

NEW JERSEY



REGISTER

**IN THIS ISSUE—
“INDEX OF PROPOSED RULES”**

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The New Jersey Register supplements the New Jersey Administrative Code. To complete your research of the latest State agency rule changes, see the Rule Adoptions in This Issue, the Rule Adoptions in the September 6 issue, and the Index of Adopted Rules beginning on Page 1508 of that issue.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ADMINISTRATION

Organization of Department

Proposed Readoption with Amendments: N.J.A.C. 2:1-2

Authorized By: Arthur R. Brown, Jr., Secretary,
Department of Agriculture.

Authority: N.J.S.A. 52:14-3(1).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Samuel Garrison, Director
Division of Administration
New Jersey Department of Agriculture
CN 330

☉ Trenton, NJ 08625

The Department of Agriculture thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on November 21, 1983. The readoption of these rules becomes effective upon acceptance by the Office of Administrative Law of a notice of their readoption. The amendments to the readoption become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1983-507.

The agency proposal follows:

Summary

The subchapter proposed for readoption was internally reviewed by the Department of Agriculture in July of 1983 in compliance

with Executive Order No. 66(1978) and was found to be adequate, reasonable and necessary in informing State and Federal agencies and the general public about the organization and function of the Department of Agriculture. This subchapter details Department responsibilities, functions and organization.

The subchapter proposed for readoption contains Department tables of organization and lists the functions of each Department unit. The Department headed by the State Board of Agriculture has seven separate units. The office of the Secretary is the executive planning and operation unit for the entire Department. The Division of Administration provides administrative support services to all units of the Department. The Division of Animal Health administers programs relating to the prevention, control and eradication of animal diseases. The Division of Markets is devoted to the promotion and marketing of New Jersey Farm Products. This division also administers the Federal Food Distribution program. The Division of Plant Industry is responsible for programs related to entomology, pathology, seed certification, and seed analysis and control. The Division of Regulatory Services protects the general public through the registration and testing of animal feeds, fertilizers and agricultural liming materials, in addition to enforcing the New Jersey Egg Marketing Law and other programs. The Division of Rural Resources administers programs which are designed to maintain, conserve and develop the agricultural and natural resources of the State. The subchapter proposed for readoption also describes the role of the State Agricultural Convention, which recommends farmers to the governor for appointment to the State Board of Agriculture. Amendments to the subchapter proposed are updates as to the status of the Department. N.J.A.C. 2:1-23(a)2 has been amended to state the correct number of delegates and organizations at the State Agricultural Convention. The Division of Information has been abolished and is included in the Office of the Secretary. Each division has reviewed their respective descriptions and updated them as needed.

Social Impact

Readoption of the proposed subchapter will continue to provide information for the general public and Federal and State agencies as to the responsibilities, functions and organization of the Department goal of making the Department's services available to a wide segment of the public.

Economic Impact

Since the subchapter simply sets out the organization of the De-

NEW JERSEY REGISTER

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partment, there will be no economic impact as a result of the readoption of the subchapter.

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

SUBCHAPTER 2. ORGANIZATION

2:1-2.1 Department responsibilities

The State Department of Agriculture is responsible for regulatory, marketing, service and promotion programs of interest of the farmers and citizens of this State as prescribed in N.J.S.A. 4:1-1 et seq.

2:1-2.2 Tables of organization

Tables of organization showing the general course and method of operations within the Department and the major sections within each Division are attached at the end of this chapter.

2:1-2.3 Functions of departmental units

(a) Functions of the various units within the State Department of Agriculture are as follows:

1. State Board of Agriculture members are elected by the State Agricultural Convention and recommended to the Governor for appointment with the advice and consent of the Senate. Through the Secretary of Agriculture, the Board assigns and supervises all departmental personnel and functions. To carry out the intent of the statutes governing the Department, the Board has the authority to establish rules and regulations for its own proceedings and for the government and control of the Department, the officers and employees wherein in the performance of their duties.

i. Be it resolved by the State Board of Agriculture that all orders, rules, and regulations of the New Jersey Department of Agriculture, N.J.A.C. Title 2, Subtitles A through H, Chapters 1 through 121, heretofore filed with the Secretary of State and promulgated by the State Board of Agriculture pursuant to authority delegated in N.J.S.A. 4:1-11 and dated June 24, 1969 are hereby superseded.

ii. The following orders, rules and regulations of the New Jersey Department of Agriculture as printed in N.J.A.C. Title 2, Subtitles A through H, Chapters 1 through 127 and all other orders, rules and regulations that have been promulgated by the State Board of Agriculture since March 31, 1972, pursuant to the authorizing statutes are hereby adopted and will now constitute all orders, rules and regulations of the State Department of Agriculture, and are to become effective upon filing of this resolution with the Secretary of State.

2. State Agricultural Convention as described in N.J.S.A. 4:1-5 is composed of [97] **93** delegates representing [76] **73** organizations composed of county boards of agriculture, Pomona granges, farm breed and commodity organizations. The delegates shall meet annually for the purpose of electing two farmers to be recommended to the Governor for appointment to the State Board of Agriculture, with the advice and consent of the Senate, and to review the problems associated with the agricultural industry of the State in whatever manner they see fit. Through resolutions or other means, the Agricultural Convention recommends to the Department of Agriculture and to other agencies of the State and nation, programs to be followed for the welfare of the Agricultural interests of the State.

3. Office of the Secretary is the executive planning and operation unit for the entire Department responsible for all policies, programs, regulations, public hearings, administrative procedures and provides services to the State Board of Agriculture and eight Divisions. [Eight statutory advisory councils or committees, consisting of 82 members, advise the Office of the Secretary regarding Departmental programs.] All matters coming to the Department that are department-wide in nature are handled by this office. **Information activities are handled by an employee of the Office of Public Communications, Department of the Treasury, assigned to the Office of the Secretary by the Press Secretary.**

4. Division of Animal Health provides personnel [and general service support to all Divisions and the Office of the Secretary.], **budget and accounting, program improvement, training, and other administrative support services to all units of the Department.**

5. Division of Animal Health administers programs relating to the prevention [and control of animal diseases, poultry standardization and supporting laboratory services.], **control and eradication of livestock and poultry diseases and provides supporting laboratory diagnostic services.**

[6. Division of Information. Information activities are handled by an employee of the Office of Communications, Department of Treasury, assigned to the Office of the Secretary by the Director of Public Information as per Executive Order No. 30, January 14, 1976 and Executive Order No. 38, April 29, 1976.]

[7.]**6.** Division of Markets serves farmers and all citizens of the State in four main areas which include, but are not limited to, market development[,] services, cooperatives, and market news, equine programs, and Federal Food Distribution to schools and institutions. Considerable emphasis is placed on the promotion of New Jersey farm products through [four] **seven** commodity promotion councils and one commodity promotion commission **and the Sire Stakes Board**, and also fairs and shows.

[8]**7.** Division of Plant Industry is responsible for programs related to entomology, pathology, seed certification, seed analysis and control, and supporting laboratory services. The Division's major regulatory responsibilities are designed to:

i. Protect New Jersey's horticultural, natural and imported resources in agriculture, forests and residential properties from invasion of destructive insects and diseases; and

ii. Regulate the production of seed for genetic quality factors, as well as freedom from disease and insects; and

iii. To regulate the sale and distribution of seeds by truthful labeling which gives basic aid to agriculture and homeowners through ethical marketing.

[9]**8.** Division of Regulatory Services is designed to protect the consuming public, both farm and non-farm, through the registration and routine testing of animal feeds, fertilizers, and agricultural liming materials. Supporting laboratory facilities are maintained at all times so that accurate determinations can be made to insure that the public is receiving proper value for all products registered with and analyzed by the Division. The Division also is charged with the responsibility for enforcing the regulations pertaining to the New Jersey Egg Marketing Law, the State Seal of Quality, Use of Outline of the State, the Potato Labeling Law, and the Controlled Atmosphere Storage Law. In addition, inspection and grading are performed that relate to the cooperative agreements in effect with the United States Department of Agriculture covering eggs and poultry and fruits and vegetables.

i. The Division also administers the New Jersey Licensing and Bonding Law to insure that producers are justly compensated for their sales of perishable agricultural commodities to properly licensed and bonded Dealers, Commission Merchants, and Agents.

[10]**9.** Division of Dairy Industry is responsible for programs related to the dairy industry. Its major responsibilities are:

i. To retain a viable and competitive milk processing and distribution industry for consumer benefit through the enforcement of the Milk Control Act;

ii. To assure a fair return to dairy farmers through the enforcement of the Milk Dealer Licensing and Bonding Act and the Butterfat Testing Law;

iii. To assure that milk dealers selling to New Jersey schools purchase fresh New Jersey produced milk in accordance with the school Milk Purchase Act; and

iv. To provide services to the industry and the public including statistical information concerning milk production and the consumption of milk and dairy products.

[11]**10.** Division of Rural Resources is [organized to maintain, conserve, and develop New Jersey's agricultural industry and

improve rural areas; to control soil erosion and sedimentation and to conserve, protect and develop soil, water and related renewable natural resources in rural and urban areas of the State for improved agricultural productivity, environmental improvement, and economic growth.] **given the responsibility to maintain, conserve and develop the agricultural and natural resources of the State. Through the State Soil Conservation Committee, it provides for the control of soil erosion and sedimentation from all land disturbance activities; the control of non-point sources of water pollution; the prevention of flood and storm water damages; and the conservation, protection and development of soil, water and related renewable natural resources throughout the State. The Agriculture Retention, right to Farm and the Farmland Preservation Bond statutes are administered through the division. Agricultural statistics are collected, analyzed and published in cooperation with the Federal Crop Reporting Service.**

2:1-2.4 Information available to public

The public may obtain complete information or make submissions or requests concerning any departmental programs by contacting the Office of the Secretary, Department of Agriculture, Trenton, N.J. 08625.

OFFICE OF ADMINISTRATIVE LAW NOTE: A Department of Agriculture organizational chart was submitted as a part of this proposed re-adoption. This chart may be examined at the Office of Administrative Law, Administrative Filings, 88 East State Street, Trenton, NJ.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations Delineated Floodways for Green Brook and Bound Brook within Townships of Bridgewater and Piscataway, City of Plainfield and the Boroughs of Bound Brook, Dunellen, Green Brook and Middlesex within Somerset, Middlesex and Union Counties

Proposed Amendment: N.J.A.C. 7:13-1.11(d)

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et seq.

DEP Docket No. 053-83-08.

A **public hearing** concerning this proposal will be held on October 5, 1983 at 1:00 P.M. at:

Middlesex Borough Municipal Building
1200 Mountain Avenue
Middlesex, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clark Gilman
Bureau of Flood Plain Management
Division of Water Resources
CN 029
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-512.

The agency proposal follows:

Summary

The proposed amendment provides for the application of rules concerning the development and use of land in designated floodways to portions of the Green Brook and Bound Brook. Rules of delineated flood hazard areas are designed to preserve flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

Social Impact

The proposed delineation applies added flood protection to the Townships of Bridgewater and Piscataway, and City of Plainfield and the Boroughs of Bound Brook, Dunellen, Green Brook and Middlesex within Somerset, Middlesex and Union counties within the Raritan River Basin.

Economic Impact

The proposed flood delineation will have a relatively positive economic impact by allowing development in a previously designated floodway while still preserving the flood carrying capacity. This proposed delineation would more accurately define the flood hazard area to coincide with the proposed development after completion of the development project. The public safety, health, and general welfare shall continue to be adequately protected if the amended flood delineation should be adopted by the Department.

Full text of the proposal follows (additions indicated in boldface **thus**). See the Index of Adopted Rules for previous amendments to N.J.A.C. 7:13-1.11(d).

7:13-1.11 Delineation floodways

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

(d) A list of delineated streams in the Passaic-Hackensack Basin and a list of delineated streams in the Passaic-Hackensack Basin and a list of delineated streams in the Raritan Basin follow:

1.-41. (No change.)

42. ...**The floodway and flood hazard area of Green Brook from the Reading Rail Road at its mouth upstream to Rock Avenue, and Bound Brook from its mouth upstream to approximately 450 feet downstream of the Lehigh Valley Railroad bridge.**

43.-50. (No change.)

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

EDITOR'S NOTE: Certain delineations for the Mullica River were erroneously codified as subsection (h). Since these delineations are properly a part of the Atlantic Basin, they have been recodified

under subsection (b). Subsections (h) and (i) are presently undesignated.

OFFICE OF ADMINISTRATIVE LAW: A map delineating the flood hazard area described in this notice was submitted as part of the Department's notice of proposed rule. This map can be inspected at:

Bureau of Flood Plain Management
 Division of Water Resources
 1911 Princeton Avenue
 CN 029
 Trenton, NJ 08625; or

Office of Administrative Law
 Administrative Filings
 88 East State Street
 CN 301
 Trenton, NJ 08625

(a)

DIVISION OF WATER RESOURCES

**Flood Hazard Area Delineations
 Delineated Floodways for Various Tributaries
 to Delaware Bay in Cumberland, Gloucester
 and Salem Counties**

Proposed Amendment: N.J.A.C. 7:13-1.11(c)

Authorized By: Robert E. Hughey, Commissioner,
 Department of Environmental Protection.
 Authority: N.J.S.A. 13:1D-1 et seq. and 58:16A-50 et
 seq.
 DEP Docket No. 052-83-08.

A **public hearing** concerning this proposal will be held on
 October 6, 1983 at 1:00 P.M. at:

Board of Freeholders Building
 Freeholders Meeting Room
 92 Market Street
 Salem, NJ

Interested persons may submit in writing, data, views or
 arguments relevant to the proposal on or before October 19, 1983.
 These submissions, and any inquiries about submissions and
 responses, should be addressed to:

Clark Gilman
 Bureau of Flood Plain Management
 Division of Water Resources
 CN 029
 Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt
 this proposal without further notice (see: N.J.A.C. 1:30-3.5). The
 adoption becomes effective upon publication in the Register of a
 notice of adoption.

This proposal is known as PRN 1983-513.

The agency proposal follows:

Summary

The proposed amendment provides for the application of rules
 concerning the development and use of land in designated
 floodways to portions of the Cohansey River, Raceway Canal, Mill
 Creek/Indian Fields Branch, Jackson Run, Salem River, Fenwick

Creek, Keasbeys Creek, Alloways Creek, Raccoon Creek,
 Oldmans Creek and Maurice River, and some of its tributaries.
 Rules of delineated flood hazard areas are designed to preserve
 flood carrying capacity and to minimize the threat to the public
 safety, health and general welfare. No other delineated flood hazard
 areas have previously been adopted by the Department of
 Environmental Protection for this area.

Social Impact

The proposed delineation applies added flood protection to the
 Borough of Swedesboro, the cities of Bridgeton and Salem, and the
 townships of Commercial, Maurice River, Oldmans, Elsinboro,
 Logan, Lower Alloways Creek, Pennsville, Woolwich,
 Mannington and Hopewell within the counties of Cape May,
 Cumberland, Gloucester and Salem within the Delaware River
 Basin.

Economic Impact

The proposed amendment will have only a minor economic
 impact. The delineation would more clearly define the flood hazard
 area, thus resulting in less requirements for flood insurance, and
 minor reductions in property value could result by restricting future
 development in the floodway and requiring elevated construction
 designs in flood fringe areas. However, minor property value
 diminution would be offset by the savings to governmental bodies
 and private homeowners due to little or no future rehabilitation and
 rescue expenditures from flood damage in the delineated area.

Full text of the proposal follows (additions indicated in boldface
 thus). See the Index of Adopted Rules for previous amendments
 to N.J.A.C. 7:13-1.11(c).

7:13-1.11 Delineated floodways

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

(c) A list of delineated streams in the Delaware Basin follows:

1.-29. (No change.)

**30. Tributaries to Delaware Bay in Cumberland, Salem and
 Gloucester counties:**

**The floodway and flood hazard area of the Cohansey River
 from the downstream corporate limits upstream to Sunset Lake
 Dam, the Raceway Canal for its entire length in Bridgeton,
 from its spillway confluence with the Cohansey River to Sunset
 Lake Dam, Mill Creek/Indian Fields Branch from its
 confluence with Cohansey River upstream through East Lake
 to the upstream corporate limit in Bridgeton, Jackson Run
 from its confluence with Cohansey River upstream through
 East Lake to the upstream corporate limit in Bridgeton,
 Jackson Run from its confluence with East Lake upstream
 7,600 feet to the upstream corporate limit in Bridgeton; Salem
 River from its confluence with the Delaware River upstream to
 the junction with Fenwick Creek (approximately 350 feet
 upstream of Route 46), and Fenwick Creek from its confluence
 with Salem River upstream to its junction with Keasbeys Creek
 in Salem, and Keasbeys Creek from its confluence with
 Fenwick Creek to 75 feet upstream of Grant Street in Salem;
 Alloways Creek from its confluence with the Delaware River
 upstream to Salem-Hancocks Bridge Road; Raccoon Creek
 from its confluence with the Delaware River to 100 feet
 upstream of Kings Highway in Woolwich, and Oldmans Creek
 from its confluence with the Delaware River to 800 feet
 upstream of Interstate highway Route 295 (northbound) in
 Logan; and Maurice River from its confluence with the
 Delaware Bay upstream to its junction with Buckshutem
 Creek.**

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

EDITOR'S NOTE: Certain delineations for the Mullica River were
 erroneously codified as subsection (h). Since these delineations are
 properly a part of the Atlantic basin, they have been recodified
 under subsection (b). Subsections (h) and (i) are presently
 undesignated.

OFFICE OF ADMINISTRATIVE LAW: A map delineating the flood hazard area described in this notice was submitted as part of the Department's notice of proposed rule. This map can be inspected at:

Bureau of Flood Plain Management
Division of Water Resources
1911 Princeton Avenue
CN 029
Trenton, NJ 08625; or

Office of Administrative Law
Administrative Filings
88 East State Street
CN 301
Trenton, NJ 08625

HEALTH

(a)

HEALTH ECONOMICS SERVICES

Standard Hospital Accounting and Rate Evaluation (SHARE) Rate Review Guidelines

Proposed Readoption: N.J.A.C. 8:31A-7

Authorized By: J. Richard Goldstein, M.D.,
Commissioner, Department of Health (with approval
of the Health Care Administration Board).
Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-
5b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

James R. Hub, Director
Health Economics Services
Department of Health
CN 360, Room 600
Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules expired on August 18, 1983. The re-adoption of these rules becomes effective upon publication in the Register of a notice of their re-adoption.

This proposal is known as PRN 1983-515.

The agency proposal follows:

Summary

The Health Care Facilities Planning Act of 1971 (N.J.S.A. 26:2H-1 et seq.) mandated use of a uniform system of cost accounting for health care services (N.J.S.A. 26:2H-18c). Sections 18b and 18d of the Act provide further for approval of payment rates for health care services provided by government agencies (for example, Medicaid) and hospital services corporation (for example, Blue Cross). In establishing this system, the Commissioners of Health and Insurance were required by law to consider the total costs of the health care facility. In April, 1975, the Standard Hospital Accounting and Rate Evaluation (SHARE) Rate Review Guidelines were established with the purpose of

developing a hospital cost containment program whereby a "reasonable reimbursement" formula was developed.

Prior to the SHARE System, hospital reimbursement was controlled and administered by the Hospital Research and Educational Trust (HRET), a subsidiary of the New Jersey Hospital Association. This represented a voluntary effort of New Jersey hospitals for cost containment.

In compliance with Executive Order No. 66(1978), the Guidelines are reviewed, amended and adopted each year and a period of public comment is allowed in the best interests of the health care consumers and the industry. All amendments, comments and final adoptions are published in the New Jersey Register.

The implementation of the SHARE Rate Review Guidelines has enabled the Department of Health to effectively contain hospital costs through the regulatory system in comparison with states that are without a similar system.

Since the implementation of a Prospective Reimbursement System for New Jersey Hospitals Based on Case-Mix began in 1980, the 1983 SHARE Rate Review Guidelines are applicable to the 18 Specialized and Rehabilitation hospitals only. The Department perceives no apparent need for changes in the 1983 Guidelines.

Social Impact

The implementation of the SHARE Rate Review Guidelines has acted as a consumer protection measure against the escalating costs of hospital care and continue to do so for the Specialized and Rehabilitation hospitals, since all others are now regulated by Chapter 83 under the DRG System. If this rule is not re-adopted, the consumer would be subject to the unregulated costs in the health care industry.

Economic Impact

The economic conditions in the State continue to necessitate the need for an effective regulatory system for cost containment in health care facilities. The SHARE Rate Review Guidelines have been amended yearly since implementation to respond to the needs of the hospital, consumers and third party payors in the most equitable manner. This system has been successful in controlling costs and will continue to do so in Specialized and Rehabilitation hospitals following re-adoption.

Full text of the SHARE regulations are not reproduced in the New Jersey Administrative Code.

Full text of the proposed re-adoption can be reviewed at Health Economics Services, New Jersey Department of Health, Room 600, John Fitch Plaza, Trenton, New Jersey, or Office of Administrative Law, 88 East State Street, Trenton, New Jersey.

PROPOSALS

HUMAN SERVICES

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual Consultations or Referrals for Examinations and Treatment

Proposed Amendment: N.J.A.C. 10:63-1.4

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:4D-6a4(a), b(4)-(10), 7 and 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-471.

The agency proposal follows:

Summary

This proposal will amend the Long Term Care (LTC) Services Manual to require certain services, such as medical and surgical specialties, chiropractic services, dental, mental health, podiatric and vision care to be initiated by the attending physician as either a request for a "consultation" or a "referral for examination and treatment". The request requires the attending physician's signature on the patient's order sheet.

This proposed regulation is designed to insure the attending physician, i.e., the physician who is primarily responsible for coordinating the care of the patient, directs the patient's care, and authorizes only those services that are "medically necessary". In addition, this proposal conforms to the usual practice of good medicine as it applies to the relationships among the attending physician, patient, and other practitioners who render care to the same patient in an institutional setting.

The proposal also includes a recodification of subsections (b) through (j) to enable the additional services to follow the same order as they appear in subsection (a). Subsection (k) is being deleted.

Please note that the text of (g) pertaining to Rehabilitation Services appeared in an earlier proposal in the May 16, 1983 issue of the Register at 15 N.J.R. 782(a).

Social Impact

The social impact on Medicaid patients in LTC facilities should be positive, because they will still be able to receive medically necessary care and services that are authorized by the attending physician.

The social impact on Medicaid providers should be minimal, because services such as mental health, dental, vision care and chiropractic, etc., can be provided so long as the attending physician has signed the order sheet.

Economic Impact

There is little economic impact associated with this proposal, because there is no change in fee schedules. Both provider reimbursement and Medicaid expenditures should remain the same so long as utilization remains constant.

There is no cost to the Medicaid patient for these services.

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

10:63-1.4 Additional services

(a) As condition for qualifying as a LTCF under the New Jersey Medicaid Program, the facility must maintain effective agreements in order to provide additional services which might be required by an individual patient. **Additional services include chiropractic services; dental services; laboratory and x-ray services, including portable, and other diagnostic services; mental health services; podiatry services; rehabilitation services; special medical equipment; transportation services; vision care;**

1. It is the right of each Medicaid eligible patient[s] in [an] a LTCF, in consultation with the attending physician, to exercise free choice with respect to a provider of additional services. If [such] the patient does not choose to exercise such a right, or is unable by virtue of his/her physical or mental condition to do so, a person authorized to act on the patient's behalf [may], in consultation with the attending physician, **may** designate a provider. In the absence of [such] **an authorized** person, the facility [may], in consultation with the attending physician, **may** designate a provider. [All additional services listed in this section require the attending physician's signature on the order sheet.]

2. The services listed in this section must be provided and/or be available to **each** Medicaid eligible patient[s] in [an] a LTCF, and are not part of the per diem rate paid to the LTCF [,.]. [unless included in the cost study of the LTCF by the Bureau of Audits, Office of Program Integrity Administration of this Division.]

3. **Additional services are initiated by the attending physician. All additional services listed in this subsection, except in an emergency, require the attending physician's signature on the order sheet.**

4. **Consultations and referrals for examination and treatment: Certain services such as medical and surgical specialties, chiropractic, dental, mental health, podiatric, and vision care, must be initiated by the attending physician as either a request for a "consultation" or as a "referral for examination and treatment".**

i. **A consultation is ordered when the attending physician wishes an appropriate practitioner to evaluate, through history and appropriate physical findings and other ancillary means:**

(1) **The nature and progress of a disease, illness, or condition; and/or**

(2) **To establish or confirm a diagnosis; and/or**

(3) **To determine the prognosis; and/or**

(4) **To suggest appropriate therapy.**

ii. **When a consultant assumes the continuing care of the patient, subsequent services rendered by the consultant are not considered a consultation and other appropriate procedure codes must be utilized.**

iii. **A referral for examination and treatment must be ordered by the attending physician when he/she wishes a practitioner to assume responsibility for a specific aspect of the patient's care; for example, the attending physician would order a referral for examination and treatment for dental services.**

5. **A request for either a consultation or a referral for examination and treatment should be written and signed by the attending physician on the order sheet. Also, the order must clearly indicate the reason for the request.**

i. **If the attending physician is unable to write the request on the order sheet, the physician may personally dictate by telephone to an appropriate person at the facility, the order for**

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the consultation or the referral for examination and treatment, indicating the supporting reason(s) for the request; however, in this case the attending physician within 48 hours of requesting the consultation or referral for examination and treatment must countersign the order on the order sheet or must personally have signed and forwarded to the long-term care facility an identical order on a prescription form which will satisfy the requirements until the next visit when he/she must sign the order sheet.

6. In consideration of a patient's rights, a patient may request either a consultation or a referral for examination and treatment provided it is consistent with medical necessity. The attending physician must note the request on the order sheet and, if the physician so wishes, may note that it was made at the patient's request.

Example: Patient requests ophthalmologic consultation with Dr. Evans for significant refractive error.

Signed: A.B. Turner, M.D.

[j](b) Chiropractic services: It is required that all facilities assist Medicaid eligible patients to obtain chiropractic care through a licensed chiropractor who shall provide, or make provision for [:] [.] routine and emergency services.

[f](c) Dental services:

1. It is required that all facilities assist Medicaid eligible patients to obtain dental care through a licensed [or consulting] dentist who shall provide, or make provision for:

- [1.] i. Appropriate consulting services;
- [2.] ii. In-service education to the facility;
- [3.] iii. Policies concerning oral hygiene;
- [4.] iv. Routine and emergency services.

2. Dental examinations carried out to comply with the State Department of Health's minimal requirements as well as regular dental examinations, are not considered consultations and need not be brought to the attending physician's attention except as a matter of courtesy. However, treatments which involve invasive procedures such as extractions, fillings, etc., except in an emergency, must be brought to the attention of the attending physician who acknowledges clearance for such treatment on the order sheet.

3. Policy and procedures regarding the provision of dental services are listed in the New Jersey Medicaid Program Manual for Dental Services. Services requiring prior authorization are listed under 202.2 (N.J.A.C. 10:56-1.3).

[b](d) Laboratory; X-ray, including portable, and other diagnostic services:

1. Laboratory services: A LTCF must have written agreements with one or more general hospitals or one or more clinical laboratories so that the facility can obtain laboratory services, including emergency services promptly. If the facility has its own laboratory capabilities, the services may not be billed on a separate fee-for-service basis. A laboratory must be:

- i. Licensed and/or approved by the New Jersey State Department of Health and the State Board of Medical Examiners—which includes meeting Certificate of Need and licensure requirements, when required, and all applicable laboratory provisions of the New Jersey State Sanitary Code; and
- ii. Certified as an independent laboratory under the Title XVIII Medicare Program; and
- iii. Approved for participation as an independent laboratory provider by the New Jersey Medicaid Program.

2. X-ray services: A LTCF must have written agreements with one or more general hospitals or one or more Board certified or Board eligible radiologists so that the facility can obtain radiological services, including emergency services promptly.

i. Portable X-ray may be used when medically indicated. The mechanical portion of the services (obtaining the films) may be done by personnel of either the hospital or radiologist, but the

interpretation of the film will be by a Board certified or Board eligible radiologist only.

ii. X-ray services offered directly by the facility must be in adherence with the standards of the New Jersey Radiological Society.

3. Other diagnostic services (e.g., ECG, EEG, etc.): A LTCF must have written agreements with one or more general hospitals or one or more qualified providers so that the facility can obtain such specified services including emergency services promptly.

[i](e) [Psychological] Mental Health services: It is required that all facilities assist Medicaid eligible patients to obtain [psychological] mental health care through a licensed psychiatrist or [licensed] psychologist who shall provide[,] or make provision for [:] [.] routine and emergency services.

1. An initial consultation for mental health services does not require prior authorization but shall be performed only upon a written order signed by the attending physician (on the order sheet) citing the reason(s) for the consultation.

i. If the attending physician telephones the order to an appropriate person designated by the Long-Term-Care Facility, the physician within 48 hours must countersign the order on the order sheet, citing the reason(s) for the consultation, or must personally have signed and forwarded to the Long-Term Care Facility an identical order on a prescription form, citing the reason(s) for the consultation.

2. If mental health services are recommended following a consultation, the individual who then will provide the mental health services must submit a completed FD-07 form, ("Request for Authorization of Mental Health Services"), to the Medicaid District Office (MDO) serving that particular Long-Term Care Facility. Items number 10, 11, and 12 need not be completed on the initial FD-07 inasmuch as a copy of the consultation must accompany this request.

3. The medical consultant in the MDO will discuss with the attending physician the request for services as identified on the FD-07.

i. If the service is authorized, the medical consultant will forward a copy of the FD-07 to the Long-Term Care Facility. The FD-07 is to be made a part of the "order section" of the patient's chart.

4. If during a current period of authorization the mental health provider believes that additional services will be required, or after a reasonable time interval a renewal of therapy for the same condition is deemed necessary, a formal consultation is not necessary. The mental health provider must fill out another FD-07 form completing all items except Item number 10. Special attention is to be given Items number 11 and 12 on the form to support the need for additional therapy, and then the same procedure is followed as described under (e) 3.

[g](f) Podiatry services:

1. It is required that all facilities assist Medicaid eligible patients to obtain podiatry care through a licensed podiatrist who shall provide, or make provision for:

- [1.] i. Appropriate consulting services;
- [2.] ii. In-service education for the facility;
- [3.] iii. Policies concerning foot care;
- [4.] iv. Routine and emergency services.

2. Once the attending physician reviews the treatment plan of the podiatrist, the physician is not required to sign a request every time the podiatrist treats the patient; however, the attending physician must review the need for podiatric services every six months, and if indicated, complete a request for podiatric services for each patient at least once a year. This is to be accomplished by an order on the order sheet and not by repeated request for consultations.

3. Policies and procedures regarding the provision of podiatric services are outlined in the New Jersey Medicaid Program's Podiatry Services Manual (N.J.A.C. 10:57).

[e] (g) Rehabilitation services: Rehabilitation services include

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physical therapy, occupational therapy, speech-language therapy services and other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level. It does not include physical medicine procedures administered directly by a physician, or physical therapy which is purely palliative, such as the application of heat per se, in any form; massage; routine calisthenics or group exercises; assistance in any activity; use of a simple mechanical device; or other services not requiring the special skill of a qualified physical therapist. Rehabilitation services shall be made available to eligible recipients as an integral part of a comprehensive medical program.

1. If the attending physician orders an evaluation for physical, speech-language or occupational therapy, an appropriate qualified therapist may make an initial visit to evaluate the need for physical, speech-language or occupational therapy without prior authorization. The reimbursement fee for the initial visit will be the same as the allowance for the subsequent treatment visits. Prior authorization by the Medicaid Medical Consultant of the Medicaid District Office is required for all subsequent therapy visits.

[1.]**2.** When prior authorized, reimbursement to a LTCF may be made for more than one type of therapy service performed on the same day, e.g., physical therapy and speech-language therapy.

[2.]**3.** Where the same type of therapy is performed more than once on a given day, or the therapy rendered is a different modality within the same type of therapy, reimbursement will be made for one therapy treatment only. All therapy must be provided under the direct supervision and in the presence of a qualified therapist or physiatrist.

[3.]**4.** Providers of service:

i. Rehabilitation services shall be provided by qualified therapists employed by or under contract to:

- (1) An approved Home Health Agency; or
- (2) A licensed or accredited general or special hospital; or
- (3) An approved independent outpatient health facility; or
- (4) A LTCF.

ii. Reimbursement for rehabilitation services is made to the LTCF,[and] not to the therapist, by this program. Prior authorization is required as outlined in [(e)] (g) 5 below.

(1) Outpatient physical therapy, speech-language therapy and occupational therapy services furnished by a Medicare Certified facility to its Medicare eligible inpatients may be billed by the facility to Medicare under Part B only when the beneficiary has exhausted his benefits under Part A or is otherwise ineligible for Part A benefits. When physical therapy, speech-language therapy or occupational services are furnished under arrangements to combination Medicare/Medicaid patients, these services should be billed to the provider's Part A Intermediary using Form HCFA-1483 (Provider Billing for Medical and Other Health Services, Exhibit No. 23).

(2) Outpatient physical therapy, speech-language therapy and occupational therapy services furnished only by a Medicaid LTCF to Medicaid eligible inpatients only may be billed by the facility to the Bureau of Claims and Accounts if prior authorization for the treatment visits has been given by the Medicaid District Office (MDO). The facility must state to the Medicaid District Office (MDO) that it is not a Medicare provider and, therefore, no Medicare denial letter is needed.

(3) Medicaid may reimburse Medicare certified facilities through their Part A Intermediary (Blue Cross or Prudential) for the unsatisfied deductible (Medicare Part B) when physical therapy, speech-language therapy or occupational therapy services are performed for patients eligible for both programs.

[4.]**5.** Billing Medicaid following Medicare decline:

i. If the HCFA-1483 (Exhibit No. 23) claim for physical therapy, speech-language therapy or occupational therapy is declined by Medicare and you wish to bill Medicaid for these services, a request for authorization must be made to the [LMAU] MDO. When

submitting such a request for authorization to the [LMAU] MDO, the facility must attach a copy of the Medicare denial letter. Medicaid will not authorize payment for any claim for rehabilitation services including but not limited to physical therapy, occupational therapy, speech-language therapy or any other restorative services provided for the purpose of attaining maximum reduction of physical or mental disability and restoration of the patient to his best functional level, which was denied by Medicare by reason of "not medically necessary". If authorization is granted by the [LMAU] MDO, the facility shall bill the Bureau of Claims and Accounts in accordance with established procedures, e.g., therapy charges, Form (MCNH-14 (Exhibit No. 5) plus Form FD-06 (Request for Authorization or Reauthorization for Prescribed Rehabilitation Treatment Program, Exhibit No. 1).

ii. When submitting requests for prior authorization of physical therapy, speech-language therapy or occupational therapy to the [LMAU] MDO on behalf of patients not covered by Medicare benefits, the facility must state that the "patient is not a Medicare beneficiary".

[5.]**6.** Medicaid patients not eligible for Medicare benefits: Prior authorization by the Medical Consultant of the Medicaid District Office is not required for the initial evaluation visit. See N.J.A.C. 10:63-1.4[e](g)l. All subsequent rehabilitation therapy treatment visits require prior authorization. Authorization shall be considered only when the request includes a written prescription by a licensed physician who is the patient's attending physician, substantiating the need, type of therapy, objective of treatment, and an estimate of the number of treatment days. Prescriptions must be definitive as to type and scope. Orders such as "Physical Therapy three times a week" will not be accepted. Prior authorization may be for a period not exceeding 60 days. Subsequent authorizations for periods not exceeding 60 days may be issued by the Medical Consultant of the Medicaid District Office when the request is supported by the written prescription of the attending physician, including a statement of the anticipated number of treatments required, and a progress report of the recipient's condition.

[6.]**7.** Procedure regarding the acquisition of prior authorization for prescribed rehabilitation services:

i. All LTCFs requesting prior authorization for rehabilitation services for Medicaid eligible patients receiving care in their facilities will use the Form FD-06 (Exhibit No. 1).

ii. The LTCF will be responsible for the total completion of the "Patient Information" and "Medical Information and Therapy Requested" portions of the form, in triplicate. If the request is for initial authorization of rehabilitation services, it will not be necessary to complete No. 13 on the form. Note also that if the form is completed by the therapist rather than the attending physician, the latter's prescription must be attached to the request when it is submitted to the [LMAU] Medicaid District Office (MDO).

iii. Following Medical Consultant's review and disposition, the billing and provider copies of the form will be returned to the LTCF by the [LMAU] MDO. The billing copy is to be submitted to the Bureau of Claims and Accounts along with the MCNH-14 form (Exhibit No. 5) for payment.

[7.]**8.** Therapy charges-billing procedures: Refer to N.J.A.C. 10:63-1.11(h) for detailed instructions.

