home | | |
| <u>V. Accidents, Injuries and Emergencies</u> | | |
| 1. First aid supplies accessible | | To be provided by REACH Program YES/NO |
| <u>VI. Sanitation</u> | | |
| 1. Individual towels and washcloths or disposable towels and washcloths | | |

HUMAN SERVICES

ADOPTIONS

| | <u>Compliance</u> | <u>Comments</u> |
|--|-------------------|---|
| VII. <u>Program</u> | | |
| 1. Safe toys, play equipment, creative materials for ages, interests, and number of children | | |
| 2. Materials for preschoolers include: | | |
| i. Dramatic play/language development | | |
| ii. Visual/small muscle development | | |
| iii. Auditory development | | |
| iv. Creative expression | | |
| v. Large muscle development | | |
| VIII. <u>Rest and sleep</u> | | |
| 1. Daily rest/sleep for each child in clean, safe area according to needs | | |
| 2. Children under 18 months/non-walkers sleep in crib, playpen, cot, bed with rails, or floor mat 1" thick | | To be provided by REACH Program YES/NO |
| 3. Crib and playpen slats no more than 2 3/8 apart | | |
| 4. Drinking water available? | | |

B. STANDARD INTERVIEW PROCEDURE

| Name | Relationship to Caregiver | Sex | Date of Birth |
|------|---------------------------|-----|---------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Other Children Living in Home

| Name | Relationship to Caregiver | Sex | Date of Birth |
|------|---------------------------|-----|---------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

ADOPTIONS

HUMAN SERVICES

| <u>QUESTION</u> | <u>RESPONSE</u> |
|---|-----------------|
| 1. Are you over 18 years of age? | |
| 2. What other adults and/or children will be in your home during the time the REACH children are in your care? What type of contact will they have with the REACH children? | |
| 3. How long can you provide the day care? (Days/weeks/months). | |
| 4. Full time?/Part time? | |
| 5. Holidays?/Summers? | |
| 6. Have you ever been convicted of a crime? If yes, explain. (Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as a caregiver. Such determination shall be made on a case by case basis.) | |
| 7. Do you have any illnesses or medical conditions that would prevent you from providing child care services? | |
| 8. Based on compliance with the policy outlined above, are you willing to provide day care to the child/children of the REACH client? | |
| 9. Have you had other experiences in working with children? Describe. | |
| 10. What methods of discipline will you use with the REACH child in your care? | |
| 11. How will you handle medical emergencies if you or the REACH child should get sick during the hours child care is being provided? | |
| 12. Who, other than the REACH child's parent, will be able to pick-up the child at the end of the day? Do you have a telephone number in order to contact this person? | |
| 13. What arrangements have been made to provide nutritious meals to the REACH child/children in your care? | |

C. OBSERVATIONS

1. Describe the applicant's home in relation to assessing their home management skills.

2. Have you observed any condition or situation that would cause you to deny this applicant?
If yes, explain: _____

3. If applicant is being approved for child care, has emergency card been provided?

For evaluator only: (check)

Home Approved _____

Home Denied _____ Reason _____

Date: _____ Evaluator's signature _____

CORRECTIONS

(a)

THE COMMISSIONER

Inmate Discipline

Adopted Repeals: N.J.A.C. 10A:4-11.9 and N.J.A.C. 10A:4-12.

Proposed: March 7, 1988, at 20 N.J.R. 496(b).

Adopted: October 21, 1988 by William H. Fauver,

Commissioner, Department of Corrections.

Filed: October 24, 1988 as R.1988 d.543, **without change.**

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

Effective Date: November 21, 1988.

Expiration Date: July 21, 1991.

Summary of Public Comments and Agency Responses:

The Department of Corrections proposed the repeal of N.J.A.C. 10A:4-11.9 and N.J.A.C. 10A:4-12 on March 7, 1988, at 20 N.J.R. 496(b). This action is deemed necessary in view of the expiration of N.J.S.A. 52:14F-8(a). A public hearing was held on May 18, 1988, at the request of the Public Advocate concerning the proposed repeal. Twenty persons submitted written comments on the proposed repeal and five persons testified at the public hearing.

Objections to the proposed repeal, reflected in the written comments and the testimony at the public hearing, fall into the following categories:

1. Comments which address the perceived fairness which the Office of Administrative Law appeal provides;
2. Comments with conflicting interpretations of the law affecting the cases which should be referred to the Office of Administrative Law; and
3. Comments which interpret statistical data related to the results of Office of Administrative Law hearings.

COMMENT: Commenters stressed the need for impartiality and an unbiased review of evidence which the commenters believe is only available in a forum removed from the Department of Corrections' influence. The commenters viewed the Office of Administrative Law (OAL) appeal procedure as an additional avenue by which to restore commutation time lost through disciplinary actions. The commenters pointed out that the more detailed evidentiary hearings conducted by the Office of Administrative Law Judges provided greater opportunity to get at the true facts of an incident because of the adversary nature of the Office of Administrative Law hearings, and the requirement for in-person testimony, cross-examination and a higher burden of proof.

RESPONSE: The Department of Corrections disagrees with the commenters who contended that disciplinary hearings are biased or unfair. The use of Disciplinary Hearing Officers to adjudicate inmate disciplinary cases was implemented in accordance with the New Jersey Supreme Court's suggestion in *Avant v. Clifford*, 67 N.J. 496 (1975). Both experience and statistics support the Department of Corrections' belief that this system is both fair and procedurally correct. The State prisons are the source of most appeals of disciplinary hearings. Of the approximately 3,000 disciplinary hearings conducted each month at the State prisons, 22 to 29 percent result in not guilty findings. Moreover, Mr. Vito Casarella, Senior Hearing Officer, Department of Corrections, testified at the Public Hearing saying that, based on his 12 years of experience during which time he heard approximately 4,000 cases, inmates generally believed that the Discipline Hearing Program and Disciplinary Hearing Officers were fair. Mr. Casarella stated that inmates often approached him and other Disciplinary Hearing Officers to express their satisfaction with the Inmate Discipline Program.

The commenters also erred in their demand for trial of disciplinary cases before Office of Administrative Law judges, where a higher burden of proof is required than that mandated by either the United States Supreme Court or the New Jersey Supreme Court. In New Jersey, the Supreme Court has approved "substantial evidence" as the burden of proof in disciplinary hearings. There is, therefore, no justification for implementing an additional procedure having a greater burden.

The commenters also failed to recognize that commutation time lost through disciplinary action may be restored pursuant to N.J.A.C. 10A:9-5.5, Restoration of forfeited commutation time, which provides a process for restoring up to 75 percent of lost commutation time for good behavior.

COMMENT: Commenters contended that prison disciplinary hearings are "contested cases" within the meaning of the Administrative Procedure Act, so as to render all inmate disciplinary hearings subject to Office of Administrative Law (OAL) review. Specifically, the commenters pointed to the "sunset" provision, N.J.S.A. 52:14F-8(a), as having provided only a temporary exemption. The result of its expiration would then subject all cases to the law's requirements. Despite this argument, the commenters are not in agreement on whether all cases should be referred to the Office of Administrative Law (OAL). Suggestions range from maintaining the 365 day cut-off, to 180 days, to all cases. Commenters offered no explanation as to how a contested case is to be identified using the length of sanction as a yardstick.

RESPONSE: The Department of Corrections disagrees with the commenters who contend that the expiration of N.J.S.A. 52:14F-8(a) subjects all, or any, inmate disciplinary hearings subject to Office of Administrative Law (OAL) appeal. Rather, N.J.S.A. 52:14F-8(a) created a temporary remedy to provide for Office of Administrative Law (OAL) hearings in a limited class of cases—only those in which 365 days loss of commutation time or more had been imposed. The Department of Corrections maintains that the New Jersey Legislature never intended prison disciplinary proceedings to be included under the Administrative Procedure Act. Procedures of the Administrative Procedure Act are wholly inappropriate to prison disciplinary matters in light of the prison setting and the need of prison administrators to determine disciplinary matters fairly and swiftly. In this setting, disciplinary hearings must be conducted in such a way as to minimize the danger of heated confrontation while preserving basic rights of due process. The present Inmate Discipline Program strikes the most appropriate balance to meet these urgent needs.

COMMENT: Commenters differed, at the public hearing, in their opinion of the effectiveness of Office of Administrative Law (OAL) hearings based upon statistics which indicate that a total of 41 cases, all of which involved 365 days loss of commutation time, were referred to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14F-8. Two cases are still pending and three were withdrawn, leaving 36 cases. In 28 of these 36 cases, after *de novo* hearings, the final decision and sanction imposed was the same as had been rendered by the Disciplinary Hearing Officer. Three cases resulted in dismissal of charges and sanctions imposed by the Disciplinary Hearing Officer. In five cases, the finding of guilt was sustained but the sanctions were modified. It thus appears that 77 percent of the cases transferred to OAL were upheld; eight percent were reversed and 14 percent were modified as to sanction. Commenters who favored the Office of Administrative Law (OAL) process testified that results of hearings supported the need to continue *de novo* OAL hearings, because the commenters said results were significantly modified.

RESPONSE: The Department of Corrections does not agree with the commenter's conclusion as to the effectiveness of the Office of Administrative Law (OAL) process based solely on statistics which failed to paint a complete picture of the disciplinary process and its purpose in correctional institutions. As was stated above, the Department of Corrections believes that institutional discipline is not appropriate for handling by the Office of Administrative Law.

COMMENT: Commenters contended that statistics generated by the Office of Administrative Law hearings conducted pursuant to N.J.S.A. 52:14F-8(a) support their views that inmate disciplinary hearings are flawed so as to necessitate more detailed appellate review than is possible in the Appellate Division.

RESPONSE: The Department of Corrections disagrees with the commenters' conclusion, which the Department of Corrections believes was based on an inadequate examination of the record. The percentage of cases which were modified or dismissed is no different from, and probably fewer than, results of all judicial actions subjected to review by higher courts. Such decisions reflect differences of opinion as to the quality or quantity of evidence and how the law is to be applied, rather than any "flaw" in the proceedings generally.

Full text of the repeals may be found in the New Jersey Administrative Code at N.J.A.C. 10A:4-11.9 and 10A:4-12.

ADOPTIONS

(a)

Medical and Health Services Psychological Services

Adopted Amendment: N.J.A.C. 10A:16-4.1, 4.2 and 4.8

Proposed: September 6, 1988 at 20 N.J.R. 2128(a).

Adopted: October 21, 1988 by William H. Fauver,
Commissioner, Department of Corrections.

Filed: October 24, 1988 as R.1988 d.542, **without change.**

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

Effective Date: November 21, 1988.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment concerning the employment of psychologists, rather than a suggestion for a change in the proposed amendments.

Full text of the adoption follows.

10A:16-4.1 Office of Institutional Support Services (O.I.S.S.) Director of Psychological Services

(a) The Office of Institutional Support Services (O.I.S.S.), Director of Psychological Services, serving under the Supervisor, Health Services Unit (O.I.S.S.), shall be the designated authority with primary responsibility of serving as a consultant in psychology and providing professional review, evaluation and guidance of all psychological programs and activities of the Department with particular emphasis upon the maintenance of professional standards and the coordination of planning, training, recruitment and research.

(b) The O.I.S.S. Director of Psychological Services shall be responsible for:

1.-7. (No change.)

8. Developing training programs in the area of psychology and assisting interns within the Department of Corrections. The day-to-day supervision and evaluation of interns, however, shall be under the direction of a New Jersey licensed psychologist of at least the grade of Staff Psychologist I in the correctional facility; and

9. (No change.)

(c) (No change.)

10A:16-4.2 Correctional facility staff and structure

(a) A New Jersey licensed psychologist, of at least the grade of Staff Clinical Psychologist I, shall be designated Director of Psychology at each correctional facility and he or she is directly responsible to the Superintendent or his or her designee.

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

10A:16-4.8 Reporting responsibilities

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

(d) Monthly reports, annual reports and, as required, special reports shall be prepared by the O.I.S.S. Director of Psychological Services of the Department of Corrections and submitted to the Supervisor, Health Services Unit (O.I.S.S.).

LABOR

(b)

OFFICE OF WAGE AND HOUR

Child Labor

Occupations Prohibited to Minors Under 18 Years of Age

Slaughtering and Meat Packing Establishments, Rendering Plants, or Wholesale, Retail or Service Establishments

Adopted Amendment: N.J.A.C. 12:58-4.12

COMMERCE AND ECONOMIC DEVELOPMENT

Proposed: September 19, 1988 at 20 N.J.R. 2357(a).

Adopted: October 26, 1988 by Charles Serraino, Commissioner,
Department of Labor.

Filed: October 26, 1988 as R.1988 d.548, **without change.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:2-1, 34:2-21.17 and 34:2-21.64.

Effective Date: November 21, 1988.

Expiration Date: September 26, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

12:58-4.12 Slaughtering and meat packing establishments; rendering plants; wholesale, retail or service establishments

(a) Minors under age 18 shall not be employed, permitted or suffered to work in or about slaughtering and meat packing establishments, rendering plants, or wholesale, retail or service establishments in the following occupations:

1. All occupations on the killing floor, in curing cellars, and hide cellars, except the work of messengers, runners, hand-truckers, and similar occupations which require entering such workrooms or work-places infrequently and for short periods of time;

2. All occupations involved in the recovery of lard and oils, except packaging and shipping of such products and the operation of lard-roller machines;

3. All occupations involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products;

4. All occupations involved in the operation or feeding of the following power-driven meat-processing machines, including setting up, adjusting, repairing, oiling, or cleaning such machines: meat patty forming machines, meat and bone cutting saws, knives including circular and horizontal knives used for slicing meat, slicing machines used for cutting delicatessen meats and cheeses (except bacon-slicing machines), head-splitters, and guillotine cutters, snout-pullers and jaw-pullers, skinning machines, horizontal rotary washing machines, casing-cleaning machines such as crushing, stripping, and finishing machines, grinding, mixing, chopping, and hashing machines, and presses (except belly-rolling machines);

5. All boning operations;

6. All occupations involved in the pushing or dropping of any suspended carcass, half carcass, or quarter carcass; and

7. All occupations involved in the hand-lifting or hand-carrying of any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

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

COMMERCE, ENERGY AND ECONOMIC DEVELOPMENT

(c)

DIVISION OF ENERGY CONSERVATION AND PLANNING

Methodology for Computing Energy Cost Savings

Adopted New Rules: N.J.A.C. 12A:60

Proposed: September 6, 1988 at 20 N.J.R. 2238(a).