[c] (h) Special Medical equipment: When unusual circumstances require special medical equipment not usually found in a LTCF, such special equipment may be reimbursable with prior authorization from the [Local Medical Assistance Unit (LMAU)] Medicaid District Office serving the county where the facility is located.

1. When special medical equipment is authorized and purchased on behalf of a Medicaid recipient, ownership of such equipment will vest in the Division of Medical Assistance and Health Services. The recipient will be granted a possessory interest for as long as the recipient requires use of the equipment. When the recipient no longer needs such equipment, possession and control will revert to the Division. The recipient agrees to this when he/she signs the

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"patient's certification" section on the claim form.

[d](i) Transportation services: When a Medicaid eligible patient requires a service or care not regularly provided by the LTCF, arrangements to obtain these services are to be made by the [facilities] facility with appropriate agencies or other responsible persons.

1. Transportation provided by LTCF: If a transportation service is provided by the LTCF to an inpatient of that LTCF, no additional reimbursement is allowed. Reimbursement is included in the per diem rate.

[2. Ambulance and invalid coach: Prior authorization from the LMAU is required for transportation by a certified transportation provider except in emergency conditions, i.e., critical illness or injury status for which prompt medical care may be crucial to saving life or limb.

i. Ambulance service is covered only when the use of any other method of transportation is medically contraindicated.

ii. Invalid Coach service may be utilized when covered persons require transportation from place to place for medical purposes and whose use of a lesser form of transportation, i.e., cab, bus, or private vehicle would create a serious risk to life or health.]

2. Ambulance service does not require authorization, but is reimbursable only under the following conditions:

i. When such service is not free and available in the community; or

ii. When the use of any other method of transportation is medically contraindicated. (See N.J.A.C. 10:50-1.3(b) for specific medical conditions).

3. Invalid Coach: Invalid Coach services require prior authorization from the MDO.

i. Invalid Coach services must be rendered by a certified transportation provider.

ii. An Invalid Coach may be utilized when a Medicaid eligible person requires transportation from place to place for medical purposes and when the use of a lesser form of transportation, i.e., cab, bus, or private vehicle would create a serious risk to life or health.

[3] 4. Other transportation not directly reimbursable: Transportation by taxi, train, bus, and other public conveyances is not directly reimbursable by the New Jersey Medicaid Program. Inquiry should be made to the County Welfare Agency for authorization and payment for such transportation.

5. Policy and procedures regarding the provision of transportation services are outlined in the New Jersey Medicaid Transportation Services Manual (N.J.A.C. 10:50-1.3 through 1.6).

[h](j) Vision care services: It is required that all facilities assist Medicaid eligible patients to obtain vision care through [an] a licensed ophthalmologist or [licensed] optometrist who shall provide or make provision for [:] [1.] routine and emergency services.

1. Policies and procedures regarding the provision of Vision Care services are outlined in the New Jersey Medicaid Program's Vision Care Manual (N.J.A.C. 10:62).

[(k) When dental, podiatry, vision care, psychological or chiropractic consultations are ordered, as well as any medical or surgical specialty consultation, such requests must be personally prescribed by and under the attending physician's signature and appear on the order sheet. This order must also clearly indicate, in detail, the medically necessary reason for the requested consultation.

1. Dental examinations performed to comply with the State Department of Health's minimal requirements, as well as regular dental examinations with their subsequent treatments, are not consultations within the meaning of the term as expressed above.

2. When the consultant assumes the continuing care of the patient, any subsequent services rendered by him no longer will be considered a consultation and other appropriate procedure codes should be utilized.

3. In view of patient's rights, consultation requests may arise from this source provided they are consistent with medical necessity. The attending physician must note this request on the order sheet and may, if he/she wishes, not that it was made at the patient's request.

Example: "Optometric Consultation with Dr. John Doe ...significant refractive error-request is by ...patient.

Signed: A.B. Turner, M.D."

4. Notwithstanding anything to the contrary, all services to be rendered should be with the knowledge of the attending physician.]

(a)

DIVISION OF PUBLIC WELFARE

Ruling 11 Classification and Compensation Plan; Time and Leave Regulations

Proposed Readoption: N.J.A.C. 10:109-2 and 3; Appendix II Proposed Readoption with Amendments: N.J.A.C. 10:109-Appendix I

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:7-6 and 44:10-3.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Acting Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on November 14, 1983. The re-adoption of the existing rules becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of their re-adoption. The concurrent amendments become effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1983-511.

The agency proposal follows:

Summary

The Federal government through the Social Security Act of 1935, established a series of categorical assistance programs in order to provide funding for certain classes of needy individuals and families. Aid to Families with Dependent Children is one such program.

In order to receive a Federal grant-in-aid, a state must formulate and submit to the Department of Health and Human Services (formerly the Department of Health, Education and Welfare) a state plan for implementing the AFDC program. Of particular importance are the requirements that a single state agency administer or supervise the administration of the plan, that the plan be in effect and mandatory throughout the state, including all political subdivisions.

After a state plan is approved, it is still continuously monitored by the Federal government to ensure continuing conformity to the

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Federal requirements. Should a state plan be deemed to be out of compliance with Federal requirements, Federal payments are terminated until such time as the defects are remedied.

In New Jersey, the Department of Human Services/Division of Public Welfare supervises the AFDC program as the single State agency pursuant to Federal mandate. N.J.S.A. 44:10-3 authorizes the Commissioner of the Department of Human Services to issue all necessary rules, regulations and administrative orders to secure the maximum Federal financial participation and specifically directs him or her to promulgate regulations to "assure that the program shall be in effect in all counties of the State and mandatory upon them." One such regulation is Ruling 11 which contains provisions controlling the terms and conditions of employment for county welfare agency employees.

Ruling 11 was promulgated pursuant to N.J.S.A. 44:7-6 which provides in pertinent part that:

"Said division (of old age assistance)† shall, in cooperation and association with the Civil Service Commission, require adequate standards for all county welfare boards, as county bureaus of old age assistance, in the manner following: The division shall by appropriate rule and regulation, establish and maintain standards appropriate to a modern personnel system on a merit basis for all positions and for the application of correct business principles in the creation and abolition of positions, the classification of authorized positions on the basis of the duties and responsibilities of the incumbents, the development, adoption and the administration of equitable compensation schedules for each class of positions, the selection, certification, appointment, regulation, and tenure of person holding such positions, and such other standards for a merit system of personnel administration as may lawfully be required by the Federal Social Security Board for approval of a State public assistance plan. . . All rules and regulations made by the State division under this chapter shall be binding upon the county welfare boards, as county bureaus of old age assistance."

While the foregoing section deals only with old age assistance, relevant companion sections (N.J.S.A. 44:7-39, 44:7-44, 44:10-2) apply equally to the other public assistance programs such as permanent total disability assistance, assistance for the blind and assistance for dependent children.

Each time revisions are proposed to Ruling 11, copies of the proposals are sent to all county welfare agencies and all employee organizations which represent county welfare agency employees. Proposals are also published in the New Jersey Register. Written comments regarding the proposed revisions are invited by the Division of Public Welfare and are carefully considered before adoption by the Commissioner of the Department of Human Services. In addition, when major revisions have been proposed, public hearings have been held giving all interested parties an opportunity to comment on the proposals.

Ruling 11 has enabled the Division to fulfill the Federal mandate to establish and maintain a modern personnel system on a merit basis for all positions. It is based upon Federal legislative requisites to AFDC funding and its purpose is to assure that a merit system of personnel administration exists throughout the State for employees of county welfare agencies.

It may be argued that Civil Service Laws would adequately comply with the Federal requirements. However, the Superior Court of New Jersey in the State of New Jersey v. County of Hudson found that this argument fails in that, "Civil Service is not binding upon or in effect in all counties. Somerset County is not bound by Civil Service. Thus, in the absence of N.J.S.A. 44:7-6 and Ruling 11, Somerset county would not be required to have a merit system of personnel administration and uniformity would not exist."

N.J.A.C. 10:109-2 and 3 have had minor revisions over the past few years. For the most part, these changes were due to changes in other State regulations which had to be reflected in Ruling 11, or changes for the purposes of clarification. Additionally, Appendix II, Compensation Schedules, have been revised whenever there has been a change in the State Compensation Schedules to maintain comparability between State and county welfare agency salaries.

The proposed amendments to Appendix I reflect the abolishment of certain titles and the inclusion of other titles determined by the Department of Civil Service as more appropriate and in accord with standardized specifications, subsequent to an in-depth study by Civil Service.

Since Ruling 11 was developed as a result of Federal and subsequent State regulations, it contains basic essential elements mandated by those regulations. Ruling 11, therefore, fulfills the purpose for which it was promulgated.

†Now the Division of Public Welfare.

Social Impact

Because Ruling 11 is a regulation which affects the terms and conditions of employment for some 7,000 county welfare agency employees, it has traditionally been resisted by employees and their certified majority representatives (labor unions) who claim the regulation is too restrictive and does not allow them to effectively negotiate a collective bargaining agreement.

However, Ruling 11 is a regulation which sets the parameters for negotiations. Negotiability is still possible within these parameters.

In *Communications Workers of America v. Union County Welfare Board*, the court found that the State, vis-a-vis the Division, did not have much room for discretion under N.J.S.A. 44:7-6 which they deemed as not merely confined to a general grant of authority designed to carry out the Federal assistance program but as representing a "command to establish and maintain a modern personnel system... on a merit basis for all positions..."

If the State abrogates its authority to maintain a modern personnel system as formulated in Ruling 11, it risks the loss of all Federal funding for public assistance programs.

Economic Impact

The economic impact of Ruling 11 is twofold. It impacts indirectly on public assistance recipients who benefit from Federal funding of New Jersey's public assistance programs and directly on the employees of the county welfare agencies whose salaries are regulated by the parameters set by Ruling 11.

The authority of the Division of Public Welfare and the Department of Human Services to set and approve salary guidelines for employees of county welfare agencies was challenged in *Communications Workers of America v. Union County Welfare Board*. In this case, the court held that, "The Commissioner was granted statutory authority to prescribe minimum and maximum salary ranges for county welfare employees and that the power of such boards by virtue of N.J.S.A. 44:1-27 and 44:4-35 to fix and determine the salaries of its officers and employees is subject to the authority granted to the Commissioner."

It has been made very clear in Federal regulations that in order to initially receive and continue receiving Federal funds for the AFDC program, an approvable State plan must be filed with the United States Department of Health and Human Services. Inherent in the plan is the establishment and maintenance of a merit personnel system.

Administration of the AFDC program by the county welfare agencies is subject to the supervision of the State department which has implemented the State plan through administrative regulations pursuant to its authority under N.J.S.A. 44:10-3. One such regulation is Ruling 11 which constitutes the aggregation of provisions controlling the terms and conditions of employment of county welfare agency employees. If the rule is not readopted, New

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Jersey will no longer be in compliance with Federal regulations for a State plan and risks losing Federal funding for public assistance programs.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:109-2 and 3, and Appendices I and II; as amended in the New Jersey Register.

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

APPENDIX I
RULING NO. 11 PART I
CLASSIFICATION AND COMPENSATION PLAN
REVISED EFFECTIVE [7/1/81]

APPROVED COUNTY WELFARE AGENCY TITLE	COMPARABLE STATE TITLE	STATE SALARY RANGE EFFECTIVE [7/1/81]
Clerk Bookkeeper Typing	Clerk Bookkeeper	05
[Key Punch Machine Supervisor]	[†]	[†]
Personnel Assistant	Personnel Assistant IV	18
[Principal Terminal Operator]	[†]	[13]
Research Aide (Social Welfare)	Research Aide	05
[Senior Key Punch Machine Operator]	[Senior Data Entry Machine Operator]	[09]
Senior Operator, Automated Typewriter	Senior Operator, Automated Typewriter	09
[Senior Terminal Operator]	[†]	[09]
Social Work Specialist Bilingual in Spanish and English	Social Worker 1	20
Social Work Supervisor Bilingual in Spanish and English	Assistant Social Work Supervisor	21
Supervisor of Automated Typing Operations	†	15
[Terminal Operator]	[†]	[07]

†Comparable state title and/or salary range is determined by the Director, Division of Public Welfare, based on scope of duties and responsibilities for the particular position.

LABOR

(a)

DIVISION OF VOCATIONAL REHABILITATION

**Vocational Rehabilitation Facilities
Legal Authority, Administration, Advisory
Councils, Services, Appeals**

Proposed Amendments: N.J.A.C. 12:51-2.1, 3.5, 4.1, 5.1, 6.1, 7.1, 8.2, 8.3, 8.4, 9.1, 10.1, 11.1, 13.1, 13.2, 17.1, 18.1

Authorized By: George R. Chizmadia, Director, Division of Vocational Rehabilitation Services.
Authority: N.J.S.A. 34:16-21.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

George R. Chizmadia, Director
Division of Vocational Rehabilitation Services
New Jersey Department of Labor
CN 398
Trenton, NJ 08625

The Department of Labor thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-451.

The agency proposal follows:

Summary

At the time that these rules, which govern the operations of Vocational Rehabilitation Facilities, were originally promulgated in August 1981, some contained phase-in periods. This revision removes the language related to those phase-in periods which have since passed. It also serves to allow for the removal of other obsolete material and the clarification of language.

The proposed changes are as follows:

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- 12:51-2.1 Remove vague language from the regulation regarding seeking "approval" and specifies that "approval" will take the form of a certificate.
- 12:51-3.5 Update the regulations to recognize the "shop rate" concept for bidding.
- 12:51-4.1 Clarifies language and removes outdated material related to phone in periods that have already expired.
 - 5.1
 - 6.1
- 12:51-6.1 Clarifies and regulates the definition of a client service day in the event of early release for medical reasons.
- 12:51-7.1 Clarification of language only.
- 12:51-8.2 Update references to publications used in determining program costs.
- 12:51-8.3 Deletes old material and updates and reorganizes material that is inserted. This is done for ease of reference.
- 12:51-9.1 Remove excessive editorial material that do not constitute rules and regulations in enforceable sense. Reduces 24 position description to 11.
- 12:51-10.1 Correct date of second quarter report period.
- 12:51-11 Correct language .
- 12:51-13.1 Correct codification of paragraph and delete "Duties" as separate subparagraph.
- 12:51-17.1 Clarifies that all exceptions to stated regulations must be agreed upon in writing by specific staff.

Social Impact

The changes being made here will not affect existing practices but will more properly reflect in the Rules and Regulations the actual practices based on existing policy and procedure.

Economic Impact

These changes will clarify and slightly reduce the volume of rules which impact on the operators of Vocational Rehabilitation Facilities. In this regard they could be construed to save time and money in both effort to comply with rules by vendor and to enforce rules by the State. Service recipients should benefit by receiving a better defined service that is more appropriate to their needs.

Full text of the original rule may be reviewed at the Office of Administrative Law.

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

- 12:51-2.1 Rules
 - (a)–(b) (No change.)
 - (c) The basic rationale how the development of these standards of operation consists of the following:
 - 1.–3. (No change.)
 - [4. State planning for rehabilitation facilities must include the establishment of standards.
 - 5. These standards will serve as rules for the establishment and operation of rehabilitation facilities in New Jersey. They will also be used as goals and measurements of effectiveness, efficiency, and progress in delivering necessary services to handicapped

individuals. A major objective will also be to enable or assist the facilities to meet standards to C.A.R.F. or N.A.C.]

4. In order to vend services to the New Jersey Division of Vocational Rehabilitation Services, a facility must apply for and be granted a certificate from that agency. This certificate will be issued by the Director of the Division of Vocational Rehabilitation Services upon his being satisfied that:

- i. There is a need for the service to be vended; and**
- ii. The facility is in compliance with the rules and regulations governing Vocational Rehabilitation Facilities.**

5. Certificates will be issued covering several specific service areas including but not restricted to:

- i. Vocational Evaluation;**
- ii. Work Adjustment Training;**
- iii. Sheltered Employment;**
- iv. Psycho-Social Vocational Rehabilitation Services;**
- v. Skill Training.**

(d) Approval of a faculty will be contingent upon its adherence to the standards set forth by D.V.R.S.

(e) DVRS recognizes the need to make every effort to utilize existing facilities and agencies to assist their clients in realizing their full potential. Every effort should be made to exhaust the use of existing services before the development of new services by a facility.

(f) It is a matter of high priority to DVRS that a unified services system become a reality. This should include agencies such as DVRS, Division of Mental Health and the Division of Mental Retardation as well as community service providers. Such an effort would be of incalculable benefit to the disabled citizens of New Jersey.

(g) The Director of the Division of Vocational Rehabilitation reserves the right to withhold approval of new vocational facilities where it is felt that the approval of such a vocational facility will, due to oversaturation, have a detrimental effect on the cost effectiveness or quality of rehabilitation in an area.]

12:51-3.5 Business and financial practices

- (a) (No change.)
- 1.–4. (No change.)

5. A copy of certified audit which renders an opinion and is conducted by a certified public accountant in accordance with generally accepted auditing standards and the A.I.C.P.A. Industry Audit Guide for Voluntary Health and Welfare Organizations will be filed with [Facilities Research Utilization Specialist of] the New Jersey Division of Vocational Rehabilitation Services each year.

- 6.–9. (No change.)

10. In quoting bids for contract work, an overhead mark-up averaging at least 80 percent on direct labor, supported by the precise analysis of costs of normal direct labor, should be charged for subcontract work. The value of any services, equipment or space provided by the contractor for the contract operation may be included in the determination of this mark-up. [The quotation for contracts shall also take into consideration the following:] **Bid quotations for contract work should not be less than the minimum hourly overhead rate established (usually known as the "shop rate") for the workshop and take into consideration the following:**

- i.–iv. (No change.)
- 11.–15. (No change.)

16. Active membership should be maintained in the appropriate State and National professional associations such as the National Rehabilitation Association, the New Jersey Rehabilitation Association, and their affiliates, the [International] National Association of Rehabilitation Facilities, the New Jersey Association of Rehabilitation Facilities, New Jersey Psychiatric Rehabilitation Association, and any other allied health and welfare organizations.

- 17.–19. (No change.)

LABOR

PROPOSALS

12:51-4.1 Evaluation

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

(c) In programs where production activities which may include work samples, are a part of the evaluation process, the client should be expected to produce at [six percent of the competitive rate. This shall increase to nine percent effective January 1, 1982 and to] 12 percent [on July 1, 1982] **of normal productivity rates by the end of evaluation.** If the client produces at [75 percent of the required rate] **nine percent of normal productivity rates**, extensions may be given in five-week intervals until the 20-weeks is reached. The client's productivity should be sampled over the last three-day period prior to the preparation of the report. If at the end of evaluation the client is not producing at [the required rate,] **12 percent of normal productivity** it is doubtful [he has] **they have** vocational potential, and [he] **they** should be terminated from [the program] **DVRS sponsorship** and referral made to a program of appropriate level.

12:51-5.1 Work adjustment training

(a) (No change.)

(b) Clients who are earning between [10 percent (15 percent, effective January 1, 1982,] 20 percent [effective July 1, 1982)] and 40 percent at the end of 18 weeks should be closed as sheltered employees at that time. Clients who are earning above 40 percent may be considered for up to two, nine week extensions if there is a definable upward trend in their production. Clients earning between [75 percent of required rates] **15 percent and 20 percent of normal production rates** may be given one nine week extension if patterns of performance indicate that there is reason to believe they can achieve the sheltered level of employment. **If client cannot achieve sheltered level of employment an attempt should be made to find another appropriate program for the individual.**

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

12:51-6.1 Sheltered (extended) employment

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

(d) The case record will also include a Facility **Individual Rehabilitation Plan** which will be developed in concert with the evaluation of the sheltered (extended) employee. One of the facility's primary resources for demonstrating services provided is the case record. This case record must be updated every three months.

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

(h) In computing supervisor ratio in satellite facilities, off site, or crew labor programs, these will be considered as separate entities. While counseling and placement services need not be "on site" full time, [they] **all services** must be available on a regularly scheduled basis.

(i)-(l) (No change.)

(m) A client who is released early for medical appointment shall be considered to have attended the full day for purposes of counting program days unless such early releases shall occur on more than five percent of the days he is present.

12:51-7.1 Psycho-social centers

(a) Psycho-social rehabilitation is a structured program of vocational preparation [that] **which** endeavors to:

1. [d]Discover and develop the individual's strengths and assets;
2. [b]Build positive and adaptive skills; [to]
3. [i]Increase and extend the individual's repertoire of skilled behavior in the physical, emotional and intellectual areas. [of functioning with the] **The purpose of the center is to** [teaching the] **teach** living, learning and working skills necessary to function effectively in his community with the least possible support.

12:51-8.2 Establishment and changes in fees

(a) (No change.)

(b) Each approved facility will be reviewed periodically by the

facilities and audit staffs of NJDVR for the purpose of determining the appropriateness of their currently approved fees as they relate to the reasonable costs determined applicable to the facility's programs as defined in Chapter I Cost Principles Used to Determine Rehabilitation Facility Costs and Chapter II Cost Analysis and Financial Review Procedures (effective July 1, 1981), and according to the following standards.]

(b) Each approved facility will be reviewed periodically by the facilities and audit staffs of NJDVR for the purpose of determining their program effectiveness and results, and efficiency and compliance with applicable laws and regulations. The appropriateness of fees and other support of funding which a facility receives as it relates to the costs of its programs, will be determined in accordance with Principles and Procedures for Determining Costs of Rehabilitation Facility Program, Services, originally issued April 1, 1982, and the following standards.

(c) (No change.)

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

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

[12:51-8.3 Procedure for program approval

(A) A facility that wishes to implement a new program on a "fee for service" basis should first discuss the proposed program with the manager and staff of the local office. It should be noted that their endorsement will have great significance on final disposition of their request.

(b) The next step would be to discuss the concept with the Facilities Specialist assigned to the area. The Facility Specialist should be used as a consultant in designing and detailing the program to be offered.

(c) Once the final proposal is completed in sufficient detail, a cost analysis should be prepared and a fee request made. These items should be attached to the Program Description and forwarded to the Facilities Specialist.

(d) The Facilities Specialist will assemble the "Program Request Package," to include the detailed written comments of the Local Office Manager and their own written endorsement to the Facilities Research Utilization Specialist who will deliver the entire package to the Audit Staff who will prepare a recommendation on the Fee Request and present the package to the Chief of Administrative Services in conjunction with the Chief of Field Services for final approval.]

12:51-8.3 Program requirements

(a) **A written narrative description of all the facility's programs, services and administrative procedures should be maintained and made available to interested parties. This description will also be submitted to D.V.R.S.**

(b) **Services should be geared to the objective development of the client's maximum potential for employment in a competitive labor market or in a sheltered workshop if the client's needs are best served in such an environment.**

1. To accomplish (b) above, the following services should be provided:

i. Medical, psychological, social, educational, and vocational evaluation at the time of intake. There will be a written criteria for procedures for admissions;

ii. The following kinds of services should be made available to clients, trainees, and employees: Vocational evaluation, work adjustment training, on-the-job training, skill training, placement and follow-up.

(c) **An internal system of Program Evaluation will be developed which offers continuous information about the quality of services provided and the results achieved by persons following their provision.**

(d) **Programming of facility services for clients should be based upon professional evaluations of the individual's assets, needs, progress and vocational goal. A Facilities Rehabilitation**

Plan will be developed for each client and revised periodically; it will also be coordinated with the I.W.R.P. developed by the local DVR office.

(e) Professional ethics will be maintained at all times with respect to confidentiality in the use of the client's records. It is recommended that a central comprehensive client record system be kept; for example, all client's records be kept in a central location, and be controlled by a designated person.

1. These records should include the following:

- i. First application blank;
- ii. Medical history;
- iii. Medical examination report and work precautions;
- iv. Social history and case information;
- v. Psychological reports and/or psychiatric reports;
- vi. Evaluation reports, prognosis, and summary reports and Facilities Rehabilitation Plan;
- vii. Information on wages paid and written report on the discussions of wages with the client;
- viii. A summary description describing fully the reasons for non-acceptance or closure;
- ix. A written record of follow-up placement;
- x. A continuous running record, updated monthly, of client activity.

(f) A current client or worker manual, or handbook covering services available and personnel policies, regulations and benefits should be given to each client at the time of acceptance.

(g) Each client in sheltered employment will be evaluated twice a year and appropriate modification will be made to the client's rehabilitation plan.

(h) Records will be kept which reflect the productivity of each worker or client on a continuing basis.

(i) The facility will have a carefully planned placement program for clients who are ready for employment in the competitive labor market including an adequate follow-up program.

(j) The facility will periodically evaluate its total program, its coordination with related rehabilitation programs in the community, the capacity of the facility for providing services needed in the community, follow-up of clients served, and the adequacy of the total program. Information derived from the facility's system of program evaluation should be utilized in this regard.

(k) The written consent of the client, guardian and, if necessary, cooperating agencies should be obtained prior to the use of facility clientele for public relations and publicity purposes.

(l) A facility should have a written grievance procedure for communication with clients, trainees, and employees, which facilitates receiving and hearing complaints and discussing problems of a general or specific nature.

(m) All records of both client and facility pertaining to DVR sponsored clients will be made available to D.V.R.S. Facility Specialist and/or facility and auditors upon request.

12:51-8.4 Considerations for new program approval

(a) It should be noted that creation of new programs are not routine procedure. The program description must be detailed and should clearly show how the proposed program differs from existing previously approved programs.

(b) It is also important that a step-by-step routine be included showing various techniques and procedures, as well as goals that are expected.

(c) A final consideration should be time. A new program will take time to develop the description to process the approvals. Allow for this time in new program planning.

(d) No new programs will be approved where adequate descriptions do not exist for present programs.]

12:51-8.4 Procedure for program approval

(a) A facility that wishes to implement a new program on a "fee for service" basis should first discuss the proposed program with the manager and staff of the local office. It should be noted that the endorsement of the manager and staff of the local office will have great significance on final disposition of their request.

(b) The next step would be to discuss the concept with the Facilities Specialist assigned to the area. The Facility Specialist should be used as a consultant in designing and detailing the program to be offered.

(c) It should be noted that creation of new programs are not routine procedure. The program description must be detailed and should clearly show how the proposed program differs from existing previously approved programs.

(d) It is also important that a step-by-step outline be included showing various techniques and procedures, as well as goals that are expected.

(e) No new programs will be approved where adequate descriptions do not exist for present programs.

(f) Once the final proposal is completed in sufficient detail, a cost analysis should be prepared and a fee request made. These items should be attached to the Program Description and forwarded to the Facilities Specialist.

(g) The Facilities Specialist will assemble the "Program Request Package", to include the detailed written comments of the Local Office Manager and their own written endorsement to the Facilities Research Utilization Specialist who will deliver the entire package to the Audit Staff who will prepare a recommendation on the Fee Request and present the package to the Chief of Administrative Services in conjunction with the Chief of Field Services for final approval.

12:51-9.1 Staffing requirements, procedures and qualifications

(a) In the process of developing maximum work capacity, a client or worker may require assistance with personal problems including, the development of vocational goals, his role as a worker, acceptance and adjustment to his disability and adequate interpersonal relationships and acceptance of supervision. The availability of competent licensed ethical and qualified professional disciplines of medicine, psychiatry, psychology, social work, vocational rehabilitation counseling, teaching, and a variety of therapies assures the effective use of the workshop for rehabilitation purposes in realizing the goal of employment of the handicapped for more effective living.

1. The Executive Director will maintain a functional organizational chart which is available at all times.

[2. The following staff positions can be represented on the facility staff, depending upon the size of the client population; and the proposed professional services program; the titles may vary from shop to shop:

- i. Vocational Rehabilitation Counselor;
- ii. Supervisor of Production (Production Manager, Operations Director);
- iii. Bookkeeper, Accountant or Comptroller;
- iv. Sales Manager;
- v. Contract Procurement Representative;
- vi. Public Relations Director;
- vii. Work Evaluation;
- viii. Personnel Manager;
- ix. Psychologist;
- x. Vocational Instructor;
- xi. Department Foreman;
- xii. Placement Specialist;
- xiii. Social Worker;
- xiv. Psychiatrist;
- xv. Registered Nurse;
- xvi. Medical Director or an M.D.;
- xvii. Mental Health Worker;
- xviii. Activity Coordinator;

- xix. Work Adjustment Specialist;
- xx. Occupational Therapist;
- xxi. Speech Therapist;
- xxii. Physical Therapist;
- xxiii. Auditory Specialist;
- xxiv. Secretaries;
- xxv. Clerks;
- xxvi. Maintenance Staff.]

(b)–(h) (No change.)

(i) Minimum qualifications for staff personnel are:

1. (No change.)

2. Supervisor [of] (Production): The minimum requirements are a high school or technical school education or equivalency and supervisory experience in industrial production. [Two years of college or equivalent education in a recognized program of technical training should also be required. Mechanical know-how and familiarity with production methods are essential, as is the ability to judge client potential, to supervise and lead. An understanding of the work-and-service pattern of the workshop and the ability to work within it are essential. A minimum of five years' full time paid employment in industry or in a sheltered workshop should be required of which at least two should be in a supervisory capacity.]

[3. Vocational Counselor: He should be a graduate from a four-year college or university with a degree in psychology, education, sociology or related field with one year of counseling or related experience.]

[4.]3. Rehabilitation Counselor: He [should] **will** possess a [Master's] **Bachelor's** Degree in vocational rehabilitation, or related fields. [He should also meet the requirements for rehabilitation counselor for the New Jersey Division of Vocational Rehabilitation Services and possess or be working toward such as Commission for Certification of Rehabilitation Counseling certification by a National Accrediting agency.]

[5.]4. Bookkeeper: He [should] **will** have a high school education or business school training in bookkeeping[,] **and** accounting[,], [etc. The ability to keep a complete set of books and prepare financial statements is necessary, as is knowledge of billing procedures, etc.]

[6. Sales Manager: He should be a high school graduate, preferably with emphasis on distributive education, or sales and sales management. Experience in salesmanship and the ability to supervise and inspire people.]

[7. Contract Procurement Manager: He should be a high school or technical school graduate plus four years of experience in the field of plant operations, marketing or sales.]

[8. Public Relations Director: He should be a college graduate with speciality in journalism, English, public relations, or related fields. Some experience in newspaper writing, public speaking. Some knowledge of the various media of communication and business education.]

[9.]5. Vocational Evaluator: He [should] **will** possess an undergraduate degree, with [sufficient] emphasis in the Rehabilitation area, **and will attend a DVRS approved training program within six months of employment. Post graduate training in vocational evaluation may be substituted for the DVRS training program.** [plus efforts to obtain additional training in the area of work evaluation which may include attendance at colleges and universities or training facilities. It is preferred that the candidate for the position have at least two years' experience in such areas as rehabilitation counseling, industrial arts, or occupational therapy. Other combinations of experience and education, such as in a workshop or industry and completion of specialized rehabilitation courses, especially those in work evaluation are also acceptable.]

[10. Psychologist: He should be licensed by the State of New Jersey as a psychologist.]

[11.]6. Vocational Instructor: He [should] **will** be accredited by the New Jersey State Department of Education, or qualified as a

journeyman in his field and have one year experience in teaching a trade with teaching experience acceptable to the New Jersey Division of Vocational Rehabilitation Services.

[12. Department Foreman: He should have a high school education in Industrial Arts or related field plus supervisory experience. The ability to understand, train and teach, as well as evaluate handicapped clients and trainees is necessary.]

[13.]7. Director of Professional Services: He should possess a Master's Degree in vocational rehabilitation or related field plus at least one year of experience in an administrative capacity directing professional, technical, or supervisory personnel. Experience as a staff member in a rehabilitation facility should also be required.

[14. Placement Specialist: It is advisable this person have at least two years' college training or an Associate in Arts Degree in the helping professions. He should have some experience in working with the disabled, especially in job placement. He must understand functional limitations imposed by a handicap. He must possess some knowledge of the demands of business and industry.]

[15. Social Worker: He should possess a Bachelor of Social Work degree plus one year of experience in public or private social work. An MSW degree with an ACSW is preferable in a large workshop.]

[16. Licensed Practical Nurse: He should be licensed in the State of New Jersey.]

[17. Medical Director: He should be licensed in the State of New Jersey, preferably with a speciality in physical medicine and rehabilitation.]

[8. Physical Therapist: He should be licensed by the State of New Jersey.]

[19. Occupational Therapist: He should be registered by the State of New Jersey.]

[20. Rehabilitation Counselor Aide: It is advisable this person have at least two years' college training or an Associate in Arts Degree in the Helping professions. His duties will be that of assisting the Rehabilitation Counselor in many of the facets of his work and especially those involved with the socially and culturally disadvantaged.]

[21.]8. Psychiatrist: He must be board certified.]

[22.]9. Program Director (Psycho-Social): This individual will be responsible for the overall development, implementation and maintenance of the psycho-social program. The Program Director may have direct service responsibility. A Masters Degree in vocational rehabilitation or a related field plus at least three years experience, one of which must be in an administrative capacity directing professional, technical or supervisory personnel. Experience in direct vocational service with psychiatrically disabled [should be] **is** required.]

[23.]10. Work Supervisor (Psycho-Social): He should possess a high school education or equivalent plus five years of work experience in occupational areas similar to those being offered at the facility. The individual will have a clear understanding of the demands and expectations in business and industry, particularly related to the occupational area supervised. The individual must understand the functional limitations imposed by a psychiatric handicap. Any combination of college or technical school may be substituted for experience on a year for year basis. College credits should be within the helping professions.]

[24.]11. Employment Specialist (Psycho-Social): He should possess a Bachelor of Arts degree in human services or a related field plus two years experience in working with the disabled, particularly with individuals who have significant emotional problems. He must have an understanding of the functional limitations imposed by such a handicap, and must be familiar with the demands and expectations of business and industry. Experience in job placement should also be required.]

12:51-10.1 Reporting

(a)–(b) (No change.)

(c) DVRS keeps statistics based on the Federal fiscal year. This begins October 1, and ends on September 30. Therefore, for reporting purposes:

First Quarter	Oct. 1–Dec. 31	Due Jan. 21
Second Quarter	Jan. 1–March [32]31	Due April 21
Third Quarter	April 1–June 30	Due July 21
Fourth Quarter	July 1–Sept. 30	Due Oct. 21

(d) (No change.)

12:51-11.1 Considerations

(a) (No change.)

1. (No change.)

2. The site and size of the property and building, rented or purchased, will be adequate for the immediate program and contemplated expansion. It is suggested that there be a minimum footage of 100 square feet floor space, exclusive [for] of storage space, but including aisles and passageways, for each client. All ceilings will be a minimum of nine feet in height. The architectural design of the building if being newly constructed will provide for maximum flexibility in adapting floor space and utilities to facilitate operations of the workshop.

3.–9. (No change.)

10. **Access to suitable** [Suitable] hospital and first-aid facilities will be readily available and at least one person who is trained in administering first-aid or other required client-related medical services will be available during all working hours.

11.–12. (No change.)

(b) (No change.)

12:51-13.1 Composition

[(a)] (b) A Professional Advisory Committee is permanently established to periodically review these standards, to make any suggestions, and to provide any other assistance that may be helpful in carrying out these standards.

[(b)] (a) The permanent Professional Advisory Committee will consist of the Chief of Rehabilitation Service, the Facilities Staff[s] of the Division of Vocational Rehabilitation and the State Commission for the Blind and Visually Impaired, the President of the New Jersey Association of Rehabilitation Facilities and representatives of the association.

[12:51-13.2 Duties]

[(a)] (c) Other duties of this professional Advisory Committee will consist of the assistance in handling differences of opinion, grievances and/or problems which may arise between directors of rehabilitation facilities and any private or public agencies, including the New Jersey Division of Vocational Rehabilitation Services. Those involved in whatever dispute is being mediated will in all cases be invited to attend the advisory committee meeting.

[(b)] (d) A report of these periodic meetings should be made available to members of the New Jersey Association of Rehabilitation Facilities and the New Jersey Division of Vocational Rehabilitation Services.

12:51-17.1 Procedure

(a) (No change.)

(b) The facility will provide the total number of days of services to each client according to the appropriately signed authorization allowing up to 10 percent absenteeism. Exceptions must be agreed to in writing between DVR counselors and the facility, or the facility will be responsible for the exceptions. Authorizations will be submitted for payment when the number of days of services indicated are provided - allowing for the 10 percent absenteeism and holidays.]

(b) **The facility will provide the number of days of service authorized for the client allowing up to 10 percent absenteeism. Exceptions must be agreed to, in writing and signed by the DVRS Manager, or the facility will be responsible for the exception.**

(c)–(e) (No change.)

12:51-18.1 NJDVRs

(a)–(c) (No change.)

(d) [It is the decision of NJDVR that the Commission on Accreditation of Rehabilitation Facilities (CARF) meet the above criteria. Accordingly, the NJDVR has adopted the following policy regarding the accreditation of vocationally oriented rehabilitation facilities:

1. Effective July 1, 1978, CARF will be the recognized voluntary agency responsible for the accreditation of vocationally oriented rehabilitation facilities in New Jersey that provide rehabilitation services to the clients of the NJDVR and of the New Jersey Commission for the Blind and Visually Impaired.

i. Classification "B" facilities approved for payment of survey fee by NJDVR must be surveyed and accredited prior to July, 1978, or must be surveyed by CARF and present satisfactory evidence to NJDVR of progress in corrective action to obtain accreditation.

ii. Classification "B" facilities not approved for assistance for payment for survey fee at this time must be surveyed and approved by July 1, 1980 by CARF.

iii. Classification "C" facilities must be surveyed and accredited by CARF by July 1, 1981.

(e) Rehabilitation Facilities established after July 1, 1978, who are providing services to clients of NJDVR will apply for accreditation and receive on site survey no later than the third year of operation from date of approval by NJDVR.

(a)

DIVISION OF WORKPLACE STANDARDS

**Ski Lifts
Improving Safety for the Public**

**Proposed Repeal: N.J.A.C. 12:175
Proposed New Rule: N.J.A.C. 12:175**

Authorized By: Roger A. Bodman, Commissioner,
Department of Labor.

Authority: N.J.S.A. 34:4A-1 et seq., specifically 34:4A-4.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

William J. Clark, Director
New Jersey Department of Labor
Division of Workplace Standards
CN 054
Trenton, NJ 08625-0054

The Department of Labor thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-500.

The agency proposal follows:

Summary

Implementation of the proposed new rules will provide greater safety for the public at ski lifts. The proposed new text replaces the existing rules on ski lifts with rules that: update requirements with the current state of safety, reflect administrative changes, editorially improve the text, and present the material in accordance with the guidelines of the Office of Administrative Law.

The new rules are intended to continue to provide standards to

implement the purposes of the Ski Lift Act, N.J.S.A. 34:4A-1 et seq.

The new chapter consists of six subchapters; Subchapter 1, General Provisions are rules essentially relating to purpose and scope. Subchapter 2 covers definitions for terms used in the chapter. Subchapter 3 addresses administration, registration, fees, notice, records, reporting and plans. Subchapter 4 contains the safety requirements. Subchapter 5 contains rules for safe passenger evacuation. Subchapter 6 contains the documents referred to by reference and their availability.

Development of the rules and amendments to the rules were accomplished with internal agency review, public input, and notice to affected interested persons.

Social Impact

Implementation of the proposal will provide greater safety for the public at ski lifts in that the rule is abreast of current developments in the field.

Economic Impact

The application of the improved rules presents no hardship to the ski lift industry and should provide economic advantage to the public and the operators and owners of ski lifts by reducing expensive injuries.

Though compliance with the rules does impose some minimal expense (although not easily or readily quantifiable in terms of dollars) on the owners or operators of ski lifts, this expense is far outweighed by the positive results for the owners or operators of ski lifts and the public.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:175.

Full text of the proposed new rules follows.

CHAPTER 175 SKI LIFTS

SUBCHAPTER 1. GENERAL PROVISIONS

12:175-1.1 Title and citation

This regulation shall be known and may be cited as N.J.A.C. 12:175, Ski Lifts.

12:175-1.2 Purpose

The purpose of this chapter is to provide reasonable standards for the design, construction and operation of passenger tramways used in skiing for the safety of the public.

12:175-1.3 Scope

This chapter shall apply to passenger tramways used in skiing subject to the Ski Lift Safety Act, N.J.S.A. 34:4A-1 et seq.

12:175-1.4 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:175-6.

12:175-1.5 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decisions shall not affect the remaining portions of this chapter.

SUBCHAPTER 2. DEFINITIONS

12:175-2.1 Definitions

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

"Act" means the Ski Lift Safety Act, N.J.S.A. 34:4A-1 et seq.

"ANSI" means the American National Standards Institute.

"Approved" means acceptable to the commissioner. Any product certified, or classified, or labeled, or listed by a nationally recognized testing agency may be deemed to be acceptable, unless specifically banned by order of the commissioner.

"Authority having jurisdiction" means the Commissioner of Labor.

"Commissioner" means the Commissioner of Labor or any officer or employee of the Department of Labor assigned by him to carry out any of the functions, duties and powers conferred or imposed upon him by the Act.

"Division of Workplace Standards" means the Division of Workplace Standards in the New Jersey Department of Labor, CN 054, Trenton, New Jersey 08625-0054.

"Nationally recognized testing agency" means a laboratory, such as the Underwriters' Laboratories, Inc., or the Factory Mutual Engineering Corporation, or any similar testing organization acceptable to the commissioner.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Office of Safety Compliance" means the Office of Safety Compliance, New Jersey Department of Labor, CN 386, Trenton, New Jersey 08625-0386.

"Operator" means a person who owns, manages or directs the operation of a passenger tramway, and includes the State or any political subdivision or instrumentality thereof.

"Passenger tramway" means a device used to transport passengers uphill, on skis, or in cars, or suspended in the air, by the use of steel cables, chains, belts, or ropes, and usually supported by trestles or towers with one or more spans, and includes among others: an aerial passenger tramway, multicar aerial passenger tramway, skimobile, chairlift, J-bar, T-bar, poma lift, platter pull, or rope tow.

"Professional engineer" means a person licensed to practice professional engineering in New Jersey by the New Jersey Board of Professional Engineers and Land Surveyors.

"Serious injury" means an injury to a member of the public which requires treatment by a doctor, such as a fracture, or conditions requiring admittance to a hospital for at least 24 hours.

"Shall" means a mandatory requirement.

"Ski lift" means aerial passenger tramway or passenger tramway.

SUBCHAPTER 3. ADMINISTRATION

12:175-3.1 Scope of subchapter

This subchapter shall apply to the administrative procedures to be followed by operators and the appropriate officials of the Division of Workplace Standards concerning passenger tramways.

12:175-3.2 Compliance

(a) Every operator of a passenger tramway shall comply with this chapter.

(b) A passenger tramway which is not in compliance with this chapter shall not be used or occupied, except as provided in N.J.A.C. 12:175-4.4.

(c) The Office of Safety Compliance shall order in writing, a temporary cessation of operation of a passenger tramway, if it has been determined after inspection to be hazardous or unsafe. Operation shall not be resumed until such conditions are corrected.

12:175-3.3 Registration

(a) A passenger tramway shall not be operated unless it has been registered by the commissioner.

(b) On or before October 1 of each year, every operator of a passenger tramway shall apply to the commissioner, on forms supplied by him, for registration of the passenger tramway or tramways which such operator owns or manages or the operation of which he directs. The application shall contain such information as the commissioner may reasonably require in order for him to determine whether the passenger tramways sought to be registered comply with the intent of the Act and this chapter.

(c) The commissioner shall issue to the applying operator without delay registration certificates for each passenger tramway for which such registration is sought when he is satisfied:

1. That the facts in the application are sufficient to enable him to fulfill his duties under the Act; and

2. That each such passenger tramway sought to be registered complies with this chapter.

(d) In order to satisfy himself that the conditions described in (c) above have been fulfilled, the commissioner may cause to be made such inspections as he may reasonably deem necessary.

(e) When an operator installs a passenger tramway subsequent to October 1 of any year, such operator shall file a supplemental application for registration of such passenger tramway. Upon receipt of such supplemental application the commission shall immediately initiate proceedings leading to the registration or rejection of registration of such passenger tramway.

(f) Each registration shall expire on September 30 next following skiing season for which it was acquired.

(g) Each operator shall display prominently the registration certificate for each passenger tramway at the place where passengers are loaded. The registration certificate shall be encased in such a manner as to be protected from the weather.

12:175-3.4 Inspection fee

(a) An inspection fee for the purpose of registration shall be charged at the rate of \$50.00 per day per inspector or for any part of any day. No other fees shall be charged for any other inspections performed.

(b) After inspection, if the passenger tramway is found to comply with this chapter, the Office of Safety Compliance shall authorize the passenger tramway for use by the public by issuing a registration certificate. Each certificate shall not be issued until the inspection fee has been paid.

12:175-3.5 Filing of notice of intent to operate

The operator of a new passenger tramway or the operator of a passenger tramway who changes the structure, mechanism, classification or its capacity or changes the physical spacing between carriers shall file plans or proper notice with the Office of Safety Compliance.

12:175-3.6 Maintenance and inspection records

(a) The operator shall retain at all times up-to-date maintenance and inspection records for each passenger tramway.

(b) These records shall contain the following information:

1. Date and nature of all inspections, whether by the Office of Safety Compliance or the operator;

2. Any violation of the rules and type of action taken to rectify the violation; and

3. All break-downs or repairs of any major mechanical part.

(c) These maintenance and inspection records shall be available for inspection by the Office of Safety Compliance.

12:175-3.7 Serious injury or death to a member of the public

(a) No passenger tramway that directly or indirectly results in a death to the public shall be permitted to resume operation until the passenger tramway has passed a full mechanical and safety inspection made by the Office of Safety Compliance.

(b) All serious injuries or fatalities incurred during the operation of any ski lift shall be immediately reported to the division by the operator on a form provided by the Office of Safety Compliance.

12:175-3.8 Submittal of plans

(a) Before constructing a new or altering an existing passenger tramway the operator or prospective operator shall submit plans and specifications to the commissioner. The commissioner may make recommendations relative to the safety of the layout and equipment, but such recommendations shall not relieve the operator or prospective operator of his primary responsibility as set forth in N.J.S.A. 34:4A-2.

(b) One set of plans shall be filed with the New Jersey Department of Labor, Office of Safety Compliance, CN 389, Trenton, New Jersey 08625-0389.

(c) Prints of drawings shall be sealed by a professional engineer and shall comply with the requirements of the New Jersey Board of Professional Engineers and Land Surveyors.

(d) Plans shall be titled, stating name of operator, location of work by street number and municipality, date of drawing, drawing number, and all revisions thereto.

(e) Plans shall be drawn to scale to produce good legibility.

(f) Plans required by (a) above shall include the following information:

1. A plot plan of the area within 150 feet of the passenger tramway to scale or with appropriate distances indicated on the plot plan, showing on-site and off-site buildings, structures, property lines, required site improvements, or structures, principal access or egress points, driveways, and parking areas.

2. Design and details of foundations or supports for all passenger tramways, the foundation drawing to include a description of the soil and allowable soil pressure based on investigation of the professional engineer.

3. A schematic, isometric or plan drawing of the entire system, with specifications. This drawing to include all equipment, parts, safety devices, material, instrumentation, electrical system for both power and light necessary to evaluate the safe operation of the system and manufacturer's name.

4. Appropriate information on fire protection facilities at the site and available public fire services.

(g) When projects are of a repetitive nature, such as those involving standard components or previously approved packaged units, standard drawings may be utilized.

(h) All drawings and documents shall include notation of any and all revisions with date of change noted.

SUBCHAPTER 4. PASSENGER TRAMWAYS

12:175-4.1 Scope of subchapter

This subchapter shall apply to the design, construction, installation, operation, and maintenance of ski lifts.

12:175-4.2 Standards adopted by reference

(a) The standards prescribed by Passenger Tramways, ANSI B77.1-1982, are adopted as safety standards and shall apply according to their provisions, except that the following sections and subsections shall not apply:

1. Subsection 1.1, Scope;

2. Subsection 1.2, Purpose;

3. Subsection 1.3, Reference to other Codes and Standards; and

4. Section 8, Revision of American National Standards Referred to in this Document.

(b) Each operator engaged in ski lift operations shall protect the public by complying with the standards prescribed in (a) above.

(c) Only technical standards relating to public safety are adopted by any incorporation by reference as prescribed in (a) above. Other standards relating to administration and reporting procedures shall be achieved by communication with the appropriate officials of the Division of Workplace Standards.

(d) Where any conflict occurs between the standards prescribed in (a) above and these rules, these rules shall prevail.

12:175-4.3 Electrical disconnect switch

(a) Where restoration of electrical power could create a hazard, passenger tramways shall be provided with a main disconnect switch capable of being locked only in the Off position.

(b) The operator shall lock-out the electrical disconnect switch when restoration of electric power to a passenger tramway could create a hazard to persons during the performance of maintenance, repair, inspection or an emergency evacuation of passengers, and insure that it remains locked-out until such time that restoration of power will not create a hazard.

12:175-4.4 Out of service procedure

Where individual units of a passenger tramway, such as cars, seats or other carriers are defective and not in compliance with this chapter, such units shall be taken out of service and clearly marked with a sign reading "Out of Service" provided however, such defects do not jeopardize the safety of the passenger tramway.

12:175-4.5 Passenger conduct

(a) The operator shall post a conspicuous sign in the vicinity of the entrance to passenger tramways advising the public of prohibited passenger conduct on such tramways.

(b) The sign required by (a) above shall include the items listed, as applicable, or express equivalent requirements:

1. Passengers shall not board a passenger tramway unless he has sufficient knowledge and ability to use it.

2. Passengers shall get on and get off a tramway, lift, or tow at designated areas.

3. Passengers, while riding an aerial tramway or lift, shall not throw or expel therefrom any object, nor shall any passenger do any act or thing that shall interfere with the operation of the tramway or lift.

4. Passengers shall not willfully engage in any type of conduct that may contribute to, or cause, injury to any other person. Passengers, when using a surface lift or tow, shall not willfully place in an uphill track any object that can cause a skier to fall.

SUBCHAPTER 5. EVACUATION OF PASSENGER TRAMWAYS**12:175-5.1 Scope of subchapter**

This subchapter shall apply only to those passenger tramways which convey occupants in a chair, gondola, cabin or other aerial carrier from which passengers would have to be lowered to the ground, snow surface or other safe place when conditions interrupt normal operation and preclude the use of auxiliary measures to bring carriers and passengers to terminal areas.

12:175-5.2 Evacuation plan

(a) All evacuation plans shall be approved.

(b) The operator shall prepare and have available for inspection by the Office of Safety Compliance a detailed written evacuation plan which complies with (c) through (e) below.

(c) An evacuation plan shall indicate consideration of the following:

1. Every reasonably predictable condition of passenger use;
2. The most adverse operating conditions;
3. The most disadvantageous combination of factors that could affect evacuation.

(d) An evacuation plan shall incorporate a program that starts with the initial alert and carries through to the preparation of reports.

(e) An evacuation plan shall include:

1. An evacuation system capable of removing passengers from carriers at any point on the lift under any possible operating conditions, including inclement weather and darkness.

2. A system or combination of systems that can remove the passengers from fully loaded carriers under the most adverse operating conditions within a time limit appropriate for the type of carrier and the climatic conditions encountered.

3. Personnel training to perform all phases of the evacuation within the time limit specified.

4. Designation and availability of evacuation gear and mechanical equipment necessary to carry out aerial lift evacuation. This includes:

- i. The number, location, and content of evacuation caches in terminal areas and along lift lines;
- ii. The designation of mechanical equipment that is to be available for evacuations;
- iii. Provisions for nighttime evacuations; and
- iv. Information on emergency units or equipment which can be called upon in an emergency.

12:175-5.3 Evacuation equipment

Evacuation equipment properly maintained and in good working condition, adequate to implement the approved evacuation plan shall be provided.

12:175-5.4 Evacuation personnel

(a) Personnel necessary to implement the approved evacuation plan shall be provided and available to perform evacuation duties during normal operations of passenger tramways.

(b) Personnel assigned duties to implement the approved evacuation plan shall be trained to competently perform these duties.

12:175-5.5 Evacuation drills

Evacuation drills shall be conducted at established intervals not to exceed one each 12 calendar months and such drills shall be recorded in the operational log of each passenger tramway.

SUBCHAPTER 6. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER**12:175-6.1 Documents referred to by reference**

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. ANSI B77.1-1982, Passenger Tramways - Aerial Tramways and Lifts, Surface Lifts, and Tows.
2. N.J.S.A. 34:4A-1 et seq., Ski Lift Safety Act.

12:175-6.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
Division of Workplace Standards
Labor and Industry Building, Room 1103C
Trenton, New Jersey

12:175-6.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed in N.J.A.C. 12:175-6.1.

ANSI - American National Standards Institute
1430 Broadway
New York, New York 10018

N.J.S.A. - New Jersey Statutes Annotated
Copies available from:
Office of Safety Compliance
New Jersey Department of Labor
CN 386
Trenton, New Jersey 08625-0386

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Certification of Debts Regulation of Credit

Proposed Amendments: N.J.A.C. 13:2-7.10 and 13:2-24.4

Authorized By: John F. Vassallo, Jr., Director, Division
of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-39 and N.J.S.A. 33:1-1(w).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex
CN 087
Trenton, NJ 08625

The Director, Division of Alcoholic Beverage Control, thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-509.

The agency proposal follows:

Summary

The proposed amendments to the existing Division regulations governing the extension of credit address two areas which can be modified to enhance regulatory compliance and effect time savings and cost reductions without diminishing the policy objectives fostered by the regulation.

N.J.A.C. 13:2-7.10(b)4 is to be deleted. This regulation basically requires a certification by the transferor (seller) and transferee (buyer) of a retail liquor license that outstanding debts to liquor distributors will either be paid out of the proceeds of the sale or assumed by the transferee. The local issuing authority had to insure this certification was produced and acknowledge same in its Resolution of license transfer approval.

This procedure is replaced by the proposed new subsection, N.J.A.C. 13:2-24.4(h), which automatically effects the same basic consequence in an ownership transfer situation. The proposed modification in form comports with the recommendations contained in the Final Report to the Director of the Division of Alcoholic Beverage Control presented by a 12 member Special Panel on Credit dated July 10, 1981.

The second area of modification is the amendment to N.J.A.C. 13:2-24.4(b) and (f) which will permit wholesalers to serve a "Notice of Obligation" (a written notice to a retail licensee that a credit purchase is in default, the consequences of same and the mechanism to dispute the notice) by sending the notice via first class mail as an additional alternative to service by personal delivery.

Social Impact

The regulation of credit extensions by wholesaler to retailer in the sale of alcoholic beverages has been a consistent object of specific regulatory provisions since 1945 and judicially recognized as a proper matter for public concern.

The proposed amendments to N.J.A.C. 13:2-24.4 shall have no substantive negative social impact on the numerous justifications and public interest objectives of the regulation of wholesaler credit most recently reviewed and approved by the New Jersey Supreme Court in *Heir v. Degnan*, 82 N.J. 109, 124-25 (1980). The amendment proposed to provide an alternative use of first class mail by a wholesaler to serve a "Notice of Obligation" upon a defaulting retailer should reduce wholesaler costs in its self-administration of credit delinquencies. Continued adequate recourse and due process protection is provided the retailer that may dispute a "Notice of Obligation" through retention and expansion of the *ad interim* and dispute conference provisions of N.J.A.C. 13:2-24.4(c)1 and N.J.A.C. 13:2-24.4(f). By affording wholesalers an option to utilize the mail instead of personal man hours, the anticipated overhead savings at the wholesale level should have positive economic benefits in not only the wholesale distribution of products but with the retail licensee and the ultimate consumer.

The second aspect of the proposed amendment replaces the existing regulatory provision and reintroduces the previous type regulatory provision involving the effect of transfers, extensions or corporate stockholder changes of retail licenses on a "Notice of Delinquency", which should reduce confusion and duplicity at the local issuing authority and Division level. The requirement for a certification concerning wholesaler indebtedness adds three parties to the process; for example, the transferor, the transferee and the local issuing authority. The proposed regulation will obviate the time and expense of these parties, as well as the Division, which has to review the action taken at the municipal level. By operation of the proposed regulation, there should be tie and cost savings with total certainty of regulatory compliance.

Economic Impact

These proposed regulatory amendments should meaningfully reduce cost and time spent by wholesale and retail licensees, local issuing authorities and the Division of Alcoholic Beverage Control in various aspects of administering and implementing the overall public policy objectives of the wholesaler credit regulations. Wholesalers that utilize the mailing of the "Notice of Obligation" instead of personal service should reduce their overhead in complying with the regulation. Any reductions in costs of operation should have an economic impact on retail licensees and consumers, as well as wholesale licensees. Eliminating the need for a certification as to wholesalers debts will save time and money expended by the seller and buyer of retail licenses, the local issuing authority and the Division. These savings can be directed at the governmental levels to other areas of concern in alcoholic beverage control and supervision.

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

13:2-7.10 Hearing not required; reasons

(a) (No change).

(b) No application shall be approved unless the issuing authority affirmatively finds and reduces to resolution that:

1.-2. (No change.)

3. The applicant has disclosed and the authority reviewed the source of all funds used in the purchase of the license and the licensed business and all additional financing obtained in connection with the licensed business [; and].

[4. In the case of person-to-person transfers, that it has received a written statement, under oath, signed by an authorized representative of both the transferor and transferee, affirming that the transferee is aware of all obligations outstanding to New Jersey alcoholic beverage manufacturers, wholesalers, and distributors, and that either the transferee has assumed any such obligations or the obligations have been or will be satisfied by the transferor out of the proceeds of the sale of the licensed business.]

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

13:2-24.4 Regulation of wholesaler credit

(a) (No change).

(b) In the event that a wholesaler has not received payment in accordance with the terms of sale as set forth upon an individual delivery invoice pursuant to N.J.A.C. 13:2-39.1, such wholesaler shall [physically serve], **personally or by first class mail**, serve a "Notice of Obligation" upon any such defaulting retailer or its employee within three business days after the obligation is due. **Service shall be deemed complete on the date of mailing or when personal service is made.**

1. (No change).

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

(f) Upon receipt of a written claim by a retailer that it disputes the existence of a debt as set forth in a "Notice of Obligation", the Director or his designee will, upon a showing that either the merchandise was not delivered or that payment has been made, direct that the matter be set down for informal conference with notice to the parties **and subject to appropriate interim orders to preserve the rights of the retailer**. In the event that the dispute has not been resolved by the date of the hearing, the Director or his designee shall take proofs as to whether or not the merchandise which is the subject of the "Notice of Obligation" was delivered, and/or whether or not payment was made, and if so, upon what date. Should the Director or his designee determine that the "Notice of Obligation" was accurate, a special ruling shall be entered directing that a "Notice of Delinquency" be issued with respect to the licensee for such period of time as that which would have transpired between the original "Notice of Obligation" and "satisfaction". Should it be determined that the original "Notice of Obligation" was inaccurate, a special ruling shall be entered prohibiting the issuance of a "Notice of Delinquency." The party for whom the determination was adverse shall promptly remit to the Division such costs as may be determined, which shall in no event be less than \$25.00.

(g) (No change).

(h) **Whenever the license of any retail licensee that is subject to an outstanding "Notice of Delinquency" is transferred or extended to another person or is subject to a change in corporate stockholders, the name and address of the transferee or the person to whom the license has been extended or the same corporate entity that has its State assigned license number modified because of a stockholder change shall be placed on the "Notice of Delinquency" in the place and stead of the transferor or license subject to extension or stockholder change.**

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Conduct of Licensees Prohibited Promotions

Proposed Amendment: N.J.A.C. 13:2-23.16

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 33:1-39, 33:1-39.2 and 33:1-93.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex
CN 087
Trenton, NJ 08625

The Director, Division of Alcoholic Beverage Control may thereafter adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-499.

The agency proposal follows:

Summary

The proposed amendments to the existing Division regulations governing prohibited promotions by licensees and registrants of alcoholic beverages sold in New Jersey shall clarify a typographical error in N.J.A.C. 13:2-23.16(a) and change the word "license" to "licensee" and will add an additional exception to N.J.A.C. 13:2-23.16(a)2 to reference the allowance of manufacturers' rebates of a portion of the purchase price to New Jersey purchasers of an alcoholic beverage product.

The change in the regulation to correct the typographical error requires no further explanation.

The amendment to N.J.A.C. 13:2-23.16(a)2 is required to avoid an apparent conflict with a recently adopted new regulation authorizing manufacturers rebate coupons, N.J.A.C. 13:2-24.11.

N.J.A.C. 13:2-23.16(a) prohibits any licensee or registrant from offering anything of value to a consumer upon the purchase of an alcoholic beverage product. The only current exception from this prohibition is the providing of branded or unique glassware or souvenirs in connection with a single purchase of an alcoholic beverage product.

N.J.A.C. 13:2-24.11 was adopted on August 4, 1983 after a proposal notice bearing PRN 1983-310 appeared in the June 20, 1983 issue of the New Jersey Register at 15 N.J.R. 1003(a). The effective date of this new rule will occur when the adoption notice is published in the New Jersey Register, which is expected to be September 6, 1983. The new manufacturer's rebate regulation will permit consumers to mail in to manufacturers, distillers, blenders and rectifiers, brewers, vintners or importers (alcoholic beverage producers or importers a rebate form to receive a refund of a portion of the purchase price of an alcoholic beverage product acquired by the consumer. This could therefore, be considered as the offering to a consumer of something of value conditioned upon the purchase of an alcoholic beverage product and within the prohibitions currently set forth in N.J.A.C. 13:2-23.16(a)2.

The proposed amendment to N.J.A.C. 13:2-23.16(a)2 will rectify any conflict by adding another exception to exempt from its provisions "consumer mail-in rebates offered by alcoholic beverage producers or importers in accordance with N.J.A.C. 13:2-24.11".

Social Impact

The proposed amendments have no intrinsic social impact, but merely correct an obvious typographical error and clarify an apparent conflict of an existing regulatory provision (N.J.A.C. 13:2-23.16(a)2) with a recent subsequent amendment (N.J.A.C. 13:2-24.11). The anticipated social and economic consequences of the manufacturers' rebate regulation were previously articulated in PRN 1983-310 at 15 N.J.R. 1003(a).

Economic Impact

There is no intrinsic economic impact on these proposed amendments for the same reasons indicated in the Social Impact statement referenced above.

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

PROPOSALS

13:2-23.16 Prohibited promotions

(a) No [license] licensee or registrant privileged to sell or solicit the sale of alcoholic beverages within this State shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. (No change.)
2. Offers to a patron or consumer a free drink, gift, prize or anything of value, conditioned upon the purchase of an alcoholic beverage or product, except branded or unique glassware or souvenirs in connection with a single [;] or consumer mail-in rebates offered by alcoholic beverage producers or importers in accordance with N.J.A.C. 13:2-24.11; or
3. (No change.)

(a)

DIVISION OF MOTOR VEHICLES

**Vehicle Construction
Exception for Safety Appliances from
Dimensional Restrictions**

Proposed New Rule: N.J.A.C. 13:20-2.3

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.
Authority: N.J.S.A. 39:3-84.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, NJ 08666

The Division of Motor Vehicles thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-508.

The agency proposal follows:

Summary

The proposed new rule deals with the maximum width of commercial motor vehicles. The proposed rule provides that mirrors, lights and chains or other similar fasteners installed on commercial vehicles are exempt from the maximum width limitation prescribed by statute. This rule would permit mirrors to extend out 10 inches or less, and lights or chains to extend out three inches or less. This proposed rule reinstates a Division of Motor Vehicle policy that was not codified in the Administrative Code.

Social Impact

The proposed rule is designed to effect greater safety on the roadways by limiting the overall width of commercial vehicles with extensions. The rule would also publicize the policy of the Division and result in a greater public awareness of the maximum width of commercial vehicles.

Economic Impact

There is no economic impact on the State. There may be an increased cost to owners of commercial vehicles in order for them to comply with this rule.

Full text of the proposed new rule follows.

TRANSPORTATION

13:20-2.3 Exceptions for safety appliances from dimensional restrictions

(a) In computing the overall width of a vehicle, or vehicle and load, there shall not be included in the dimensional limitations safety appliances such as mirrors or lights, or chains or similar fasteners used for the securing of cargo, providing such appliances or fasteners do not exceed the following limitations:

1. Mirrors which are required to be mounted on a vehicle may extend beyond the permissible width of the vehicle to a distance not to exceed 10 inches on each side of the vehicle.
2. Lights which are required to be mounted on a vehicle may extend beyond the permissible width of the vehicle a distance not to exceed three inches on each side of the vehicle.
3. Chains or similar fasteners used for securing of cargo may extend the permissible width of a vehicle to a distance not to exceed three inches on each side of the vehicle.

TRANSPORTATION

(b)

TRANSPORTATION OPERATIONS

**Restricted Parking and Stopping
Route 47**

Proposed Amendment: N.J.A.C. 16:28A-1.33

Authorized By: John P. Sheridan Jr., Commissioner,
Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1a-6, 39:4-138.1, 39:4-139.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Department of Transportation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-504.

The agency proposal follows:

Summary

The proposal amends the text which was previously proposed June 21, 1982 at 14 N.J.R. 637(a) and adopted September 7, 1982 at 14 N.J.R. 982(a), concerning restricted parking and stopping along Route 47 in Glassboro Borough, Gloucester County. The proposed amendment deletes text which is duplicated in existing rules. Additionally, the proposal amends N.J.A.C. 16:28A-1.33 to effect spelling and other technical changes not in violation of N.J.A.C. 1:30-3.5, and to comply with requests from local officials.

Based upon the request from local officials, the Department's Bureau of Traffic Engineering conducted engineering studies. The engineering studies proved that the establishment of "no parking" zones were warranted in the areas specified by local officials.

TRANSPORTATION

PROPOSALS

The Department therefore proposes to amend N.J.A.C. 16:28A-1.33 regarding restricted parking and stopping along Route 47 in Glassboro Borough, Gloucester County in compliance with the request from local officials. Appropriate signs will be installed to advise the motoring public.

Social Impact

The proposed amendment will establish "no parking" zones along Route 47 in Glassboro Borough, Gloucester County for the safe and efficient flow of traffic and the enhancement of public safety. Additionally, it will remove any confusion caused by the duplicate rules and provide a single source of information. Thus, ensuring the public's confidence in State government's effort to reduce duplication and unnecessary rules.

Economic Impact

The proposed amendment will cause the Department and local officials to incur direct and indirect costs for personnel for mileage and equipment requirements. The restrictions imposed will have no economic impact on local businesses in the areas being designated as "no parking" zones. Local officials will bear the costs for the installation and procurement of signs. Motorists who are violators of the regulation will be levied appropriate fines.

Full text of the current rule may be found in the New Jersey Administrative Code as supplemented by the New Jersey Register.

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

16:28A-1.33 Route 47

(a) The certain parts of State highway Route 47 described in [(a)] this section and 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.-3. (No change.)

4. No stopping or standing in Glassboro[ugh] Borough, Gloucester County:

i. Along the northbound side:

(1) (No change.)

(2) From route US 322-West Street to [East Focer Street] **Green**

Tree Road;

[(3) From Market Place to Green Tree Road;]

[(4)] (3) From Bristol Drive to Heston Road.

ii. Along the southbound side:

(1)-(3) (No change.)

(4) Including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

5.-9. (No change.)

[10. No stopping or standing in Glassboro Borough, Gloucester County including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation:

i. Along the northbound side:

(1) From a point 150 feet south of the center line of US 322-High Street to the center line of US 322-High Street;

(2) From the center line of US 322-West Street to the center line of East Focer Street;

(3) From the center line of Market Place to the center line of Green Tree Road;

(4) From the center line of Bristol Drive to the center line of Heston Road.

ii. Along the southbound side:

(1) From the center line of Heston Road to the prolongation of the southerly curb line of Green Tree Road;

(2) From the center line of Spencer Street to the center line of Market Place;

(3) From the center line of US 322-High Street to a point 120 feet south of the center line of US 322-High Street.]

[11.]10. No stopping or standing in Westville Borough, Gloucester County:

i. - ii. (No change.)

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Routes 70 and 183

Proposed Amendment: N.J.A.C. 16:28A-1.37 Proposed New Rule: N.J.A.C. 16:28A-1.96

Authorized By: John P. Sheridan Jr., Commissioner,
Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-6, 39:4-138.1,
39:4-139 and 39:4-199.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Department of Transportation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-503.

The agency proposal follows:

Summary

The proposed amendment and new rule will establish "no parking" zones along Route 70 in Cherry Hill Township, Camden County and Route 183 in Stanhope Borough, Sussex County, for the efficient flow of traffic and the safe and efficient on/off loading of passengers at established bus stops.

Based upon requests from the local authorities the Department's Bureau of Traffic Engineering conducted engineering studies to consider the best method of traffic control devices required as provided by traffic counts, accidents rates, traffic flow and volume.

The engineering studies and data obtained indicated that the installation of signs restricting parking were the most efficient method for traffic control, after considering all alternatives.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.37 regarding "no parking" zones along Route 70 in Cherry Hill Township, Camden County, and to add new rule N.J.A.C. 16:28A-1.96 regarding "no parking" zones along Route 183 in Stanhope Borough Sussex County, in compliance with requests from the local officials.

Social Impact

The proposed amendment and new rule will establish "no parking" zones along Route 70 in Cherry Hill Township, Camden County, and Route 183 in Stanhope Borough, Sussex County for the safe and efficient flow of traffic and the on/off loading of passengers at established bus stops, respectively. Additionally, the regulations will enhance public safety in the respective areas designated and the interest of mass transit. Appropriate signs will be erected advising the motoring public.

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Economic Impact

The Department and local authorities will incur direct and indirect costs for personnel for mileage and equipment requirements. There will be no economic impact on any businesses within the areas where parking is being restricted, however, fines will be levied for the motoring public in violation of the law. Local authorities will be responsible for the placement of signs establishing "no parking" zones.

Full text of the current rule may be found in the New Jersey Administrative Code as supplemented by the New Jersey Register.

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

16:28A-1.37 Route 70

(a) The certain parts of State highway Route 70 described in [(a) of] this section 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.-4. (No change.)

[5. No stopping or standing in Cherry Hill Township along the westbound side from the westerly curb line of Connecticut Avenue to the easterly curb line of Virginia Avenue.]

[6.] 5. No stopping or standing in Lakewood Township, Ocean County:

i. Along both sides for the entire corporate limits of the Township of Lakewood including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

[7. No stopping or standing in Cherry Hill Township, Camden County:

i. Along the northerly (westbound) side:

(1) Between the Evesham Township-Cherry Hill Township corporate line and intersection of Maine Avenue;

(2) Between a point 150 feet east of, and the easterly curb line of Georgia Avenue.

ii. Along the southerly (eastbound) side:

(1) Between a point 250 feet west of the Ellisburg traffic circle and the Evesham Township - Cherry Hill Township corporate line;

(2) Between a point 80 feet west of, and the westerly curb line of Edison Avenue.

iii. Along both sides:

(1) Between the intersection of Cuthbert Boulevard and the Stoys Landing Road Traffic Circle.

(2) Including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.]

[(b) The certain parts of State Highway Route 70 described in (b) of this section shall be and hereby are designated and established as "no parking" zones where parking is prohibited at all times, and in accordance with the provisions of N.J.S.A. 39:4-199 permission is hereby granted to erect appropriate signs at the following established bus stops:

1. Along Route 70 westbound on the northerly side in the Township of Cherry Hill, County of Camden:

i. Beginning 130 feet west of the westerly curb line of Springdale Road and extending 135 feet westerly therefrom.]

6. No stopping or standing in Cherry Hill Township, Camden County:

i. Along the northerly (westbound) side:

(1) Beginning 130 feet west of the westerly curb line of Springdale Road and extending 135 feet westerly therefrom.

(2) From Connecticut Avenue to Virginia Avenue.

(3) From the Evesham Township-Cherry Hill Township corporate line and Maine Avenue.

(4) From the easterly curb line of Georgia Avenue to a point 150 feet easterly therefrom.

ii. Along the southerly (eastbound) side:

(1) Beginning 250 feet west of the westerly curb line of Ellisburg Circle to the Evesham Township-Cherry Hill Township corporate line.

(2) From the westerly curb line of Edison Avenue to a point 80 feet westerly therefrom.

iii. Along both sides:

(1) From Cuthbert Boulevard to the Stoys Landing Road traffic circle.

(2) Including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

16:28A-1.96 Route 183

(a) The certain parts of State highway Route 183 described in this section shall be 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. No stopping or standing in the Borough of Stanhope, Sussex County:

i. Along the easterly (northbound) side:

(1) From a point 35 feet south of the prolongation of the southerly curb line of Main Street (south intersection) to a point 105 feet north of the northerly curb line of Main Street (south intersection).

(b) The certain parts of State highway Route 183 described in this section 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 hereby granted to erect appropriate signs at the following established bus stops:

1. Along the easterly (northbound) side in Stanhope Borough, Sussex County:

i. Near side bus stop:

(1) Main Street (southerly intersection): Beginning 35 feet south of the prolongation of the southerly curb line of Main Street and extending 100 feet southerly therefrom.