Adopted: October 24, 1988 by Borden R. Putnam,
Commissioner, Department of Commerce, Energy and
Economic Development.

Filed: October 25, 1988 as R.1988 d.545, **without change.**

Authority: N.J.S.A. 52:27F-11g and q.

Effective Date: November 21, 1988.

Expiration Date: November 21, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

CHAPTER 60

ENERGY CONSERVATION MEASURES FINANCING

SUBCHAPTER 1. METHODOLOGY FOR COMPUTING ENERGY COST SAVINGS

12A:60-1.1 Scope

(a) This subchapter shall apply to all contracts, the entire price of which is established as a percentage of the resulting energy savings, and which involve the performance of work or services or the furnishing of materials, supplies or equipment for the purpose of conserving energy in the following:

1. Buildings owned or operations conducted by those entities subject to the provision of the Local Public Contracts Law, P.L. 1971, c.198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c.551; and
2. Buildings owned by any board of education subject to the provision of N.J.S.A. 18A:18A-5 and 18A:18A-42, as amended by P.L. 1984, c.49.

12A:60-1.2 Purpose

This subchapter fulfills the requirements of section 15(12) of P.L. 1981, c.551, and of N.J.S.A. 18A:18A-5 and 18A:18A-42 as amended by P.L. 1984, c.49, by establishing a methodology for computing energy cost savings associated with contracts for the furnishing of energy conserving renovations on a shared-savings or guaranteed-savings basis.

12A:60-1.3 Definitions

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

"Annualized price" means the average price of fuel to the user during the base period.

"Base period" means the preceding calendar year, preceding fiscal year, preceding 12-month period, or any consecutive period of time greater than one year specifically agreed upon by the firm and user which serves as the standard for measurement of energy consumption and energy savings due to energy conserving renovations.

"Complete energy audit" means an energy audit conducted in accordance with the requirements of N.J.A.C. 12A:60-1.5(a)3.

"Current cost" means the most recent delivered price of fuel to the user for the period of claimed savings.

"Degree days" means an index for measurement of differences in energy usage due solely to differences in weather conditions and equals the daily difference between 65 degrees fahrenheit and the outdoor mean daily temperature.

"Department" means the New Jersey Department of Commerce, Energy and Economic Development.

"Energy conserving renovation" means any equipment, services, work, materials or supplies, or combination thereof furnished by a firm and agreed upon by the user, for the purpose of conserving energy in buildings owned or operations conducted by a user.

"Energy cost savings" means energy savings converted into dollar savings.

"Energy savings" means the amount in energy units (e.g., BTUs, kilowatts) of energy saved by an energy conserving renovation.

"Extraordinary unspecifiable services" are defined by the Local Public Contracts Law (N.J.S.A. 40A:11-2(7)) as "services which are specialized and qualitative in nature requiring expertise, extensive training and proven reputation in the field of endeavor."

"Fair market value" means the cost of the equipment and/or renovation plus the cost of installation less the depreciation figured over the life of the contract less the cost of the removal.

"Firm" means a vendor engaged in the business of furnishing energy conserving renovations to users through a shared-savings or guaranteed-savings program, and includes all representatives, agents, assignees, and other persons or entities performing activities for or acting on behalf of the vendor.

"Guaranteed-savings" means a program in which a firm guarantees a user a predetermined reduction in energy costs and warrants that the energy costs of the user plus all costs of the energy conserving renovations provided by the firm will be less than or equal to the user's normal energy costs minus the cost reductions provided for in the program.

"Shared-savings" means a program in which the sole source of payment for energy conserving renovations provided by a firm is a predetermined percentage of the energy cost savings of the user resulting from the energy conserving renovations.

"User" means a municipality, county or other entity subject to the provisions of P.L. 1971, c.198 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c.551, and a board of education subject to the provisions of N.J.S.A. 18A:18A-5 and 18A:18A-42 as amended by P.L. 1984, c.49, which enters into a shared-savings or guaranteed-savings contract with a firm.

12A:60-1.4 Pre-contract phase

(a) In this section, "user" shall mean only municipalities, counties and other entities subject to the provisions of P.L. 1971, c.1978 (N.J.S.A. 40A:11-15), as amended by P.L. 1981, c.551.

(b) Prior to entering into any contract pursuant to N.J.A.C. 12A:60-1.5 for the furnishing of energy conserving renovations, the following requirements shall be fulfilled:

1. Preliminary assessment of the energy consumption patterns and energy conserving renovations needs of the user: The assessment may take the form of a self-audit conducted by the user, an energy audit performed by an independent auditor, an energy audit performed by all firms as a condition of participation in a pre-Request for Bids Conference or an energy audit performed by all firms as part of a pre-qualification procedure conducted in accordance with N.J.S.A. 40A:11-25. Any meetings, discussions or other contact with firms during the preliminary assessment shall conform to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. The preliminary assessment shall be tailored to the needs of the user and shall provide the user with the following information:

i. A description of the building(s) audited, including but not limited to level of occupancy, schedule of operating hours, and size in square feet;

ii. An inventory and description of the building components and equipment affecting energy consumption;

iii. Base period energy consumption data. The information shall be presented as follows:

(1) Factors influencing base period energy consumption (for example, degree days, building renovations) shall be identified and the effect of each factor shall be discussed individually; and

(2) Consumption data shall be:

(A) Reported separately for each component type (for example, for electricity, fuel oil, natural gas); and

(B) Stated in energy units, BTU's and dollars;

iv. A description of the suggested energy conserving renovations including all equipment to be installed;

v. A description of the effect of the suggested energy conserving renovations on base period energy consumption and energy costs; and

vi. The projected energy savings, BTU savings and energy costs savings which will be generated by the suggested energy conserving renovations;

2. Bidding: Upon completion of the preliminary assessment specified in (a)1 above, the user shall solicit bids in accordance with the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

12A:60-1.5 Contract phase

(a) All contracts and modifications thereof subject to the provisions of this chapter shall meet, in addition to the requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. or the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and rules promulgated thereunder, the minimum requirements stated below. The firm and user may agree to any additional terms or conditions which do not limit, contradict or abrogate the said minimum requirements and which comply with the applicable provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. or the Public School

ADOPTIONS

Contracts Law, N.J.S.A. 18A:18A-1 et seq., and rules promulgated thereunder. At a minimum the contracts and modifications shall:

1. Be reduced to writing;
2. State the term or duration, which shall not exceed 10 years;
3. Require the firm to conduct a complete energy audit and to furnish the user with a complete energy audit report. The complete energy audit report shall include, but not be limited to, the following:
 - i. A description of the building(s) audited, including but not limited to information concerning level of occupancy, schedule of operating hours, and size in square feet;
 - ii. An inventory and description of the building components and equipment affecting energy consumption;
 - iii. Base period consumption data. The information shall be presented as follows:
 - (1) Factors influencing base period energy consumption (for example, degree days, building operating schedules, equipment installation or removal, building renovations) shall be identified. The effect of each factor shall be both quantified and discussed individually; and
 - (2) Consumption data shall be:
 - (A) Reported separately for each component type (for example, for electricity, fuel oil, natural gas); and
 - (B) Stated in energy units (for example, BTUs, Kwh) and dollars;
 - iv. A precise description of the proposed energy conserving renovation, including but not limited to equipment specifications, required modifications to or alteration of the building structure, engineering drawings, installation procedures and schedules, and estimated equipment and installation costs, as appropriate to the particular case;
 - v. The projected impact of each major energy conserving renovation and of the total program of energy conserving renovations on base period energy consumption and energy costs; and
 - vi. The projected energy savings, energy units (for example, BTUs, Kwh) savings and energy cost savings which will be generated by the proposed energy conserving renovations;
 4. State a specific method of accounting for energy savings due to the energy conserving renovations:
 - i. The firm shall employ, alone or in combination, as appropriate, the following:
 - (1) Individual metering: The effect of each energy conserving renovation on energy savings shall be determined, where feasible, by individually metering each energy conserving renovation;
 - (2) Calculating energy savings: In the event that (a)4i(1) above is not feasible, the effect of each energy conserving renovation on energy savings shall be determined by calculating the amount of energy savings attributable to each energy conserving renovation. Calculations shall be based upon billings from utility or other energy suppliers, readings from energy meters, and/or measurements of energy storage facilities;
 - (3) Normalization: All energy savings produced by energy conserving renovations which are affected by degree day changes shall be normalized using the following: degree day method; modified degree day method†; bin method‡. Energy consumed by energy conserving renovations that are affected by degree day changes or the base period equivalent of such energy conserving renovations, for uses other than space heating or cooling, shall be discounted before comparing energy consumption data using the degree day method, modified degree day method or bin method.
 5. Require energy savings determined in (a)4 above to be converted to BTU savings††;
 6. Require energy savings determined in (a)4 above to be converted to energy cost savings as follows:
 - i. Energy cost savings shall be equal to energy savings adjusted by an energy cost factor. The energy cost factor may include but shall not be limited to:
 - (1) Current cost; or
 - (2) Annualized price.
 - ii. The calculations of energy cost savings shall be stated and explained to the user.
 7. Contain a provision including or excluding the cost of metering in the cost of energy conserving renovations, in the event that metering is used pursuant to (a)3 or 4 above;

COMMERCE AND ECONOMIC DEVELOPMENT

8. Contain a provision incorporating changes in such factors as demand charges, power factors, time-of-day usage, delivery schedules, as appropriate, in the calculation of energy savings, BTU savings, and energy cost savings, in the event that fuel or utility billing is not based on energy usage;
9. Contain a provision including or excluding fuel adjustment clauses, in the event that the current cost method specified in (a)6i(1) above is used in the complete energy audit report to convert energy savings into energy cost savings;
10. Specify the extent to which the firm may have access to and control over the operation of equipment and facilities of the user;
11. Require the firm to familiarize personnel of the user with the operation and functions of the energy conserving renovations;
12. Identify and provide a method of adjustment to account for variations in conditions or situations which may affect energy consumption and energy savings (for example, activities affecting energy conservation undertaken by the user independent of the firm and not caused by the energy conserving renovations, changes in building use or operating schedules, installation or removal of equipment, additions to or alteration of building structure). Appropriate adjustments may be made to base period or current energy consumption data to reflect such conditions or situations;
13. Define acceptable limits for variations in installed equipment performance, operating conditions and health, safety and comfort levels, and require the firm to maintain operations within said limits;
14. Require the firm to provide, at no cost to the user, maintenance, repair and replacement, and emergency services with respect to the energy conserving renovations or portions thereof, in the event that the firm retains ownership of or control over the energy conserving renovations. The firm shall agree to service all problems regarding maintenance, repair and replacement, and emergency services within 24 hours of notification by the user so as to eliminate any interruption in the operation of the user's facilities or essential equipment or any adverse effect on health, safety and comfort;
15. State the payment for energy savings generated by the energy conserving renovations shall be required of the user only in the following circumstances and that no other payment shall be required:
 - i. The energy savings have actually occurred. No payment shall be required of the user until the energy conserving renovations have generated energy savings for the user; and
 - ii. The payment required is consistent with the energy savings generated. No payment shall be required of the user which is disproportionate to the energy savings generated by the energy conserving renovations;
16. Contain indemnification, insurance or other provisions regarding payment or reimbursement for injury to persons, or damage or loss of property, as the parties deem appropriate;
17. Specify that the firm shall furnish monthly summaries of energy consumption, energy savings, BTU savings and energy cost savings to the user. Calculations shall be made in accordance with (a)4, 5, and 6 above;
18. State the grounds for termination of the contract by the user or the firm prior to the conclusion of the term. The following grounds shall be specifically included:
 - i. If the savings projected in the original proposal is significantly greater than the savings indicated by the engineering study the user shall have the option of terminating the contract and shall not be liable for any costs or expenses incurred by the firm.
 - ii. Termination by buyout: The user shall be permitted to terminate the contract at the user's election at any time during the term of the contract by purchasing the energy conserving renovation in accordance with a schedule of prices or, if no price schedule is established, fair market value. The right to termination by buyout and the schedule of prices shall be expressly stated in the contract.
19. Require the firm to remove or dispose of the energy conserving renovations at the conclusion of the contract term unless the user exercises an option to purchase, pursuant to (a)18ii above; and
20. Specify the manner in which disputes are to be resolved.

†The Department adopts the energy estimating methods of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., contained in ASHRAE Systems Volume, Section IV, Chapter 43

(1980), with respect to the normalization of energy savings by the degree day method, modified degree day method, and bin method.

†Copies of the document may be obtained from the sponsor at: ASHRAE, Inc., 1971 Tullie Circle, NE, Atlanta, Georgia 30329.

††The Department adopts the conversion factors of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., contained in ASHRAE Systems Volume, Section IV, Chapter 47 (1980), with respect to the conversion of energy savings to BTU savings.

12A:60-1.6 Technical assistance

The Department shall be available to provide technical assistance to users in connection with matters included in this subchapter.

12A:60-1.7 Extraordinary unspecifiable services bidding exception

N.J.S.A. 40A:11-5(1)(a) permits local contracting units to avoid competitive bidding for extraordinary unspecifiable services. The application of this exception to extraordinary unspecifiable services shall be construed narrowly in favor of open competitive bidding where possible.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Board of Marriage Counselor Examiners

Readoption: N.J.A.C. 13:34

Proposed: September 19, 1988 at 20 N.J.R. 2361(a).
 Adopted: October 24, 1988 by The Board of Marriage Counselor Examiners, Edward G. Haldeman, Ed.D., Chairperson.
 Filed: October 26, 1988 as R.1988 d.550, **without change**.
 Authority: N.J.S.A. 45:8B-13.
 Effective Date: October 26, 1988.
 Expiration Date: October 26, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:34.