(2) Stonegate Lane: Beginning at the southerly curb line of Stonegate Lane and extending 180 feet southerly therefrom.

ii. Midblock bus stop:

(1) Dell Road: Beginning 875 feet south of the southerly curb line of Dell Road and extending 200 feet southerly therefrom.

iii. Far side bus stop:

(1) Houdaille Road-Beginning at the prolongation of the northerly curb line of Houdaille Road and extending 120 feet northerly therefrom.

2. Along the westerly (southbound) side in Stanhope Borough, Sussex County:

i. Near side bus stop:

(1) Houdaille Road-exit ramp-Beginning at the northerly curb line of the Houdaille Road exit ramp of Route 183 and extending 105 feet northerly therefrom.

ii. Mid block bus stop:

(1) Dell Road-Beginning 816 feet south of the prolongation of the southerly curb line of Dell Road and extending 164 feet southerly therefrom.

iii. Far side bus stop:

(1) Main Street (southerly interestion)-Beginning at the southerly curb line of Main Street and extending 100 feet southerly therefrom.

TRANSPORTATION

PROPOSALS

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping
Routes 82 and 208

Proposed Amendments: N.J.A.C. 16:28A-1.43
and 1.88

Authorized By: John P. Sheridan Jr., Commissioner,
Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-6, 4-138.1,
4-139 and 4-199.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

The Department of Transportation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-502.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 16:28A-1.43, will establish additional "no parking" zones along Route 82 in Union Township, Union County, for the safe and efficient flow of traffic and the enhancement of the safety of the populace.

The proposed new rule to N.J.A.C. 16:28A-1.88, will establish "no parking" zones along Route 208 in the Borough of Fair Lawn, Bergen County at established bus stops for the safe off/on loading of passengers.

Based upon requests from the local officials the Department's Bureau of Traffic Engineering conducted engineering studies to ascertain the best possible traffic control devices to be installed to regulate the traffic. The engineering studies which included traffic counts, traffic flow, number of accidents and congestion of traffic proved that the establishment of "no parking" zones in the areas designated were warranted for the enhancement of public safety along the highway system.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.43 and add new rule 16:28A-1.88 in compliance with the engineering studies and the requests from local officials.

Social Impact

The proposed amendment will establish new "no parking" zones along Route 82 in Union Township, Union County except in the case of emergency, for the safe and efficient flow of traffic and the safety and welfare of the public.

The proposed new rule establishes "no parking" zones along Route 208 in Fair Lawn Borough, Bergen County at established bus stops for the safe and efficient on/off loading of passengers, the enhancement of safety and the well-being of the populace.

Appropriate signs will be erected to advise the motoring public of the restrictions.

Economic Impact

The proposed amendment and new rule will cause the Department and local officials to incur direct and indirect costs for mileage, for personnel and the equipment requirements. The local officials will incur added costs involved in the placement and procurement of signs. These rules will impact on motorists, who are violators of the regulations through the payment of fines allotted.

Full text of the current rule can be found in the New Jersey Administrative Code as supplemented by the New Jersey Register.

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

16:28A-1.43 Route 82

(a) The certain parts of State highway Route 82 described in this section shall be 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. No stopping or standing in Union Township, Union County:

i. Along the westbound side:

(1)-(11) (No change.)

[(12) From a point 185 feet east of the easterly curb line of Stuyvesant Avenue to the easterly curb line of Stuyvesant Avenue;]

(13)-(16) renumbered (12)-(15).

ii. Along the eastbound side:

(1)-(2) (No change.)

(3) From a point 105 feet east of the easterly curb line of Caldwell Avenue [to a point 190 feet east of the easterly curb line] to the westerly curb line of Stuyvesant Avenue.

(4) From a point 85 feet west of the westerly curb line of Stuyvesant Avenue to the westerly curb line of Stuyvesant Avenue;

[(4)-(11)] renumbered (5)-(12).

iii. (No change.)

iv. Along the eastbound side from 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M., Monday through Friday.

(1)-(13) (No change.)

(14) From the easterly curb line of Stuyvesant Avenue to a point 190 feet east of the easterly curb line of Stuyvesant Avenue.

v.-vi. (No change.)

(b) (No change.)

16:28A-1.88 Route 208

(a) The certain parts of State highway Route 208 described in [(a) of] this section 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. (No change.)

(b) The certain parts of State highway Route 208 described in this section 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 bus stops:

1. Along the northbound (easterly) side in the Borough of Fair Lawn, Bergen County:

i. Mid-block bus stop:

(1) Morlot Avenue-Beginning 110 feet south of the Morlot Avenue Bridge and extending 170 feet southerly thereof.

2. Along the southbound (westerly) side in the Borough of Fair Lawn, Bergen County:

i. Mid-block bus stop:

(1) Morlot Avenue-Beginning 45 feet north of the Morlot Avenue Bridge and extending 190 feet northerly thereof.

2. Along the southbound (westerly) side in the Borough of Fair Lawn, Bergen County:

i. Mid-block bus stop:

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(1) Morlot Avenue—Beginning 45 feet north of the Morlot Avenue Bridge and extending 190 feet northerly thereof.

The Department finds this new rule adequate and required for the efficient operation of a State rail freight program.

(a)

Social Impact

The proposed new rules will provide assistance to persons and organizations interested in preserving rail service on lines threatened with abandonment or discontinued service due to the physical condition of the lines. The program will thus, preserve the economic and special environment and aesthetics of the areas affected by the rail lives.

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Economic Impact

The proposed new rules will impact economically on the industries served and the populace by limiting the loss of revenue and jobs. Similarly, the impact on the State and local governments is the prevention of increased unemployment payments and benefits and continued economic viability of the areas affected by the rail lines.

**Rail Freight Program
Financial Assistance for Reconstruction,
Improvement or Rehabilitation**

Proposed New Rules: N.J.A.C. 16:53C

Authorized By: John P. Sheridan Jr., Commissioner,
Department of Transportation.
Authority: N.J.S.A. 27:1A-3, 27:1A-5 and 27:1A-6.

Full text of the proposed new rule follows.

**CHAPTER 53C
RAIL FREIGHT PROGRAM**

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

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

SUBCHAPTER 1. INTRODUCTION

The Department of Transportation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-498.

16:53C-1.1 Definitions

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

The agency proposal follows:

Summary

The proposed new rules establish a program within the Department of Transportation to oversee, and assist financially in, the acquisition and improvement of New Jersey rail freight facilities. The rail industry has suffered financially since World War II leaving New Jersey with an old and deteriorated, yet still essential, rail system. This program will provide assistance to parties interested in preserving rail service on lines threatened with abandonment or discontinued service due to the physical condition of the lines.

“Acquisition assistance” means funds granted to the Department of Transportation under the Rail Freight Assistance Program to cover the cost of acquiring, by purchase, or in such other manner the Department considers appropriate, a line of railroad or other rail property for existing or future rail freight service.

“Cash” means the outlay of funds.

“Commissioner” means the Commissioner of the New Jersey Department of Transportation.

“Common carrier” means that entity providing railroad transportation for compensation and which is subject to the jurisdiction of the Interstate Commerce Commission.

Where such lines are acknowledged as significant to the State’s economy, assistance is available for: acquisition of lines in the “Core” system (as defined by the Department of Transportation); rehabilitation of freight lines (both “Core” and “non-Core”); and the construction of alternative freight facilities where the continuation of essential rail service otherwise would not be feasible.

“Core Rail Freight System” denotes that system of rail lines deemed essential to the economic well-being of the State, as defined in the State Rail Plan.

“Facilities” means track, ties, roadbed, and related structures used or usable for rail freight operations.

“Maintenance” means inspection and light repairs, emergency repairs and the planned program of periodic maintenance necessary to keep a line at its existing condition but not below Federal Railroad Administration (FRA) Class I safety standards.

The New Jersey State Rail Plan for 1981/1982 identified 15 rail lines in the State in need of rehabilitation or construction assistance. If these lines were put out of service or abandoned, the first year impacts on the industries served by these lines are estimated as follows:

“Rail facility construction assistance” means funds provided to cover the cost of constructing rail related facilities for the purpose of improving the quality and efficiency of the rail freight service. This includes new connections between two or more existing lines, relocation of lines or sidings, modernization of existing facilities, and construction of minor sections of new track (for example, passing tracks, crossovers, etc.)

“Rehabilitation or improvement assistance” means a one-time investment of funds to cover the cost of reconstruction, improvement or rehabilitation of rail properties.

Jobs Lost:	2,279
Net Lost Wages:	\$17,197,552
Increased Transportation Costs:	\$3,908,898
Unemployment Payments:	\$5,553,939
Taxes Lost (State, Federal):	\$6,010,724

“State Rail Plan” means the current edition, including all updates, revisions and amendments, documenting the methodology and analysis applied to the rail freight network and describing a specific recommendation for funding assistance.

Funding under this program is authorized in the State Budget, to cover the cost of constructing rail related facilities for the purpose of improving the quality and efficiency of the rail freight service, by the operator of a freight service or other appropriate party.

“Substitute service assistance” means funds to cover the cost of reducing the transportation impacts of abandoned rail service in a manner less expensive than the continuation of the rail service and includes, but is not limited to, the acquisition, construction or improvement of substitute freight transportation services, for

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example, team track, intermodal facilities, etc., as described in the State Rail Plan.

SUBCHAPTER 2. STATE RAIL ASSISTANCE PROGRAM

16:53C-2.1 General provisions

(a) Scope of the program includes:

1. Acquisition assistance;
2. Rehabilitation or improvement assistance;
3. Rail facility construction assistance;
4. Substitute service assistance;

16:53C-2.2 Form of financial assistance

Financial assistance may be in the form of a grant to the owner of the rail properties or the operator of Rail Freight Service on the properties. The Commissioner shall determine all financial terms and conditions of the grant.

16:53C-2.3 Duration of assistance

Financial assistance granted is limited in duration to a period not to exceed three years from the date of project approval.

SUBCHAPTER 3. PROJECT ELIGIBILITY

16:53C-3.1 General requirements

(a) General eligibility requirements under the State Rail Assistance Program are as follows:

1. The analysis of the line related to the project is included in the State Rail Plan (except when the project is of an emergency nature, in which case the State Rail Plan requirement may be waived, at the discretion of the Commissioner).
2. The cost/benefit ratio of the project is greater than 1.0, as calculated in the State Rail Plan.

16:53C-3.2 Acquisition assistance

(a) The rail freight properties which are eligible for acquisition assistance are those properties in the State identified as part of a core rail freight system which will be defined by the Department. In no case will the State acquire rail properties where continued operation can be provided through continued ownership within the private sector. These properties include those identified in the State Rail Plan as having potential for future use for rail freight services.

(b) Those rail properties identified as elements of the core rail freight system, which will not be continued in the private sector, are eligible for public purchase with a maximum of 100 percent State funding.

16:53C-3.3 Rehabilitation or improvement assistance

(a) The rail freight properties eligible for rehabilitation assistance are those properties (as defined by the Department,) for which the one-time investment of capital assistance will insure the continuation or initiation of safe, adequate and efficient rail freight services for a period of at least five years.

1. For a State-owned line the operator of the freight service or other appropriate party is eligible to receive a grant not to exceed 70 percent of the cost to rehabilitate to Federal Railroad Administration (FRA), Class II safety standards. On these properties trackage rights fees will be assessed in an amount sufficient to recoup both acquisition and rehabilitation investments.

2. The operator of freight service or other appropriate party on a line which is part of the core rail freight system is eligible to receive a grant not to exceed 70 percent of the cost to rehabilitate to FRA Class II safety standards;

3. At the discretion of the Commissioner, the operator of freight service, or other appropriate party, on a line which is not an element of the core system is eligible to receive a grant not to exceed 50 percent of the cost to rehabilitate to FRA Class II safety standards;

4. Funding assistance available under this program shall not be available for maintenance as defined in N.J.A.C. 16:53C-1.

16:53C-3.4 Rail facility construction assistance

In those instances, as defined in the State Rail Plan, where an improvement in the quality and efficiency of rail freight service can be provided by the construction of a rail related facility, funding will be provided not to exceed 50 percent of the cost of the construction.

16:53C-3.5 Substitute rail service assistance

For industries located on rail segments where the continuation of rail service through acquisition, rehabilitation or rail facility construction assistance is not warranted, a grant not to exceed 50 percent of the cost of construction would be available in order to provide for alternative transportation facilities necessitated by the loss of rail service.

SUBCHAPTER 4. STATE/LOCAL SHARE

16:53C-4.1 State share

The State share of allowable costs under this program shall be at the levels specified in N.J.A.C. 16:53C-3.

16:53C-4.2 Local share

The required local share of allowable costs under this program shall be provided in cash or through the provision of materials to be used on the project. The value of work performed by railroad forces may also be counted toward the local share.

SUBCHAPTER 5. REQUIREMENTS FOR THE STATE RAIL PLAN

16:53C-5.1 General provisions

(a) The State Rail Plan shall be based on a comprehensive, coordinated and continuing planning process. As such, it shall be developed with an opportunity for participation by parties interested in rail freight activity. At a minimum, the Department shall hold an annual public hearing upon revision of the State Rail Plan. Public notice shall be given in accordance with applicable State law and practice.

(b) The State Rail Plan shall:

1. Specify the objectives of the State's Rail Assistance Program and explain how the implementation of the State Rail Plan will accomplish these objectives;
2. Specify the goals, objectives, policies, and long-range expectation for the rail freight network;
3. Explain the relevant data sources, assumptions and analytical methodology used in developing the plan;
4. Contain a description, analysis and recommended action for lines in the State for which abandonment or discontinuance applications are pending;
5. Contain a description, analysis and recommended action for lines, other than those in (b)4 above, for which program assistance is contemplated;
6. For each line recommended for assistance, include the amount and source of funds required for implementation;
7. For lines receiving assistance, include the revenue and cost data information for the previous years operating experience and a reevaluation of the recommended project based upon the new data;
8. Contain an update of information in previous submittals which is no longer accurate as a result of plan implementation, governmental action, action by a railroad, or changed conditions;
9. Include a program of projects which identifies the projects, project priority, project costs, and anticipated start-up dates for lines recommended to receive program assistance;
10. Describe the planning process participation of local governmental entities, the railroads, rail service users and the public in general.
11. Describe the core rail system and the methodology used to establish this system.

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SUBCHAPTER 6. APPLICATIONS

16:53C-6.1 General contents

(a) Each application shall include:

1. Full name and principal business address of the applicant;
2. Name, title, address and phone number of the person to whom correspondence regarding the application should be addressed;
3. Budget estimates for the total amount of assistance required;
4. Applicant's proposed means of furnishing its share of total project costs, including copies of any executed third party agreements to provide the required local share, or a portion thereof;
5. Assurances that the applicant will comply with and that the program will be conducted in accordance with applicable State laws, policies, directives, and regulations dealing with discrimination in employment on public contacts;
6. Assurance by the Chief Executive Officer that a contingent interest (redeemable reference shares) shall be retained by the State for a period equal to the service life of the project for its share of funds in any line receiving assistance under this program. Further, that during this period, the State's share shall be repaid, upon the sale, disposition or abandonment of the line receiving assistance.

(b) Applications for assistance may be addressed to: the Office of Freight Services, New Jersey Department of Transportation, 1035 Parkway Avenue, Trenton, New Jersey 08625.

16:53C-6.2 Acquisition assistance

(a) In addition to meeting the requirements of N.J.A.C. 16:53C-6.1, each application for acquisition assistance shall include:

1. Copies of the materials and data used as the basis for the proposed acquisition price;
2. A description of the necessary steps and timing for completion of the acquisition;
3. When rail service is to be immediately provided over the line, a description of the arrangements made for rail service operation, including copies, if applicable, of proposed operating agreements, and leases.

16:53C-6.3 Rehabilitation or improvement assistance and rail facility construction assistance

(a) In addition to meeting the requirements of N.J.A.C. 16:53C-6.1, each application for rehabilitation or improvement assistance and rail facility construction assistance shall include:

1. A detailed estimate of the materials and labor required to complete the work; the estimated numbers and kinds of ties and other materials; the milepost termini involved; and a schedule for completion of the work;
2. An assurance by the Chief Executive Officer of the applicant that:
 - i. The rehabilitated or improved facilities or newly constructed facilities will be maintained to prevent deterioration below the speed at which the line could be operated for at least the period of time established as the payback period in the applicable State Rail Plan analysis.
3. A description of the arrangements made for the operation of rail service over the property including copies of the proposed operating agreements, or leases and the proposed method of financing the operation of such service.

16:53C-6.4 Substitute service assistance

(a) In addition to meeting the requirements of N.J.A.C. 16:53C-6.1, each application for substitute service assistance shall include:

1. A detailed description of the substitute service project, including evidence that the cost and scope of the project are limited to that necessary to replace the rail service being discontinued.

16:53C-6.5 Execution and filing of applications

(a) Each original application shall bear the date of execution and be signed by the Chief Executive Officer of the entity submitting the application.

TREASURY-TAXATION

SUBCHAPTER 7. ENVIRONMENTAL IMPACT

16:53C-7.1 Requirements

Applications for assistance under the program shall conform to the requirements for environmental impact assessments under State and Federal regulation, directives, or policies governing existing or new facility construction.

SUBCHAPTER 8. GRANT AGREEMENT AND DISBURSEMENT

16:53C-8.1 Grant agreement

(a) Upon the approval of an application meeting the requirements of N.J.A.C. 16:53C-7, an agreement for the State share of the approved amount of the estimated project costs will be executed by the applicant and the Commissioner or his designated representative.

(b) The agreement will identify the amount of the grantee's share of the program costs to be furnished in cash and through approved in-kind benefits as defined in N.J.A.C. 16:53C-4. The applicant shall expend a pro-rata share of its contribution at the same time payments of the State share are made available.

16:53C-8.2 Disbursement

The State share of project costs shall be provided on a cost reimbursement basis upon the submission of properly documented invoices and subject to a retainage of 10 percent of the invoiced amount pending final audit.

16:53C-8.3 Settlement

Settlement under the agreement is made on the basis of a State audit which has determined the allowable costs over the entire term of the agreement. If the State audit determined that the allowable costs under the agreement are less than the amount of the agreement, the difference shall be refunded to the program at the end of the fiscal year in which the audit was performed.

SUBCHAPTER 9. RECORD, AUDIT AND EXAMINATION

16:53C-9.1 General requirements

The grantee shall retain and make available to the Commissioner, or his designated representative, for the purpose of audit and examination, any financial records, supporting documents, papers, statistical records, contracts and all other records pertinent to, arising out of or connected with the Rail Assistance Program. The records shall be available for a period of three years, or for any longer period necessary to resolve audit findings, following the payment by the Commissioner of the final billing under the agreement.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Sales and Use Tax Electronic Data Processing Transactions

Proposed Amendment: N.J.A.C. 18:24-25.2

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-1 et seq., specifically 54:32B-24.

TREASURY-TAXATION

PROPOSALS

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-501.

The agency proposal follows:

Summary

The proposal amends N.J.A.C. 18:24-25.2 in order that the rules contained therein will conform to the decision rendered in Spencer Gifts, Inc. v. Taxation Division Director, 3 N.J. Tax 482 (1981). The proposal provides that the sale of mailing lists is not subject to sales and use tax.

Social Impact

The proposed amendment will conform N.J.A.C. 18:24-25.2 Tax Court of New Jersey and will provide taxpayers and their attorneys and accountants with guidance and assistance in complying with the provisions of the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1, et seq.

Economic Impact

The proposed amendments will have an economic benefit to a taxpayer who purchases mailing lists of use in a business activity. It clarifies the nontax status of such items for sales tax purposes.

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

18:24-25.2 Electronic data processing transactions
(a) (No change.)

(b) Rules concerning non-taxable transactions are as follows:
1.-6. (No change.)

7. The Sales and Use Tax Act is not applicable to charges for the sale or use of mailing lists.

(a)

DIVISION OF TAXATION

Gross Income Tax
Computation of Tax Credit

Proposed Amendment: N.J.A.C. 18:35-1.12

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54A:9-17(a).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-497.

The agency proposal follows:

Summary

The proposed amendment provides for a separate calculation for gross income tax credit attributable to income taxed by only one of two jurisdictions where the income subject to tax in both another state and a political subdivision of such state are not equal. The amended rule contains an example for the convenience of taxpayers. This amendment implements a recent New Jersey Tax Court Opinion in the case of Benjamin and Judith Feuer v. Director, Division of Taxation, N.J. Tax (decided June 8, 1983). The amended rule also makes clear that the City of Philadelphia Wage Tax and Net Profits Tax are both eligible for the resident tax credit. The amendment also implements the recent New Jersey Tax Court Opinion in the case of Romanus J. Buckley and Margaret M. Buckley v. Director, Division of Taxation, N.J. Tax (decided May 27, 1983).

Social Impact

The proposed amendment affects taxpayers who have differing amounts of income subject to tax in other states and political subdivisions thereof. The amendment is in keeping with the purpose of the legislation, namely to do nothing more than provide a taxpayer with an equitable way to avoid paying tax proportionately on the same income to New Jersey while paying tax on that income in another state or political subdivision. The proposed amendment will also allow resident taxpayers to take the resident tax credit on their New Jersey Gross Income Tax Resident Return (Form NJ-1040) for the City of Philadelphia Wage and Net Profits Taxes paid during the same taxable year.

Economic Impact

Under the proposed amendment, the economic impact will fall upon those taxpayers having different amounts of income subject to tax in another jurisdiction at the State and local levels. It also extends the credit privilege to those resident taxpayers who have paid taxes in another jurisdiction on a net profits tax. It is believed that the amount of State revenue affected would be at a minimum.

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

18:35-1.12 Computation of tax credit

(a) The following provisions shall govern the computation of the tax credit by reason of any income or wage tax paid to another state [of] or political subdivision of such state under the New Jersey Gross Income Tax Act.

1.-3. (No change.)

4. For purposes of determining the percentage, as provided in (a)3 above, for limitation of the tax credit:

i.-ii. (No change.)

iii. Adjustments must be made:

(1)-(2) (No change.)

(3) For example, a taxpayer who includes in the numerator (see line [64] 69, N.J. 1040) pension and/or other retirement income which is subject to tax by the other jurisdiction but which is excluded from the denominator (line 17c of Form N.J. 1040) shall make an adjustment in the denominator to add back such pension

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and/or other retirement income to reflect the entire New Jersey income.

5. Taxes paid by a resident taxpayer under the City of Philadelphia Wage Tax and Net Profits Tax are eligible for the resident tax credit.

i. A W-2 Form must be attached to the New Jersey Gross Income Tax Resident Return (Form N.J. 1040) to indicate the amount subject to the City of Philadelphia Wage Tax and the amount of tax withheld.

ii. A copy of the City of Philadelphia Net Profits Tax Return must be attached to the New Jersey Gross Income Tax Resident Return (Form N.J. 1040) to indicate the amount of the City of Philadelphia Net Profits Tax paid.

[5.] **6.** The following examples will illustrate how the maximum allowable resident credit for tax paid to another jurisdiction shall be determined:

i. Example 1: Taxpayer income is as follows:

NEW YORK	
Wages	\$15,000
Capital Gains	
Long Term	\$20,000
Deduction	12,000 8,000
Total New York Income	<u>\$23,000</u>

NEW JERSEY	
Wages	\$15,000
Dividends	3,000
Capital Gains	20,000
	\$38,000
Less: Exemptions	<u>2,000</u>
	<u>\$36,000</u>
New Jersey Tax	\$ 800

Line [62]67 New York income subject to tax (not \$35,000): \$23,000
 Line [63]68 Entire New Jersey Income: \$38,000
 Line [64]69 $\$23,000 \div \$38,000 = 60.53\% \times \$800 = \$484.24$
 Maximum Allowable Credit

ii. Example 2: Taxpayer income is as follows:

NEW YORK	
Rental Income	\$13,000
N.Y.C. Pension	4,000
Total New York Income	<u>\$17,000</u>

NEW JERSEY	
Wages	\$ 2,000
Rental Income	21,000
Pension (NYC)	\$4,000
N.J. Exclusion	<u>4,000 -0-</u>
	\$23,000

Retirement Income Exclusion	<u>6,000</u>
	\$17,000
Less Exemptions	<u>2,000</u>
	<u>\$15,000</u>
Tax	\$ 300

Line [62]67 New York Income Subject to Tax: \$17,000
 New Jersey Gross Income (Line 17c): \$17,000
 Plus Exclusions:
 Pension Income 4,000
 Retirement Income 6,000
 Line [63]68 Entire New Jersey Income: \$27,000
 Line [64]69 $\$17,000 \div \$27,000 = 62.96\% \times \$300 = \$188.88$
 Maximum Allowable Credit

iii. Example 3:

A resident New Jersey taxpayer has two businesses ("A" - N.Y., "B" N.J.) and the net profits (or losses) from such are both reportable at line [34]39 of the return. The net income of business "A" is \$50,000 and is entirely attributable to New York. The net loss of business "B" is \$40,000 and is entirely attributable to New Jersey.

The taxpayer has paid a tax on \$50,000 to New York but only on \$10,000 to New Jersey (\$40,000 loss netted against the \$50,000 net income at line [34]39).

The taxpayer may include as income subject to tax by the other jurisdiction on line [62]67 (Form N.J. 1040) only business income subject to tax in New Jersey and therefore, must deduct from the \$50,000 New York business income the \$40,000 not subject to tax as business income in New Jersey.

In no event may a taxpayer claim a credit for income or wage taxes paid to other jurisdiction(s) unless the income so claimed is also included in entire New Jersey income at line [63]68 of the return.

Taxpayer Income is as follows:

NEW YORK	
Business Income	\$50,000

NEW JERSEY	
Dividend Income	\$ 5,000
Interest	2,000
Capital Gain Income	3,000
Business	
Income	\$50,000
Business	
Loss	<u>(40,000) 10,000</u>
	\$20,000

Less: Exemptions	<u>2,000</u>
	<u>\$18,000</u>
Tax	\$ 360

Line [62]67 \$50,000
 Less: Amount Not Subject to tax in New Jersey 40,000

Income Subject to Tax in New York which is also Subject to Tax in New Jersey: \$10,000

Line [63]68 Entire New Jersey Income: \$20,000
 Line [64]69 $\$10,000 \div \$20,000 = 50\% \text{ of } \$360 = \$180$
 Maximum Allowable Credit

iv. Example 4: Taxpayer income is as follows:

NEW YORK	
Wages	\$15,000
Less Sick Pay qualifying in New York only	<u>5,000</u>
Total New York Income	\$10,000

NEW JERSEY	
Wages	\$15,000
Dividends	3,000
Capital Gains	2,000
	\$20,000

Less: Exemptions	<u>2,000</u>
	<u>\$18,000</u>
Tax	\$ 360

Line [62]67 New York Income Subject to Tax (not \$15,000): \$10,000
 Line [63]68 Entire New Jersey Income: \$20,000
 Line [64]69 $\$10,000 \div \$20,000 = 50\% \text{ of } \$360 = \$180$
 Maximum Allowable Credit

[6.]7. The following is the worksheet for credit for taxes paid to another jurisdiction:

WORKSHEET FOR CREDIT TO

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(Use this worksheet to determine "entire New Jersey income" at line [63]68 of the return if a credit to other jurisdictions is being claimed.)

List the following:

- a. Gross Income (Line 17c)
- b. Pension Exclusion (Line [40b]45(b)) (see instruction below)
- c. Retirement Income/Special Exclusion (Line 17b) (see instruction below)
- d. Entire New Jersey Income (income subject to tax by another jurisdiction which is also subject to tax under the N.J. Gross Income Tax Act). (Add lines a, b and c) (to be entered here and at line[63]68.)

INSTRUCTIONS:

The amount of pension exclusion claimed at line [40b]45(b) and the amount of retirement income exclusion claimed at line 17b are includible in determining "entire New Jersey income" and are, therefore, to be included in the amount reported by you at line [62]67.

EXAMPLE:

A resident New Jersey taxpayer has two businesses and the net profits (or losses) from such are both reportable at line [34]39 of the return. The net income of business "A" is \$50,000 and is entirely attributable to New York. The net loss of business "B" is \$40,000 and is entirely attributable to New Jersey.

The taxpayer has paid a tax on \$50,000 to New York but only on \$10,000 to New Jersey (\$40,000 net loss netted from \$50,000 net income at line [34]39.

The taxpayer may include as income subject to tax by the other jurisdiction on line [62]67 (Form N.J. 1040) only business income subject to tax in New Jersey and therefore must deduct from the \$50,000 New York business income the \$40,000 not subject to tax as business income in New Jersey.

In no event may a taxpayer claim a credit for income or wage taxes paid to other jurisdiction(s) unless the income so claimed is also included in entire New Jersey income at line [63]68 of the return.

Taxpayer should retain this worksheet for substantiation of the credit claimed.

[7.]8. Instruction for line [62]67: Do not include on this line any income which has been excluded or deducted from the taxable gross income of other jurisdiction(s) or which has not been taxed by other jurisdiction(s). Example: If a portion of long-term capital gains are excluded from such taxable income, such excluded portion may not be included in line [62]67.

[8.]9. A New Jersey resident taxpayer in determining the resident credit allowed against the tax due under this Act for the amount of any income tax or wage tax imposed for the taxable year by another state or political subdivision of such state or by the District of Columbia, shall not combine in the numerator (line [64]69. N.J. 1040) the same income subject to tax by the jurisdiction and/or political subdivision. The amount of income or wage tax during the tax year shown on line [65]70. N.J. 1040 for the taxpayer paying both a tax to another state and political subdivision of such state would be the total amount of state income tax and income tax or wage tax paid to the other state and political subdivision of such state **where the same amount of income is subject to tax in both the other state and political subdivision of such state. Where the income subject to tax in both the other state and political subdivision of such state are not equal, a separate calculation shall be made of the excess income to arrive at the limitation of the credit for the income tax or wage tax paid to the other state and political subdivision of such state.**

For example:

STEP NO. 1

Line 67	Income subject to tax in both the other state and its political subdivisions	_____
Line 68	New Jersey Gross Income (Line 17c, NJ 1040)	_____
Line 69	Line 67 _____ x New Jersey Tax (Line 25, NJ 1040) Line 68 = Maximum allowable credit	_____
Line 70	Tax paid on amount in Line 67 to each jurisdiction State _____ Political Subdivisions _____	_____
Line 71	Lesser of Line 69 or 70	_____

STEP NO. 2

Line 67	Amount subject to tax in one jurisdiction and not in the other(s)	_____
Line 68	New Jersey Total Gross Income (Line 17c, NJ 1040)	_____
Line 69	Line 67 _____ x New Jersey Tax (Line 25, NJ 1040) Line 68 = Maximum allowable credit	_____
Line 70	Tax paid to the jurisdiction on amount appearing on Line 67	_____
Line 71	Lesser of Line 69 or 70	_____

STEP NO. 3

Step No. 1 Line 71 plus Step No. 2 Line 71 _____

The following examples illustrate the above outlined procedures:

Example 1

Taxpayer A	
(1) Total Gross Income (Line 17c, NJ 1040)	\$100,000
Income subject to tax in other jurisdictions:	
(2) New York State: \$40,000	
(3) New York City: \$50,000	
(4) Identical income subject to tax in both jurisdictions: \$40,000	
(5) New York State Tax: \$2,700††	
(6) New York City Tax: \$225††	
(7) New Jersey Tax (Line 25, NJ 1040) \$2,690	

Calculation of Credit

STEP No. 1

Line 67	(4) above	\$ 40,000
Line 68	(1) above	100,000
Line 69	\$40,000 _____ x \$2,690	1,076

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	100,000		
Line 70	New York State (based on \$40,000 as indicated on line (4) above)	\$2,700	
	New York City 4/5 x \$225 (based on \$40,000 as indicated on line (4) above)	<u>180</u>	2,880
Line 71			<u>\$ 1,076</u>
STEP NO. 2			
Line 67	(3)-(2)		\$ 10,000
Line 68			100,000
Line 69	\$10,000		
	<u>100,000</u> x \$2,690		269
Line 70	1/5 x \$225		45
Line 71			<u>\$ 45</u>
STEP NO. 3			
Line 71	Step No. 1	\$1,076	
	Step No. 2	<u>45</u>	
Line 26	Total New Jersey Tax Credit Allowed		<u>\$1,121</u>

Example 2

Taxpayer B			
(1)	Total Gross Income (Line 17c, NJ 1040)		\$100,000
Income subject to tax in other jurisdictions:			
(2)	New York State: \$50,000		
(3)	New York City: \$40,000		
(4)	Identical income subject to tax in both jurisdictions: \$40,000		
Tax paid to other jurisdictions:			
(5)	New York State Tax: \$4,200††		
(6)	New York City Tax: \$180††		
(7)	New Jersey Tax (Line 25, NJ 1040) \$2,690		

Calculation of Credit

STEP NO. 1			
Line 67	(4) above		\$ 40,000
Line 68	(1) above		100,000
Line 69	\$40,000		
	<u>100,000</u> x \$2,690		1,076
Line 70	New York State (based on \$40,000 as indicated on line (4) above)	\$2,700	
	New York City (based on \$40,000 as indicated on line (4) above)	<u>180</u>	2,880

Line 71			<u>\$ 1,076</u>
STEP NO. 2			
Line 67	(2)-(3)		\$ 10,000
Line 68			100,000
Line 69	\$10,000		
	<u>100,000</u> x \$2,690		269
Line 70	(5) Above Less: Step No. 1, Line 70	\$4,200	
		<u>2,700</u>	1,500
Line 71			<u>\$ 269</u>
STEP NO. 3			
Line 71	Step No. 1	\$1,076	
	Step No. 2	<u>269</u>	
Line 26	Total New Jersey Tax Credit Allowed		<u>\$1,345</u>

Example 3

Taxpayer C			
Income the same in both state and city			
Line 67			\$ 40,000
Line 68			100,000
Line 69	\$40,000		
	<u>100,000</u> x \$2,690		1,076
Line 70	New York State	\$2,700	
	New York City	<u>180</u>	2,880
Line 71	(Line 26, NJ 1040) Tax Credit		<u>\$ 1,076</u>

i. When claiming a credit for the taxes paid to another jurisdiction and/or political subdivision, the taxpayer shall file with the New Jersey tax return, a signed copy of the tax return filed with the other jurisdiction and/or political subdivision showing the amount of the tax paid. A W-2 form or its equivalent which indicates the withholding of income tax in another jurisdiction and/or political subdivision is considered prima facie evidence of such amount of tax paid where the taxing jurisdiction and/or political subdivision imposing an income tax or wage tax does not require the filing of a return by the taxpayer claiming a credit.

ii. Where a taxpayer claims credit for taxes paid to more than one state on income earned in that state, a separate computation for the maximum allowable credit shall be made for each such state.

iii. Example 1: Taxpayer Income is as follows:

Husband and Wife File Jointly—2 Exemptions			
NEW YORK			
	Wages		\$20,000
	Standard Deduction		<u>2,400</u>
			\$17,600
	Exemption		
	2 x 66.6% (\$700)		<u>933</u>
			\$16,667
	New York State Tax		<u>\$ 1,027</u>

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New York City Tax 81
Total Tax \$ 1,108

NEW JERSEY

Wages \$20,000
Interest 1,000
Dividends 2,000
Other Income 7,000
\$30,000
Exemptions 2,000
\$28,000
New Jersey Tax \$ 600

Tax Credit
Line [62]67 Income Subject to Tax by Other Jurisdiction \$20,000
Line [63]68 Income Subject to Tax by New Jersey \$30,000
Line [64]69 Maximum Allowable Credit
\$20,000 ÷ \$30,000 x \$600 (N.J. Tax) = \$ 400
Line [65]70 Income or Wage Tax Paid to Other Jurisdictions \$ 1,108
Line [66]71 New Jersey Tax Credit Allowed

v. Example 2: Taxpayer Income is as follows:

Husband and Wife File Jointly-2 Exemptions

OTHER STATE

Wages \$20,000
Assume
State Tax 250
Local Wage Tax 75
Total Tax \$ 325

NEW JERSEY

Wages \$20,000
Interest 1,000
Dividends 2,000
Other Income 7,000
\$30,000
Exemptions 2,000
\$28,000
New Jersey Tax \$ 600

Tax Credit
Line [62]67 Income Subject to Tax by Other Jurisdiction \$20,000
Line [63]68 Income Subject to Tax by New Jersey \$30,000
Line [64]69 Maximum allowable Credit
\$20,000 ÷ \$30,000 x \$600 (N.J. Tax) = \$ 400
Line [65]70 Income or Wage Tax Paid to Other Jurisdictions \$ 325
Line [66]71 New Jersey Tax Credit Allowed \$ 325

v. Example 3: Taxpayer Income is as follows:

Husband and Wife File Jointly-2 Exemptions

OTHER JURISDICTION

Wages \$20,000
Local Wage Tax \$ 800

NEW JERSEY

Wages \$20,000
Interest 2,000
Dividends 2,000
\$24,000
Exemptions 2,000
\$22,000
Tax \$ 450

Tax Credit
Line [62]67 Income Subject to Tax by Other Jurisdiction \$20,000
Line [63]68 Income Subject to Tax by New Jersey \$24,000
Line [64]69 Maximum Allowable Credit
\$20,000 ÷ \$24,000 x \$450 (N.J. Tax) = \$ 375
Line [65]70 Wage Tax Paid to Other Jurisdiction \$ 800

Line [66]71 New Jersey Credit Allowed \$ 375

vi. Example 4: Taxpayer Income is as follows:

Husband and Wife File Jointly-2 Exemptions

OTHER JURISDICTIONS

State A-Wages \$10,000
State B-Wages \$15,000
Assume
State A-Tax \$ 150
State B-Tax \$ 600

NEW JERSEY

Wages \$25,000
Interest 1,000
Dividends 2,000
\$28,000
Exemptions 2,000
\$26,000
New Jersey Tax \$ 550

Tax Credit

State A
Line [62]67 Income Subject to Tax by Other Jurisdiction \$10,000
Line [63]68 Income Subject to Tax by New Jersey \$28,000
Line [64]69 Maximum Allowable Credit
\$10,000 ÷ \$28,000 x \$550 (N.J. Tax) = \$196.42
Line [65]70 Income or Wage Tax Paid to Other Jurisdiction \$150.00
Line [66]71 New Jersey Tax Credit Allowed \$150.00

State B

Line [62]67 Income Subject to Tax by Other Jurisdiction \$15,000
Line [63]68 Income Subject to Tax by New Jersey \$28,000
Line [64]69 Maximum Allowable Credit
\$15,000 ÷ \$28,000 x \$550 (N.J. Tax) \$294.65
Line [65]70 Income or Wage Tax Paid to Other Jurisdiction \$600.00
Line [66]71 New Jersey Tax Credit Allowed
Total New Jersey Tax Credit Allowed
State A-\$150.00
State B-\$294.65 \$444.65

†All line item numbers are based upon the 1983 New Jersey Gross Income Tax Resident Return (Form NJ 1040).

††The amount of New York State, New York City and New Jersey tax indicated are solely for purposes of illustration.

(a)

DIVISION OF TAXATION

**Gross Income Tax
Credit for excess contributions**

Proposed New Rule: N.J.A.C. 18:35-1.17

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54A:4-4 and 54A:10-9.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

PROPOSALS

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-510.

The agency proposal follows:

Summary

The proposed new rule implements P.L. 1981, c. 453, approved January 11, 1982 to provide for a credit on the New Jersey Gross Income Tax Return forms for excess contributions to the New Jersey disability benefits fund or to a private plan, and to the Unemployment Compensation Fund.

An employee who, during any calendar year, is paid wages by two or more employers who have withheld from the employee's wages unemployment compensation contributions and disability fund contributions in excess of the amount determined by law shall have made excess contributions during that year. Such employee may take credit on the Gross Income Tax Return for the taxable year for such excess contributions.

Documentation of such excess contributions will be made on the employee's Wage and Tax Statement (W-2 Form). The proposed new rule includes examples for the credit and time limitations for claiming the credit. It also makes clear that the excess contributions are subject to the setoff of debts provision of the Gross Income Tax Act.

Social Impact

The proposed new rule will implement statutory law. It is likely that the effect of the law and the new rule will be to make the population more broadly aware of the availability of credit for excess amounts for unemployment and disability contributions. The new rule will make the claiming of credits more convenient for those who have made excess contributions.

Economic Impact

The proposed new rule will have an economic benefit to certain New Jersey employees and gross income taxpayers by helping to make them aware of a possible credit available to them for overpayment of contributions.

Full text of the proposed new rule follows.

18:35-1.17 Credit for excess contributions.

(a) Credit for excess amounts deducted and withheld as worker contributions for unemployment and disability insurance shall be treated as follows:

1. Employers issuing a W-2 form to employees shall include on it:

- i. The amount of New Jersey unemployment insurance contributions withheld;
- ii. The amount withheld for New Jersey disability benefits fund contributions or for a private plan;
- iii. The New Jersey unemployment number; and
- iv. The New Jersey private plan number, if any.

(b) The later two numbers referred to in (a) i and iv above are assigned by the New Jersey Division of Unemployment and Disability Insurance in the Department of Labor.

(c) An individual claiming a credit against gross income tax for overpayment of unemployment or disability insurance contributions shall claim such credit by including with his New Jersey 1040 or New Jersey 1040-NR return a completed New Jersey Form 2450 Employee's Claim for Credit for Excess Unemployment

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and Disability Contributions. A claim not received within two years after the end of the calendar year in which the contributions were deducted is void. Such claims are not applicable to withholdings made during calendar years prior to 1983.

Example 1: During 1983, A, who is divorced, worked for two employers in New Jersey. The first withheld the maximum of \$44.00 for unemployment insurance contributions and \$44.00 disability benefits fund contributions from A's salary, as required by law. The second employer withheld \$30.00 from A's wages as contributions to each fund, for a total of \$60.00. A files his 1983 Gross Income Tax Return and pays the tax on February 14, 1984 but fails to make claim for the \$60.00 excess contributions withheld during 1983 or qualifying alimony payments made in that year.

During December 1985 A files an amended Gross Income Tax Return containing New Jersey 2450 for 1983 claiming a credit for excess contributions withheld and claiming the alimony deduction that he had originally omitted from the 1983 return. The claim is timely filed with respect to both the contributions withheld and the alimony deduction.

Example 2: Same facts as above except A files an amended return on January 5, 1986. The claim for contributions withheld is too late since it was filed after the expiration of the two year period for refund. The claim for refund based upon alimony deduction, however, is timely because the claim was filed within three years from the time the return was filed or two years from the time the tax was paid, whichever was later.

(d) Claims for gross income tax credit for excess contributions made by an employee are subject to the provisions of N.J.S.A. 54A:9-8.1 and N.J.A.C. 18:35-2.

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(a)

CASINO CONTROL COMMISSION

Applications

Casino Hotel Employee Registration Fees

Proposed Amendment: N.J.A.C. 19:41-9.15

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a) and 5:12-141.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Richard Dana Krebs
Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5
CN 208
Trenton, NJ 08625

The Casino Control Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-505.

The agency proposal follows:

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Summary

By petition filed pursuant to N.J.S.A. 5:12-69(c), Harrah's Atlantic City requested an amendment to N.J.A.C. 19:41-9.15 concerning casino hotel employee registration fees. This rule establishes a \$30.00 registration fee for casino hotel employees. In its original petition, Harrah's Atlantic City requested that this fee be eliminated for registrants "who have previously paid a fee in connection with an application for a casino employee license".

On July 13, 1983, the Casino Control Commission decided to publish Harrah's Atlantic City's proposal as it was amended by Harrah's at the Commission's public meeting. The amended proposal limits the registration fee waiver to employees having a "currently valid application for a casino employee license pending before the Commission".

In approving this proposal for publication in the New Jersey Register, the Commission did not take any position on the substantive merits of the proposed amendment. This proposal was approved for publication for the sole purpose of soliciting public comment thereon.

Social Impact

The proposed amendment would permit individuals who have a currently valid application for a casino employee license to be hired in hotel (non-casino) positions and registered accordingly without paying an additional \$30.00 registration fee. The amendment would thus ease the financial burden on entry level employees who have also applied for casino employee licenses for purposes of upward mobility and who could not otherwise afford the \$30.00 registration fee.

Economic Impact

The amendment would result in the loss of revenues normally received from persons seeking registrant status. Pursuant to N.J.S.A. 5:12-139 and 143, as implemented by N.J.A.C. 19:41-9.4(f), the administrative and investigative costs associated with processing and maintaining registration-related data will be shifted to the casinos as part of the annual deficiency assessment.

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

19:41-9.15 Casino hotel employee registration fees

Under section 91 of the Act, no person may be employed as a casino hotel employee unless such person is registered with the commission. Under section 94(d) of the Act, a casino hotel employee shall be registered with the commission. A casino hotel employee registration shall remain in effect unless revoked, suspended, limited, or otherwise restricted by the commission in accordance with the provisions of P.L. 1977, c.110, (N.J.S.A. 5:12-1.1 et seq.). The one time registration fee for a casino hotel employee shall be \$30.00. **This fee shall not be required if an applicant has a currently valid application for a casino employee license pending before the commission.**

(a)

CASINO CONTROL COMMISSION

Rules of the Games Electronic, Electrical and Mechanical Devices Prohibited; Minimum and Maximum Wagers

Proposed New Rule: N.J.A.C. 19:47-8.1 Recodification: N.J.A.C. 19:47-5.7 recodified as 19:47-8.2, without change

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 5:12-69(a) and 5:12-70(f).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael A. Santaniello
Deputy Director-Operations
Casino Control Commission
Division of Financial Evaluation
and Control
3131 Princeton Pike Office Park
Building No. 5
CN 208
Trenton, NJ 08625

The Casino Control Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-506.

The agency proposal follows:

Summary

The new rule is proposed in response to research which has shown the effectiveness of certain devices on increasing gaming advantages. The proposed regulation would prohibit the use of any device which would assist in projecting an outcome at any table game or in keeping track or analyzing either the cards having been dealt, the changing probabilities of any game or the playing strategies to be utilized. The proposal will implement the public policy expressed in N.J.S.A. 5:12-1b(14) and the specific legislative mandate to promulgate regulations concerning rules of the games, devices permitted and the method of operation of such games and devices (see N.J.S.A. 5:12-70(f)). This regulation is being proposed as part of the new Subchapter 8 (Regulations Concerning All Games).

The recodification of N.J.A.C. 19:47-5.7 is for purposes of clarification and consistency. No change has been made to present text.

Social Impact

The social impact will be minimal since the use of these devices in Atlantic City has been infrequent. However, the use of any such device gives an unfair advantage which is a threat to the fairness of gaming in Atlantic City (see N.J.S.A. 52:1b(6)). Accordingly, the prohibition of these devices would enhance the integrity and fairness of gaming in Atlantic City by eliminating devices which would provide an unfair advantage to either patrons or the casino.

PROPOSALS

OTHER AGENCIES

Economic Impact

The prohibition of these devices would assure that neither patron nor casino would possess advantages other than those inherent in authorized casino games. This fact would affect patrons and casinos somewhat differently. Since research has shown the effectiveness of certain devices on increasing advantages, the negative impact on an individual utilizing such a device may be significant. However, due to their infrequent use casinos may experience only a slight economic benefit.

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

SUBCHAPTERS 6. and 7. (Reserved)

SUBCHAPTER 8. REGULATIONS CONCERNING ALL GAMES

19:47-8.1 Electronic, electrical and mechanical devices prohibited

Except as specifically permitted by the commission, no person shall possess with the intent to use, or actually use, at any table game, either by himself or in concert with others, any calculator, computer, or other electronic, electrical or mechanical device to assist in projecting an outcome at any table game or in keeping track of or analyzing the cards having been dealt, the changing probabilities of any table game, or the playing strategies to be utilized.

19:47-5.7 recodified as **19:47-8.2** Minimum and maximum wagers
(No change in text.)

AGRICULTURE

ADOPTIONS

RULE ADOPTIONS

AGRICULTURE

(c)

(a)

DIVISION OF REGULATORY SERVICES

Grades and Standards Quality of Individual Shell Eggs

Readoption: N.J.A.C. 2:71-1

Proposed: July 5, 1983 at 15 N.J.R. 1050(a).
Adopted: September 1, 1983 by Arthur R. Brown, Jr.,
Secretary, Department of Agriculture.
Filed: September 1, 1983 as R.1983 d.394, **without
change.**

Authority: N.J.S.A. 4:3-11.12.

Effective Date: September 1, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(b)

DIVISION OF REGULATORY SERVICES

Grades and Standards Fruits and Vegetables

Readoption: N.J.A.C. 2:71-2

Proposed: July 5, 1983 at 15 N.J.R. 1051(a).
Adopted: September 1, 1983 by Arthur R. Brown, Jr.,
Secretary, Department of Agriculture.
Filed: September 1, 1983 as R.1983 d.395, **without
change.**

Authority: N.J.S.A. 4:10-3 and 4:10-13.

Effective Date: September 1, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

DIVISION OF REGULATORY SERVICES

Licensing and Bonding Commission Merchants, Dealers, Brokers, Agents

Readoption: N.J.A.C. 2:72-1.1

Proposed: July 5, 1983 at 15 N.J.R. 1051(b).
Adopted: September 1, 1983 by Arthur R. Brown, Jr.,
Secretary, Department of Agriculture.
Filed: September 1, 1983 as R.1983 d.396, **without
change.**

Authority: N.J.S.A. 4:11-20 and 4:11-33.1.

Effective Date: September 1, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(d)

DIVISION OF REGULATORY SERVICES

Controlled Atmosphere Storage Apples

Readoption: N.J.A.C. 2:74-1

Proposed: July 5, 1983 at 15 N.J.R. 1052(a).
Adopted: September 1, 1983 by Arthur R. Brown, Jr.,
Secretary, Department of Agriculture.
Filed: September 1, 1983 as R.1983 d.397, **without
change.**

Authority: N.J.S.A. 4:10-26 et seq.

Effective Date: September 1, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 1, 1988.

Summary of Public Comments and Responses:
No comments received.

ADOPTIONS

COMMUNITY AFFAIRS

BANKING

(a)

**DIVISION OF CONSUMER COMPLAINTS,
LEGAL AND ECONOMIC RESEARCH**

Home Mortgage Disclosure

Readoption: N.J.A.C. 3:1-9

Proposed: July 18, 1983 at 15 N.J.R. 1146(a).
Adopted: August 25, 1983 by Michael M. Horn,
Commissioner, Department of Banking.
Filed: August 26, 1983 as R.1983 d.379, **without
change.**

Authority: N.J.S.A. 17:16F-11.

Effective Date: August 26, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
August 26, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(b)

**DIVISION OF CONSUMER COMPLAINTS,
LEGAL AND ECONOMIC RESEARCH**

Revolving Credit Equity Loans

Adopted New Rule: N.J.A.C. 3:1-14

Proposed: July 18, 1983 at 15 N.J.R. 1147(a).
Adopted: August 25, 1983 by Michael M. Horn,
Commissioner, Department of Banking.
Filed: August 26, 1983 as R.1983 d.378, **with substantive
changes** not requiring additional public notice (N.J.A.C.
1:30-35).

Authority: N.J.S.A. 17:9A-24(a), 24(b), 25.2; 17:12B-
48(21), 1551.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 19, 1988.

Summary of Public Comments and Agency Responses:

The comments received by the Department in connection with the proposed regulations were favorable. One commentator pointed out that Federal Truth-In-Lending Regulation Z does not require notice of a change in the interest rate if there was proper initial disclosure of the variable rate plan under an index or formula. 12 C.F.R. Section 226.6(a)(2) (F.R.B. Comment 6(a)(2)-2); 12 C.F.R. section 226.9(c)(1) (F.R.B. Comment 9(c)-1). In order to ensure uniformity between Federal and State law in this area, proposed rule N.J.A.C. 3:1-14.4 has been amended to conform to Regulation Z (12 C.F.R. Section 226).

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

3:1-14.4 Notification of changes

(a) The bank, savings bank or savings and loan association shall notify each affected borrower of any change ***in terms*** in the manner set forth in the agreement governing the plan and in compliance with the Truth-In-Lending Act and regulations promulgated thereunder, as in effect from time to time, if applicable; provided, however, that if such change has the effect of increasing the interest rate or other charges to be paid by the borrower, the bank, savings bank or savings and loan association shall mail or deliver to the borrower at least 15 days before the effective date of the change a clear and conspicuous written notice which shall describe the change and the existing term or terms of the agreement affected by the change and shall also set forth the effective date and an explanation, if necessary, of the change.

(b) No notice of a change is required under (a) above if a change in interest rate is made under a properly disclosed variable rate plan that ties the interest rate change to an index or formula.

COMMUNITY AFFAIRS

(c)

**DIVISION OF HOUSING AND
DEVELOPMENT**

**Hotels and Multiple Dwellings
State-Local Cooperative Housing Inspection
Program**

Adopted Amendment: N.J.A.C. 5:10-1.3

Proposed: July 5, 1983 at 15 N.J.R. 1054(a).
Adopted: August 22, 1983 by John P. Renna,
Commissioner, Department of Community Affairs.
Filed: September 1, 1983 as R.1983 d.389, **without
change.**

Authority: N.J.S.A. 55:13A-6(e),-21.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
January 1, 1984.

Summary of Public Comments and Agency Responses:
No comments received.

ENVIRONMENTAL PROTECTION

ADOPTIONS

(a)

(c)

DIVISION OF HOUSING AND DEVELOPMENT

DIVISION OF COASTAL RESOURCES

**Hotels and Multiple Dwellings
Retirement Community Fire Safety; Fire
Separation Walls in Row Houses**

**Wetlands Management
Wetlands Maps in Cape May County**

Adopted Amendment: N.J.A.C. 5:10-1.4, 1.6

Adopted Amendment: N.J.A.C. 7:7A-1.13

Proposed: July 5, 1983 at 15 N.J.R. 1054(b).
Adopted: August 22, 1983 by John P. Renna,
Commissioner, Department of Community Affairs.
Filed: September 1, 1983 as R.1983 d.388, **without
change.**

Proposed: December 6, 1982 at 14 N.J.R. 1330(a).
Adopted: August 25, 1983 by Robert E. Hughey,
Commissioner, Department of Environmental
Protection.
Filed: September 2, 1983 as R.1983 d.402, **without
change.**

Authority: N.J.S.A. 55:13A-3(k), -6(e), P.L. 1983, c. 2
and c. 154.

Authority: N.J.S.A. 13:9A-2.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
January 1, 1984.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
June 7, 1987.

DEP Docket No. 057-82-11.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Public Comments and Agency Responses:

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In response to comments made at a public hearing held on December 21, 1982, minor revisions were made to maps numbered 140-2004, 140-2010 and 150-1986. One commentor suggested deletion of portions of regulated wetlands delineated on map number 150-1986 on the basis that the delineated wetlands were of low productivity. DEP recognizes that the site in question is not as productive as adjacent wetlands, but the Wetlands Act does not give the Department discretion to consider productivity as a factor in delineating wetlands.

A copy of all comments and responses is on file with the Office of Administrative Law.

(b)

(d)

DIVISION OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

**Wetlands Management
Wetlands Maps in Cumberland County**

**Flood Hazard Area Delineations
Floodway Delineation along a portion of Mill
Brook in Montvale**

Adopted Amendment: N.J.A.C. 7:7A-1.13

Adopted Amendment: N.J.A.C. 7:13-1.11(d)

Proposed: February 7, 1983 at 15 N.J.R. 119(a).
Adopted: August 25, 1983 by Robert E. Hughey,
Commissioner, Department of Environmental
Protection.
Filed: September 2, 1983 as R.1983 d.401, **without
change.**

Proposed: June 20, 1983 at 15 N.J.R. 989(a).
Adopted: August 23, 1983 by Robert E. Hughey,
Commissioner, Department of Environmental
Protection.
Filed: September 2, 1983 as R.1983 d.405, **without
change.**

Authority: N.J.S.A. 13:9A-2.

Authority: N.J.S.A. 58:16A-50 et seq.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
June 7, 1987.
DEP Docket No. 003-83-01.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
July 19, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Public Comments and Agency Responses:
No comments received.

OFFICE OF ADMINISTRATIVE LAW NOTE: A portion of the proposal at 15 N.J.R. 119(a) was adopted on August 15, 1983 as R. 1983 d.335. That adoption concerned wetlands maps in Atlantic County only. The present adoption concerns the Cumberland County portion of the proposal. See: 15 N.J.R. 1374(a).

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(a)

DIVISION OF WATER RESOURCES

Water Supply Allocation Procedures for Determining, Assessing and Collecting Payments for Waters Diversion

Adopted New Rule: N.J.A.C. 7:19-4

Proposed: March 7, 1983 at 15 N.J.R. 276(a).
Adopted: August 29, 1983, by Robert E. Hughey,
Commissioner, Department of Environmental
Protection.
Filed: September 2, 1983 as R.1983 d.400, **with technical
changes** not requiring additional public notice and
comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 58:2-1 et seq. and N.J.S.A. 13:1B-
3.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 19, 1988.
DEP Docket No. 007-83-01.

Summary of Public Comments and Agency Responses:

The Department of Environmental Protection held two public hearings concerning the proposed new rule on March 30, 1983 in Wayne, New Jersey, and on March 31, 1983 in New Brunswick, New Jersey. The hearing record remained open until April 6, 1983. Two written comments were received in addition to testimony from a total of seven persons at the two public hearings. In addition, further research by the Department disclosed 18 additional water systems entitled to a free allowance. In the near future, the Department intends to amend N.J.A.C. 7:19-4.9(d) to include these water systems. The following is a summary of the comments received and the Department's response to those comments.

Comment: Several persons asked if the new rule imposed a new or increased tax, and whether it would affect industrial users.

Response: The excess diversion tax dates back to 1907. The rates specified in the statute have not changed since that time. The new rule will define procedures which in the past were derived from the statute by the Water Policy and Supply Council. The tax pertains only to public water supplies. It will not be levied against non-public supplies such as industries. Nor will it be imposed on the Dundee Water Power and Land Company which provides surface waters from its facilities under contract to industrial users.

Comment: The Chief Engineer of the North Jersey District Water Supply Commission inquired as to whether a purveyor charged with maintaining passing flows in more than one stream could be penalized more than the \$10.00 per million gallons maximum specified in the law and the proposed new rule.

Response: The Department explained that where more than one penalty applied, the penalties would be allocated and would be levied against waters actually distributed to users. The total penalty would not exceed the amount of \$10 per million gallons, as specified in the statute.

If a purveyor disagrees with the charges computed by the Department, it has the right to discuss the calculations with the Department, and to appeal if agreement can not be reached.

Comment: The Executive Director of the Passaic Valley Water Commission (PVWC) noted that minimum flow requirements were to be based on the lowest monthly flow of record. If no data were available, the figure of 125,000 gallons per day per square mile would be used. He wondered if monthly average low flows have been recomputed in recent years.

Response: The Department reviewed the passing flow requirement for the PVWC at Little Falls which was based on the drought of September 1932. The Department, with the help of the U.S. Geological Survey (U.S.G.S.), reanalyzed monthly flows and concluded that the 1932 drought still constitutes the lowest passing flow requirement for PVWC. The purpose of including passing flow requirements in the proposed rule was to invite purveyors to review the requirements, and to indicate possible errors or inequities.

Comment: The Water Superintendent of Rahway questioned the accuracy of the U.S.G.S. gage used to measure their compliance with minimum passing flow requirements. The weir at the gaging station is reported to leak. Also, the City of Cranford, which is upstream, is known to have restricted passing flows upstream of Rahway thereby increasing the deficit at the Rahway gage.

Response: The Department will ask the U.S.G.S. to evaluate the effects of gage leakage and the possible need for repairs. U.S.G.S. will also review the siting of the Rahway gage with the thought of possibly relocating the gage upstream of Cranford.

Comment: One question concerned the possible impact of other diversions located between a purveyor's intake pipe and the U.S.G.S. gaging station.

Response: The gaging stations used in the excess diversion determinations were specifically sited to provide the residual streamflow data needed. For this reason, a promotion of the tax collected is used to reimburse the U.S.G.S. for the cost of operating those gaging stations. The U.S.G.S. routinely corrects gage readings for such things as differences in drainage area between gage and the point of diversion and for leakage (see item 4 above).

The questioner could not cite a situation in which a diversion located between the purveyor and the gaging station would have a significant impact on the minimum flow requirement imposed on a purveyor. The appeal provisions of the rules provide the mechanism for rectifying any such inequities.

Comment: The Middlesex County Planning Commission raised the issue of diversions by Sayreville from South River, and for which no passing flow requirements were specified.

Response: At the present time, Sayreville is diverting from wells in the Old Bridge and Farrington formations. Sayreville pumps from South River during certain seasons to fill their recharge lagoons. The statute specifies that the excess diversion tax is applicable to surface water diversions. The use by Sayreville of wells establishes the basis for exempting them from the provisions of the new rule. Other recharge activities, namely Perth Amboy, are treated similarly.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

7:19-4.3 Definitions

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

...

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“Free allowance” means the amount of water diverted from stream*s* and lakes with outlets for the purpose of public water supply *[in excess of a total amount]* ***in an amount*** equal to 100 gallons daily fo each inhabitant of the municipality or municipalities supplied, as shown by the census of 1905, or *[in excess of]* ***equal to*** such greater amount being legally diverted on June 17, 1907. ***Free allowances have been established in N.J.A.C. 7:19-4.9.***

7:19-4.9 Free allowance determination

(a)-(c) (No change from proposal.)
 (d) The Department has determined the following free allowances, in accordance with (a) above, for the following purveyors:

Purveyor/ *[Division]* *Division*	Points of Diversion	Free Allowance*s* (millions gallons)
Commonwealth Water Co.	Canoe Brook/ Passaic River	782.889
Commonwealth Water Co.	Madisonville	64.423
Elizabethtown Water Co.	Millstone River and Raritan River	472.067
Including: Somerville Water Co.		26.061
Highland Park Elizabethtown Division		154.395
Plainfield Division		826.614
City of Elizabeth		2,208.579 ¹
Hackensack Water Co.	Hackensack River Saddle River Hirschfeld Brook Sparkill Brook	9,153.47 ²
Jersey City Water Dept.	Rockaway River	16,542.946
Middlesex Water Co.	Robinson’s Branch Rahway River Raritan River	639.006
Monmouth Consolidated Water Company	Swimming River Jumping River Shark River	1,090.946 16.813 140.615
Newark Water Department Newark and Belleville Bloomfield	Pequannock River	*13,228.208 ¹ 425.882
North Jersey District Water Supply Comm.	*[Wanague River]* *[Ramapo River]* *[Two Bridges]*	
Including: *[Passaic Valley Water Commission]* Montclair, Kearny, Glen Ridge, Bayonne and East Newark City of Newark *[City of Elizabeth]* City of New Brunswick	*Wanaque River* *Ramapo River* *Two Bridges* Lawrence Brook	*[6,542.735 ¹]* 2,825.940 10,340.048 *[2,208.579]* 957.445

New Brunswick and Milltown Passaic Valley Water Commission	Passaic River, Little Falls Passaic River, Two Bridges	6,542.735 ¹
Rahway Water Dept. *[Elizabethtown Water Company Potterville]*	Rahway River *[Upper Cold Brook]*	555.397 *[None]*
City of Trenton New Jersey Water Co.	Delaware River Brass Castle Creek	4,923.850 125.232

¹Subject to Allocation

²May include credits for releases to DeForest Reservoir.

(a)

DIVISION OF WASTE MANAGEMENT

**Hazardous Waste Management
 Removal of Precondition of Federal Phase II
 Authorization Prior to Submission of Part
 B of Permit Application for Existing
 Hazardous Waste Facilities**

Adopted Amendment: N.J.A.C. 7:26-12.3

Proposed: July 5, 1983 at 15 N.J.R. 1063(a).
 Adopted: September 1, 1983 by Robert E. Hughey,
 Commissioner, Department of Environmental
 Protection.
 Filed: September 2, 1983 as R.1983 d.403, **without
 change.**

Authority: N.J.S.A. 13:1E-6a(2).

Effective Date: September 19, 1983.

DEP Docket No. 032-83-06.

Expiration Date pursuant to Executive Order No. 66(1978):
 October 8, 1986.

Summary of Public Comments and Agency Responses:

The Department received two comments concerning the proposed amendment. One commenter supported the amendment; the other commenter was of the opinion that the proposed regulation would only serve to duplicate Federal and State efforts thereby increasing the burden on industry without attendant public benefit. The commenter suggested that either the State enter into an agreement so that Part B applications for the EPA and NJDEP will be requested contemporaneously or that it seek to obtain Phase II authorization pursuant to section 3006 of RCRA and thereby achieve primacy for RCRA permits.

In response to the comment and suggestion, the Department wishes to explain that it foresees no duplication of effort which would increase the burden on industry’s part. The Department is currently pursuing Phase II authorization and expects to receive it in the near future. Once the amendment is effective, the Department will initiate Part B call-ins for storage, treatment, and incineration

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type facilities so that permits may be issued shortly after Phase II authorization is received. Currently, in anticipation of granting authorization to the State, EPA is no longer calling in Part B applications. It should be noted that a facility has six months to submit the Part B application form the date on which it is called in. Therefore, the timing of the rule adoption and the initiation of call-ins is such that both substantial delay in permit issuance and duplication of effort will be avoided.

(a)

DIVISION OF WASTE MANAGEMENT

Siting Criteria for New Major Commercial Hazardous Waste Facilities

Adopted Amendment: N.J.A.C. 7:26-13.7

Proposed: July 5, 1983 at 15 N.J.R. 1064(a).

Adopted: September 1, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Filed: September 2, 1983 as R.1983 d.406, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 13:1B-3, specifically 13:1E-57, and 13:1E-85.

Effective Date: September 19, 1983.

DEP Docket No. 033-83-06.

Expiration Date pursuant to Executive Order No. 66(1978): June 21, 1988.

Summary of Public Comments and Agency Responses:

The section of the Siting Criteria for New Commercial Hazardous Waste Facilities adopted today amends N.J.A.C. 7:26-13, which was adopted July 5, 1983 at 15 N.J.R. 1096(a). This section, concerning protection of the population, was originally proposed as N.J.A.C. 7:1-9.3 at 15 N.J.R. 115 and was repropoed as N.J.A.C. 7:26-13.7 at 15 N.J.R. 1064(a).

The Department of Environmental Protection and the Hazardous Waste Advisory Council (hereinafter Council) have carefully reviewed the transcripts of the public hearings and the written comments submitted during the comment period for the proposal, which closed on August 4, 1983. The following is a summary of the major issues raised in the comments which were germane to the proposal, and the Department's response to those comments. Copies of a more complete "Response to Comment" document may be obtained from: Barbara M. Greer, Office of Regulatory Services, CN 402, Trenton, New Jersey 08625.

7:26-13.7(a)1.-2.

Comment: The proposal concerns itself with a 12 hour per day exposure time and equates distance from a hazardous waste facility with allowable exposure.

Response: The 12 hour and two hour per day figures define the type of structures from which buffer zone measurement should be taken. These figures do not attempt to estimate allowable exposure limits.

Comment: Does the language "any structure which is routinely occupied by the same person or persons more than 12 hours per day,

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or by the same person or persons under the age of 18 for more than two hours per day" mean a person who may be employed in an industrial, commercial or business site that may be part of the project or contiguous to the project? Does the language include persons who may decide to build a home in an industrial zone within one-half mile of the project? Is the prohibition retroactive and/or prospective? If a person were to convert an existing industrial building into an apartment, could this force the facility to cease to operate? An amendment to the reproposal is suggested which would require the measurement of the buffer zone from existing residential zones as delineated by the municipal zoning ordinance.

Response: The proposed rule is not intended to apply to persons employed in an industrial, business or commercial structure at the facility site itself or within the appropriate distance. The intent of both the act and the rule is to provide a buffer zone between the facility and residential and like occupied structures such as schools, health care facilities, day care centers and correctional institutions.

The rule does apply to structures which may legally be occupied as a residential use in an industrial zone. The zoning designation of the buffer zone is otherwise immaterial to the siting process. A facility could, for example, be sited in an area which is zoned residential as long as the buffer zone requirement is met.

The Council and the Department agree that at some point in the siting process the buffer zone must be measurable. In order to fix a time for measurement of the buffer zone, the Department is adding a paragraph, 7:26-13.7(a)4, which establishes the time at which the proposed zone will be measured as six months prior to the Commission's formally proposing to designate a site. The six months will provide sufficient time for the Commission to proceed with the site designation proposal while limiting the time in which movement into the buffer zone, which might hinder the siting process, may take place. The six-month period is also consistent with N.J.A.C. 7:26-13.10(a)4.

The owner or operator of a facility, pursuant to N.J.S.A. 13:1E-63, may construct and operate that facility without regard to any local zoning ordinance. Once a facility is sited, the use of land within the buffer zone will be a local land use planning decision. A facility which has been sited in accordance with the criteria, and which is constructed and operated in accordance with all applicable laws, could not be forced to cease operation by the inappropriate use of a structure within the buffer zone.

Comment: The selection of the one-half mile buffer zone appears arbitrary. A buffer zone should be dependent on the nature of the materials handled at the facility and the design of the facility. In some cases, the one-half mile may be wholly inadequate, whereas in others, it may be unreasonably restrictive.

Response: The one-half mile buffer zone will provide the initial isolation distance suggested by the U.S. Department of Transportation's 1980 Emergency Response Guidebook for Hazardous Materials. The one-half mile distance is further substantiated by information in the EPA document by D. Bruce Turner, Workbook of Atmospheric Dispersion Estimates.

Comment: The proposal seeks to establish a twofold distance criterion. It is suggested that the same distance criteria should be used for both landfills and treatment facilities.

Response: The Department and Council determined that facilities with large amounts of storage capacity will pose a greater hazard due to the volatile/reactive nature of the materials on-site. Land emplacement facilities do not, as a rule, pose a threat of fire or explosion. Two thousand feet is therefore considered a reasonable buffer zone for a land emplacement facility given the groundwater protection criteria which apply.

7:26-13.7(b)1.-6.

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Comment: Section 7:26-13.7(b) will be interpreted with regard to specific distance measurements set forth in 7:26-13.7(a)1 and 2. To avoid any ambiguity, we recommend that subsection 13.7(b) be revised to read, "With regard to the specific distances set forth in subsection 13.7(a)1 and 2, no new major commercial. . .".

Response: Since the requirements of subsection (a) are absolute prohibitions, if a site does not meet them, it will not be reviewed under the following subsection (b). In the opinion of the Department, the suggested additional wording is not necessary.

Comment: The DEP and the Council should establish specific criteria in relation to subsection (b), especially (b)1 pertaining to population density.

Response: The Department adheres to its previous statements that there is not enough information available to develop strictly prohibitive criteria, based on those factors listed, for all possible types of facilities in all possible locations. When the Commission and Council review specific areas, much more detailed site-specific information will become available. The factors listed in 7:26-13.7(b) will then be subject to rigorous evaluation. For the above reasons, the Department agrees with the commentator who stated that "setting a threshold population density above which an area becomes exempt from consideration appears not only unnecessary but ill-advised."

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***).

7:26-13.7 Protection of the population of the State
(a)1.-3. (No change from proposal.)

4. The measurement of distances required in (a)1 and 2 above shall be taken from structures which are legally occupied, in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and any ordinance adopted by the municipality pursuant thereto, six months prior to the Commission's formally proposing to designate the site.

(b) (No change from proposal.)

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(a)

OFFICE OF COMMUNITY MANAGEMENT SERVICES

Contract Administration Capital Funding Program and Funding Agreement

Adopted New Rule: N.J.A.C. 10:3-2

Proposed: July 5, 1983 at 15 N.J.R. 1072(a).
Adopted: August 30, 1983 by George J. Albanese, Commissioner, Department of Human Services.
Filed: September 1, 1983 as R.1983 d.392, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:1-12; P.L. 1980, c.119.

Effective Date: September 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
September 19, 1988.

Summary of Public Comments and Agency Responses:

Although no comments were received concerning the proposed Rule itself, one comment was received concerning the Standard Document referenced in this subchapter. The Catholic Community Services of Newark objected to the introduction of an "on demand" promissory note and mortgage in that the mortgage satisfaction provision in the case of the agency being required to sell the facility in order to satisfy the mortgage does not provide for a "sharing of risks, as well as gains." In order to equitably address this concern, section 5.02., Mortgage Satisfaction part (c) of the Standard Contract/Agreement Document for the Construction, Purchase and Renovation of Community-Based Facilities has been changed from "the Department's fair share of such proceeds may be deemed to satisfy the Agency's indebtedness under the mortgage" to "shall be deemed to satisfy the Agency's indebtedness under the contract." Therefore, if the Agency must sell a Facility in order to satisfy a mortgage, and the proceeds of such sale are less than the amount of the mortgage, the agency will not be left with a liability to the State that it cannot meet.

Copies of the Standard Document as changed and as updated in the future may be obtained from:

Office of Community Management Services
Department of Human Services
CN 700
Trenton, NJ 08625

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***).

CHAPTER 3 CONTRACT ADMINISTRATION

SUBCHAPTER 2. CAPITAL FUNDING PROGRAM AND FUNDING AGREEMENT ***[FOR CONSTRUCTION, PURCHASE, OR PURCHASE AND RENOVATION OF COMMUNITY-BASED FACILITIES]***

10:3-2.1 Capital Funding Program
(a) (No change from proposal.)

10:3-2.2 Capital Funding Agreement* **For Construction, Purchase, or Purchase and Renovation of Community-Based Facilities***
(a)-(b) (No change from proposal.)