TRANSPORTATION

TRANSPORTATION OPERATIONS

(b)

Speed Limits

Route U.S. 9 in Atlantic County and Ocean County

Adopted Amendment: N.J.A.C. 16:28-1.41

Proposed: September 6, 1988 at 20 N.J.R. 2190(a).
 Adopted: October 11, 1988 by John F. Dunn, Jr., Director,
 Division of Traffic Engineering and Local Aid.
 Filed: October 19, 1988 as R.1988 d.540, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.
 Effective Date: November 21, 1988.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.41 Route U.S. 9 including Parts of Route 35 and 444

(a) The rate of speed designated for the certain parts of State highway Route U.S. 9 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. (No change.)
2. For both directions of traffic in Atlantic County:
 - i. In the City of Somers Point:

(1) Zone 1: 45 miles per hour between the Beesley's Point Bridge Company-New Jersey Department of Transportation jurisdictions line and County Route 559 (mileposts 31.90 to 32.55); thence

(2) Zone 2: 35 miles per hour between County Route 559 and Route N.J. 52 (mileposts 32.55 to 33.15); thence

(3) Zone 3: 40 miles per hour between Route N.J. 52 and the City of Somers Point-City of Linwood line (mileposts 33.15 to 34.47); thence

ii. In the City of Linwood:

(1) 40 miles per hour between the City of Somers Point-City of Linwood line and West Avenue (mileposts 34.47 to 34.98); thence

(2) Zone 4: 45 miles per hour between West Avenue and Monroe Avenue (mileposts 34.98 to 35.93); thence

(3) Zone 5: 40 miles per hour between Monroe Avenue and the City of Linwood-City of Northfield line (mileposts 35.93 and 36.96).

iii. In the City of Northfield:

(1) 40 miles per hour between the City of Linwood-City of Northfield line and Mill Road except with a 25 miles per hour School Speed zone in the Mill Road School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 36.96 to 37.62); thence

(2) Zone 6: 35 miles per hour between Mill Road and Jackson Avenue except with a 25 miles per hour School Speed Zone in the Mill Road School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 37.62 to 38.38); thence

(3) Zone 7: 40 miles per hour between Jackson Avenue and the City of Northfield-City of Pleasantville line (mileposts 38.38 to 38.88); thence

iv. In the City of Pleasantville:

(1) 40 miles per hour between the City of Northfield-City of Pleasantville line and Tilton Road (mileposts 38.88 to 38.99); thence

(2) Zone 8: 35 miles per hour between Tilton Road and Noah's Road (mileposts 38.99 to 39.55); thence

(3) Zone 9: 30 miles per hour between Noah's Road and Route U.S. 322 (mileposts 39.55 to 39.87); thence

(4) Zone 10: 35 miles per hour between Route U.S. 322 and West Adams Avenue (mileposts 39.87 to 40.37); thence

(5) Zone 11: 40 miles per hour between West Adams Avenue and West Reading Avenue (mileposts 40.37 to 40.90); thence

(6) Zone 12: 35 miles per hour between West Reading Avenue and West California Avenue (City of Pleasantville-City of Absecon line) (mileposts 40.90 to 41.81); thence

v. In the City of Absecon:

(1) 35 miles per hour between West California Avenue (City of Pleasantville-City of Absecon line) and 450 feet north of West California Avenue (mileposts 41.81 to 41.90); thence

(2) Zone 13: 45 miles per hour between 450 feet north of West California Avenue and 500 feet south of Orchard Street except with a 35 miles per hour School Speed zone in the Holy Spirit High School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 41.90 to 42.47); thence

(3) Zone 14: 35 miles per hour between 500 feet south of Orchard Street and 25 feet north of Ohio Avenue (mileposts 42.47 to 42.71); thence

(4) Zone 15: 25 miles per hour between 250 feet north of Ohio Avenue and West Church Street (mileposts 42.71 to 42.90); thence

(5) Zone 16: 35 miles per hour between West Church Street and Route N.J. 157 (mileposts 42.90 to 43.77); thence

(6) Zone 17: 45 miles per hour between Route N.J. 157 and the City of Absecon-Township of Galloway line (mileposts 43.77 to 44.15); thence

v. In Galloway Township:

(1) Zone 18: 45 miles per hour between the City of Absecon-Township of Galloway line and East Brook Avenue (mileposts 44.15 to 44.52); thence

(2) Zone 19: 50 miles per hour East Brook Avenue and 450 feet north of Sommers Town Lane except with a 35 miles per hour School Speed zone in the Oceanville School zone during recess when the

presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (mileposts 44.52 to 46.48); thence

(3) Zone 20: 45 miles per hour between 450 feet north of Sommers Town Lane and 1225 feet north of Leeds Point Road (County Road 618) (mileposts 46.48 to 47.16); thence

(4) Zone 21: 50 miles per hour between 1225 feet north of Leeds Point Road (County Road 618) and milepost 48 (mileposts 47.16 to 48.00); thence

(5) Zone 22: 45 miles per hour between Mileposts 48 and Old New York Road (County Road 610) (mileposts 48.00 to 48.63); thence

(6) Zone 23: 50 miles per hour between Old New York Road (County Road 610) and the Township of Galloway-City of Port Republic line (mileposts 48.63 to 51.34); thence

vi. In the City of Port Republic:

(1) Zone 24: 50 miles per hour between the Township of Galloway-City of Port Republic line and the Garden State Parkway (mileposts 51.34 to 52.36).

(b) The rate of speed designated for State highway Route U.S. 9, including parts of Route 444 (and excluding Garden State Parkway Authority sections) described in this subsection shall be established and adopted as the maximum legal rate of speed for both directions of traffic:

1.-11. (No change.)

12. 35 miles per hour between Route 72 and Lakewood Avenue, Stafford Township (mileposts 70.40 to 70.86); thence

13. (No change.)

14. 50 miles per hour between Manor Drive and Barnegat Township line (mileposts 71.14 to 73.21); thence

i. 35 miles per hour school speed zone within the Southern Regional High School zone in Stafford Township, Ocean County, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.

Renumber existing 14. through 31. as 15. through 32. (No change in text.)

(a)

Restricted Parking and Stopping Routes U.S. 9 in Ocean County and N.J. 71 in Monmouth County

Adopted Amendments: N.J.A.C. 16:28A-1.7 and 1.38

Proposed: September 6, 1988 at 20 N.J.R. 2189(a).

Adopted: October 11, 1988 by John F. Dunn, Jr., Director,
Division of Traffic Engineering and Local Aid.

Filed: October 19, 1988 as R.1988 d.539, with a technical change,
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3(c)).

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

Effective Date: November 21, 1988.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.7 Route U.S. 9

(a) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-35. (No change.)

36. Along the southbound (westerly) side in Howell Township, Monmouth County:

i. Near side bus stops:

(1)-(3) (No change.)

(4) West Farms Road—Beginning at the northerly curb line of West Farms Road and extending 135 feet northerly therefrom.

ii. Mid-block bus stops:

(1)-(2) (No change.)

iii. (No change.)

37.-*[38.]**42.* (No change.)

16:28A-1.38 Route 71

(a) The certain parts of State highway Route 71 described in this subsection are designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-9. (No change.)

10. No stopping or standing in the City of Asbury Park, Monmouth County:

i. (No change.)

ii. At taxi stands along (Main Street) west side.

(1) From a point 35 feet north of the northerly curb line of Second Avenue to a point 25 feet northerly therefrom.

(b) (No change in text.)

(c) The certain parts of State highway Route 71 described in this subsection are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established Loading Zones:

1. No parking—Loading Zone in the City of Asbury Park, Monmouth County:

i. (No change.)

ii. Along the westerly (southbound) side (Main Street):

(1) Between points 30 feet south of, and 70 feet south of the southerly curb line of Lake Avenue;

(2) Between points 25 feet south of, and 65 feet south of the southerly curb line of Asbury Avenue.

(d) The certain parts of State highway Route 71 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the northbound (easterly) side in the Borough of Manasquan, Monmouth County:

i. Mid-block bus stop:

(1) Main Street—Beginning 128 feet north of the northerly curb line of Main Street and extending 135 feet northerly therefrom.

2. Along the southbound (westerly) side in the Borough of Manasquan, Monmouth County:

i. Near side bus stop:

(1) Main Street—Beginning at the northerly curb line of Main Street and extending 105 feet northerly therefrom.

(b)

Restricted Parking and Stopping Route N.J. 17 in Bergen County

Adopted Amendment: N.J.A.C. 16:28A-1.9

Proposed: September 19, 1988 at 20 N.J.R. 2374(a).

Adopted: October 20, 1988, John F. Dunn, Jr., Director, Division
of Traffic Engineering and Local Aid.

Filed: October 26, 1988 as R.1988 d.552, without change.

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

Effective Date: November 21, 1988.

Expiration Date: June 1, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.9 Route 17

(a) (No change.)

(b) The certain parts of State highway Route 17 described in this subsection shall be designated and established as "no parking" zones

where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-11. (No change.)

12. Along the southbound (westerly) side in the Borough of Ho-Ho-Kus, Bergen County:

i. Near side bus stop:

(1) Hollywood Avenue—(Island)—Beginning at the southerly curb line of the Hollywood Avenue island and extending 100 feet northerly therefrom.

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

TREASURY-GENERAL

(a)

AFFIRMATIVE ACTION OFFICE (PUBLIC CONTRACTS)

Notice of Correction

Affirmative Action Rules—Chapter Expiration Date

N.J.A.C. 17:27

Take notice that the published readoption with amendments of N.J.A.C. 17:27 appearing in the November 7, 1988 New Jersey Register at 20 N.J.R. 2795(b) contained an erroneous date for the expiration of the chapter pursuant to Executive Order No. 66(1978). The published expiration date was November 7, 1993; the correct expiration date is **October 7, 1993**.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE DIVISION OF SCIENCE AND RESEARCH

Deer Liver Consumption Advisory

Take notice that, pursuant to N.J.S.A. 13:1D-9 and 13:1B-23 et seq., the Department of Environmental Protection hereby issues this advisory concerning the consumption of deer liver. This advisory applies to the consumption of deer liver only. The consumption of venison (muscle meat) is not affected. Other viscera (organs) have not been tested, although with cadmium exposure, kidney may also be affected.

In 1986, the Department of Environmental Protection, Division of Fish, Game and Wildlife sampled deer livers taken from 11 of New Jersey's 59 deer management zones. Analysis of these samples revealed the existence of elevated concentrations of cadmium in the livers of older deer (1½ years and older) taken from Deer Management Zones 3, 39, 46, and 53. The liver samples taken from deer in Deer Management Zones 2, 6, 7, 8, 10, 37, and 52 were found to be normal.

Cadmium is a naturally occurring metal and its concentration may be increased in the environment through a number of sources, including, but not limited to, fossil fuel combustion, electroplating, and sewage sludge. The existence of cadmium in the liver does not affect the edibility of venison and this advisory does not apply to deer parts other than the liver. The liver is a detoxifying organ. In order to fulfill its functions, it retains, modifies, and removes various harmful substances from the animal's system. The older the animal, the longer the liver may have been accumulating these substances and, therefore, the greater their concentration in the liver.

The effects of eating liver from older deer from Deer Management Zones 3, 39, 46, and 53 may be gastric distress from a single meal or kidney damage from repeatedly eating livers with high concentrations of cadmium over a long period of time. Therefore, it is advised that people not consume liver from deer older than one year of age from zones 3, 39, 46, and 53. Due to the limited number of management zones sampled (11 out of 59), it is prudent to utilize a conservative approach for the protection of public health. Consequently, it is advised that the consumption of liver from deer older than one year of age taken from other management zones should be limited. Limited consumption means no more than three meals of deer liver per year.

Deer less than one year of age are easily distinguished from older animals by counting the number of back grinding teeth (premolars, molars). Deer under one year of age will have fewer than six back grinding teeth on each side of the lower jaw.

The State of Maine and the Provinces of Quebec, Ontario, New Brunswick, Newfoundland, and Labrador have issued similar advisories concerning the consumption of deer liver from those regions. New information regarding New Jersey's advisory will be publicized as it becomes available.

(b)

DIVISION OF FISH, GAME AND WILDLIFE

Availability of Grant Funds

Wildlife Check-Off Conservation Grant Program

Take notice that, in compliance with N.J.S.A. 52:14-34.4, the Department of Environmental Protection (Department) hereby announces the availability of the Wildlife Check-Off Conservation Grant Program (WC-OCG). The purpose of WC-OCG is to make matching funds available for local projects designed to benefit nongame wildlife, and to increase the public use, knowledge and enjoyment of the State's nongame wildlife resources on public open space areas in New Jersey.

The Endangered and Nongame Species Program (ENSP) of the Department's Division of Fish, Game and Wildlife has allotted \$5,000 of its fiscal year 1989 budget for this Program. The Program will provide one-to-one matching grants up to \$1,000 for selected projects. Organizations such as environmental groups, conservation groups, youth groups, citizen

groups, environmental centers, and school groups may apply for funding. In order to be eligible for funding, applicants must demonstrate the ability to effect the aforementioned purpose of WC-OCG and to provide for matching funds on a one-to-one basis.

Those organizations wishing to qualify for a WC-OCG shall submit an application using an official procedural guide and application form. The official WC-OCG procedural guide and application form can be obtained from the ENSP Trenton office by sending requests to:

Wildlife Check-Off Conservation Grant Program
Endangered and Nongame Species Program
Division of Fish, Game and Wildlife
CN 400
Trenton, New Jersey 08625

Completed applications shall be submitted to the same address. The application deadline for projects to receive funding in 1989 is February 1, 1989. Applicants will receive notice of approval or disapproval of a WC-OCG proposal by March 15, 1989.

(c)

DIVISION OF FISH, GAME AND WILDLIFE BUREAU OF SHELLFISHERIES

Notice of Petition for Rulemaking on Mechanical Clam Dredging

Notice of Action on Petition for Rulemaking on Mechanical Clam Dredging

Petitioner: Biosphere, Inc.