ADOPTIONS

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(a)

DIVISION OF MENTAL RETARDATION

Determination of Mental Deficiency/Need for Guardianship

Readoption with Amendments: N.J.A.C. 10:43

Proposed: July 5, 1983 at 15 N.J.R. 1111(a).
Adopted: September 1, 1983 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: September 1, 1983 as R.1983 d.390, **without change**.

Authority: N.J.S.A. 30:1-12.

Effective Date (Readoption): September 1, 1983.
Effective Date (Amendments): September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 1, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(b)

DIVISION OF MENTAL RETARDATION

Guardianship Services

Readoption as a New Rule: N.J.A.C. 10:45

Proposed: July 5, 1983 at 15 N.J.R. 1073(a).
Adopted: September 5, 1983 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: September 1, 1983 as R.1983 d.391, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:1-12.

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
September 19, 1988.

Summary of Public Comments and Agency Responses:

The Division received several comments from the Division of Advocacy for the Developmentally Disabled within the Department of the Public Advocate.

Objection was raised to the proposed extension of guardianship services eligibility to orphaned or abandoned children. The Public Advocate contended that this would constitute an unlawful termination of parental rights.

In response, the Division perceives the Public Advocate's comment as having been prompted by a possible misunderstanding of the true implications of this section. No termination of parental rights would be entailed since the Bureau of Guardianship Services would not be assuming a permanent role as legal guardian, but would be extending services to the child in the absence of a parent or guardian after diligent efforts to discover their whereabouts had

proven unsuccessful. Indeed, if a parent or guardian should subsequently reappear, he or she would again exercise his or her rights and prerogatives, and guardianship services would automatically cease. An addition shall be incorporated into the adopted regulation to clarify this issue.

Several suggestions were offered by the Public Advocate with respect to Sections 1.5 and 1.6. In sum, it was recommended that language be modified and additions made to further delineate the responsibilities of the Bureau of Guardianship Services staff, as well as to define more clearly limitations on their authority to consent to certain procedures.

The Division sees merit in all of the suggestions pertaining to 1.5 and 1.6 and has developed changes in the text of the regulation substantially reflecting this agreement.

Some exception has to be made with respect to the recommendation by the Public Advocate for a requirement that each client be directly contacted at least annually by Bureau of Guardianship Services staff.

Although the experience has been that 80 to 90 percent of the clients receiving guardianship services have had an annual visit, shortage of staff, staff turnover, etc., preclude making this an absolute requirement. At the same time it is recognized that some concrete definition of goals and standards is indicated with respect to frequency of contact.

Consequently, the standard inserted reflects a general stipulation that clients be seen at least annually, more often as necessary, but leaves some leeway of up to 18 months for each and every client's minimally required visit.

Finally, a comment was made about Section 1.7: Appeal. The Public Advocate proposed extending this section to provide for an appeal procedure on the part of a family member or advocate who disagrees with a decision made by the Bureau of Guardianship Services.

In response, an addition or change in this section is not considered necessary. N.J.A.C. 10:48 already makes provision for an administrative appeal procedure which would be available to any citizen who has a dispute or disagreement with a service component of the Division of Mental Retardation. This same provision is also promulgated in the form of Division Circular No. 37. In effect, Section 1.7 merely extends access to substantially the same procedure to the Bureau of Guardianship Services acting on behalf of the client.

Summary of Changes Between Proposal and Adoption:

The Division wishes to modify or add language in certain sections of the regulation to reflect concurrence with some of the suggestions of the Public Advocate, viz. those which relate to the responsibilities and limitations of the Bureau of Guardianship Services staff addressed in Sections 1.5 and 1.6. The addition of language to Section 1.3 of the proposal is also prompted by the expressed concern of the Public Advocate regarding the termination of parental rights in the instance of providing guardianship services to a minor. The insertion should make clear that no such termination of rights is intended and consequently if a parent or legal guardian should become available again after a period of absence, their role has in no way been affected or compromised.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

10:45-1.1 Authority
(No change from proposal.)

10:45-1.2 Definitions
(No change from proposal.)

10:45-1.3 Eligibility
(a)-(c) (No change from proposal.)
(d) Eligibility for a child continues as long as he or she:

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i. Is receiving functional services;
ii. Is under the age of 18 years, and;
iii. Has no ***available*** legal guardian of the person. ***In any instance when a parent or legally appointed guardian, who had been previously inaccessible, again becomes available to exercise their role, guardianship services shall immediately and automatically cease.***

(e) (No change from proposal.)

10:45-1.4 Provision of guardianship
(No change from proposal.)

10:45-1.5 Role and responsibility of Bureau of Guardianship Services staff

(a) (No change from proposal.)

(b) Guardianship staff shall focus exclusively on:

1. Protective services;
2. Safeguarding individual rights;
3. Substitute decision-making ***[and]***;
4. Advocacy on behalf of clients ***[.]* ***and***;**
- *5. Maximizing client self-determination.***

(c) In order to exercise their role and responsibility, guardianship staff shall be expected to:

1. Be ***[as]*** knowledgeable and informed ***[as possible]*** about each client's status, program and progress. This shall be achieved in a variety of ways, including:

i. Direct contact ***[;]* ***: most clients shall be seen at least annually, more often as necessary, but in any event each client shall be visited no less frequently than 18 months;*****

ii. Interviews with staff, service providers and other involved parties;

iii. Participation at case conferences, individual habilitation plan sessions and other meetings;

iv. Review of records ***[.]* ***;*****

v. ***Utilization of any other appropriate source of information.***

2. Give or withhold consent for proposed dental/medical procedures. Such consent shall be premised upon:

i. An awareness by the guardianship worker of the purpose of the procedure, the risks involved, the benefits, and the possible alternatives.

ii. Voluntariness; freedom from the subtlest hint of coercion.

iii. Responsibility by the guardianship worker to secure, and by staff involved in the medical procedure to provide, accurate and complete information which includes:

(1) The purpose of description of the procedure.

(2) Clear identification of experimental or irreversible procedures.

(3) Possible or probable adverse effects, including disadvantages, discomfort, and risks involved.

(4) Identification of anticipated benefits.

(5) Assurance that alternatives have been identified and considered.

(6) Identification of limitation of breadth and duration of consent.

3. Give or withhold consent for release of confidential information and ***/*** or photographing clients.

4. Give or withhold approval for major changes of program or transfers.

***5. Give or withhold informed consent to other professional advice or services as appropriate.**

6. Give or withhold approval or individualized education plan and educational placement.

7. Encourage client to participate in decision-making to the extent of his or her capability. Special care should be taken to ascertain the feelings of the client whenever possible before making a decision.

8. Unless contraindicated by the client's social history, contact client's family and solicit participation in the decision-making process.*

(d) (No change from proposal.)

10:45-1.6 Limitation on Bureau of Guardianship Services staff

(a) (No change from proposal.)

(b) ***[A guardian ad litem shall be specially appointed by a court for the matter of consent to the following proceedings:]* ***Bureau of Guardianship Services staff shall not consent to the following procedures but may, with the approval of the Chief of the Bureau, refer the case to court for appointment of a guardian ad litem:*****

1. Shock treatment;

2. Psychosurgery;

3. Sterilization, or;

4. Medical, behavioral or pharmacological research (N.J.S.A. 30:6D-5.a[4]).

[(c) The Chief of the Bureau of Guardianship Services shall make the decision whether to initiate referral of a case to court for appointment of a guardian ad litem.]

10:45-1.7 Appeal

(No change from proposal.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Administration Manual Prior Authorization in Emergency Situations

Adopted Amendments: N.J.A.C. 10:49-1.8

Proposed: August 22, 1983 at 15 N.J.R. 997(a).

Adopted: August 22, 1983 by George J. Albanese,
Commissioner, Department of Human Services.

Filed: August 22, 1983 as R.1983 d.376, **without change.**

Authority: N.J.S.A. 30:4D-7 and 7b.

Effective Date: September 19, 1983.

Operative Date: October 1, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
April 30, 1985.

Summary of Public Comments and Agency Responses:
No comments received.

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Transportation Services Manual

Readoption: N.J.A.C. 10:50

Proposed: June 20, 1983 at 15 N.J.R. 999(a).

Adopted: August 22, 1983 by George J. Albanese,
Commissioner, Department of Human Services.

Filed: August 22, 1983 as R.1983 d.375, **without change.**

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Authority: N.J.S.A. 30:4D-6b(15), 7 & 7b, and 42 CFR 431.53 and 440.170(a).

Effective Date: August 22, 1983.
Expiration Date pursuant to Executive Order No. 66(1978): August 22, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Independent Clinic Services Manual
Procedure Codes, Including Family Planning Services, Obstetrical Services, Rehabilitation Services**

Adopted Amendment: N.J.A.C. 10:66-3.3

Proposed: December 6, 1982, at 14 N.J.R. 1339(a).
Adopted: August 26, 1983 by George J. Albanese, Commissioner, Department of Human Services.
Filed: August 31, 1983 as R.1983 d.386, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:4D-6b(3), (16) and 4D-7 an 7b.

Effective Date: September 19, 1983.
Operative Date: October 1, 1983.
Expiration Date pursuant to Executive Order No. 66(1978): May 8, 1986.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Between Proposal and Adoption:

There were four procedure codes that required minor modifications but the changes were not significant enough to require republication. Procedure codes 9090 (physical therapy), 0076 (occupational therapy), and 0075 (speech-language therapy) added the phrase "treatment session" so that the complete heading will now read individual treatment session, which is a more precise identifier. There was no change in the text of the code nor in the fee schedule.

The procedure code for pelvimetry (7390) was modified to indicate that written evidence of medical necessity must accompany the Independent Out-patient Health Facility claim form (MC-14). This statement is a clarification of a standard already in existence. There is no change in the fee schedule associated with this procedure code.

Full text of the changes between proposal and adoption follows (additions are indicated in boldface with asterisks ***thus***; deletions are indicated by brackets and asterisks ***[thus]***).

10:66-3.3 Procedure code listing

11. Radiology Services: (No change from proposal.)
7390 Pevimetry, with or without [cephalometry or] placental localization.

Note: Use of the code for pelvimetry requires written evidence of medical necessity ***[.]*** ***to accompany the Independent Outpatient Health Facility claim form (MC-14).***

- 12. Rehabilitation Services: (No change from proposal.)
- 9090 Physical therapy-Individual ***treatment session***:
Minimum time 30 minutes. No more than three patients can be treated simultaneously. Prior authorization required. Consists of any or a combination of the following modalities, prescribed by a licensed physician, performed by a qualified physical therapist and related to the patient's active treatment regimen:
Appropriate use of accepted mechanical devices (such as parallel bar, weights, pulley system friction wheels, steps, etc.)
Graduated range of motion exercises.
Therapeutic ultrasound only when included as part of other forms of accepted therapy.
Therapeutic use of physical agents (other than drugs) including heat, light, water, electricity and radiation.
Instructions to responsible persons for follow-up procedures between therapy visits.
- 0076 Occupational therapy - Individual ***treatment session***:
Minimum time 30 minutes. Prior authorization required. Consists of any, or a combination of the following modalities prescribed by a licensed physician, performed by a qualified occupational therapist and related to the patient's active treatment regimen:
The design, fabrication and application of self help devices.
The use of specifically designed crafts to achieve maximal physical and/or mental functioning.
Guidance in the selection and use of adaptive equipment.
Advice and counsel to the patient concerning the adaptation of the physical environment of the handicapped.
Pre-vocational evaluation and training.
Sensory motor activities.
- 0075 Speech-Language therapy - Individual ***treatment session***:
Minimum time 30 minutes. Prior authorization required. Prescribed by a licensed physician, performed by a qualified speech-language pathologist.

(b)

DIVISION OF PUBLIC WELFARE

**Food Stamp Program
Maximum Income Eligibility Limits**

Readopted Amendments: N.J.A.C. 10:87-12.3, 12.4 and 12.7

Proposed: July 18, 1983 at 15 N.J.R. 1185(a).
Adopted: August 30, 1983 by George J. Albanese, Commissioner, Department of Human Services.
Filed: August 30, 1983 as R.1983 d.382, **without change.**

Authority: N.J.S.A. 30:4B-2, the Food Stamp Act of 1977 as amended (7 USC 2014) 7 CFR 273.9(a) and 48 FR 22765 issued May 20, 1983.

Effective Date: August 30, 1983.
Expiration Date pursuant to Executive Order No. 66 (1978): March 1, 1984.

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Summary of Public Comments and Agency Responses:
No comments received.

(a)

DIVISION OF PUBLIC WELFARE

Monthly Reporting Policy Handbook Treatment of Income; Benefit Computation Involving Income; Changes in Household Composition and Changes in Circumstances

**Adopted Amendments: N.J.A.C. 10:90-2.2,
2.4, 4.1, 4.2, 4.3, 4.4, 4.6, 5.3 and 6.1
Adopted New Rule: N.J.A.C. 10:90-5.6**

Proposed: July 18, 1983 at 15 N.J.R. 1162(a).
Adopted: September 1, 1983 by George J. Albanese,
Commissioner, Department of Human Services.
Filed: September 1, 1983 as R.1983 d.398, with
substantive changes not requiring additional public
notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-6, 44:10-3 and 30:4B-2; 45
CFR 233.20(a)(13).

Effective Date: September 19, 1983.
Expiration Date pursuant to Executive Order No. 66(1978):
November 15, 1987.

Summary of Public Comments and Agency Responses:

Comments were received from two county welfare agency directors. The areas of concern pertained to delayed issuance of benefits, self-employment, supplemental food stamp benefits and reinstatement.

Any inquiry was made as to whether delayed issuance of benefits was intended as a punitive measure. Delayed issuance of benefits is not intended to be punitive to recipients, but rather, allows the agency additional time to process report forms received late.

Both counties questioned the need to use an averaged or annualized monthly amount of self-employment income to calculate AFDC/FS benefits, rather than self-employment income actually received by the family in a month. Federal regulations mandate the average or annualized treatment of income from self-employment that is received less often than monthly.

A need for clearer final interpretation of policy was expressed regarding issuance of supplemental food stamps for an individual added to a Food Stamp household. The language in question is being deleted pending further Federal clarification.

It was suggested that the scope of coverage for reinstatement be broadened to encompass causes or reasons other than monthly reporting; however, those situations are addressed sufficiently in other program policy manuals.

Summary of Changes Subsequent to Proposal:

At N.J.A.C. 10:90-2.4(f), (h) and (h)6, the word "other" has been replaced with the words "less often" to avoid misleading interpretation.

At N.J.A.C. 10:90-4.2(c), language has been to explain more clearly prospective budgeting after a period of ineligibility.

At N.J.A.C. 10:90-4.4(b), language has been deleted since further Federal clarification is needed.

The entire section N.J.A.C. 10:90-4.8 is **not being adopted at**

this time; however, it is anticipated that adoption of this material will be forthcoming with some modification of language for clarification purposes.

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***.)

10:90-2.4 Income, employment and deductions

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

(f) Income from self-employment received ***[other]**less often*** than monthly: The CWA shall annualize self-employment income which is received ***[other]* *less often*** than monthly, in accordance with (f)1 through (f)3 below, **following the procedures in N.J.A.C. 10:90-2.4(h)**. Therefore, the CWA shall use the monthly annualized self-employment income amount to determine eligibility and compute the assistance payment/food stamp benefit. Self-employed individuals are still required to report income and circumstances monthly to the CWA.

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

(g) (No change from proposal.)

(h) **Procedures for annualizing income from self-employment received*[other]* *less often* than monthly: The CWA shall annualize income from self-employment received*[other]* *less often* than monthly according to (h)1 through 6 below.**

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

6. Treatment of self-employment income received *[other]* *less often* than monthly at application: At the time of application for AFDC/food stamps, if an applicant was recently self-employed and received the income *[other]* *less often* than monthly, the CWA shall follow (h)6i and ii below to determine if a monthly annualized income amount must be use in the eligibility determination and benefit calculation.

i.-ii. (No change from proposal.)

10:90-4.2 Computing the assistance payment/food stamp benefit in the initial two payment months of eligibility

(a) The CWA shall use prospective budgeting to compute the assistance payments/food stamp benefits for the ***[initial]**initial*** two payment months of eligibility, except in situations detailed in (b) below. See N.J.A.C. 10:90-2.4(a)2i for determination of gross monthly income in these two months. **The CWA will compute the assistance payment by counting the budget month income of the same individuals whose income was considered in the prospective eligibility decision in N.J.A.C. 10:90-4.1.**

1. (No change from proposal.)

(b) (No change from proposal.)

***[c) The CWA shall use prospective budgeting to compute the assistance payment/food stamp benefit for the initial two payment months of eligibility that follow a period ineligibility of at least one full payment month.**

1. If the period of ineligibility is less than one full payment month, the CWA shall use retrospective budgeting to compute the assistance payment/food stamp benefit.

2. A payment month of suspension, as defined in N.J.A.C. 10:90-4.5, shall not be considered a payment month of ineligibility for purposes of this section.

3. Example: A CWA terminates a family's AFDC/food stamp benefits effective January 1 due to excess income. On February 1 the family applies for AFDC and food stamps because the income was reduced. After eligibility is determined, the CWA will use prospective budgeting to calculate the AFDC and food stamp benefits to be issued for the February and March Payment months, because they follow a full payment month of ineligibility, January 1 through 31.

4. Example: An eligible unit/household requests that its AFDC and food stamp benefits be terminated effective February 1. On

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February 16 the family reapplies for AFDC/food stamps and is determined prospectively eligible for February and March. The AFDC and food stamp benefits issued for February and March must be calculated using retrospective budgeting, because the period of ineligibility of February 1 through 15 was less than one full payment month.*

10:90-4.4 Changes in circumstances

(a) (No change from proposal.)

(b) Individual added to a food stamp household: If a household gains a member in the processing month between the budget month and payment month, the CWA shall determine eligibility using the household's composition during the payment month. **The CWA shall compute the household's payment month food stamp benefit by prospectively budgeting the new member's income and circumstances. *[The CWA shall not issue a supplemental food stamp benefit for the new member's processing month eligibility. However, the processing month will become the first budget month in which retrospective budgeting is applied to the new member's income and circumstances.]***

(a)

DIVISION OF PUBLIC WELFARE

**Medicaid Only Program
Eligibility Computation Amounts**

**Readopted Amendments: N.J.A.C. 10:94-5.4,
5.5 and 5.6**

Proposed: July 18, 1983 at 15 N.J.R. 1187(a).

Adopted: August 30, 1983 by George J. Albanese,
Commissioner, Department of Human Services.

Filed: August 30, 1983 as R.1983 d.381, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-87 and Section 1902(a) of the Social Security Act.

Effective Date: August 30, 1983.

Effective Date of figures which are a change upon adoption:
October 1, 1983.

Expiration Date pursuant to Executive Order No.66(1978):
August 22, 1988.

**Summary of Public Comments and Agency Responses:
No comments received.**

Summary of Changes Subsequent to Proposal:

The figures represent SSI payment levels including both Federal and State shares. The figures which become effective October 1, 1983 represent the increase in the optional State supplement included in the SSI payment level pursuant to enactment of New Jersey's Budget which increases the annual Lifeline benefit amount from \$175.00 to \$200.00 per household.

Inasmuch as there is an increase in the SSI payment level and that payment level is used as the income eligibility standard for community based cases in the MO program, Federal law (Section 1902(a) of the Social Security Act) requires adherence to that standard as previously expressed in the certification of imminent peril at time of emergency rule adoption/proposal.

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Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

AGENCY NOTE: The figures which appear in boldface with brackets and asterisks are to be effective August 30, 1983 through September 30, 1983. The new figures in boldface with asterisks will become effective October 1, 1983.

10:94-5.5 Deeming of income

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

(d) A table for deeming computation amounts follows:

**TABLE A
Deeming Computation Amounts**

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

3. Spouse to Spouse

Deeming-Eligibility
Levels

a. Residential Health Care Facility	\$[572.30]*	[602.30]**	604.37*
b. Eligible individual living alone with ineligible spouse	\$[589.70]*	[629.70]**	632.18*
c. Living alone or with others	\$[453.50]*	[483.50]**	485.57*
d. Living in household of another	\$[324.43]*	[344.43]**	346.50*

4. (No change from proposal.)

10:94-5.6 Income eligibility standards

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

(c) (No change from proposal.)

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

5. TABLE B

Variations in Living Arrangements	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$[430.20] * [450.20]* * 452.27*	\$[845.80] * [885.80]* * 887.88*
II. Living Alone or with Others	[311.40] * [331.40]* * 333.47*	[447.60] * [477.60]* * 479.68*
III. Living Alone with Ineligible Spouse	[447.60] * [477.60]* * 479.68*	
IV. Living in Household of Another	[229.70] * [243.03]* * 245.10*	[373.20] * [393.20]* * 395.28*
V. (No change from proposal.)		

*Gross income ([i.e.,] **that is**, income prior to any income exclusions) is applied to this Medicaid "Cap".

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

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(a)

DIVISION OF PUBLIC WELFARE

Service Programs for Aged, Blind or Disabled Supplemental Security Income Payment Levels

Readopted Amendment: N.J.A.C. 10:100, Appendix A

Proposed: July 18, 1983 at 15 N.J.R. 1188(a).
 Adopted: August 30, 1983 by George J. Albanese, Commissioner, Department of Human Services.
 Filed: August 30, 1983 as R.1983 d.383, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Effective Date: August 30, 1983.
 Effective Date of figures which are a change upon adoption: October 1, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): August 30, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Subsequent to Proposal:

The figures represent SSI payment levels including both Federal and State shares. The figures, which become effective October 1, 1983 represent the increase in the optional State supplement included in the SSI payment level pursuant to enactment of New Jersey's Budget which increases the annual Lifeline benefit amount from \$175.00 to \$200.00 per household.

Full text of the changes between proposal and adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

AGENCY NOTE: The figures which appear with brackets and asterisks are to be effective August 30, 1983 through September 30, 1983. The new figures in boldface with asterisks will become effective October 1, 1983.

10:100, Appendix A

New Jersey Supplemental Security Income Payment Levels

Living Arrangement Categories	Payment Level *[7/1/83]* *10/1/83*
Eligible Couple	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence	\$50/456.40†
Residential Health Care Facilities and certain residential facilities	*[\$885.80]*

for children and adults	*\$887.88*
Living Alone or with Others	*[\$477.60]* *\$479.68*
Living in Household of Another, Receiving Support and Maintenance	*[\$393.20]* *\$395.28*
Eligible Individual Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	\$25/304.30†
Residential Health Care Facilities and certain residential facilities for children and adults	*[\$450.20]* *\$452.27*
Living Alone or with Others	*[\$331.40]* *\$333.47*
Living with Ineligible Spouse (No other individuals in household)	*[477.60]* *479.68*
Living in Household of Another, Receiving Support and Maintenance	*[\$243.03]* *\$245.10*

†The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

(b)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Care Manual of Standards for Child Care Centers (Combining Infant/Toddler and Existing Standards)

Adopted Amendments: N.J.A.C. 10:122-1.1, 1.2, 1.3, 2.1, 2.2, 3.2, 3.3, 4.2-4.7, 5.1-5.4, 6.1-6.6, 6.9 and 7.3

Proposed: June 6, 1983 at 15 N.J.R. 850(a).
 Adopted: August 22, 1983 by George J. Albanese, Commissioner, Department of Human Services.
 Filed: August 22, 1983 as R.1983 d.372, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:70-1 to 9.

Effective Date: September 19, 1983.
 Expiration Date pursuant to Executive Order No. 66(1978): September 19, 1988.

Summary of Public Comments and Agency Responses:

The Division of Youth and Family Services (DYFS) received seven letters of comment on the proposal: two from child care center directors; one from the DYFS Day Care Policy Development

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Board; one from the Leonia Board of Health; one from a committee of nine persons from Camden County that included center directors and staff and representatives of the Camden County Office for Children; and one letter each from the Commissioners of the New Jersey Departments of Education and Health, who commented pursuant to N.J.S.A. 18A: 70-3. In addition, staff of the Division's Bureau of Licensing conducted several meetings during this period with child care center directors and staff, as well as representatives of organizations representing various day care interests in order to discuss the proposal and secure reactions and comments. The meetings were with the statewide officers and area chapters of the New Jersey Association for the Education of Young Children (NJAEYC); the DYFS Policy Development Board; a group of child care providers from the southern-most counties, organized by the Camden County Office for Children; the Bergen County Health Officers Association; and groups of child care center directors (constituent licensees) from various areas of the State. Verbal comments received at those meetings were considered and, as appropriate, incorporated in these adopted regulations. It should be noted that prior to the publication of the proposal, the Division circulated widely a first draft of the proposal to many child care centers, organizations, and professionals; comments received on that draft were then incorporated into the proposal that was published on June 6. The initial draft of the proposal was developed in conjunction with a 15-member ad hoc citizens advisory committee that included directors of child care centers, representatives from child care advocacy and professional organizations, and staff from the State Departments of Education and Health.

All of the comments received, both verbal and written, generally supported the proposed regulations, although a number of suggestions and recommendations for improvement were made. The majority of changes made as a result of the comments received on the proposal are not substantive; rather, they constitute for the most part clarifications and improvements in language and organization or modifications of the provisions in a way that provides licensed centers more flexibility and greater ease in meeting the regulations.

Comment:

One comment suggested that the provision governing hours of operation for centers serving children during the normal waking hours not be so specific (7:00 a.m. to 7:00 p.m.), since some centers may open earlier to accommodate parents who must drop their children off earlier than 7:00 a.m.

Response:

The regulation has been modified to reflect the normal waking hours as "approximately" 7:00 a.m. to 7:00 p.m., allowing centers additional flexibility in their operating hours. The same language was added to the description of night programs; (approximately 7:00 p.m. to 7:00 a.m.). (N.J.A.C. 10:122-1.3(a)1-3).

Comment:

One comment suggested that the regulations pertaining to the use of swimming pools for children attending child care centers be expanded to include wading pools as well so that the regulations coincide with the provisions of the Swimming Pool Code of New Jersey - 1970, which is adopted by reference in the New Jersey Youth Camp Safety Act Standards.

Response:

Those provisions of the regulations pertaining to swimming pools have been modified to include wading pools, as suggested. (N.J.A.C. 10:122-5.2(m)).

Comment:

At meetings conducted by the Bureau of Licensing, some attendees suggested that the requirement pertaining to toilet training

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be amended to permit centers to utilize regular size toilets for children capable of using them, in addition to the required child-size facilities.

Response:

Language has been added to that provision to permit such an option. (N.J.A.C. 10:122-6.2(c)3).

Comment:

One center director suggested that the requirements governing food and nutrition be amended so that milk is not an absolute requirement at the breakfast, lunch and dinner meals; rather, centers should have the flexibility of providing milk for the children either at the regular meals or at in between meal snacks or a combination of both.

Response:

The requirement has been amended to permit centers this option, since it fully meets the food and nutritional requirements of the children served. (N.J.A.C. 10:122-6.3(c)8).

Comment:

Verbal comments at some of the meetings held by the Bureau of Licensing suggested that those provisions of the program activities section that prohibit centers from letting children sit inactively for long periods of time be modified to prohibit also the confinement of infants and small children to cribs and playpens.

Response:

This requirement has been amended by adding language to the regulation that would also prohibit children from being confined to cribs or playpens for long periods of time, since such a prohibition is clearly consistent with the intent of this particular requirement. (N.J.A.C. 10:122-6.6).

Comment:

Some verbal suggestions were made to modify in the program activities section of the manual the reading and language activities for children below 2 1/2 years of age in order to eliminate the reference to reading, since it was felt that such an activity was inappropriate for children in this very young age group.

Response:

The reference to reading as one of the program activities in the regulations has been eliminated in keeping with this suggestion, so that this particular provision focuses more appropriately on language development. (N.J.A.C. 10:122-6.6(c)1iii).

Comment:

The Department of Education suggested that the provision governing staff contact with the children require that staff talk to the children while they are being cared for at the center.

Response:

The provision has been amended to implement that suggestion, since it is fully in keeping with the original intent of the regulation. (N.J.A.C. 10:122-6.6(b)2).

Comment:

The Department of Education suggested that language be included to ensure that children who are being bathed are carefully and closely supervised.

Response:

This provision of the regulations has been amended to reflect this suggestion. (N.J.A.C. 10:122-6.6(d)2).

Comment:

The Department of Education suggested that specific limitations

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be placed on the use of cots for children 1 1/2 to 2 years of age.

Response:

The Division chose to allow the use of cots for children in this age group. In developing the regulations, the ad hoc citizens advisory committee felt that it should be permissible for children over 1 1/2 years of age to utilize cots for rest and sleeping, provided that they are prohibited for use for children under that age. (N.J.A.C. 10:122-6.4(c)).

Comment: The Department of Education recommended requiring more space in areas where cribs are used for sleeping infants.

Response:

The regulations require that cribs be placed at least one foot apart and arranged so as to provide direct access to a three-foot-wide aisle leading to an unobstructed exit. In addition, the regulations require at least 30 square feet of play space per child for centers serving children below 2 1/2 years of age. As such, the Division did not feel that it was necessary to strengthen the space requirements further. (N.J.A.C. 10:122-6.4(e)).

Comment:

The Department of Health suggested that a medical doctor or nurse consultant be a requirement for centers serving more than 15 children.

Response:

The Division did not see a need to specify such a requirement, since the regulations already require centers either to have the name of a physician on call in case of emergencies or to specify a particular health care facility to be used in emergency situations.

Comment:

One comment questioned whether the regulations allowed or prohibited child care centers from administering over the counter first-aid creams and ointments, when necessary, and felt that the regulations should address this issue.

Response:

The regulations do not prohibit in any way the use of first aid medications, and, in fact, require that certain first aid supplies be kept at the center for use in emergencies. As such, the Division felt it was not necessary to address this issue further. (N.J.A.C. 10:122-6.1(g)).

Comment:

The Department of Health recommended that the requirements governing the dispensing of medication specifically require that medications be administered by a registered nurse or licensed practical nurse or someone trained by a doctor or nurse.

Response:

The Division chose not to change this requirement, since the regulations already establish adequate safeguards for dispensing medications to children, along with strict recording and accountability requirements whenever medications are administered. Also, medications that are administered to children must be authorized by the children's parents and physician. These requirements are already applied to preschool centers now subject to licensure and the Bureau's experience has shown they are sufficient to protect the health of children attending centers.

Comment:

The Department of Health suggested that when a child has been identified as having a real or suspected handicapping condition, the center director or administrator refer the parents to the Department's Special Child Health Services Program for a possible comprehensive medical examination of the child. The proposal had

already included a similar provision referring parents to the State Department of Education's Child Find telephone number for possible educational evaluations.

Response:

A reference to the Department of Health's Special Child Health Services Program and its telephone number have been added to the regulations, in keeping with this suggestion. (N.J.A.C. 10:122-6.9(d)).

Comment:

It was suggested by the Department of Health that since a parent is able to refuse a physical examination for a child based on religious grounds, it is not appropriate for that parent to determine and certify in writing that the child is in good health and free from communicable disease.

Response:

That requirement has been dropped in keeping with this suggestion. (N.J.A.C. 10:122-6.1(a)3).

Comment:

In the area of immunization requirements, the Department of Education suggested that the Division require, rather than only recommend, that the immunization guidelines of the American Academy of Pediatrics (AAP) be followed for children younger than 12 months of age.

Response:

Since the State Sanitary Code does not mandate immunizations for children under 12 months of age, the Division does not have the authority to mandate the AAP guidelines as part of the regulations and can only include them in the regulations as a recommendation. (N.J.A.C. 10:122-6.1(a)1iv(3)).

Comment:

The Department of Education suggested a provision under the health care requirements that would prohibit staff members and children with clear symptoms of illness from entering the children's play rooms or sleeping rooms.

Response:

A provision to this effect has been added to the requirements. (N.J.A.C. 10:122-6.1(b)3).

Comment:

The Department of Education suggested that the term "sponsor" or "owner" be used consistently throughout the regulations, since they now appear to be used somewhat interchangeably.

Response:

The Division has eliminated the use of the term "owner" as it appeared in the proposal in favor of the term "sponsor" throughout the regulations, since the term is more appropriate and its meaning is clearer. (N.J.A.C. 10:122-1.2).

Comment:

The Department of Education suggested that language be added to clarify any confusion over or misuse of such terms as "State-licensed," "State-approved," "State-accredited," and "State certified." Specifically, it suggested that approved child care centers clearly be referred to as "licensed" and that the term "certified" be restricted to professional teaching staff at centers.

Response:

The Division did not modify the language in the regulations, since the terms were found to be already clearly defined and appropriately used in the regulations.

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Comment:

Some persons who commented verbally at the meetings and one written comment suggested that the staff qualifications requirements governing centers serving six to 15 children below 2 1/2 years of age be strengthened to require a full-time supervising care giver possessing academic credentials in addition to experience in the field. These persons felt that a college degree and related academic credentials were necessary for persons supervising a child caring program, regardless of the small number of children in the program. On the other hand, several other persons expressed the view that experience was an adequate, and even preferable, qualification for infant and toddler care, given these very young children's primary need for the physical care, affection, and nurturance that an experienced caregiver can provide.

Response:

The Division chose not to change this requirement from the proposal, favoring the view that the proposed staff qualifications requirements governing centers serving from six to 15 children were adequate to ensure the care and well-being of the children served. Also, the imposition of more restrictive staff qualifications requirements governing centers of this size would escalate the cost of care, imposing a severe economic hardship on many small centers that might force them to discontinue operating and that could discourage the development of vitally needed new child care resources.

Comment:

One comment suggested a limitation on the number of children who could be cared for by a center director who also serves at the same time as supervising caregiver or head teacher for the center.

Response:

The Division did not see a need to impose such a requirement, since the number of children being cared for by any one adult is set through the staff/child ratio requirements.

Comment:

One comment suggested that more than two full-time supervising caregivers be required in centers serving more than 180 children 2 1/2 years of age and below.

Response:

The Division chose not to amend this requirement, feeling that it was not necessary to require more than two full-time supervising care givers in such centers, particularly since these centers are also obligated to meet specific staff/child ratios and other programmatic requirements that ensure the adequate supervision, care and development of the children served.

Comment:

The Department of Education suggested that a bilingual staff member should be utilized in centers where a majority of the children served have a limited English proficiency. As written in the proposal, a bilingual staff member should be utilized where 15 percent or more of the children have limited fluency in English.

Response:

The Division had intended in the proposal to recommend the use of a bilingual staff member in centers where 50 percent or more of the children had limited proficiency in English. The 15 percent figure was included inadvertently and has been corrected accordingly. (N.J.A.C. 10:122-4.3(d)8).

Comment:

The Department of Education suggested that centers serving a mixed age population be required to meet the staff qualifications requirements appropriate for the majority of children enrolled, either below 2 1/2 years of age (infants/toddlers) or 2 1/2 years of

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age and above (pre-school age children).

Response:

One option in the proposal would allow centers serving a mixed age population to satisfy the requirements by meeting the current pre-school staff qualifications regulations, even if the center serves more children below 2 1/2 years of age. The Division determined that it is appropriate to maintain this option as it appeared in the proposal, since the staff qualifications requirements for head teachers and group teachers are already more stringent than those proposed for equivalent staff in infant/toddler centers. In response to the suggestion, however, the Division has added an additional option that would allow centers serving a mixed age population to satisfy the requirements by meeting the staff qualifications regulations pertaining to centers serving children below 2 1/2 years of age, provided that the center is serving fewer than six children above the age of 2 1/2 years. One other option is retained as stated in the proposal. (N.J.A.C. 10:122-4.3(f)).

Comment:

One comment suggested that the national Child Development Associate (CDA) credential not be recognized as meeting certain staff qualifications requirements for centers serving children 2 1/2 years of age and below.

Response:

The Division chose to continue to recognize the CDA credential as meeting certain staff qualifications requirements, since it represents a nationally recognized competency-based credential reflecting a caregiver's experience and ability to provide adequate care for young children. Acceptance of that credential for meeting certain staff qualifications requirements of the regulations has been supported by the State's child care community, including the New Jersey Association for the Education of Young Children and other organizations. The CDA credential is already recognized in the existing regulations for centers serving children 2 1/2 through five years of age and will now be applied to centers serving children below 2 1/2 years of age, as well.

Comment:

The Department of Education suggested that the term "caregiver" be applied strictly to centers serving children below 2 1/2 years of age, while the terms "head teacher" and "group teacher" be associated only with centers for pre-school age children.

Response:

The Division felt that the staff qualifications requirements, as proposed, clearly and adequately delineated these terms to address the suggestion raised by the Department of Education.

Comment:

The Department of Education suggested that it would be helpful to define more clearly the term "assistant" as it appears in the staff qualifications requirements.

Response:

The Division did not feel the need to define this term further. The duties, qualifications and responsibilities of the assistant at a child care center are thoroughly described in the regulations.

Comment:

There were numerous comments and suggestions, both verbal and written, regarding the area of staff/child ratios. Generally, they called for stricter staff/child ratios, particularly as they apply to the youngest age groups (children from birth to 1 1/2 years old). Some suggested maintaining the ratios as proposed, while only one commentator felt that the ratios were too restrictive. The suggestions for change were wide ranging and are summarized in the table

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below:

Ages of Children	Proposed Ratios Staff/Children	Changes Suggested Staff/Children
Birth - 6 Weeks	1/5	1/1
Birth - 6 Months	1/5	1/2
Birth - 6 Months	1/5	1/6
Birth - 9 Months	1/5	1/3
Birth - 1 1/2 Years	1/5	1/3
Birth - 1 1/2 Years	1/5	1/46
6 Months - 1 1/2 Years	1/5	1/7
1 Year	1/5	1/4
1 1/2 - 2 Years	1/7	1/8
1 1/2 - 2 1/2 Years	1/7	1/5

Response:

In response to the comments, the Division has chosen to modify its proposed staff/child ratio for centers serving children from birth to 1 1/2 years of age in day, night and drop-in programs from the proposed ratio of 1 staff for every 5 children to 1 staff for every 4 children, since most respondents focused on the ratios for the younger, more vulnerable children. The ratio for centers serving children 1 1/2 to 2 1/2 years of age remains at 1 staff for every 7 children, as in the proposal, since there was general agreement that the proposed staff/child ratio for this age group was adequate. The Division, in studying the staff/child ratio issue, believes that strengthening the ratio from 1 staff/5 children to 1 staff/4 children for this age group is an appropriate change that would not have an adverse impact on such centers. (N.J.A.C. 10:122-4.5(d) 1 and 2).

Comment:

The Departments of Education and Health both suggested that the provision that requires a minimum of two staff members on the premises at all times, as written, appears to contradict the other specific staff/child ratios. Also, it was suggested that the direct care and supervision responsibilities of these two staff members be more clearly stated.

Response:

The Division has modified this provision to clarify its meaning, in keeping with those suggestions. (N.J.A.C. 10:122-4.5(b)).

Comment:

The Department of Health suggested that night care programs be permitted staff/child ratios for centers serving children over 1 1/2 years of age that are higher (less stringent) than those that had been proposed, since the children would be sleeping most of the time and, thus, would require less direct care.

Response:

The Division elected not to change the staff/child ratio requirements for centers serving children over 1 1/2 years of age in night care programs, since the more stringent ratios are necessary to handle any emergencies that would require the evacuation of the center while the children are sleeping.

Comment:

The Department of Education suggested that the Division retain the existing staff/child ratio of 1 to 15 for centers serving children five years of age, rather than extend the ratio to 1 to 20 for that age group. While the Department of Education applies a 1 to 25 staff/child ratio for its kindergarten programs, these normally run for about 2 1/2 hours a day. They felt that a tighter staff/child ratio was necessary for child care centers since children are usually in care for more extended periods of time during the day.

Response:

The Division chose to retain the 1 to 15 staff/child ratio for centers serving five-year-old children, as suggested by the Department of Education.

Comment:

The Department of Education suggested that the regulations specify a maximum group size to promote better quality of center programs.

Response:

The Division, as well as the ad hoc citizens advisory committee that helped the Division develop these regulations, considered the issue of group size but chose not to include it in the regulations at this time. Rather, it was felt that the Division should first assess the effectiveness of the new staff/child ratios for this age population in meeting the basic needs of the children served. Based on its experience, the Division can later determine whether it is necessary and appropriate to impose a maximum group size limit as well.

Comment:

The Camden County group suggested some changes to the existing regulations governing centers caring for children from 2 1/2 through five years of age in the areas of staff/child ratios and staff qualifications.

Response:

The Division chose not to make changes in these areas of the existing regulations, since the staff child ratios and staff qualifications for centers serving pre-school age children were adopted in January, 1982, and were formulated after extensive consultation with a wide range of professionals in the child care community. The Division believes that these regulations are adequate to meet the needs of children over 2 1/2 years of age attending child care centers.

Summary of Changes Subsequent to Proposal:

10:122-1.1(c)

This provision is being amended only to make a minor grammatical correction, changing the word "was" to "were".

10:122-1.2

The definition "owner" has been deleted and the definition "sponsor" added; the Division determined that the use of "sponsor", as defined in the existing child care licensing regulations, is clear and appropriate and does not need to be amended as a new term and definition, as proposed.

10:122-1.3(a)1-3

The word "approximately" has been added to describe the hours of operation for day, drop-in and night programs. This was done in response to a suggestion by one constituent and allows centers more latitude in choosing their hours of operation.

10:122-2.2(g) and 2.2(j)

The term "sponsor" replaces "owner", as explained above. Also, the word "care" was inadvertently omitted from the proposal.

10:122-3.2(c)1

"Sponsorship" replaces "ownership" for the same reasons cited above.

10:122-3.3(b)1

This provision appeared as "no change" from the existing regulation in the proposal. In response to verbal suggestions by constituent licensees, the Division has eliminated as unnecessary

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and impractical the rule requiring centers to maintain for each child enrolled the child's date of termination from the center.

10:122-3.3(d)7iii

The word "suitable" is deleted, since it is unnecessary to the meaning of the regulation.

10:122-4.3(b)1iii(2)

Closing parenthesis added, which was inadvertently omitted in the proposal.

10:122-4.3(b)4

The word "full-time" was inadvertently omitted in the proposal; also, the terms "day, drop-in and/or night programs" have been eliminated from this provision, since it was unnecessary to specify them.

10:122-4.3(b)6

This provision has been deleted, since the requirement is covered in 10:122-4.3(b)4.

10:122-4.3(b)6

This provision appeared as 10:122-4.3(b)7 in the proposal and appears here only to reflect the new numbering sequence.

10:122-4.3(d)8

The figure of "50 percent" replaces the figure of "15 percent" that appeared in the proposal. The proposal had intended to show the figure as 50 percent, but erroneously cited it as 15 percent. The 50 percent figure is consistent with the language in the existing licensing regulations for centers serving children over 2 1/2 years of age.

10:122-4.3(f)

The phrase "six or more of whom are above 2 1/2 years of age" has been deleted from this provision, since it is unnecessary and extraneous to the meaning of the rule.

10:122-4.3(f)ii

The Division decided to add this provision to explain and clarify further the computations for determining what staff qualifications a center must meet when it serves a mixed age population of children from birth through five years of age.

10:122-4.3(f)iii

This provision appeared as 10:122-4.3(f)ii in the proposal and appears here to reflect the new numbering sequence. In addition, the word "calculate" has been deleted and replaced by "determine", since the Division felt that this word offered a clearer meaning of the rule without altering its intent. Also, the word "required" has been deleted from this provision, since it was redundant and unnecessary. Finally, the Division added a sentence to this rule to clarify the computation for determining what staff qualifications apply when a center serves children both above and below 2 1/2 years of age.

10:122-4.4

The Division deleted the words "for centers serving children from birth through five years of age", since they were unnecessary to the meaning of rule.

10:122-4.5(b)

In response to comments by the Departments of Education and Health, language has been added to clarify the meaning of this provision. As proposed, the provision might appear to conflict with other staff/child ratio requirements; as amended, it specifies more clearly that in certain circumstances, a minimum of two (2) staff members must be present at the center who are involved in the care and supervision of the children, even though the staff/child ratio requirements for that age group might otherwise only call for one

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staff member. This change is fully in keeping with the intent of the regulation as it was proposed.

10:122-4.5(d)1 and 2

The following changes have been made in the staff/child ratios requirements: - for children under 1 1/2 years of age, the ratio of 5 children to one staff member has been deleted and changed to a ratio of 4 children to one staff member. This change was made in response to several comments and recommendations submitted to the Division on the proposal, and reflects a more effective and appropriate adult/child ratio for this age category.

- The ratio for children in the age categories of 2 1/2 to 3 years of age and 3 years of age have been deleted, as written, and consolidated into a single age category of children 2 1/2 to 4 years of age. The ratio of 10 children to one staff member for children in this age range remains unchanged from the proposal. The change has been made merely for purposes of clarification and to eliminate duplication.

10:122-4.5(d)1

For children 5 years of age, the ratio of 20 children to one staff member has been deleted and changed to a ratio of 15 children to one staff member. The change was made in response to a recommendation by the Department of Education and reflects a more appropriate adult/child ratio for this age category. It should be pointed out that the existing licensing regulations for centers serving children 2 1/2 through five years of age already include a 15 to 1 child/staff ratio for this age group; as such, the change would have no impact on licensees.

10:122-4.5(e) and (f)

Certain numerical changes have been made in the staff/child ratio computation examples in these sections. These were done merely to reflect the changes made in the staff/child ratio requirements in 4.5(d)1 and 2 and to simplify and make clear the method of computation.

10:122-4.5(h)

In response to a suggestion by the Department of Education, the term "noncaregiving directors" has been deleted and replaced with the phrase "Directors whose duties do not include caregiving/teaching" for the purpose of clarifying the meaning. Also, the phrase, "on a temporary basis" has been added to clarify the limitation on the use of substitute staff in cases of emergency.

10:122-5.1(a)1i

Language has been added to describe in greater detail the Assembly (A-4) use group classification of the State Uniform Construction Code (UCC) and to distinguish it more clearly from the Business (B) use group classification of the UCC. In this way, constituent licensees can more readily determine into which of the use group classification their centers would fall.

10:122-5.1(d)

The word "shall" has been deleted and the word "may" added to allow the Division discretion in accepting variations to the UCC granted to centers by municipalities as they apply to the child care licensing requirements.

10:122-5.2(d)2x

The word "avoid" has been deleted in favor of the word "prevent", which more accurately conveys the meaning of the provision.

10:122-5.2(i)4

This provision has been added by the Division to clarify how the toilet and sink requirements are computed and applied in centers serving a mixed age population of children from birth through five years of age. This provision also permits such centers additional options for meeting the toilet and sink requirements. Section

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10:122-5.2(i)4 as it appeared in the proposal remains in the adopted regulations as 10:122-5.2(i)5

10:122-5.2(i)5 and 6

These sections appeared as 10:122-5.2(i)4 and 5, respectively, in the proposal and appear here only to reflect the new numbering sequence.

10:122-5.2(m)

The words "and wading" were added to this section to clarify that the rule pertains both to swimming and wading pools in order to make the rule consistent with the provisions of the Swimming Pool Code of New Jersey - 1970.

10:122-5.2(m)1

In response to a comment by a municipal board of health, this rule was added to insure that the health and sanitary needs of children in centers that provide swimming or wading are met and that the rule is consistent with the provisions of the Swimming Pool Code of New Jersey - 1970. The State Department of Health corroborated this recommendation.

10:122-5.2(m)2

This provision appeared in the proposal as 10:122-5.2(m)1 and appears here only to reflect the new numbering sequence.

10:122-5.4(a)3 iii

The term "Special Needs" has been added to this provision. It has been inadvertently deleted from the proposal. The term is already included in a corresponding provision of the existing regulations.

10:122-5.4(a)3iv(1) A and B

The word "and" has been deleted from both sections to clarify the meaning of the rule.

10:122-6.1(a)1i

The word "recommending" has been added to this provision to clarify its meaning.

10:122-6.1(a)3

In response to a suggestion by the Department of Health, the last sentence of this provision has been deleted, since it was felt that a parent refusing a medical examination for his or her child cannot appropriately certify that the child is in good health and free from communicable disease.

10:122-6.1(b)3

In response to a suggestion by the Department of Education, language has been added to prohibit staff members with symptoms of illness from entering children's play or sleeping rooms. This provision is in keeping with the intent of the regulations as they pertain to communicable disease control.

10:122-6.1(g)7

The phrase "In addition to 1 through 6 above" has been deleted since it was unnecessary.

10:122-6.2(c)3

In response to public comment, language has been added to permit centers to utilize regular size toilets for toilet training purposes, as well as child-size toilets, allowing more flexibility in meeting this rule. Also, the word "potties" was placed after the term "toilet training chairs" to clarify the meaning.

10:122-6.3(a)4

This provision has been deleted from this section and placed in a more appropriate section of the regulations.

10:122-6.3(a)4 and 5

These sections appeared as 6.3(a)5 and 6, respectively, in the

proposal and appear here only to reflect the new numbering sequence.

10:122-6.3(b)6

The language "or other age-appropriate seating apparatus" has been added to allow for any appropriate seating arrangement for feeding young children to insure that such arrangements are not limited specifically to feeding chairs, which is in keeping with the intent of the rule.

10:122-6.3(c)7

This provision appeared as 6.3(a)4 in the proposal and has been placed here in a more appropriate location.

10:122-6.3(c)8

This provision appeared as 6.3(c)7 and appears here to reflect the new numbering sequence. Also, in response to public comment, the rule has been amended so that milk is no longer an absolute requirement at meals; rather, centers will have the option to provide milk either at mealtimes or at in-between meals snacks or a combination of both. This was done to allow centers more flexibility in meeting this nutritional requirement. In making this modification, 6.3(c)8i(1) and ii(1) have been deleted and iii. added to reflect the change. Finally, 6.3(c)8i(2) and (3) now appear as (1) and (2) and 6.3(c)8ii(2), (3) and (4) now appear as (1), (2) and (3) to reflect the new numbering sequence.

10:122-6.3(c)9

This provision appeared as 6.3(c)8 in the proposal and appears here only to reflect the new numbering sequence.

10:122-6.3(d)

This provision appeared in the proposal as 6.3(c)9. It has been changed here and placed under a separate subject heading (furniture for feeding), since it was appropriate to distinguish the rule from the food and nutrition requirements. Also, language has been added here to reflect the use of feeding chairs or other age-appropriate seating apparatus to be consistent with the language change made in 6.3(b)6.

10:122-6.4(c)1

The word "three" has been changed to "four" to reflect the intent of the regulation. It was inadvertently written as three in the proposal. This change makes the rule consistent with the existing regulations.

10:122-6.4(c)2 and 3

The word "bed" has been added by the Division to allow an additional option to centers in meeting the sleeping equipment requirements.

10:122-6.4(c)2

In response to a comment by a constituent, this provision was added to allow an additional option to centers for meeting the labeling requirements for sleeping equipment.

10:122-6.4(e)3-10

These provisions appeared as 6.4 (e) 2-9 in the proposal and appear here to reflect the new numbering sequence. Also, the word playpen has been added to 6.4(e)3, 4, 5, and 6 to clarify that when such equipment is used for sleeping purposes, as permitted by the regulations, that it meets the requirements spelled out in these provisions.

10:122-6.6(a)4

In response to public comment, the words, "or confined to cribs or playpens" have been added to clarify the prohibition against such a practice in centers, which is fully in keeping with the intent of the regulation as it appeared in the proposal.

ADOPTIONS

10:122-6.6(b)2

The word "or" has been changed to "and", as suggested by the Department of Education, to insure that staff talk to infants as part of the center's developmental program. The change is fully in keeping with the intent to this provision.

10:122-6.6(b)4iii

The word "rattles" has been deleted, since such toys fit within other categories of equipment specified in this provision.

10:122-6.6(c)1iii

In response to public comment, the words "reading and" have been deleted, since reading was suggested to be inappropriate as an activity for children in such a young age category.

10:122-6.6(c)vii-x

These subparagraphs were omitted inadvertently during the printing of the proposal. It should be pointed out that the existing licensing regulations for centers serving children 2 1/2 through 5 years of age already include these provisions; as such, the inclusion of these provisions would have no impact on licensees.

10:122-6.6(d)2

The word "constantly" has been added to insure that children are properly supervised when being bathed. The change was suggested by the Department of Education and clarifies the original intent of this provision.

10:122-6.9(d)

As suggested by the Department of Health, this provision has been added to refer parents of handicapped children in child care centers to that Department's Special Child Health Service Program for a possible comprehensive medical evaluation. This provision parallels 6.9(c), which refers such parents to the Department of Education's Child Find program for educational evaluations for these children.

10:122-7.3(i)

Language has been amended to clarify the intent of the requirement that children being transported from the center be delivered to the parent or the parent's designee.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 1. GENERAL PROVISIONS

10:122-1.1 Legal authority

(a)-(b) (No change from proposal.)
(c) Under N.J.S.A. 30:1-25, the Department of Education's functions, powers and duties pertaining to the licensing of child care centers ***[was]*** ***were*** transferred to the Department of Institutions and Agencies, which is now referred to as the Department of Human Services (N.J.S.A. 30:1A-1).
[(e)](d)-[(f)](e) (No change from proposal.)

10:122-1.2 Definitions

The following words and terms, when used in this chapter, have the following meanings.

...
["Owner" means any person purchasing the license to operate the child care center.]

...
["Sponsor" means any person owning a child care center. The "sponsor" also may serve as the director.]

"Sponsor" means any person owning a child care center. The "sponsor" also may serve as the director.

HUMAN SERVICES

10:122-1.3 Program descriptions

(a) A licensed child care center shall offer one or more of the following types of program:

1. [Pre-school] **Day Program**: A program serving children during the normal waking hours (***approximately*** 7:00 A.M. to 7:00 P.M.) and providing for the care of children on a regularly enrolled and scheduled basis;

2. Drop-in **Program**: A program serving children 70 percent or more of whom are not regularly enrolled in the program and are cared for on an occasional and unscheduled basis during the normal waking hours (***approximately*** 7:00 A.M. to 7:00 P.M.);

3. Night [care] **Program**: A program serving children during the normal sleeping hours (***approximately*** 7:00 P.M. to 7:00 A.M.);

4. Special needs **Program**: A program serving regularly enrolled children, 50 percent or more of whom have a [physical,] **cognitive, socio-emotional** or [intellectual] **physical** handicap*[,]*or [learning] disorder.

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

SUBCHAPTER 2. LICENSING PROCEDURES

10:122-2.2 Issuance of a license

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

(g) The license shall be issued to a particular child care center [sponsor] ***[owner]*** ***sponsor*** at a particular location and shall not be transferable.

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

(h)-(i) (No change from proposal.)

(j) When two or more child ***care*** centers [are to] **will** be operated on the same premises by the same [sponsor] ***[owner]*** *** sponsor,*** the [sponsor] ***[owner]*** ***sponsor*** shall submit to the bureau a single application for a license and licensing fee.

(k) (No change from proposal.)

SUBCHAPTER 3. ADMINISTRATION

10:122-3.2 Reporting requirements

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

[(c) A center shall notify the Division immediately if it believes that a child has been or is being abused or neglected by a staff member(s) or any other person, as required by the Child Abuse and Neglect Law (N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14). Copies of the law and information about it are available from the Division upon request.]

(c) The Center shall notify the Bureau in writing at least 30 days prior to any of the following proposed changes and events:

1. *Ownership* *Sponsorship* of the center;

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

10:122-3.3 Records

(a) (No change from proposal.)

(b) Children's records: The center shall maintain in its files an up-to-date record on each child and it shall include:

1. The child's full name, address, birth date ***and*** date of enrollment ***[and date of termination, except drop-in centers, which shall not be required to maintain the date of termination]***;

2.-9. (No change from proposal.)

(c) (No change from proposal.)

(d) Administrative records: The center shall maintain the following records in its files:

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

7. A written plan specifying the procedures to be followed in the event that the parent(s) or other person(s) authorized by the parent(s) fails to pick up or is late in picking up a child at the time of the center's daily closing. The plan shall insure that:

i.-ii. (No change from proposal.)

iii. Whenever the parent(s) and/or other person(s) authorized by the parent(s) fails to pick up the child one hour or more after closing time, **and provided that the center staff members have been**

unable to make other *[suitable]* arrangements for returning the child to his/her parent(s) and/or guardian(s), a center staff member shall call the Division's 24-hour Child Abuse Hotline (800-792-8610) to seek assistance in caring for the child until his/her parent(s) or other person(s) authorized by the parent(s) is available to care for the child; and

8. (No change from proposal.)

SUBCHAPTER 4. STAFF REQUIREMENTS

10:122-4.3 Types, responsibilities and qualifications of staff

(a) (No change from proposal.)

(b) Types of staff for centers serving children under 2 1/2 years of age:

1. Centers with day, drop-in and/or night programs serving from 6 to 15 children shall have:

i.-ii. (No change from proposal.)

iii. A full-time staff member who possesses:

(1) (No change from proposal.)

(2) Three years of experience in a group program for children under six years of age. (The staff member should be enrolled in courses leading to six college credits in early childhood education, child growth and development, psychology, social work, health care, nursing or any other field related to child growth and development.)*

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

4. Centers *[with day, drop-in and/or night programs]* serving more than 180 children shall have two *full-time* supervising caregivers.

5. (No change from proposal.)

[6. Centers with a special needs program serving more than 180 children shall have two full-time supervising caregivers.]

[7.] *6.* Centers serving more than 30 children should also utilize a full-time caregiver for every 30 children beyond the first 30 children served.

(c) (No change from proposal.)

(d) Types of staff for centers serving children over 2 1/2 years of age.

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

8. In a center where *[15]* *50* percent or more of the children have limited English proficiency, a bilingual staff member should be utilized.

(e) (No change from proposal.)

(f) In centers serving a mix of children ranging from birth through 5 years of age, *[six or more of whom are above 2 1/2 years of age,]* the center shall either:

1. (No change from proposal.)

2. If the total number of children above 2 1/2 years of age is fewer than six, meet the staff qualifications requirements for centers serving children below 2 1/2 years of age, based on the total number of children being served at the center.

[2.] *3.* *[Calculate]* *Determine* the number of children above and the number of children below 2 1/2 years of age and meet the staff qualifications requirements *[required]* for the number of children being served in each age category. *If the total number of children in either age category is fewer than six, the staff qualifications requirements for centers serving 6-15 children shall apply.*

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

10:122-4.4 Exceptions *[for centers serving children from birth through five years of age]*

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

10:122-4.5 Staff/child ratios

(a) (No change from proposal.)

(b) *When the number of staff required by the staff/child ratios calls for fewer than two staff members, there shall be* *[A]* *a* minimum of two staff members *on the premises at

all times* who are involved in the care and supervision of the children. *This rule applies* *[premises at all times]* *only* when six or more children are present.

(c) (No change from proposal.)

(d) The following staff/child ratios shall apply for each program category listed below:

1. Day and drop-in programs:

Under 1 1/2 years of age	*[5]* *4* children	1 staff member
1 1/2 to 2 1/2 years of age	7 children	1 staff member
2 1/2 to *[3]* *4* years of age	10 children	1 staff member
[3 years of age	10 children	1 staff member]
4 years of age	15 children	1 staff member
5 years of age	*[20]* *15* children	1 staff member

2. Night programs:

Under 1 1/2 years of age	*[5]* *4* children	1 staff member
1 1/2 to 2 1/2 years of age	7 children	1 staff member
2 1/2 to *[3]* *4* years of age	8 children	1 staff member
[3 years of age	8 children	1 staff member]
4 years of age	12 children	1 staff member
5 years of age	15 children	1 staff member

3. (No change from proposal.)

(e) In computing the required staff size for a center, the Bureau shall apply the staff/child ratios, as specified in (d) above, for each program category to the actual number of children in attendance at the center. The total number of staff required for a center shall be the cumulative number of staff required per room. The number of staff per room shall be computed by dividing the number of children in attendance per room by the staff/child ratio required for the age of the children served. When this resulting figure is not a whole number, the computation for required staff shall be determined by rounding the figure to the nearest whole number. If the resulting figure is below .5, an additional staff member shall not be required; if it is .5 or above, an additional staff member shall be required. See examples below:

Example 1:

Program-Category	Child- ren In Attend- ance Per Room	Age	Staff/ Child Ratio Required	Compu- tation	Required Staff
Day Drop- In or Night	*[10]**8*	Under 1 1/2	*[1:5]* *1:4*	No. of Children *[(10)]* *(8)* = 2 *[5]* *4*	2
		1 1/2 to to 2 1/2	1:7	No of Child- children <u>(15)=2.1</u> 7	2

Total Staff Required for Center 4

Example 2:

Example 2:

Pro- gram	Child- ren In	Staff/ Child
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Cate- gory	Attendance Per Room	Age	Ratio Required	Compu- tation	Required Staff
Day or Drop-In	30	2 1/2 to *[3]* *4*	1:10	No. of Children <u>(30) = 3</u> 10	3
	28	*[3]* 2 1/2 to 4*	1:10	No. of Children <u>(28) = 2.8</u> 10	3
	34	2 1/2 to *[3]* *4*	1:10	No. of Children <u>(34) = 3.4</u> 10	3
	30	4	1:15	No. of Children <u>(30) =</u> 15	2

Total Staff Required for Center = 11

(f) When children of mixed ages requiring different staff/ child ratios are in one room, the Bureau shall compute the staff/child ratios applicable for each age group separately to the nearest 10th decimal. If the resulting cumulative figure for both age groups is below .5, an additional staff member shall not be required; and if it is .5 or above, an additional staff member shall be required. See examples below:

Example 3:

Pro- gram Cate- gory	Children In Attendance Per Room	Age	Staff/ Child Ratio Required	Compu- tation
Day or Drop-in	*[19]**17*	Under 1 1/2	*[1:5]* *1:4*	No. of Children <u>*[(9)]* *7* = 1.8</u> *[5]* *4*
	10	1 1/2 to 2 1/2	1:7	No. of Children <u>(10) = 1.4</u> 7
Cumulative Total = 3.2				

Total Staff Required for This Room = 3

Example 4:

Pro- gram Cate- gory	Children In Attendance Per Room	Age	Staff/ Child Ratio Required	Compu- tation
Day or Drop-in	31 13	2 1/2 to *[3]* *4*	1:10	No. of Children <u>(13) = 1.3</u> 10
	18	4	1:15	No. of Children <u>(18) = 1.2</u> 15
Cumulative Total = 2.5				

Total Staff Required for This Room = 3

(g) (No change from proposal.)

(h) For purposes of determining whether a required staff/child ratio is met, only those staff members who are involved in the care and supervision of children shall be counted. * [Noncaregiving directors]* *Directors whose duties do not include caregiving/teaching,* as well as clerical, housekeeping and maintenance staff *,* shall not be counted for such purposes, although they may be used as substitutes in cases of

emergency *on a temporary basis*.

(i) (No change from proposal.)

SUBCHAPTER 5. PHYSICAL FACILITY REQUIREMENTS

10:122-5.1 Local government physical facility requirements

(a) An applicant seeking a license to open and operate a child care center for the first time as such shall:

1. For newly constructed buildings, existing buildings whose construction code use group classification would change from that which it had been or existing buildings that require major alteration or renovation, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located, reflecting the center's compliance with the provisions of the State Uniform Construction Code (N.J.A.C. 5:23), hereinafter referred to as UCC, for one of the following use group classification*s*:

i. A-4 (Assembly) for buildings accommodating children 2 1/2 years of age and/or older *and having a total occupancy (children and adults) that is 50 or more*^{*}; or

ii.-iii. (No change from proposal.)

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

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

(d) Whenever a variation(s) has been granted by the municipality for any of the requirements in the UCC, such variation(s) *[shall]* *may* be accepted by the Bureau as meeting the appropriate requirement(s) as specified in N.J.A.C. 10:122-5.

10:122-5.2 General life/safety requirements

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

(d) Maintenance and sanitation:

1. (No change from proposal.)

2. Indoor maintenance and sanitation requirements:

i.-ix. (No change from proposal.)

x. Openable windows that are located within 48 inches above the floor shall have protective guards so as to *[avoid]* * prevent* children from falling out of the windows.

3. (No change from proposal.)

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

(i) Toilet facilities:

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

*4. In centers serving a mix of children ranging from birth through five years of age, the center shall either:

i. Meet the toilet and sink requirements specified in 2i above, based on the total number of children being served at the center provided that all toilets and sinks are utilized by children of all ages; or

ii. Determine the number of children above and below 2 1/2 years of age and meet the toilet and sink requirements for the number of children being served in each age category, as specified in 2 and 3 above.*

[2.]*[4.]* *5* Location of toilet facilities: Toilet facilities shall be easily accessible to the children:

i. [Pre-school] Day, drop-in and night [care] programs:

(1) (No change from proposal.)

(2) Any toilet facilities in addition to those stated in (i) [2] *[4]* *5* i (1) above shall be located on the same floor *as the play room(s) or within one floor* above or below the floor level used by the children.

ii.-iii. (No change from proposal.)

[3.]*[5.]* *6* Additional toilet facility requirements:

i.-ii. (No change from proposal.)

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

(m) Swimming *and wading* pools.

1. A center shall not allow common swimming or wading except in licensed municipal pools or pools that meet the criteria of the model Swimming Pool Code of New Jersey-1970 as approved by the State Department of Health.

*[1.]**2.* Any swimming pool used by the children shall comply with requirements pertaining to swimming pools, as specified in the UCC and in the New Jersey Youth Camp Safety Act Standards (N.J.A.C. 8:25-5.1 through 5.4 and 8:25-6.9).

(n)-(o) (No change from proposal.)

10:122-5.4 Additional life/safety requirements for centers beginning operation after January 1, 1977

(a) Any center, as specified in N.J.A.C. 10:122-5.1(a), beginning operation after January 1, 1977 and approved to operate as a center, in accordance with provisions of the UCC, shall be inspected by the Bureau prior to beginning its operation or renewal of its license to insure that the center is being maintained in accordance with the UCC and (a) 1 through [4] 6 below.

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

[2.]3. Fire protection:

i.-ii. (No change from proposal.)

iii. [Special needs and n] **Special needs and** [N]**n*ight; [care] programs **servicing children 2 1/2 years of age and/or older:** In addition, these programs shall meet the following [fire protection] requirements:

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

iv. **Programs servicing children below 2 1/2 years of age: In addition, these programs shall meet the following requirements:**

(1) A fire suppression system and a manual fire alarm system shall be installed and maintained in full operating condition in buildings:

(A) Over one story in height; *[and/]* or

(B) Housing more than 100 children;* *[and/]* or**

(C) (No change from proposal.)

(2) (No change from proposal.)

[3.] 4.-6. (No change from proposal.)

SUBCHAPTER 6. PROGRAM REQUIREMENTS

10:122-6.1 Health

(a) Health certificate:

1. **Day, [Pre-school] night [care] and special needs programs:**

i. The center shall have on file for each child a health examination certificate from a physician certifying that the child's health is satisfactory[.] **and *recommending* that the child may attend the center.** [Proof of such examination shall be on file at the center within 30 days of the child's admission.]

ii.-iv. (No change from proposal.)

2. (No change from proposal.)

3. Any child whose parent(s) object to a physical examination, immunization or medical treatment for their child[(ren)] on grounds that it conflicts with the tenets and practice of a recognized religion of which the parent(s) or child[(ren)] are an adherent or member shall be exempt from complying with such requirements, provided that the parent(s) sign a statement requesting such an exemption and submit it to the center. ***[The statement shall also indicate that the child[(ren)] is in good health and free from communicable disease.]***

(b) Communicable disease control:

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

[3. Staff members and/or children with a disease in a communicable state shall not be permitted at the center.]

3. Staff members with symptoms of illness shall not be permitted in the children's playrooms or sleeping rooms.

(c)-(f) (No change from proposal.)

[h)] (g) Medication (**prescription and non-prescription**):

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

7. *[In addition to (g)1 through 6 above, any]* *Any* prescription medication for a child shall be:

i.-iii. (No change from proposal.)

10:122-6.2 Hygiene

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

(c) Toilet training:

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

3. The center shall ***[provide]* *utilize toilets,* child-size toilets,*** ***[(potty)]* toilet training chairs ***(potties)*** or children's toilet seats for children being toilet trained.**

4.-5. (No change from proposal.)

(d) (No change from proposal.)

10:122-6.3 Food and nutrition

(a) [General] **Food** requirements:

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

[4. The center shall prepare and post a weekly menu of food to be served to the children.]

[8.] ***[5.]* *4.*** Drinking water shall be available to the children. Any private well water supply shall be approved by the appropriate health authority before it is used.

[9.] ***[6.]* *5.*** The center staff members shall not force-feed or otherwise coerce a child to eat against his/her will, except by order of a physician.

(b) Feeding requirements for centers serving children under 2 1/2 years of age:

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

6. A child too young to use a feeding chair *or other age appropriate seating apparatus* shall be held when fed.

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

(c) Mealtime and snack requirements for centers serving children 2 1/2 years of age and above and younger children who are developmentally ready to eat regular meals and snacks:

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

7. The center shall prepare and post a weekly menu of food to be served to the children.

[7.]* *8. Content of meals:

i. **Breakfast shall consist of:**

[(1) Milk as a beverage and/or on cereal;]

***[(2)]* *(1)* A serving of fruit or vegetable or full-strength fruit or vegetable juice; and**

***[(3)]* *(2)* A serving of enriched or whole grain bread, a bread product or cereal.**

ii. **Lunch and/or dinner shall consist of:**

[(1) Milk as a beverage;]

***[(2)]* *(1)* Meat, poultry, fish or a protein alternative;**

***[(3)]* *(2)* Fruits *[and]* *or* vegetables; and**

***[(4)]* *(3)* Bread or bread product.**

iii. Milk shall be served at the meal(s) or at snack time.

[8.]* *9. The center shall make available, as necessary, an alternate choice of food for each meal served in order to accommodate the needs of:

i.-ii. (No change from proposal.)

(d) Furniture for feeding:*

[9.]* *1. Furniture appropriate to the maturity of the child shall be provided at mealtime, including:

i. **Feeding chairs * or other age appropriate seating apparatus* that have a wide sturdy base and safety straps; and**

ii. (No change from proposal.)

10:122-6.4 Rest and sleep

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

(c) Day, drop-in and special needs programs serving children over the age of 18 months and under the age of five years;

1. The center shall provide an opportunity for a rest and/or sleep period for each child in attendance for more than * [three]* *four* consecutive hours or according to the child's individual physical needs.

2. The center shall provide each child with a crib*[/], bed,* playpen, cot or mat for use during rest and sleep.**

3. A center providing a crib*/, bed,or* playpen for rest and sleep shall comply with the requirements, as specified in (a)3 through 7 above.**

4.-6. (No change from proposal.)

[(b)] (d) (No change from proposal.)

[(c)] (e) Other requirements:

1. (No change from proposal.)

2. When cribs, beds, playpens, cots, mats, sheets and blankets are stored together as single units, it is only necessary to label the child's name on the sleeping equipment.

***[2.]* *3.* Each crib*[/]**, *bed, *playpen ,* cot or mat shall be maintained in a clean and sanitary condition at all times.**

***[3.]* *4.* During rest and sleep periods, no more than one child shall occupy a crib*[/]**, *bed, *playpen,* cot or mat.**

***[4.]* *5.* A child shall be permitted to rest or sleep on the same crib*[/]**, *bed, *playpen,* cot or mat that another child has occupied only after the sheet and blanket have been changed.**

***[5.]* *6.* Cribs*[/]**, *beds, *playpens,* cots or mats shall be placed at least one foot apart and shall be arranged so as to provide direct access to a three-foot-wide aisle that leads to an unobstructed exit(s).**

***[6.]* *7.* The center shall comply with any special health conditions for rest and sleep that have been provided in writing from a child's [parent(s) or] physician.**

***[7.]* *8.* The staff members responsible for supervising the children during rest and sleep periods shall be awake at all times and [have visual contact with] shall oversee the children.**

***[8.]* *9.* Dim lighting shall be provided in the sleeping room in order to enable staff to oversee the children during rest or sleep periods.**

***[9.]* *10.* The center shall insure that no child is deprived of needed sleep or has it unnecessarily interrupted. The center shall arrange the scheduled hours for admitting children and for picking them up so that sleeping children are not disturbed by the arrival or the pick-up of other children.**

10:122-6.6 Activities

(a) General:

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

[5.] 4. Activities shall be planned and conducted [so] in such a way that children are not sitting *or confined to cribs or playpens* for long periods of time[.] and the arriving and departing of children are not disruptive to the over-all program.

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

(b) For centers serving children under 2 1/2 years of age, the following shall be provided to children of that age group:

1. (No change from proposal.)

2. To insure direct contact with the children, staff members shall hold, rock, cuddle, play with *[or]* *and* talk to the children while they are being cared for at the center.

3. (No change from proposal.)

4. Day and drop-in programs: The center shall include a minimum of three daily activities from the following:

i. Sensory stimulation activities: Suggested equipment/materials include crib mobiles/chimes, teether toys and baby mirrors;

ii. Language stimulation activities: Suggested equipment/materials include picture books; suggested activities include verbal interactions, chants, songs and stories*:[;]*

iii. Manipulative activities: Suggested equipment/ materials include *[rattles]* squeeze and grip toys, boxes, sorting and stacking toys, three-and four-piece wooden inlay puzzles, puzzle blocks, simple threading toys and mobiles pull toys;

iv.-vii. (No change from proposal.)