Take notice that on September 15, 1988, the Department of Environmental Protection (Department) received a petition for rulemaking concerning mechanical clam dredging from Biosphere, Inc. Petitioner, grantee of over 80 acres of riparian lands in Little Egg Harbor, Tuckerton, New Jersey, requests that the Department promulgate a rule to allow mechanical clam dredging on certain Atlantic Coast lots.

In accordance with the provisions of N.J.A.C. 1:30-3.6, the Department hereby gives notice that it is referring the above petition for further deliberation in order to allow for adequate evaluation of the merits of the petition by both the Commissioner of Environmental Protection and the Atlantic Coast Section of the New Jersey Shell Fisheries Council (Council). The above petition has been placed on the agenda of the next regularly scheduled Council meeting for the Council's consideration and recommendation. This meeting will take place as follows:

Date: November 21, 1988
Time: 7:00 P.M.
Place: Stockton State College
Pomona, New Jersey

Since all Council meetings are open to the public by authority of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., members of the public are invited to attend the November 21, 1988 meeting to comment on the rulemaking petition.

Upon receiving the Council's recommendation and the Commissioner's approval, the Department will file a notice with the Office of Administrative Law, for publication in the New Jersey Register, specifying the results of the further deliberations on the above petition. In accordance with N.J.A.C. 1:30-3.6(c), a copy of the notice will be mailed to the petitioner. Should the Commissioner and the Council decide to grant the rulemaking petition, a rulemaking proposal will be developed jointly at this time.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 1:30-3.6.

(a)

**DIVISION OF FISH, GAME AND WILDLIFE
Fish and Game Council 1988-89 Game Code
Bow and Arrow, General Provisions
Notice of Correction: N.J.A.C. 7:25-5.24**

Take notice that an error appears in the current text of N.J.A.C. 7:25-5.24 appearing in the New Jersey Administrative Code.

In amending the 1987-88 Game Code, the Department of Environmental Protection (Department) proposed and adopted the deletion of the text of N.J.A.C. 7:25-5.24(d) (see 19 N.J.R. 808(a) and 1434(a)). However, through a printing error in the 8-17-87 Update to the New Jersey Administrative Code, the text of subsection (d) was retained. As this subsection was not affected by the amendments to the 1988-89 Game Code (see 20 N.J.R. 1035(b) and 1985(a)), its erroneous retention was not detected by the Department at that time, and the paragraph was retained in the 8-15-88 Code Update.

Full text of the current rule as it should appear in the New Jersey Administrative Code follows:

7:25-5.24 Bow and arrow, general provisions

(a) A bow means longbow, recurved bow or compound bow that is hand held and hand drawn and that has no mechanical devices built into or attached to, that will enable the archer to lock the bow at full or partial draw. Except as provided in N.J.A.C. 7:25-5.24(e) all draw locking and draw holding devices are prohibited and all crossbows or variations thereof are prohibited. Hand-held releasing devices are permitted.

(b) No person shall use a bow and arrow for hunting, on December 14, 15 and 16, 1988 and January 27 and 28, 1989 in those deer management zones in which a permit shotgun deer season is authorized, on any additional permit deer season day(s) if declared open, during the Six-Day Firearm Deer Season, or between 1/2 hour after sunset and sunrise during other seasons. Deer shall not be hunted for or taken on Sunday except on wholly enclosed preserves that are properly licensed for the propagation thereof.

(c) During the season for taking deer or turkey with bow and arrow (as listed elsewhere in this subchapter), all arrows used for taking deer or turkey must be fitted with an edged head of the following specifications:

1. Minimum width shall be 3/4 inch.
2. Minimum length shall be 1 3/8 inch on main cutting edge.
3. Cutting edges shall be of well-sharpened metal only.
4. Arrows fitted with heads other than specified for deer may be carried in the woods and fields during the Upland Game Season or other seasons which overlap with the Bow and Arrow Deer Season, in addition to arrows specified for deer. It is unlawful to hunt with any device propelled by any means that is used for the purpose of injecting or delivering any type of drug into an animal.

5. All bows, except compounds, must have a minimum draw pull weight of 35 pounds at the archers' draw length. Compound bows must have a minimum peak weight of 35 pounds.

(d) No person shall hunt for deer with the aid of a deer decoy, an electronic calling device or any device which projects a beam of light upon the target.

(e) The Division may issue a Special Bow Use Permit to certain physically handicapped individuals which would allow these individuals as specified below in this subsection to hunt with a longbow, recurved bow or compound bow that has been modified such that it has a mechanical device built into or attached to, that will enable the archer to draw and lock the bow at full or partial draw. Crossbows are prohibited. Special Bow Use Permit applications will require certification by a physician licensed to practice medicine in the State of New Jersey and be subject to Division's review and ratification. For the purposes of this permit, a handicapped individual is defined as one who is incapable of using a bow due to a permanent disability resulting from the loss of, or loss of use of, one or both arms as a result of birth defect, injury or disease.

(f) Authority: The authority for the adoption of the foregoing section is found in N.J.S.A. 23:4-1, 23:4-12, 23:4-16, 23:4-43, 23:4-44, 23:4-45 and other applicable statutes.

(b)

**DIVISION OF FISH, GAME AND WILDLIFE
Defining Lines Upstream of Which License Is
Required to Fish with Handline, Rod and Line or
Long Bow and Arrow**

**Notice of Administrative Correction: N.J.A.C.
7:25-16.1**

Take notice that the Department of Environmental Protection, Division of Fish, Game and Wildlife, hereby makes an administrative correction, pursuant to N.J.A.C. 1:30-2.7(a)3, to the New Jersey Administrative Code at N.J.A.C. 7:25-16.1(a) concerning the definition of the fishing license line on Deal Lake, Monmouth County. This correction does not change the line upstream of which a license is required to fish with handline, rod and line or long bow and arrow on Deal Lake, Monmouth County, but merely revises the language in the rule describing the line to clarify its location.

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

7:25-16.1 Defining lines upstream of which license is required to fish with handline, rod and line or long bow and arrow

(a) The following table defines lines upstream of which a license is required to fish with handline, rod and line or long bow and arrow:

| Name of Water | License required upstream of this location |
|-----------------|---|
| ... | |
| MONMOUTH COUNTY | |
| ... | |
| Deal Lake | [Lake Spilling to Ocean Outlet Flume] Top of Dam |
| ... | |

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

(c)

**DIVISION OF SOLID WASTE MANAGEMENT
Exemption from Registration**

Notice of Correction: N.J.A.C. 7:26-1.7

Take notice that an error appears in the current text of N.J.A.C. 7:26-1.7(a) and (d) appearing in the New Jersey Administrative Code.

Certain language changes in that subsection originating as an emergency amendment and concurrent proposal (see 19 N.J.R. 886(a)) and adopted as a permanent amendment (see 19 N.J.R. 1453(a)) do not appear in the Code.

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

7:26-1.7 Exemption from registration

(a) Pursuant to N.J.S.A. 13:1E-4a, the [c]Commissioner [shall] **may** exempt from the requirement of registration as set forth in N.J.A.C. 7:26-2, and [shall] **may** grant a permanent or temporary certificate of authority to operate, with or without conditions, to the class of solid waste collection or disposal facilities or operations which in the [c]Commissioner's opinion meets the general and application specific criteria set forth in this section.

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

(d) **This subsection sets forth the [S]specific criteria for exempting sanitary landfills.**

1. A temporary certificate of authority to operate which shall be for a fixed period of time, not to exceed one year, [shall] **may** be granted to a sanitary landfill facility which, in the opinion of the Commissioner, meets the following criteria for exemption:

i.-v. (No change.)

(e)-(f) (No change.)

HEALTH

(a)

EPIDEMIOLOGY AND DISEASE CONTROL

Public Forum on New Jersey's Clean Indoor Air Laws

Take notice that the Department of Health, in coordination with the Departmental advisory Commission on Smoking or Health, is announcing a public forum to give opportunity for public participation in the discussion of current and proposed activities concerning New Jersey's Clean Indoor Air Laws: the effectiveness in protecting the health of nonsmokers; the methods of enforcement; the clarity of the provisions for implementation; and the penalties for violation. Indoor places to be considered include government and private sector workplaces, schools, restaurants, and other public places such as theaters and sports facilities. New Jersey is in the forefront in enactment of legislation protecting the rights of all to breathe clean indoor air. The Department of Health now

seeks to elicit broad public input so that it can comprehensively report to the Legislature about the impact of the legislation and develop recommendations for revision.

The meeting will be held on Monday, November 28, 1988, from 9:00 A.M. to 4:00 P.M. at:

Hughes Justice Complex
Conference Room C, Fourth Floor
25 Market Street
Trenton, NJ 08625

Persons wishing to present testimony, or if further information is needed on this subject, please contact:

Diane DiDonato, R.N., M.P.H.
Chief, Cancer Control and Risk Reduction Program
Chronic Disease Control Services
University Office Plaza
CN 369
Trenton, New Jersey 08625-0369
(609) 588-7470

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 October 3, 1988 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

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 SEPTEMBER 19, 1988

NEXT UPDATE: SUPPLEMENT OCTOBER 17, 1988

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 |
|------------------------------------|--|------------------------------------|--|
| 19 N.J.R. 2087 and 2224 | November 16, 1987 | 20 N.J.R. 1127 and 1316 | June 6, 1988 |
| 19 N.J.R. 2225 and 2324 | December 7, 1987 | 20 N.J.R. 1317 and 1500 | June 20, 1988 |
| 19 N.J.R. 2325 and 2510 | December 21, 1987 | 20 N.J.R. 1501 and 1594 | July 5, 1988 |
| 20 N.J.R. 1 and 124 | January 4, 1988 | 20 N.J.R. 1595 and 1758 | July 18, 1988 |
| 20 N.J.R. 125 and 220 | January 19, 1988 | 20 N.J.R. 1759 and 1976 | August 1, 1988 |
| 20 N.J.R. 221 and 320 | February 1, 1988 | 20 N.J.R. 1977 and 2122 | August 15, 1988 |
| 20 N.J.R. 321 and 434 | February 16, 1988 | 20 N.J.R. 2123 and 2350 | September 6, 1988 |
| 20 N.J.R. 435 and 570 | March 7, 1988 | 20 N.J.R. 2351 and 2416 | September 19, 1988 |
| 20 N.J.R. 571 and 692 | March 21, 1988 | 20 N.J.R. 2417 and 2498 | October 3, 1988 |
| 20 N.J.R. 693 and 842 | April 4, 1988 | 20 N.J.R. 2499 and 2610 | October 17, 1988 |
| 20 N.J.R. 843 and 950 | April 18, 1988 | 20 N.J.R. 2611 and 2842 | November 7, 1988 |
| 20 N.J.R. 951 and 1018 | May 2, 1988 | 20 N.J.R. 2843 and 2948 | November 21, 1988 |
| 20 N.J.R. 1019 and 1126 | May 16, 1988 | | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|-----------------------------------|---|--------------------------------------|--------------------|--------------------------------------|
| ADMINISTRATIVE LAW—TITLE 1 | | | | |
| 1:1-9.5 | Transmittal of clerk's notices | 20 N.J.R. 1979(a) | | |
| 1:1-9.5 | Transmittal of clerk's notices: withdrawal of proposal | 20 N.J.R. 2613(a) | | |
| 1:1-14.3 | Interpreters for hearing impaired: preproposal | 20 N.J.R. 1979(b) | | |
| 1:1-14.8 | Proceedings on the papers: inaction by requesting party | 20 N.J.R. 1979(c) | R.1988 d.517 | 20 N.J.R. 2749(a) |
| 1:6-10.1 | Discovery in school budget cases | 20 N.J.R. 1980(a) | R.1988 d.516 | 20 N.J.R. 2749(b) |
| 1:30-3.1 | Regulatory flexibility analysis and proposed rulemaking | 20 N.J.R. 573(a) | | |

Most recent update to Title 1: TRANSMITTAL 1988-4 (supplement September 19, 1988)

| | | | | |
|--|---|-------------------|--------------|-------------------|
| AGRICULTURE—TITLE 2 | | | | |
| 2:2 | Animal disease control program | 20 N.J.R. 2419(a) | | |
| 2:33 | Agricultural fairs | 20 N.J.R. 2125(a) | | |
| 2:68-1 | Association standards for commercial feeds | 20 N.J.R. 1671(c) | R.1988 d.528 | 20 N.J.R. 2749(c) |
| 2:69 | Commercial fertilizers and soil conditioners | 20 N.J.R. 1673(a) | R.1988 d.527 | 20 N.J.R. 2750(a) |
| 2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16 | Farmland preservation: acquisition of development easements | 20 N.J.R. 1503(a) | R.1988 d.493 | 20 N.J.R. 2565(a) |
| 2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16 | Farmland development easements: residual dwelling sites | 20 N.J.R. 1761(a) | | |
| 2:76-8 | Acquisition of farmland in fee simple | 20 N.J.R. 2501(a) | | |

Most recent update to Title 2: TRANSMITTAL 1988-6 (supplement September 19, 1988)

| | | | | |
|--|--|-------------------|--------------|-------------------|
| BANKING—TITLE 3 | | | | |
| 3:1-2.17 | Repeal (see 3:32-1) | 20 N.J.R. 697(a) | R.1988 d.472 | 20 N.J.R. 2450(a) |
| 3:1-16 | Mortgage loan practices | 20 N.J.R. 1021(b) | | |
| 3:2-1.1, 1.2, 1.3, 1.4 | Advertising by financial institutions | 20 N.J.R. 1025(a) | R.1988 d.524 | 20 N.J.R. 2750(b) |
| 3:24-5.1 | Licensed check cashing | 20 N.J.R. 2353(a) | | |
| 3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11 | Conversion of savings and loan associations from mutual to capital stock | 20 N.J.R. 697(a) | R.1988 d.472 | 20 N.J.R. 2450(a) |
| 3:38-5 | Repeal (see 3:1-16) | 20 N.J.R. 1021(b) | | |

Most recent update to Title 3: TRANSMITTAL 1988-5 (supplement August 15, 1988)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1988-3 (supplement September 19, 1988)

| | | | | |
|---------------------------|--|------------------|--|--|
| PERSONNEL—TITLE 4A | | | | |
| 4A:6-1.3, 1.10 | Sick leave; leave without pay | 20 N.J.R. 133(a) | | |
| 4A:6-1.3, 1.10 | Sick leave, leave without pay: extension of comment period | 20 N.J.R. 341(a) | | |

Most recent update to Title 4A: TRANSMITTAL 1988-3 (supplement September 19, 1988)

| | | | | |
|----------------------------------|---|-------------------|--------------|-------------------|
| COMMUNITY AFFAIRS—TITLE 5 | | | | |
| 5:2 | Handicapped Persons' Recreational Opportunities grant program | 20 N.J.R. 1765(a) | R.1988 d.459 | 20 N.J.R. 2451(a) |
| 5:3-2 | Nonpublic records | 20 N.J.R. 1763(a) | R.1988 d.458 | 20 N.J.R. 2451(b) |
| 5:10 | Maintenance of hotels and multiple dwellings | 20 N.J.R. 2126(a) | | |
| 5:10-1.3, 1.6, 1.10, 1.12, 25 | Fire safety in hotels and multiple dwellings | 20 N.J.R. 2126(a) | | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|--|---|-----------------------------------|-----------------|-----------------------------------|
| 5:12-1.1, 2.1, 2.4 | Homelessness Prevention Program: eligibility for temporary assistance | 19 N.J.R. 1777(a) | R.1988 d.521 | 20 N.J.R. 2752(a) |
| 5:13-1.14 | Limited dividend and nonprofit housing projects: payment in lieu of taxes | 20 N.J.R. 2425(a) | | |
| 5:15 | Emergency shelters for the homeless | 20 N.J.R. 341(b) | | |
| 5:23-4.3 | Uniform Construction Code: assumption of local enforcement powers | 20 N.J.R. 1764(a) | | |
| 5:23-4.4 | Acting appointments: correction to text | | | 20 N.J.R. 2823(a) |
| 5:23-7.104, 7.116 | Barrier Free Subcode: recreation standards | 20 N.J.R. 1764(b) | R.1988 d.503 | 20 N.J.R. 2754(a) |
| 5:23-8 | Asbestos Hazard Abatement Subcode | 20 N.J.R. 1130(b) | | |
| 5:27-1.3, 1.6, 5 | Fire safety in rooming and boarding houses | 20 N.J.R. 2126(a) | | |
| 5:30 | Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision | 20 N.J.R. 1320(a) | | |
| 5:38 | State intergovernmental review process for Federal programs and direct development activities | 20 N.J.R. 2354(a) | | |
| 5:51 | Handicapped Persons' Recreational Opportunities grant program (recodified as 5:2) | 20 N.J.R. 1765(a) | R.1988 d.459 | 20 N.J.R. 2451(a) |
| 5:70-6.3 | Congregate Housing Services Program: service subsidy formula | 20 N.J.R. 2426(a) | | |
| 5:91-4.1 | Council on Affordable Housing: adoption of housing element | 20 N.J.R. 2613(b) | | |
| 5:91-14 | Council on Affordable Housing: amending of certified municipal plan | 20 N.J.R. 2613(c) | | |
| 5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F | Affordable housing council rules | 20 N.J.R. 1673(b) | | |

Most recent update to Title 5: TRANSMITTAL 1988-9 (supplement September 19, 1988)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6

| | | | | |
|-------------------------|---|-------------------|--------------|-------------------|
| 6:2 | Appeals to State Board | 20 N.J.R. 2615(a) | | |
| 6:2-1.21 | Issuance of administrative order creating State-operated school district | 20 N.J.R. 1505(a) | R.1988 d.475 | 20 N.J.R. 2452(a) |
| 6:3-1.23, 1.24 | Principal certification | 20 N.J.R. 1320(c) | R.1988 d.491 | 20 N.J.R. 2567(a) |
| 6:8-1.1, 4.3, 7.1 | High school core proficiencies | 20 N.J.R. 2619(a) | | |
| 6:11-12.5 | Substance awareness coordinator | 20 N.J.R. 1980(c) | | |
| 6:11-3.25, 4.2, 5.7, 10 | Principal certification | 20 N.J.R. 1320(c) | R.1988 d.491 | 20 N.J.R. 2567(a) |
| 6:20-2 | Bookkeeping and accounting in local districts | 20 N.J.R. 2502(a) | | |
| 6:20-5.7 | Reimbursement to nonpublic schools for asbestos removal and encapsulation | 20 N.J.R. 2505(a) | | |
| 6:22A-1 | School facility lease purchase agreements | 20 N.J.R. 2127(a) | | |
| 6:29-4.2 | Testing for tuberculosis infection | 20 N.J.R. 1981(a) | | |
| 6:39 | High school core proficiencies | 20 N.J.R. 2619(a) | | |
| 6:78-1.1, 1.2, 1.3 | Marie H. Katzenbach School for the Deaf | 20 N.J.R. 1678(a) | R.1988 d.534 | 20 N.J.R. 2754(b) |

Most recent update to Title 6: TRANSMITTAL 1988-7 (supplement September 19, 1988)

ENVIRONMENTAL PROTECTION—TITLE 7

| | | | | |
|---|--|------------------------------|--------------|-------------------|
| 7:1A-1.1, 1.2, 1.4, 1.6, 2.1-2.4, 2.8, 2.10, 2.12-2.15, 5.1, 5.2, 7 | Replacement of contaminated wellfields | Emergency (expires 11-18-88) | R.1988 d.479 | 20 N.J.R. 2470(a) |
| 7:1C-1.2, 1.5 | 90-day construction permits: fee structure for treatment works approvals | 20 N.J.R. 135(a) | | |
| 7:1D | Allocation of costs for emergency water supply projects | 20 N.J.R. 2197(a) | | |
| 7:2 | State Park Service: extension of comment period | 20 N.J.R. 1035(a) | | |
| 7:7-2.2 | Coastal wetlands maps for Gloucester County | 19 N.J.R. 2090(b) | | |
| 7:7-2.2 | Coastal wetlands boundaries in Salem County | 20 N.J.R. 349(b) | | |
| 7:7-2.3 | Waterfront development | Emergency (expires 12-3-88) | R.1988 d.518 | 20 N.J.R. 2815(a) |
| 7:7A-8.1 | Freshwater Wetlands Protection Act rules: correction | 20 N.J.R. 22(a) | | |
| 7:7A-9.2, 9.4 | Freshwater wetlands protection: Statewide general permits for certain activities | 20 N.J.R. 1327(a) | | |
| 7:7E-3.46 | Hudson River waterfront development | 20 N.J.R. 1982(a) | | |
| 7:9-2 | Repeal (see 7:9A) | 20 N.J.R. 1790(a) | | |
| 7:9-4 | Surface water quality standards: public hearings | 20 N.J.R. 1865(a) | | |
| 7:9-4 | Surface water quality standards: extension of comment period | 20 N.J.R. 2427(a) | | |
| 7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G | Surface water quality standards | 20 N.J.R. 1597(a) | | |
| 7:9A | Individual subsurface sewage disposal systems | 20 N.J.R. 1790(a) | | |
| 7:9A | Individual subsurface sewage disposal systems: extension of comment period | 20 N.J.R. 2427(b) | | |
| 7:10-10.2, 11.2, 15 | Safe Drinking Water Program fees | 20 N.J.R. 142(a) | | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|--|---|-----------------------------------|-----------------|-----------------------------------|
| 7:10-13.2, 13.10, 13.13 | Industrial wastewater treatment systems: licensing of operators | 20 N.J.R. 1141(b) | | |
| 7:10-16 | Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water | 19 N.J.R. 2228(a) | | |
| 7:10-16.13, 16.14, 16.15 | Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics | 19 N.J.R. 2231(a) | | |
| 7:14A-3.1 | NJPDES permit requirements: discharges of dredged and fill material into freshwater wetlands and open waters | 20 N.J.R. 1328(a) | | |
| 7:14A-5.12 | Hazardous waste management: closure and post-closure financial assurance | 19 N.J.R. 2349(a) | | |
| 7:14A-5.12 | Closure of hazardous waste facilities | 20 N.J.R. 2650(a) | | |
| 7:14A-6.4 | Groundwater monitoring parameters for hazardous waste facilities | 19 N.J.R. 1863(b) | R.1988 d.529 | 20 N.J.R. 2755(a) |
| 7:15 | Statewide water quality management planning | 20 N.J.R. 2198(a) | | |
| 7:15-3.4 | Correction to proposed new rule | 20 N.J.R. 2478(a) | | |
| 7:20A | Water usage certifications for agricultural and horticultural purposes | 20 N.J.R. 2663(a) | | |
| 7:22-10 | Environmental assessment requirements for State-assisted wastewater treatment facilities | 20 N.J.R. 1983(a) | | |
| 7:25-1.5, 8 | Clam licenses | 20 N.J.R. 2666(a) | | |
| 7:25-5.7 | 1989 Wild turkey season | 20 N.J.R. 2217(a) | R.1988 d.530 | 20 N.J.R. 2757(a) |
| 7:25-5.24 | Bow and arrow provisions: correction to text | | | 20 N.J.R. 2936(a) |
| 7:25-6 | 1989-90 Fish Code | 20 N.J.R. 1627(a) | R.1988 d.531 | 20 N.J.R. 2758(a) |
| 7:25-16.1 | Upstream fishing license line: administrative correction | | | 20 N.J.R. 2936(b) |
| 7:26-1.1, 1.4, 2.7, 2.11, 2.12, 2.13, 2A.8, 2B.4, 2B.8, 3.1-3.5, 3.7, 4.1-4.5, 4.7-4.10, 16.2, 16.3, 16.13 | Solid waste facility and transporter registration fees | 20 N.J.R. 2668(a) | | |
| 7:26-1.1, 1.4, 4, 4A, 7.3, 7.5, 12.2, 13A.6, 16.2, 16.3 | Hazardous waste fee schedule | 20 N.J.R. 1995(a) | | |
| 7:26-1.1, 1.4, 4, 4A | Hazardous waste fee schedule: extension of comment period | 20 N.J.R. 2427(c) | | |
| 7:26-1.4, 1.7, 1.11, 1.12, 2.1, 2.4, 2.8, 2.13 | Permit exemptions for composting facilities | Emergency (expires 12-25-88) | R.1988 d.547 | 20 N.J.R. 2817(a) |
| 7:26-1.4, 7.4, 9.1, 12.1 | Hazardous waste research and testing facilities: pre-proposal | 20 N.J.R. 460(b) | | |
| 7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3 | Hazardous waste management: closure and post-closure financial assurance | 19 N.J.R. 2349(a) | | |
| 7:26-1.4, 9.8, 9.9, 9.10, 9.11, 9.13, App. A, 12.3, 12.5 | Closure of hazardous waste facilities | 20 N.J.R. 2650(a) | | |
| 7:26-1.7 | Exemption from registration: correction to text | | | 20 N.J.R. 2936(c) |
| 7:26-3A | Special medical waste | 20 N.J.R. 2321(a) | R.1988 d.523 | 20 N.J.R. 2760(a) |
| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Essex County | 20 N.J.R. 1048(a) | | |
| 7:26-7.3, 7.4, 7.5, 7.6 | Hazardous waste management | 20 N.J.R. 867(a) | | |
| 7:26-7.4, 9.1, 12.1 | Hazardous waste stored for reuse | 20 N.J.R. 1329(a) | | |
| 7:26-12.9 | Hazardous waste management: research, development and demonstration permits | 20 N.J.R. 462(a) | | |
| 7:26B-1.10 | Environmental Cleanup Responsibility Act: fee schedule | 20 N.J.R. 2000(a) | | |
| 7:27-16.1, 16.3 | Marine transfer of gasoline: vapor recovery program | 20 N.J.R. 866(a) | | |
| 7:27-23 | Volatile organic substances in consumer products | 20 N.J.R. 2002(a) | | |
| 7:27-25 | Control and prohibition of air pollution by vehicular fuels | 20 N.J.R. 1631(a) | | |
| 7:27-25 | Control and prohibition of air pollution by vehicular fuels: extension of comment period | 20 N.J.R. 2355(a) | | |
| 7:30 | Pesticide Control Code | 20 N.J.R. 579(a) | R.1988 d.538 | 20 N.J.R. 2865(a) |
| 7:31-2.12, 2.15, 5 | Confidentiality and trade secrets: correction and extension of comment period | 20 N.J.R. 554(a) | | |
| 7:36 | Green Acres Program | 19 N.J.R. 2358(b) | R.1988 d.549 | 20 N.J.R. 2891(a) |
| 7:36 | Green Acres Program: extension of comment period | 20 N.J.R. 552(b) | | |
| 7:36 | Green Acres Program: extension of comment period | 20 N.J.R. 869(a) | | |
| 7:45 | Delaware and Raritan Canal: State Park review zone | 20 N.J.R. 23(a) | | |
| 7:45 | Delaware and Raritan Canal review zone: extension of comment period | 20 N.J.R. 552(c) | | |

Most recent update to Title 7: TRANSMITTAL 1988-9 (supplement September 19, 1988)

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|---|--|-----------------------------------|-----------------|-----------------------------------|
| HEALTH—TITLE 8 | | | | |
| 8:31A-7.2, 7.4, 7.5, 7.11 | Reimbursement for new SHARE facilities | 20 N.J.R. 1633(a) | R.1988 d.544 | 20 N.J.R. 2897(a) |
| 8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42 | Hospital reimbursement: existing capital indebtedness | 19 N.J.R. 1145(a) | R.1988 d.24 | 20 N.J.R. 2572(a) |
| 8:31B-3.19 | Hospital reimbursement: burn care unit reporting | 20 N.J.R. 2541(a) | | |
| 8:31B-3.43 | General acute care hospitals: implementation of proposed schedule of rates | 20 N.J.R. 2542(a) | | |
| 8:31B-3.44 | Hospital reimbursement: DRG outliers | 20 N.J.R. 2542(b) | | |
| 8:31B-3.45 | Hospital reimbursement: submission of uniform bill-patient summaries | 20 N.J.R. 1143(a) | R.1988 d.497 | 20 N.J.R. 2574(a) |
| 8:31B-3, App. II | Hospital reimbursement: laundry and linen cost center | 20 N.J.R. 2543(a) | | |
| 8:31B-4.37 | Uncompensated Care Trust Fund: charity care eligibility and charges | 20 N.J.R. 2219(a) | | |
| 8:33J-1.3 | Nuclear Magnetic Resonance (NMR)/Magnetic Resonance Imaging (MRI) demonstration period | 20 N.J.R. 2220(a) | | |
| 8:34 | Licensing of nursing home administrators | 20 N.J.R. 2355(b) | | |
| 8:39-41.3, 42.2 | Long-term care facilities: excessive heat emergency plan | 20 N.J.R. 2543(b) | | |
| 8:43-4.11 | Residential health care facilities: hot water temperature | 20 N.J.R. 2221(a) | | |
| 8:43B-1.10 | Hospital facilities: confidentiality of patient information | 20 N.J.R. 2221(b) | | |
| 8:43B-18 | Hospital anesthesiology standards | 20 N.J.R. 2544(a) | | |
| 8:44 | Operation of clinical laboratories | 20 N.J.R. 2222(a) | | |
| 8:60-2.1 (12:120-2.1) | Asbestos removal defined | 20 N.J.R. 1049(a) | | |
| 8:60-2.1 (12:120-2.1) | Asbestos removal defined: extension of comment period | 20 N.J.R. 1507(b) | | |
| 8:65-1.3, 6.6, 8.13 | Handling of sodium pentobarbital in animal humane facilities | 20 N.J.R. 366(a) | R.1988 d.498 | 20 N.J.R. 2574(b) |
| 8:65-10.5 | Schedule V, Controlled Dangerous Substances | 20 N.J.R. 1506(a) | R.1988 d.496 | 20 N.J.R. 2575(a) |
| 8:70-1.5 | Interchangeable drug products: substitution of unlisted generics | 20 N.J.R. 2623(a) | | |
| 8:71 | Interchangeable drug products (see 20 N.J.R. 900(a), 1461(a), 1711(b)) | 20 N.J.R. 146(a) | R.1988 d.509 | 20 N.J.R. 2768(a) |
| 8:71 | Interchangeable drug products (see 20 N.J.R. 1710(b), 2376(d)) | 20 N.J.R. 871(a) | R.1988 d.510 | 20 N.J.R. 2768(b) |
| 8:71 | Interchangeable drug products | 20 N.J.R. 1766(a) | R.1988 d.511 | 20 N.J.R. 2769(a) |
| 8:71 | Interchangeable drug products | 20 N.J.R. 2356(a) | | |

Most recent update to Title 8: TRANSMITTAL 1988-8 (supplement September 19, 1988)

HIGHER EDUCATION—TITLE 9

| | | | | |
|--------------------------|--|-------------------|--------------|-------------------|
| 9:3 | Facilities planning for public colleges and universities | 20 N.J.R. 1768(a) | R.1988 d.506 | 20 N.J.R. 2771(a) |
| 9:4-1.5 | Chargeback for disability-specific programs at county colleges | 20 N.J.R. 1330(a) | R.1988 d.519 | 20 N.J.R. 2771(b) |
| 9:7-3.5 | Tuition Aid Grant Program: part-time students | 20 N.J.R. 2007(a) | R.1988 d.533 | 20 N.J.R. 2772(a) |
| 9:7-4.2, 4.3, 4.4 | Garden State Scholarships | 20 N.J.R. 1635(a) | R.1988 d.532 | 20 N.J.R. 2772(b) |
| 9:7-6.4 | Garden State Graduate Fellowships: approved programs | 20 N.J.R. 2624(a) | | |
| 9:7-8.1 | Vietnam Veterans Tuition Aid: eligibility | 20 N.J.R. 2625(a) | | |
| 9:9 | Student loan programs: policies and procedures | 20 N.J.R. 1636(a) | R.1988 d.478 | 20 N.J.R. 2452(b) |
| 9:11 | Educational Opportunity Fund Program | 20 N.J.R. 2506(a) | | |
| 9:9-11.2 | Guaranteed Student Loan Program: institution compliance | 20 N.J.R. 1641(a) | R.1988 d.477 | 20 N.J.R. 2456(a) |
| 9:11-1.1 | Educational Opportunity Fund grants: student eligibility | 20 N.J.R. 1768(b) | | |
| 9:11-1.6, 1.8, 1.9, 1.20 | EOF grants: eligibility procedure: refunds | 20 N.J.R. 1769(a) | | |
| 9:11-1.7 | EOF grants: award amounts | 20 N.J.R. 1770(a) | | |
| 9:12 | Educational Opportunity Fund Program | 20 N.J.R. 2506(a) | | |
| 9:12-2.6, 2.9 | EOF grants: eligibility procedure; refunds | 20 N.J.R. 1769(a) | | |

Most recent update to Title 9: TRANSMITTAL 1988-5 (supplement August 15, 1988)

HUMAN SERVICES—TITLE 10

| | | | | |
|---------------------|--|-------------------|--------------|-------------------|
| 10:1-2 | Public comment procedure and petitions for rulemaking | 20 N.J.R. 1050(a) | R.1988 d.504 | 20 N.J.R. 2773(a) |
| 10:3 | Contract administration | 20 N.J.R. 1771(a) | R.1988 d.513 | 20 N.J.R. 2898(a) |
| 10:4 | Communication with communities regarding development of group homes | 19 N.J.R. 1976(a) | Expired | |
| 10:4 | Communication with communities regarding development of group homes: extension of comment period | 20 N.J.R. 149(a) | | |
| 10:14-1.4, 4.1, 6.3 | Statewide Respite Care Program | 20 N.J.R. 1051(a) | R.1988 d.505 | 20 N.J.R. 2774(a) |
| 10:31 | Mental illness screening and screening outreach programs | 20 N.J.R. 2427(d) | | |
| 10:37-5.6, 5.16 | Repeal (see 10:31) | 20 N.J.R. 2427(d) | | |
| 10:39 | Group homes for mentally ill: operating standards | 20 N.J.R. 2547(a) | | |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|--------------------------|---|-----------------------------------|-----------------|-----------------------------------|
| 10:41-2 | Services to developmentally disabled: confidentiality of client records | 20 N.J.R. 2435(a) | | |
| 10:41-4 | Human rights committees for developmentally disabled persons | 20 N.J.R. 2552(a) | | |
| 10:44A | Licensed community residences for developmentally disabled | 20 N.J.R. 149(b) | R.1988 d.546 | 20 N.J.R. 2898(b) |
| 10:46 | Services for developmentally disabled: determination of eligibility | 20 N.J.R. 2008(a) | | |
| 10:48-2 | Control of viral hepatitis B among developmentally disabled | 20 N.J.R. 2437(a) | | |
| 10:48-3 | Lead toxicity control among developmentally disabled | 20 N.J.R. 2555(a) | | |
| 10:48-3 | Lead Toxicity Control Program: comment period | 20 N.J.R. 2688(a) | | |
| 10:49 | New Jersey Care—Special Medicaid Programs | | | 20 N.J.R. 2478(c) |
| 10:49-1.12 | Timely claim submittal—pharmaceutical services | 20 N.J.R. 1642(a) | R.1988 d.541 | 20 N.J.R. 2915(a) |
| 10:54-4 | Medicaid coverage for postpartum services | 20 N.J.R. 1052(a) | | |
| 10:54-4.5 | Medicaid reimbursement for physician's services | 20 N.J.R. 2558(a) | | |
| 10:56-3.7, 3.10 | Medicaid reimbursement for dental services | 20 N.J.R. 2558(a) | | |
| 10:58-1.2, 3 | Medicaid coverage for postpartum services | 20 N.J.R. 1052(a) | | |
| 10:61-3.2 | Medicaid reimbursement for independent laboratory services | 20 N.J.R. 2558(a) | | |
| 10:62-1, 2, 3 | Vision Care Manual | 20 N.J.R. 956(c) | | |
| 10:63-1.11, 1.19 | Use of personal needs allowance in long-term care facilities | 20 N.J.R. 1144(a) | | |
| 10:63-3.9-3.12 | Reimbursement of long-term care facilities: fixed property and movable equipment | 20 N.J.R. 2560(a) | | |
| 10:66 | Independent Clinic Services Manual | 20 N.J.R. 2562(a) | | |
| 10:66-1.6, 3 | Mental health services: partial care | 20 N.J.R. 1054(a) | R.1988 d.481 | 20 N.J.R. 2576(a) |
| 10:66-1.6, 3 | Medicaid coverage for postpartum services | 20 N.J.R. 1052(a) | | |
| 10:66-3.2 | Medicaid reimbursement for independent clinic services | 20 N.J.R. 2558(a) | | |
| 10:69B | Lifeline Credit/Tenants Lifeline Assistance programs | 20 N.J.R. 2440(a) | | |
| 10:72 | New Jersey Care—Special Medicaid Programs | | | 20 N.J.R. 2478(c) |
| 10:81-14 | Realizing Economic Achievement (REACH) program | 20 N.J.R. 2222(b) | R.1988 d.551 | 20 N.J.R. 2916(a) |
| 10:82-5.10 | Emergency Assistance in AFDC: temporary shelter allowances | 20 N.J.R. 1147(a) | | |
| 10:83-1 | Special Payments Handbook for SSI recipients | 20 N.J.R. 2563(a) | | |
| 10:85-3.3 | General Assistance: income-in-kind | 20 N.J.R. 2238(a) | | |
| 10:85-3.3 | Medically Needy eligibility | 20 N.J.R. 2688(b) | | |
| 10:87 | Food Stamp Program | 20 N.J.R. 2689(a) | | |
| 10:87-5.9 | Food Stamps eligibility: income exclusion and utility allowance payments | 19 N.J.R. 1986(a) | Expired | |
| 10:87-12.1-12.4, 12.7 | Food Stamp Program: income deductions, coupon allotment, maximum allowable income | Emergency (expires 11-29-88) | R.1988 d.512 | 20 N.J.R. 2592(a) |
| 10:89-2.1, 2.3, 3.4, 4.1 | Home energy assistance | 20 N.J.R. 1643(a) | R.1988 d.482 | 20 N.J.R. 2577(a) |
| 10:100-3, App. A | Special Payments Handbook for SSI recipients (Recodified to 10:83-1) | 20 N.J.R. 2563(a) | | |
| 10:120 | Youth and Family Services hearings | 20 N.J.R. 2742(a) | | |
| 10:126 | Registration of family day care providers | 20 N.J.R. 1508(a) | R.1988 d.507 | 20 N.J.R. 2774(b) |

Most recent update to Title 10: TRANSMITTAL 1988-9 (supplement September 19, 1988)

CORRECTIONS—TITLE 10A

| | | | | |
|--------------------------|--|-------------------|--------------|-------------------|
| 10A:1-11.3, 11.8 | Personal property of inmates | 20 N.J.R. 2746(a) | | |
| 10A:3-5.2 | Institutional search plan | 20 N.J.R. 2441(a) | | |
| 10A:4-11.9, 12 | Inmate discipline: appeal to Office of Administrative Law | 20 N.J.R. 496(b) | R.1988 d.543 | 20 N.J.R. 2928(a) |
| 10A:4-11.9, 12 | Inmate appeals to Office of Administrative Law: public hearing | 20 N.J.R. 880(b) | | |
| 10A:5-5.2 | Involuntary placement to protective custody: hearing procedure | 20 N.J.R. 2746(b) | | |
| 10A:9-4.6 | Open charges and reduced custody status | 20 N.J.R. 880(a) | | |
| 10A:9-11.4 | Classification process | 20 N.J.R. 1645(a) | R.1988 d.467 | 20 N.J.R. 2456(b) |
| 10A:16-4.1, 4.2, 4.8 | Psychological services at correctional facilities | 20 N.J.R. 2128(a) | R.1988 d.542 | 20 N.J.R. 2929(a) |
| 10A:16-4.4 | Inmate/therapist confidentiality | 20 N.J.R. 1772(a) | R.1988 d.476 | 20 N.J.R. 2457(a) |
| 10A:16-6.6 | Infants born to female inmates | 20 N.J.R. 2747(a) | | |
| 10A:16-11.4, 11.5, 11.14 | Special Medical Unit | 20 N.J.R. 1773(a) | R.1988 d.460 | 20 N.J.R. 2457(b) |
| 10A:32-6.5 | Temporary restriction of juveniles | 20 N.J.R. 2442(a) | | |
| 10A:34-2.8 | Municipal cell equipment | 20 N.J.R. 2442(b) | | |
| 10A:34-2.9 | Holding rooms: administrative correction | | | 20 N.J.R. 2594(e) |
| 10A:71-2.1, 3.4, 3.28 | Parole Board rules | 20 N.J.R. 2129(a) | | |
| 10A:71-3.21, 6.4 | State Parole Board: juvenile inmates; conditions of parole | 20 N.J.R. 2747(b) | | |

Most recent update to Title 10A: TRANSMITTAL 1988-7 (supplement September 19, 1988)

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|---|--|-----------------------------------|-----------------|-----------------------------------|
| INSURANCE—TITLE 11 | | | | |
| 11:1-5.1 | FAIR plan surcharge: repeal rule | 20 N.J.R. 2507(a) | | |
| 11:1-10 | Foreign and alien property and casualty insurers: admission requirements | 20 N.J.R. 2130(a) | | |
| 11:2-1, 19 | Repeal (see 11:17-3, 5.7) | 20 N.J.R. 1152(a) | | |
| 11:2-17.3, 17.10 | Replacement parts for damaged automobiles | 20 N.J.R. 1159(a) | R.1988 d.480 | 20 N.J.R. 2578(a) |
| 11:3-16 | Private passenger automobile rate filings for voluntary market | 20 N.J.R. 2135(a) | | |
| 11:3-24 | Automobile coverage: policy constants | 20 N.J.R. 2508(a) | | |
| 11:4-16.6, 16.8, 23.6, 23.8, Appendices | Medicare Supplement insurance coverage, benefits and premiums | 20 N.J.R. 2510(a) | | |
| 11:4-18.3, 18.5, 18.10 | Individual health policies: loss ratio standards | 19 N.J.R. 1620(b) | R.1988 d.473 | 20 N.J.R. 2457(c) |
| 11:4-28 | Group coordination of health benefits | 20 N.J.R. 1773(b) | R.1988 d.499 | 20 N.J.R. 2581(a) |
| 11:4-29 | Homeowners price comparison survey | 20 N.J.R. 2181(a) | | |
| 11:4-30 | Hospital preadmission certification programs (HPCPs) | 20 N.J.R. 880(c) | | |
| 11:5 | Real Estate Commission rules | 20 N.J.R. 2184(a) | | |
| 11:5-1.16 | Real estate listing agreements | 20 N.J.R. 2185(a) | | |
| 11:5-1.18 | Supervision of real estate offices | 20 N.J.R. 1160(a) | | |
| 11:5-1.23 | Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal | 19 N.J.R. 2238(a) | | |
| 11:5-1.23 | Real estate offers and broker's obligations | 20 N.J.R. 2186(a) | | |
| 11:5-1.34 | Discriminatory commission—split policies | 20 N.J.R. 1163(a) | | |
| 11:17-3, 5.7 | Insurance producer licensing: professional qualifications | 20 N.J.R. 1152(a) | | |
| 11:18 | Medical Malpractice Reinsurance Recovery Fund surcharge | 20 N.J.R. 2010(a) | | |
| 11:18 | Medical Malpractice Reinsurance Recovery Fund surcharge: correction | 20 N.J.R. 2186(b) | | |
| 11:18 | Medical Malpractice Reinsurance Recovery Fund surcharge: public hearing | 20 N.J.R. 2478(d) | | |

Most recent update to Title 11: TRANSMITTAL 1988-6 (supplement September 19, 1988)

| | | | | |
|-------------------------|--|-------------------|--------------|-------------------|
| LABOR—TITLE 12 | | | | |
| 12:3-1 | Debarment from contracting; conflicts of interest | 20 N.J.R. 2519(a) | | |
| 12:6-1 | Petitions for rulemaking | 20 N.J.R. 2012(a) | R.1988 d.494 | 20 N.J.R. 2586(a) |
| 12:15-1.3-1.7 | 1989 Unemployment Compensation weekly benefit, taxable wage base, local government contribution rate, base week, and alternate earnings test | 20 N.J.R. 2187(a) | R.1988 d.535 | 20 N.J.R. 2786(a) |
| 12:16-21 | Employer reporting of workplace and residential zip codes of employees | 20 N.J.R. 2625(a) | | |
| 12:17-1.6 | Unemployment insurance benefits: temporary separation from work | 20 N.J.R. 1333(a) | | |
| 12:17-2.4, 2.5 | Requalification for unemployment insurance benefits | 20 N.J.R. 1522(a) | | |
| 12:41-1 | Job Training Partnership Act: grievance procedures | 20 N.J.R. 2626(a) | | |
| 12:58-4.12 | Minor employees in meat industry | 20 N.J.R. 2357(a) | R.1988 d.548 | 20 N.J.R. 2929(b) |
| 12:60-8 | Public works and EDA projects: debarment from contracting | 20 N.J.R. 2520(a) | | |
| 12:100-4.2, 5.2, 6.2, 7 | Public employee safety and health: toxic and hazardous substances | 20 N.J.R. 2013(a) | | |
| 12:120-2.1 (8:60-2.1) | Asbestos removal defined | 20 N.J.R. 1049(a) | | |
| 12:120-2.1 (8:60-2.1) | Asbestos removal defined: extension of comment period | 20 N.J.R. 1507(b) | | |
| 12:175 | Ski lift safety | 20 N.J.R. 2521(a) | | |
| 12:235-1.6 | 1989 Workers' Compensation maximum weekly benefit | 20 N.J.R. 2188(a) | R.1988 d.536 | 20 N.J.R. 2786(b) |
| 12:235-3.11-3.23 | Workers' Compensation: conduct of compensation judges | 20 N.J.R. 2442(c) | | |
| 12:235-13 | Uninsured Employers' Fund and Second Injury Fund: surcharge collection | 20 N.J.R. 2522(a) | | |

Most recent update to Title 12: TRANSMITTAL 1988-7 (supplement September 19, 1988)

| | | | | |
|---|---|-------------------|--------------|-------------------|
| COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A | | | | |
| 12A:12-2.10 | Local Development Financing Fund program: information confidentiality | 20 N.J.R. 2524(a) | | |
| 12A:60 | Methodology for computing energy cost savings | 20 N.J.R. 2238(b) | R.1988 d.545 | 20 N.J.R. 2929(c) |
| 12A:80-1 | Urban Small Business Incubator Program | 20 N.J.R. 2524(b) | | |
| 12A:81-1 | Urban Development Program | 20 N.J.R. 2527(a) | | |
| 12A:82-1 | Neighborhood Development Corporation | 20 N.J.R. 2530(a) | | |
| 12A:121 | Urban enterprise zone boundaries | 20 N.J.R. 2358(a) | | |

Most recent update to Title 12A: TRANSMITTAL 1988-5 (supplement September 19, 1988)

| | | | | |
|---------------------------------------|---|-------------------|--------------|-------------------|
| LAW AND PUBLIC SAFETY—TITLE 13 | | | | |
| 13:3-3.4, 3.5, 3.6 | Amusement games: preproposal concerning player fees and value of prizes | 20 N.J.R. 44(a) | | |
| 13:3-5, 6 | Amusement games control: disciplinary proceedings and appeals | 20 N.J.R. 2032(a) | R.1988 d.500 | 20 N.J.R. 2787(a) |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|----------------------------------|--|-----------------------------------|-----------------|-----------------------------------|
| 13:4-3.4, 3.5, 8.2 | Discrimination complaints: confidentiality of parties' identities | 20 N.J.R. 499(a) | | |
| 13:20-39 | Special motor vehicle plates for nonprofit organizations | 20 N.J.R. 2033(a) | R.1988 d.537 | 20 N.J.R. 2788(a) |
| 13:21-11.13 | Temporary registration of motor vehicles | 20 N.J.R. 176(a) | | |
| 13:21-21 | Auto body repair facilities | 19 N.J.R. 1624(c) | R.1988 d.474 | 20 N.J.R. 2460(a) |
| 13:21-22 | Certificates of title for salvage motor vehicles | 20 N.J.R. 2675(a) | | |
| 13:26 | Transportation of bulk commodities | 20 N.J.R. 2035(a) | R.1988 d.502 | 20 N.J.R. 2790(a) |
| 13:27-5.8, 8.7, 8.8, 8.15 | Certification of landscape architects | 20 N.J.R. 2359(a) | | |
| 13:29-6 | Practice of accountancy: continuing education | 20 N.J.R. 2532(a) | | |
| 13:30-8.5 | Board of Dentistry: access to complaint history of licensees | 20 N.J.R. 2680(a) | | |
| 13:34 | Board of Marriage Counselor Examiners | 20 N.J.R. 2361(a) | R.1988 d.550 | 20 N.J.R. 2932(a) |
| 13:37-1.1, 1.2 | Accreditation of nursing programs | 20 N.J.R. 1645(b) | | |
| 13:38-1, 2.1, 2.3, 2.5, 2.7, 6.1 | Practice of optometry: advertising; access to optometrist; patient records | 20 N.J.R. 2361(b) | | |
| 13:38-2.11 | Practice of optometry: delegation of duties to ancillary personnel | 20 N.J.R. 2363(a) | | |
| 13:39 | Board of Pharmacy rules | 20 N.J.R. 1648(a) | | |
| 13:39A-3.2 | Unlawful practices and arrangements by physical therapists: preproposal | 20 N.J.R. 2242(a) | | |
| 13:39A-5.1 | Educational requirements for licensure as physical therapist | 20 N.J.R. 2243(a) | | |
| 13:40-10.1 | Professional engineers and land surveyors: contract to provide services | 20 N.J.R. 2243(b) | | |
| 13:42 | Board of Psychological Examiners | 20 N.J.R. 2244(a) | | |
| 13:43 | Shorthand reporters rules | 20 N.J.R. 1666(a) | R.1988 d.457 | 20 N.J.R. 2465(a) |
| 13:44-1.1 | Qualified graduate of veterinary medicine | 20 N.J.R. 2680(b) | | |
| 13:44D | Public movers and warehousemen | 20 N.J.R. 2364(a) | | |
| 13:44D | Public movers and warehousemen: public hearing and extension of comment period | 20 N.J.R. 2681(a) | | |
| 13:45A-11.1 | Advertising and sale of new merchandise | 20 N.J.R. 2247(a) | | |
| 13:45A-25 | Health club services | 20 N.J.R. 2036(a) | R.1988 d.520 | 20 N.J.R. 2790(b) |
| 13:45A-26 | Automotive dispute resolution: Lemon Law implementation | 20 N.J.R. 2681(b) | | |
| 13:45B-4, 5 | Temporary help service firms; booking agencies | 20 N.J.R. 2684(a) | | |
| 13:46-1A.3 | Athletic Control Board: weighing of boxers | 20 N.J.R. 380(a) | | |
| 13:49 | State Medical Examiner rules | 20 N.J.R. 2687(a) | | |
| 13:70-5 | Thoroughbred racing: registration of colors | 20 N.J.R. 2536(a) | | |
| 13:70-11.12 | Thoroughbred racing: abusive whipping by jockey | 20 N.J.R. 2038(a) | | |
| 13:70-19.22 | Thoroughbred racing: determining finishing place | 20 N.J.R. 2038(b) | | |
| 13:75-1.7 | Violent crimes compensation: prosecution of offender | 20 N.J.R. 736(b) | | |
| 13:80-1 | Hazard Waste Management Information Awards | 20 N.J.R. 507(b) | | |

Most recent update to Title 13: TRANSMITTAL 1988-8 (supplement August 15, 1988)

PUBLIC UTILITIES—TITLE 14

| | | | | |
|------------------------|---|-------------------|---------|--|
| 14:3-7.5 | Interest on customer deposits | 20 N.J.R. 737(a) | | |
| 14:3-7.13 | Collection activity on disputed charges; interest on overpayments | 20 N.J.R. 963(b) | | |
| 14:3-7.14 | Discontinuance of residential service to tenants | 20 N.J.R. 1668(a) | | |
| 14:3-9.6 | Solid waste: filing contracts for service (preproposal) | 20 N.J.R. 1669(a) | | |
| 14:3-10.3, 10.5, 10.15 | Solid waste: out-of-state solid waste collectors (preproposal) | 20 N.J.R. 1669(c) | | |
| 14:3-10.15 | Annual filing of customer lists by solid waste collectors; annual reports | 20 N.J.R. 2629(a) | | |
| 14:3-10.20 | Solid waste: itemized billing (preproposal) | 20 N.J.R. 1670(a) | | |
| 14:3-10.21 | Solid waste: violations, penalties (preproposal) | 20 N.J.R. 1670(b) | | |
| 14:3-10.22 | Solid waste: contracts (preproposal) | 20 N.J.R. 1669(b) | | |
| 14:9-4.3 | Solid waste: decals for vehicles (preproposal) | 20 N.J.R. 1671(a) | | |
| 14:9-4.4 | Solid waste: container identification (preproposal) | 20 N.J.R. 1671(b) | | |
| 14:11-6 | Interest on fuel clause overrecoveries | 19 N.J.R. 1967(c) | Expired | |
| 14:18-3 | Cable TV: pre-proposal for telephone service standards | 19 N.J.R. 2125(b) | | |
| 14:18-15.1 | Preproposal: Statewide cable TV access channel for educational and public affairs programming | 20 N.J.R. 1063(a) | | |

Most recent update to Title 14: TRANSMITTAL 1988-1 (supplement January 19, 1988)

ENERGY—TITLE 14A

| | | | | |
|--------|---|-------------------|--|--|
| 14A:14 | Certificate of need for electrical facilities | 20 N.J.R. 2188(b) | | |
|--------|---|-------------------|--|--|

Most recent update to Title 14A: TRANSMITTAL 1988-2 (supplement May 16, 1988)

STATE—TITLE 15

Most recent update to Title 15: TRANSMITTAL 1988-2 (supplement September 19, 1988)

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|-------------------|--|-----------------------------------|-----------------|-----------------------------------|
|-------------------|--|-----------------------------------|-----------------|-----------------------------------|

PUBLIC ADVOCATE—TITLE 15A

Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)

TRANSPORTATION—TITLE 16

| | | | | |
|-----------------------------------|---|-------------------|--------------|-------------------|
| 16:16, 16:17 | Municipal operations and construction: expiration of rules | | | 20 N.J.R. 2596(c) |
| 16:28-1.6, 1.14, 1.44 | Speed limit zones along U.S. 40 in Salem County, Route 33 in Monmouth County, and Route 27 in Middlesex County | 20 N.J.R. 2630(a) | | |
| 16:28-1.13 | Speed limit zone along Route 20 in Paterson | 20 N.J.R. 2631(a) | | |
| 16:28-1.35, 1.49, 1.111 | Speed rates along Route 35 in Monmouth County, and Routes 87 and 187 in Atlantic County | 20 N.J.R. 2039(a) | R.1988 d.484 | 20 N.J.R. 2586(b) |
| 16:28-1.41 | Speed limits along U.S. 9 in Atlantic County and Ocean County | 20 N.J.R. 2190(a) | R.1988 d.540 | 20 N.J.R. 2932(a) |
| 16:28-1.44 | Speed rates along Route 27 in Middlesex and Somerset counties | 20 N.J.R. 2040(a) | R.1988 d.488 | 20 N.J.R. 2587(a) |
| 16:28-1.79, 1.81 | Speed limit zones along Route 49 in Salem County and Route 94 in Sussex County | 20 N.J.R. 2632(a) | | |
| 16:28-1.130 | Speed limit zones along Route 66 in Monmouth County | 20 N.J.R. 2633(a) | | |
| 16:28A-1.6 | Parking for handicapped along Route 7 in Belleville | 20 N.J.R. 1778(a) | R.1988 d.463 | 20 N.J.R. 2465(b) |
| 16:28A-1.7 | Bus stop zone along U.S. 9 in Marlboro | 20 N.J.R. 1533(a) | R.1988 d.465 | 20 N.J.R. 2466(a) |
| 16:28A-1.7 | Stopping or standing along U.S. 9 in Somers Point | 20 N.J.R. 2040(b) | R.1988 d.489 | 20 N.J.R. 2587(b) |
| 16:28A-1.7, 1.22, 1.32, 1.34 | Parking restrictions along U.S. 9 in Tuckerton, Route 31 in Hopewell, U.S. 46 in Mountain Lakes, and Route 49 in Pennsville | 20 N.J.R. 2633(b) | | |
| 16:28A-1.7, 1.38 | Parking restrictions along U.S. 9 in Howell and Route 71 in Asbury Park and Manasquan | 20 N.J.R. 2189(a) | R.1988 d.539 | 20 N.J.R. 2933(a) |
| 16:28A-1.9 | Bus stop zone along Route 17 in Ho-Ho-Kus | 20 N.J.R. 2374(a) | R.1988 d.552 | 20 N.J.R. 2933(b) |
| 16:28A-1.18, 1.21 | Bus stop zones along Route 27 in Linden and U.S. 30 in Oaklyn | 20 N.J.R. 2041(a) | R.1988 d.486 | 20 N.J.R. 2587(c) |
| 16:28A-1.18, 1.32 | Parking restrictions along Route 27 in Linden and U.S. 46 in Teterboro | 20 N.J.R. 2040(c) | R.1988 d.485 | 20 N.J.R. 2588(a) |
| 16:28A-1.19, 1.29 | Parking restrictions along Route 28 in Garwood and Route 42 in Washington Township | 20 N.J.R. 2042(a) | R.1988 d.487 | 20 N.J.R. 2589(a) |
| 16:28A-1.33 | No stopping or standing zone along Route 47 in Franklin Township | 20 N.J.R. 2634(a) | | |
| 16:28A-1.46 | No stopping or standing zones along U.S. 130 in Pennsville | 20 N.J.R. 1533(b) | R.1988 d.464 | 20 N.J.R. 2466(b) |
| 16:28A-1.46, 1.57 | Bus stops along U.S. 130 and U.S. 206 in Bordentown | 20 N.J.R. 2043(a) | R.1988 d.492 | 20 N.J.R. 2589(b) |
| 16:30-3.1 | Bus lanes on Route 35 in Brick and Mantoloking | 20 N.J.R. 2044(a) | R.1988 d.490 | 20 N.J.R. 2590(a) |
| 16:30-3.6 | Exclusive bus and HOV lanes along Routes 3 and 495 into Manhattan | 20 N.J.R. 737(b) | | |
| 16:30-4.2 | Bicycle restrictions along Route 88 in Point Pleasant | 19 N.J.R. 2254(a) | | |
| 16:30-10.9 | Middblock crosswalk along U.S. 9 in Galloway Township | 20 N.J.R. 2635(a) | | |
| 16:31-1.25 | Turning restrictions along Route 10 in West Orange | 20 N.J.R. 1779(a) | R.1988 d.462 | 20 N.J.R. 2466(c) |
| 16:32-3.5, 3.6, App. A | 102-inch truck standard network; Route 47 access | 20 N.J.R. 2536(b) | | |
| 16:51-1.3, 1.4, 1.6, 3.1, 4.3-4.7 | Practice and procedure before Office of Regulatory Affairs concerning autobus operations, companies, and services | 20 N.J.R. 2635(b) | | |
| 16:53D | Regular route autobus carriers: zone of rate freedom | 20 N.J.R. 2374(b) | | |
| 16:54-1.4 | Licensing of aeronautical facilities | 20 N.J.R. 2638(a) | | |
| 16:62-5.1, 9.1 | Land uses within airport hazard areas: preproposal | 20 N.J.R. 1534(a) | | |
| 16:76 | NJ TRANSIT: private carrier capital improvement | 20 N.J.R. 2638(b) | | |
| 16:80 | NJ TRANSIT: Section 16(b)(2) Capital Assistance Program | 20 N.J.R. 2044(b) | R.1988 d.515 | 20 N.J.R. 2791(a) |
| 16:81 | NJ TRANSIT: Small Urban and Rural Area Public Transportation Program | 20 N.J.R. 2046(a) | R.1988 d.514 | 20 N.J.R. 2793(a) |

Most recent update to Title 16: TRANSMITTAL 1988-9 (supplement September 19, 1988)

TREASURY-GENERAL—TITLE 17

| | | | | |
|-----------|---|-------------------|--------------|-------------------|
| 17:1-1.18 | Public retirement systems: disbursement checks | 20 N.J.R. 2639(a) | | |
| 17:3-7.1 | Interfund transfers: correction to text | | | 20 N.J.R. 2482(a) |
| 17:6 | Consolidated Police and Firemen's Pension Fund | 20 N.J.R. 2537(a) | | |
| 17:7 | Prison Officers' Pension Fund | 20 N.J.R. 2375(a) | | |
| 17:8-3.3 | Supplemental Annuity Collective Trust: lump sum distributions | 20 N.J.R. 2192(a) | | |
| 17:9 | State Health Benefits Program | 20 N.J.R. 1536(a) | R.1988 d.461 | 20 N.J.R. 2466(d) |
| 17:9-2.12 | State Health Benefits Program: local coverage | 20 N.J.R. 1536(b) | R.1988 d.469 | 20 N.J.R. 2466(e) |
| 17:9-2.17 | State Health Benefits Program: board of education retirees | 20 N.J.R. 1537(a) | R.1988 d.471 | 20 N.J.R. 2467(a) |
| 17:9-4.2 | State Health Benefits Program: full-time employee defined | 20 N.J.R. 741(a) | R.1988 d.442 | 20 N.J.R. 2590(b) |

| N.J.A.C. CITATION | | PROPOSAL NOTICE (N.J.R. CITATION) | DOCUMENT NUMBER | ADOPTION NOTICE (N.J.R. CITATION) |
|------------------------------|--|-----------------------------------|-----------------|-----------------------------------|
| 17:9-6.1 | State Health Benefits Program: continuation of coverage into retirement | 20 N.J.R. 1182(a) | R.1988 d.470 | 20 N.J.R. 2467(b) |
| 17:16-41 | Investment in loan participation notes | 20 N.J.R. 1779(b) | R.1988 d.466 | 20 N.J.R. 2467(c) |
| 17:19-10.4, 10.5, 10.7, 10.9 | Architect/engineer selection procedures | 20 N.J.R. 180(a) | | |
| 17:20 | Lottery Commission rules | 20 N.J.R. 2048(a) | R.1988 d.501 | 20 N.J.R. 2795(a) |
| 17:25 | Collection of delinquent educational loans from local government employees | 20 N.J.R. 2537(b) | | |
| 17:27 | Affirmative action and public contracts | 20 N.J.R. 1780(a) | R.1988 d.522 | 20 N.J.R. 2795(b) |
| 17:27 | Affirmative action and public contracts: chapter expiration date | | | 20 N.J.R. 2934(a) |

Most recent update to Title 17: TRANSMITTAL 1988-8 (supplement September 19, 1988)

TREASURY-TAXATION—TITLE 18

| | | | | |
|--|---|-------------------|--|--|
| 18:6-7.13 | Wholesaling of prepackaged cigarettes | 20 N.J.R. 2192(b) | | |
| 18:12-10 | Real property defined | 20 N.J.R. 1787(a) | | |
| 18:26-2.5, 2.7, 5.9, 5.17, 5.19, 6.1, 6.2, 6.3, 7.10, 8.1, 8.6, 8.7, 8.12, 9.4, 9.10, 12.2, App. A | Transfer inheritance tax rules | 20 N.J.R. 2193(a) | | |
| 18:35-1.24 | Gross income tax: investment fund distributions | 20 N.J.R. 742(b) | | |

Most recent update to Title 18: TRANSMITTAL 1988-4 (supplement September 19, 1988)

TITLE 19—OTHER AGENCIES

| | | | | |
|---|--|-------------------|--------------|-------------------|
| 19:4-5.3A, 6.28 | Planned development center specially planned areas (PDC-1) | 20 N.J.R. 2247(b) | | |
| 19:4-6.28 | Rezoning in East Rutherford | 19 N.J.R. 1975(a) | Expired | |
| 19:9 | Turnpike Authority rules | 20 N.J.R. 1338(a) | R.1988 d.483 | 20 N.J.R. 2591(a) |
| 19:9 | Turnpike Authority rules: extension of comment period | 20 N.J.R. 2049(a) | | |
| 19:9 Exh. A | Prequalification of bidders for widening contracts | 19 N.J.R. 2129(b) | | |
| 19:25-1.7, 4.6, 6.1, 8.1, 9.8, 10.6, 10.8, 11.6, 11.8, 12.4, 15.14, 16.11 | Reporting and record keeping | 20 N.J.R. 2640(a) | | |
| 19:25-15.4, 15.5, 15.14, 15.16, 15.17, 15.20, 15.26, 15.46 | Public financing of general election for governor | 20 N.J.R. 2642(a) | | |

Most recent update to Title 19: TRANSMITTAL 1988-4 (supplement September 19, 1988)

TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY

| | | | | |
|--|--|-------------------|--------------|-------------------|
| 19:40-1.2 | Junket activities and representatives | 20 N.J.R. 2644(a) | | |
| 19:40-2 | Access to information maintained by casino licensees | 20 N.J.R. 1068(a) | | |
| 19:40-2 | Access to information maintained by casino licensees: public hearing | 20 N.J.R. 2049(b) | | |
| 19:41-9.4, 9.6, 9.7, 9.11, 9.11A, 9.12, 9.18, 9.20 | Billing rates for Commission and Gaming Enforcement services; special assessment | 20 N.J.R. 2539(a) | | |
| 19:41-9.16 | Deletion of endorsement from employee license | 20 N.J.R. 2647(a) | | |
| 19:42-4.2-4.7 | Exclusion of persons hearings | 20 N.J.R. 2250(a) | R.1988 d.526 | 20 N.J.R. 2801(a) |
| 19:44 | Gaming schools: licensure and standards | 20 N.J.R. 2050(a) | R.1988 d.508 | 20 N.J.R. 2802(a) |
| 19:45-1.9 | Junket activities and representatives | 20 N.J.R. 2644(a) | | |
| 19:45-1.20 | Marking baccarat vigorish | 20 N.J.R. 2647(b) | | |
| 19:45-1.25 | Verification of cash equivalents | 20 N.J.R. 1789(a) | | |
| 19:45-1.33, 1.42, 1.43 | Count times for cash and coin | 19 N.J.R. 2265(a) | | |
| 19:45-1.36, 1.45 | Internal casino controls | 20 N.J.R. 1069(a) | R.1988 d.468 | 20 N.J.R. 2468(a) |
| 19:45-1.40, 1.41 | Jackpot payout and hopper fill forms | 20 N.J.R. 2050(b) | | |
| 19:45-1.40B | Inspection of slot machine jackpots | 20 N.J.R. 2648(a) | | |
| 19:46-1.7, 1.9 | Roulette wheels | 20 N.J.R. 2445(a) | | |
| 19:46-1.19 | Dealing shoes | 20 N.J.R. 1069(a) | R.1988 d.468 | 20 N.J.R. 2468(a) |
| 19:46-1.19 | Dealing shoes: public hearing | 20 N.J.R. 1680(a) | | |
| 19:46-1.29 | Approval of slot machine modifications | 20 N.J.R. 52(a) | R.1988 d.495 | 20 N.J.R. 2591(b) |
| 19:47-3.3 | Marking baccarat vigorish | 20 N.J.R. 2647(b) | | |
| 19:48 | Exclusion of persons | 20 N.J.R. 2252(a) | R.1988 d.525 | 20 N.J.R. 2802(b) |
| 19:49-1.1, 1.2, 1.3, 2.1, 2.4, 3.1, 3.2, 3.5, 3.6 | Junket activities and representatives | 20 N.J.R. 2644(a) | | |
| 19:49-3.1, 3.2, 3.3 | Junket reporting requirements | 20 N.J.R. 2648(b) | | |
| 19:52-1.3 | Musical entertainment | 20 N.J.R. 2649(a) | | |
| 19:53-2 | Set-aside goals for minority and women's business enterprises | 20 N.J.R. 2446(a) | | |

Most recent update to Title 19K: TRANSMITTAL 1988-7 (supplement September 19, 1988)

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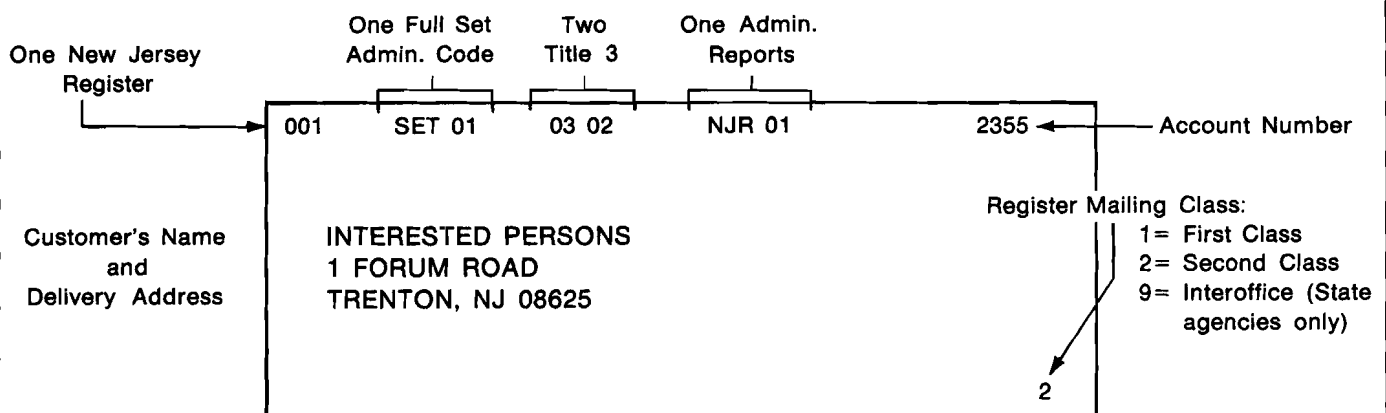
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