(c) For centers serving children over 2 1/2 years of age, the following shall be provided to children of that age group:

1. Day and drop-in programs: The center shall include in its program a minimum of five activities from those listed below.

i.-ii. (No change from proposal.)

iii. *[Reading and]* *[I]* *L*anguage activities*:[;] Suggested supplies include picture and story books, flannel boards and other materials which promote discussion and verbal exchange;**

iv.-vi. (No change from proposal.)

***vii. Musical activities: Suggested supplies include piano, records, record player, drums, cymbals, bells, rhythm sticks and radio;**

viii. Science activities: Suggested supplies include aquarium with fish, non-poisonous seeds and flower pots, plants, blunt gardening tools, dry batteries, magnets, compass, ropes and pulleys and magnifying glass;

ix. Water activities: Suggested supplies include plastic basins, soap suds, sand and dirt; and

x. Cooking activities: Preparing food according to simple recipes is recommended.*

[(c)] (d) Night [care] programs:

1. (No change from proposal.)

2. Children shall be washed as necessary and changed into comfortable night clothing for sleeping. Children shall be ***constantly*** attended when bathing or washing.

[(d) Additional requirements:] (e) (No change from proposal.)

10:122-6.9 Parent participation

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

***[d) When a child has been identified by the center as having a handicapping condition, or suspected handicapping condition, the director or staff member of the center shall refer the parent(s) to the Special Child Health Services Program at (609)292-5676 for a possible comprehensive medical evaluation for the child*.**

SUBCHAPTER 7. TRANSPORTATION REQUIREMENTS

10:122-7.3 Safety practices

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

[f] (i) The driver or second adult(s) shall ensure that each child is received by *[a responsible person]* *their parent or person designated by the parent*.

[(g)] (j) (No change from proposal.)

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Residential Child Care Manual of Standards for Residential Child Care Facilities

Adopted Repeal: N.J.A.C. 10:127

Adopted New Rule: N.J.A.C. 10:127

Proposed: April 4, 1983 at 15 N.J.R. 486(a).

Adopted: August 30, 1983 by George J. Albanese, Commissioner, Department of Human Services.

Filed: September 1, 1983 as R.1983 d.393, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 30:1-14 and 15 and N.J.S.A. 30:4C-4.

Effective Date: September 19, 1983.

Operative Date: November 1, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): September 19, 1988.

Summary of Public Comments and Agency Responses:

The Division of Youth and Family Services (DYFS) received comments on the proposal from the New Jersey Association of Children's Residential Facilities (NJACRF). All of the comments received were generally supportive of the proposed regulations, although a number of suggestions and recommendations for improvement were made. The State adopted the 1983 Accumulative Supplement to the State's building subcode, The BOCA Basic Building Code 1981; consequently, a number of changes have been made in subsection five of these regulations in order to keep them in line with the changes in the building subcode of the State's Uniform Construction Code. The changes made as a result of the comments received on the proposal and changes in the building code are not substantive, rather, they constitute clarifications and improvements in language or modifications of the provisions in a way that provides residential child care facilities more flexibility in meeting the regulations.

Comment:

The NJACRF suggested that a waiver provision be included in the regulations.

Response:

The Division chose not to include a waiver provision in the regulations, since the regulations constitute minimum baseline standards which all facilities must comply. In addition, a provision in the regulations allows a facility to request an Administrative Hearing in keeping with the State Administrative Procedure Act if it feels that its compliance with a particular regulation(s) is unreasonable.

Comment:

The NJACRF suggested that certain administrative records should be kept on file for more than one year, while other records need not be maintained for that long a period of time.

Response:

The Division amended the regulation and developed more specific requirements for maintaining all the required Administrative records.

Comment:

The NJACRF suggested that the regulations require a staff member to receive a physical examination on an annual basis, rather than once every three years.

Response:

The Division did not amend this regulation, since the requirement originally had been written in consultation with representatives of the Department of Health and other health care experts.

Comment:

The NJACRF suggested that in the record keeping requirements, the position and title of the staff responsible for the implementation of each treatment goal be recorded, rather than requiring the actual name of the staff member.

Response:

The Division did not amend this regulation, since it feels that the requirement, as written, is necessary to insure that the records reflect which staff member is directly responsible for implementing the specific treatment goal.

Comment:

The NJACRF suggested that a facility not be required to prepare an aftercare plan to include a discharge recommendation in cases where residents are discharged on a non-emergency basis.

Response:

The Division determined to retain this requirement, since most residents stay in a residential facility for more than one year and an aftercare plan that includes a discharge recommendation is a necessary minimal requirement in order to plan appropriately for the child's return to the community.

Comment:

The NJACRF suggested that in addition to the age of a resident, his or her degree of maturity should be considered before services are provided in social skills, life skills and career education.

Response:

The requirement has been amended to include this comment.

Comment:

The NJACRF suggested that visual contact with a child while the child is in a behavior management room should be maintained by staff at all times, rather than only requiring staff to check on the child every fifteen minutes.

Response:

This requirement has been amended to implement this suggestion.

Comment:

The NJACRF suggested that the safety glass window in a behavior management room provide visibility of the room, and that the word "entire" be eliminated from this provision as necessary.

Response:

The requirement has been amended to implement this suggestion.

Comment:

The NJACRF suggested that a facility not be required to take a child to a physician when there are no apparent symptoms of illness, even though the child complains of an illness or pain.

Response:

The requirement has been amended to implement this suggestion. However, a child must still be taken to a physician whenever there actually are symptoms of illness or pain.

Full text of the changes between proposal and adoption follows (additions to proposal shown in bold face with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

SUBCHAPTER 1. GENERAL PROVISIONS

10:127-1.1 Legal authority

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

(c) Under N.J.S.A. 30:1-14, the following facilities shall be subject to inspection, evaluation, and approval by the Department of Human Services.

1. New Jersey-based residential child care facilities serving 13 or more children, except that:

i. Facilities that are licensed and regulated pursuant to State Law by the Division of Mental Retardation or the Division of Mental Health and Hospitals, both of the State Department of Human Services, ***[by the State Department of Health, and/or by the State Department of Education]*** shall be exempt from provisions of this chapter ***[,]*** ***.*** ***[unless five or more of the children accommodated in a residential child care facility licensed or regulated by the above noted agencies are under the supervision of the Division of Youth and Family Services, in which case the facility shall also be required to meet all the provisions of this chapter.]***

***ii. Facilities that are licensed and regulated pursuant to State law by the State Department of Health, and/or by the State**

Department of Education shall be exempt from provisions of this chapter, unless five or more of the children accommodated in a facility licensed or regulated by the above-noted agencies are under the supervision of the Division of Youth and Family Services, in which case the facility shall also be required to meet all provisions of this chapter.*

[ii.] *iii.* (No change from proposal.)

2. (No change from proposal.)

(d)–(e) (No change from proposal.)

(f) Under N.J.S.A. 30:1-15, the Department of Human Services is authorized to “visit and inspect” publicly or privately *[operated residential child care facilities that:]* ***maintained institutions or other institutions and noninstitutional agencies to include but are not limited to residential child care facilities that:***

1.–2. (No change from proposal.)

*[(g) Under N.J.S.A. 30:1-15, the following facilities shall be subject to visitation and inspection by the Department of Human Services:

1. New Jersey based-residential child care facilities serving 13 or more children and in which fewer than five of the children accommodated in such facilities are under the supervision of the Division of Youth and Family Services.]*

[(h)] ***(g)*** The Department of Human Services or its duly authorized agent is authorized to “visit and inspect” such residential child care facilities as described in (f) *[and (g)]* above to assess the general health, safety, and well-being of the children and the care and treatment they are receiving *[. Although such residential child care facilities cannot be required to comply with the rules and regulations contained herein, the Department may use these rules and regulations as the basis of inspection.]* **** , but cannot require its compliance with this chapter and must rely on an order from a court of competent jurisdiction, pursuant to N.J.S.A. 30:1-16, to compel correction of serious deficiencies.***

10:127-1.2 Definitions

“Child” means any person who is under the age of *[21]* ***18***.

10:127-1.4 Administrative hearings

(a) To effectuate the purposes of this chapter, the Bureau ***or the facility,*** may initiate an administrative hearing in the interest of justice.

(b) Where the Bureau proposes not to approve or not to continue approval of a facility, the Bureau shall afford the facility notice ***of the intended action*** and ***an*** opportunity for ***the facility to request*** an administrative hearing*[.]* ***prior to the agency action.***

(c) All administrative hearings shall be conducted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et. seq. and N.J.S.A. 52:14F-1 et. seq.) and the Uniform Administrative Procedures Rules of Practice ***(N.J.A.C. 1:1)]***(N.J.A.C. 1:1-1.1 et. seq.).***

10:127-1.5 Public access to Bureau records for residential child care facilities

(a) Files of residential facilities maintained by the Bureau are public records and shall be readily accessible for examination by any person, under the direction and supervision of the Bureau, except when public access to records is restricted in keeping with ***[State Public Record Law]* ***the State’s Right to Know Law (N.J.S.A. 47:1A-1 et seq.), Child Abuse Confidentiality Law (N.J.S.A. 9:6-10a)*** or other appropriate statutes.**

(b) (No change from the proposal.)

***10:127-1.6 Conflict of interest**

(a) Facilities receiving funds from the Division shall comply with the appropriate New Jersey and Federal Statutes and Regulations concerning conflict of interest. In addition, the following standards shall apply:

1. A facility shall not permit funds provided under its Agreement with the Division to be paid or committed to any corporation, firm, association, or business in which any of the facility’s board members, executive personnel, or their immediate families have any direct or indirect financial interest or serve as officers and/or staff members, unless prior written approval of the Division is obtained. In securing such approval, a facility shall make clear the terms of the agreement and indicate whether the services or goods are provided at a competitive cost or under terms more favorable to the facility.

2. A facility shall not employ in any capacity, as consultant or otherwise, any person who is a member of the immediate family of any executive personnel or board member without prior written consent of the Division.

3. A staff member of a facility may hold other employment so long as such employment does not interfere with the efficient performances of the staff member’s duties as prescribed in the work program appended to and incorporated in the facility’s contract with the Division.

4. An individual board member may perform professional duties for a facility in addition to his or her duties on the board provided such services are compensated at a rate that does not exceed normal professional fees for the service, and the assignment is approved by the Board of Directors in advance.*

SUBCHAPTER 2. ADMINISTRATION

10:127-2.1 Statement of purpose

(a) The facility shall maintain on file a written statement of purpose. The statement of purpose shall be reviewed by the facility staff members and shall identify its:

1.–3. (No change from proposal.)

4. ***[Methods]* ***Procedures*** for implementing those services;** and

5. (No change from proposal.)

10:127-2.2 Intake and admissions procedures

(a) (No change from proposal.)

(b) Admission requirements:

1. Upon the child’s admission, the facility shall obtain pertinent factual and identifying information, including, as a minimum, the following:

i.–xi. (No change from proposal.)

xii. Name of legal guardian of the child.

2.–3. (No change from proposal.)

10:127-2.3 Reporting requirements

(a) The facility shall notify the Bureau ***[within 24 hours]* *** immediately*** after any of the following changes and events:**

1.–4. (No change from proposal.)

(b)–(c) (No change from proposal.)

[d) The facility shall notify within 24 hours the Division and the child’s legal guardian of the unauthorized absence of a child from the facility.

10:127-2.4 Records

(a)–(c) (No change from proposal.)

(d) Administrative records – Every facility shall keep on file ***[for at least one year]*** the following written records:

1.–21. (No change from proposal.)

SUBCHAPTER 3. STAFF REQUIREMENTS

10:127-3.1 Basic information

(a) (No change from proposal.)

(b) A facility staff member’s following action(s) shall constitute grounds for possible suspension or termination from the job:

1.–2. (No change from proposal.)

3. Evidence of conviction ***[for]* ***of*** a crime of violence, moral turpitude and/or child abuse, neglect or exploitation.**

- (c) Every facility shall have:
 1.-7. (No change from proposal.)
 8. A staff member(s) designated to direct and be responsible for providing food services*[. If the staff member directing the food service is not a registered dietician, the facility shall arrange to receive consultation from a registered dietician, who shall approve the menus]*; and
 9. (No change from proposal.)
 (d)-(f) (No change from proposal.)

10:127-3.3 Staff qualification*s*

- (a) Administrator – The administrator of the facility shall:
 1. Have a bachelor's degree from an accredited college or university and five years of professional experience in *[the]* human services, mental health or a related field, two years of which shall have been in a supervisory or administrative position; or
 2.-3. (No change from proposal.)
 (b) (No change from proposal.)
 (c) Social services/clinical director – The social services/clinical director of the facility shall:
 1. Have a bachelor's degree from an accredited college or university and three years of professional clinical experience in *[the]* human services or mental health field, one year of which shall have been in a supervisory or administrative position; or
 2. Have a master's degree from an accredited graduate school in sociology, psychology, social work, mental health or a related field and two years of professional clinical experience in *[the]* human services or mental health field; or
 3. (No change from proposal.)
 (d) Social service staff – All social service staff members shall:
 1. Have a bachelor's degree from an accredited college or university and one year of professional experience in *[the]* human services or mental health field; or
 2.-3. (No change from proposal.)
 (e) (No change from proposal.)
 (f) Child care director – The child care director of the facility shall:
 1. Have a bachelor's degree from an accredited college or university and three years of professional experience in *[the]* human services or mental health field, one year of which shall have been in a residential child care facility, group home or shelter; or
 2. Have a high school or high school equivalency diploma and five years of professional experience in *[the]* human services or mental health field, two years of which shall have been in a residential child care facility, group home or shelter; or
 3. (No change from proposal.)
 (g) Child care staff – All child care staff members shall:
 1. (No change from proposal.)
 2. Have a high school or high school equivalency diploma and one year of work experience involving the supervision of children in *[the]* human services or mental health field; or
 3. (No change from proposal.)

SUBCHAPTER 4. PROGRAM REQUIREMENTS

10:127-4.1 Posting of rights of children

- (a) The facility shall prepare a list of children's rights and shall post it prominently in *[each children's living unit]* ***the facility*** and, as a minimum, the list shall specify the children's right to:
 1.-5. (No change from proposal.)

10:127-4.4 Treatment plan

- (a) (No change from proposal.)
 (b) The treatment plan for each child shall be developed by a staff member representing each program area of the facility. In addition, the facility shall afford the placing agency, school district *[or]* ***of*** of residence *** , if applicable,*** and parent(s) an opportunity to participate in the development of the treatment plan.
 (c)-(e) (No change from proposal.)
 (f) The facility shall insure that the child's treatment plan and any

revisions to it are explained to the child, his or parent(s) *** , if applicable,*** and all staff members responsible for the plan's implementation.

- (g) (No change from proposal.)

10:127-4.5 Discharge/aftercare

- (a)-(b) (No change from proposal.)
 (c) The facility shall notify the placing agency in writing at least ***[90]* *60*** calendar days prior to the discharge of a child when a child either has completed or has attained maximum benefit from the program.
 (d)-(e) (No change from proposal.)

10:127-4.6 Treatment services

- (a)-(b) (No change from proposal.)
 (c) The facility shall provide or arrange for services for residents in social skills, life skills and career education, appropriate for the age ***[of the child.]* ***and maturity of the child.*****
 (d) (No change from proposal.)

10:127-4.7 Behavior management room

- (a)-(b) (No change from proposal.)
 (c) Specific requirements:
 1.-4. (No change from proposal.)
 5. The staff member responsible for supervising the child while she or he is in such a room shall have visual contact with the child at ***[least every 15 minutes]* ***all times***** and be free from other responsibilities to insure the child's safety while in the room. If necessary, the staff member shall remain in the room with the child.
 6. (No change from proposal.)
 (d) (No change from proposal.)
 (e) Physical design of behavior management room:
 1.-4. (No change from proposal.)
 5. The door shall be padded and equipped with a safety glass window to provide visibility of the ***[entire]*** room.
 6. (No change from proposal.)

10:127-4.8 Health

- (a) (No change from proposal.)
 (b) Health care and medical treatment – The facility shall provide or arrange for appropriate health services for residents, as follows:
 1.-3. (No change from proposal.)
 4. Examination of a child by a physician, dentist or nurse and the prescription of appropriate treatment, as diagnosis and conditions warrant, whenever the child shows any symptom of illness, or complains of illness or pain*[. even where there are no apparent symptoms]*;
 5.-6. (No change from proposal.)
 (c) General medical practices:
 1. (No change from proposal.)
 2. When serious accidents or illnesses occur to a child, the facility shall take the necessary emergency action and notify the parent(s) ***and placing agency*** immediately.
 3. In non-emergency medical situations, the facility shall make *** [every]* ***an*** effort to obtain written parental consent in advance of provisions of medical treatment.**
 4.-5. (No change from proposal.)
 (d) Medication administration:
 1. Prescription ***and non-prescription*** medication shall be administered to a child by a staff member only when authorized by a physician.
 2.-5. (No change from proposal.)
 (e) Psychotropic medication:
 1. (No change from proposal.)
 2. The facility shall insure that any psychotropic medication is administered to a child only under the conditions prescribed by a physician. In each case:
 i.-iii. (No change from proposal.)
 iv. The facility ***or appropriate medical personnel*** shall

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convey to the child, the parent(s) and the staff member(s) involved with the child information about the medication used, its effects and possible side effects.

- 3. (No change from proposal.)
- (f)–(h) (No change from proposal.)

10:127-4.10 Food and nutrition

- (a) General requirements:
 - 1. (No change from proposal.)
 - *[2. The facility shall plan its menus under the direction of or in consultation with, a registered dietician.]*
 - * 2. Menus shall be dated and kept on file a minimum of 90 calendar days.***

- 3.–4. (No change from proposal.)
- (b) Nutrition requirements:
 - 1.–2. (No change from proposal.)
 - 3. Individualized diets and feeding schedules that are submitted to the facility by the child's physician(s) shall be *[posted and]* followed.

10:127-4.11 Rest, bedroom and sleep

- (a) (No change from proposal.)
- (b) General requirements:
 - 1.–3. (No change from proposal.)
 - 4. Every child shall be provided with sanitary bed linens that are changed weekly*, *[and]* a blanket or other suitable covering that is cleaned or replaced, as necessary *[.]* ***and a pillow.***
 - 5.–17. (No change from proposal.)

10:127-4.12 Education

- (a)–(d) (No change from proposal.)
- (e) Education records:
 - 1. (No change from proposal.)
 - 2. The child's education record shall include:
 - i.–v. (No change from proposal.)
 - vi. If the child attends school in the community, *[semiannual]* ***quarterly*** instructional progress reports obtained from the community school.

10:127-4.15 Routines and house rules

The facility shall prepare and post in a location of prominence *[within each living unit]* a listing of rules governing the routines of daily living in the facility.

10:127-4.17 Aversive conditioning procedures

The facility shall not use aversive conditioning procedures (any technique used to decrease the frequency of an undesired behavior by causing either pain or discomfort or risking physical injury), unless it is approved by the Division to care for autistic children and the *[Division]* ***Bureau*** has approved the facility's plan for utilizing such procedures.

SUBCHAPTER 5. PHYSICAL FACILITY AND LIFE-SAFETY REQUIREMENTS

10:127-5.1 New Jersey local government physical facility requirements

- (a) Any residential child care facility located in New Jersey shall comply with the requirements in (b) through *[d)]* ***e)*** below.
- (b) An applicant seeking approval to open and operate a facility for the first time as such shall:
 - 1. For newly constructed buildings, existing buildings whose construction code use group classification would change from that which it had been or existing buildings that require major alteration or renovation, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located, reflecting the building's compliance with the provisions of the State Uniform Construction Code (N.J.A.C. 5:23), hereinafter referred to as UCC, for the *[following]* ***I-3*** use group*[s]* classification*[s]:*.*

- *[i. Use group R-1 for buildings accommodating more than 20 residents; or
- ii. Use group R-2 for buildings accommodating from six to 20 residents;]*

2. For ***existing*** buildings *[not newly constructed]* whose construction code use group classification is already *[R-1 or R-2]* ***I-3*** and which has not had major alterations or renovations to make it suitable for use as a residential child care facility, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located at the time the building was originally constructed or approved for use in the *[R-1 or R-2]* ***I-3*** use group*[s]*, or a certificate of continued occupancy issued by the municipality in which it is located, reflecting the facility's compliance with the municipality's construction code requirements that were in effect at the time it was originally constructed or converted to use group classification *[R-1 or R-2]* ***I-3***; and

- 3. (No change from proposal.)
- (c)–(d) (No change from proposal.)

*** (e) Whenever a variation(s) has been granted by the municipality for any of the requirements in the UCC, such variation(s) may be accepted by the Bureau as meeting the appropriate requirements as specified in 10:127-5.***

10:127-5.3 New Jersey state government physical facility requirements

- (a)–(c) (No change from proposal.)
- *[(b)]* ***d)*** Exit requirements:
 - 1. Exits:
 - i. (No change from proposal.)
 - ii. Exits above or below the first floor:
 - (1) (No change from proposal.)
 - (2) Exits above or below the first floor in buildings having a capacity of greater than 12 children shall provide exiting by a corridor that leads to two ***remote*** stairways completely enclosed in fire separation assemblies *[of the fire resistance rating of the building's construction type, as designated by the UCC]* ***in accordance with Table 401 of the UCC's building subcode.***
 - 2. Doors:
 - i. (No change from proposal.)
 - ii. Every room with ***a total occupancy*** *[an occupant load]* of more than 50 *[or which exceeds 2,000 square feet in area]* *** children and adults or whose travel distance exceeds 75 feet*** shall have at least two egress doorways leading from the room to an exit or corridor.
 - iii. Doors used for exits shall:
 - (1)–(2) (No change from proposal.)
 - (3) Swing *[outward]* ***in the direction of egress*** when serving an occupant load of more than 50.
 - *4) In enclosed exit stairs, swing in the direction of egress, be self-closing, and not block the egress of people utilizing the floors above.***
 - iv. (No change from proposal.)
 - 3. Stairways:
 - i–ii. (No change from proposal.)
 - iii. Exterior stairways:
 - (1) (No change from proposal.)
 - (2) Exterior stairways shall be constructed of ***noncombustible*** materials *[or of wood not less than two inches thick.]* ***that are permitted in Table 401 of the UCC's building subcode.***
 - iv. (No change from proposal.)
 - 4. (No change from proposal.)
 - (e) (No change from proposal.)
 - (f) Fire protection:
 - 1.–4. (No change from proposal.)
 - 5. Buildings with a capacity of more than 12 children ***that have been in existence and approved as a residential facility prior to February 22, 1983*** shall have and maintain at least one of the following:

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i. A comprehensive automatic electrical fire alarm and detection system ***with the detection devices being smoke detectors;*** or
ii. (No change from proposal.)

6. Buildings with a capacity of 12 or fewer children ***that have been in existence and approved as a residential facility prior to February 22, 1983*** shall have and maintain at least one of the following:

i. A comprehensive automatic electrical fire alarm and detection system ***with the detection devices being smoke detectors;*** or
ii.-iii. (No change from proposal.)

***7. In new buildings or buildings changing their use group classification, in keeping with the adoption of the I-3 use group classification that became effective February 22, 1983 to the UCC, shall have and maintain one of the following:**

i. A manual and comprehensive automatic electrical fire alarm and detection system with the detection devices being smoke detectors; or

ii. When the building has 20 or more occupants or is three or more stories in height a fire suppression system and manual fire alarm system:*

[7.] *8.* (No change from proposal.)

[8.] *9.* (No change from proposal.)

[9.] *10.* (No change from proposal.)

[10.] *11.* (No change from proposal.)

[11.] *12.* Interior ***[furnishings,]* drapes, curtains, paneling, mattresses, etc., shall be ***[made of fire retardant materials.]* *noncombustible, flame resistant or have an acceptable flame spread or smoke rating as required by the UCC's building subcode.*****

[12.] *13.* (No change from proposal.)

[13.] *14.* (No change from proposal.)

[14.] *15.* (No change from proposal.)

16. Boiler or furnace rooms shall be free from highly flammable materials.

(g) Glass surface (No change from proposal.)

(h) Electricity:

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

(i) Lighting:

1. General requirements:

i. (No change from proposal.)

ii. ***[In classroom or study areas, there shall be at]* *At* least 20 foot candles of light ***natural or*** ***[(* artificial *or natural).]* *shall be provided in classroom and study areas.*** This illumination shall be measured three feet above the floor at the furthest point from the light source.**

iii. (No change from proposal.)

2. (No change from proposal.)

(j) Heating: (No change from proposal.)

(k) Ventilation

1. (No change from proposal.)

2. All mechanical ***[ventilation]* ***exhaust*** systems shall ***exhaust]* ***vent*** directly to the outside.****

3. Rooms not having windows with an openable area of at least four percent of the floor space shall be equipped with a ***mechanical* ventilating or air conditioning system with a capacity ***[equal to that required for natural ventilation.]* ***that is in conformance with the UCC.*******

4. Corridors shall be provided with natural or mechanical ventilation ***[equivalent to two percent of the floor area.]* ***that is in conformance with the UCC.*****

5.-6. (No change from proposal.)

7. Kitchens provided with a stove of more than four burners shall be vented with a mechanical system having a capacity ***[of at least three cubic feet per minute per square foot of floor area and not less than 150 cubic feet per minute.]* ***that is in conformance with the UCC.*****

8. Bathrooms with a mechanical ventilation system shall have a minimum capacity of ***[50 cubic feet per minute when only one toilet is provided, or]* 40 cubic feet per minute per toilet ***[when****

more than one toilet is provided].*

9. ***[Bathroom doors]* ***There*** shall ***be*** ***[have]* at least one inch of space between the floor and the bottom of the ***bathroom* door ***when the bathroom is equipped with mechanical ventilation.*********

(l) Plumbing:

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

(m) Bathroom and toilet facilities:

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

(n) Kitchen facilities:

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

(o) Swimming ***and wading*** pools:

1. A residential facility shall not allow common swimming or wading except in licensed municipal pools or pools that meet the criteria of the model New Jersey Swimming Pool Code of 1970.

2.* Any swimming pool used by the children shall comply with the requirements pertaining to swimming pools, as specified ***in the UCC and in the New Jersey Youth Camp Safety Act Standards (N.J.A.C. 8:25-5.1 through 5.4 and N.J.A.C. 8:25-6.9).**

(p) Asbestos:

1. (No change from proposal.)

2. If sprayed-on asbestos-containing materials appear to be present in a facility, the Bureau shall notify the New Jersey Department of Health and the material shall be tested, through laboratory analysis, to determine its contents. When test results reveal the presence of sprayed-on asbestos-containing materials, and the Health Department determines that action must be taken to correct the health hazard, the facility shall insure that it is covered or removed from the building structures or premises, in a manner consistent with all Federal, State and local regulations and guidelines ***[concerning asbestos removal]*.**

(q) Maintenance and sanitation:

1. (No change from proposal.)

2. Indoor maintenance and sanitation requirements:

i.-iv. (No change from proposal.)

v. The facility shall utilize receptacles for food waste disposal that are made of ***durable materials that are nonabsorbent,* * [noncorrosive materials that are impervious and]* ***leak proof and ***easily cleaned and*** provided with tight fitting covers.****

vi. Food waste receptacles shall be lined and cleaned as often as necessary to prevent a nuisance.

[vi.]* ***vii. The facility shall arrange for an exterminator to take necessary action to protect the building from rodent, insect and related infestations. Such treatment shall be provided not less than once a year, and more frequently when there is evidence of infestation.**

3. Outdoor maintenance and sanitation requirements:

i.-iv. (No change from proposal.)

v. The facility shall utilize garbage receptacles to accommodate its waste disposal needs. The receptacles shall be made of *** durable, leak proof and nonabsorbent materials.* ***[non-corrosive materials and]* ***The receptacles* shall be provided with covers ***and be maintained in sanitary condition.*********

(r) Lead paint - Facilities caring for children six years of age and/or younger ***or older children who have been diagnosed as having pica*** shall comply with the following:

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

SUBCHAPTER 6. TRANSPORTATION

10:127-6.3 Safety practices

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

[e) There shall be no standees in any vehicle transporting children.]

*** (e) All children below the age of 1 1/2 years in the vehicle shall be secured in car seats (child passenger restraint system) meeting Federal motor vehicle safety standards in accordance with the New Jersey Division of Motor Vehicles Law. (N.J.S.A. 39:3-76.2a.)***

ADOPTIONS

HUMAN SERVICES

(f) When transporting more than six children ***who are 2 1/2 years of age and/or older,*** there shall be one adult in addition to the driver in the vehicle at all times.

(g) When transporting more than three but fewer than 13 children who are below 2 1/2 years of age, there shall be one adult in addition to the driver in the vehicle at all times.

(h) When transporting 13 or more children who are below 2 1/2 years of age, there shall be two adults in addition to the driver in the vehicle at all times.

(i) The driver or second adult(s) shall ensure that each child is received by their parent or person designated by the parent.

(j) There shall be no standees in any vehicle transporting children.

*[SUBCHAPTER 7. CONFLICT OF INTEREST

10:127-7.1 Division requirements

(a) Facilities receiving funds from the Division shall comply with the appropriate New Jersey and Federal Statutes and Regulations concerning conflict of interest. In addition, the following standards will apply:

1. A facility shall not permit funds provided under its Agreement with the Division to be paid or committed to any corporation, firm, association, or business in which any of the facility's board members, executive personnel, or their immediate families have any direct or indirect financial interest or serve as officers and/or staff members, unless prior written approval of the Division is obtained. In securing such approval, a facility shall make clear the terms of the agreement and indicate whether the services or goods are provided at a competitive cost or under terms more favorable to the facility.

2. A facility shall not employ in any capacity, as consultant or otherwise, any person who is a member of the immediate family of any executive personnel or board member without prior written consent of the Division.

3. A staff member of a facility may hold other employment so long as such employment does not interfere with the efficient performances of the staff member's duties as prescribed in the work program appended to and incorporated in the facility's contract with the Division.

4. An individual board member may perform professional duties for a facility in addition to his or her duties on the board provided such services are compensated at a rate that does not exceed normal professional fees for the service, and the assignment is approved by the Board of Directors in advance.]*

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Maintaining and Establishing Shelters for Victims of Domestic Violence Through Marriage License Fees

Adopted New Rule: N.J.A.C. 10:130-3

Proposed: July 18, 1983 at 15 N.J.R. 1169(a).

Adopted: September 1, 1983 by George J. Albanese, Commissioner, Department of Human Services.

Filed: September 1, 1983 as R.1983 d.399, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 37:1-12.

Effective Date: September 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978): September 19, 1988.

Summary of Public Comments and Agency Responses:

Respondents commented upon two sections of the proposed new rule. The vast majority of respondents commented on subsection N.J.A.C. 10:130-3.2(a) which requires a donor match of 25 percent in order to receive funds under these regulations; one comment was received on subsection N.J.A.C. 10:130-3.3(c) which requires that programs applying for funds comply with the Standards for Shelters Serving Victims of Domestic Violence.

Comment 1 – 10:130-3.2(a)

Respondents requested the removal of the requirement for donor match based upon the following:

a) No requirements for donor match is contained in the statute N.J.S.A. 37:1-12 under which these regulations are promulgated.

b) Both public and private funding sources have diminished which could result in some programs being denied funds due solely to the lack of local financial resources.

c) Few if any additional resources would be generated by this requirement since programs would only identify other funds now in their budgets to serve as donor match because they could not secure new funds.

Response: The Department accepts the request to remove the donor match requirement based upon the fact that the revenues generated under N.J.S.A. 37:1-12 et. seq. are dedicated funds which do not have historical precedent for donor match. The Department recognizes that requiring match could prevent some otherwise eligible programs from receiving funds and supports the potential use of this revenue source to serve as match for other funding sources rather than requiring match. Therefore, the donor match requirement will be removed.

Comment 2 – 10:130-3.3(c)

One respondent objected to the requirement that programs comply with the Standards for Shelters Serving Victims of Domestic Violence to be eligible for funds.

Response: N.J.S.A. 37:1-12.2 and 12.3 require the Department of Human Services to promulgate such standards. Since such standards are required by statute, it is not within the power of the Department of Human Services to withdraw this condition.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks ***thus***; and deletions from proposal shown in brackets with asterisks ***[thus]***).

10:130-3.2 Funding priorities of programs

(a) Existing shelter programs (e.g., those providing initial response, linkage to other services, and emergency residential shelter), and programs funded in the past under section (b) below shall be eligible to receive at least 80 percent of marriage license fee collections. ***[Donor match of 25 percent will be required.]*** **Donor match will not be required.***

(b) (No change from proposal.)

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CIVIL RIGHTS

Processing of Discrimination Complaints Fact-finding Conference

Adopted New Rule: N.J.A.C. 13:4-2.3

Proposed: April 4, 1983 at 15 N.J.R. 500(a).
Adopted: August 18, 1983 by Division on Civil Rights,
Pamela S. Poff, Director.
Filed: August 30, 1983 as R.1983 d.385, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 10:5-8(g) and (i).

Effective Date: September 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
September 19, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Reasons for Changes Upon Adoption:

N.J.A.C. 13:4-2.3(a)(2) This change clarifies that a party must provide documents within the time specified in the notice of fact-finding conference. The rule was intended to codify the Division's existing practice in conducting fact-finding conferences. The rule, as originally proposed, implied that the notice would always direct parties to bring documents to the fact-finding conference. This does not reflect the Division's practice, which is to require submission of the documents at a time prior to the conference in order to allow the fact-finder to review them in advance of the conference. The change would correct this error in wording. While substantive, this change is minor and non-controversial, as reflected by the total lack of comments received in response to the publication of the proposed rule.

N.J.A.C. 13:4-2.3(c) This change alters one word to more accurately describe what this rule is about. The change makes clear that this portion of the rule concerns discovery of the record of the conference, and not how the record will be maintained.

N.J.A.C. 13:4-2.3(d)(1) In reconsidering the rule, in the absence of any public comment, it has become apparent that five days will not be sufficient time to give all parties notice of an adjournment. Increasing the time to 10 days will not pose any significant burden on any party. Moreover, in emergency situations, the rule gives the Division discretion to permit adjournments on shorter notice.

Full text of the changes in the rule between proposal and adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*).

13:4-2.3 Fact-finding conference

(a) Fact-finding, as part of an investigation in a discrimination complaint, is subject to the following:

1. (No change.)
2. The Division shall provide the parties with written notice of the conference. Said notice shall identify the individuals requested to

attend on behalf of each party, and any documents which any party is requested to *[bring to the conference.]* ***provide within the specified time frame.***

(b) (No change.)

(c) A record of the fact-finding conference shall be *[maintained]* ***discoverable*** as follows:

1.-2. (No change.)

(d) Postponements of a fact-finding conference shall be subject to the following:

1. Postponements of a scheduled fact-finding conference will be granted only for good cause shown. Parties are discouraged from requesting adjournment from fact-finding conferences. Requests for adjournments should be directed to the branch manager. Except in extraordinary circumstances, requests for adjournments must be made, upon notice to all parties at least *[five]* ***10*** working days prior to the conference.

2. (No change.)

(e) (No change.)

(b)

DIVISION OF MOTOR VEHICLES

Unsatisfied Claim and Judgment Fund Board Reimbursement of Excess Medical Expense Benefits Paid by Insurers

Readoption with Amendment: N.J.A.C. 13:18-10

Proposed: June 6, 1983 at 15 N.J.R. 872(a).
Adopted: July 19, 1983 by Clifford W. Snedeker, Director,
Division of Motor Vehicles.
Filed: August 31, 1983 as R.1983 d.387, **without change.**

Authority: N.J.S.A. 39:6-73.1.

Effective Date (Readoption): August 31, 1983.

Effective Date (Amendment): September 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
August 31, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

OTHER AGENCIES

(c)

CASINO CONTROL COMMISSION

Record Keeping Procedures Receipt, Review and Maintenance of Confidential Information

Adopted New Rule: N.J.A.C. 19:40-3

Proposed: February 22, 1983 at 15 N.J.R. 238(a).

Adopted: August 26, 1983 by Casino Control Commission, Walter N. Read, Chairman.
 Filed: August 26, 1983 as R.1983 d.380, **with technical and substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 5:12-63(c), -69, -74(d), (e) and (f).

Effective Date: September 19, 1983.

Expiration Date pursuant to Executive Order No. 66(1978):
 September 26, 1984.

Summary of Public Comments and Agency Responses:

Comments were received from Resorts International Hotel, Inc. These comments and the Commission's responses follow:

1. Resorts believes that the definition of "confidential information" should be expanded to specifically include information regarding the patrons of casino hotels, information or proprietary or trade secret nature and any other information deemed confidential by decisions of the Commission. Resorts also believes that the definition of "authorized personnel" is too broad because it encompasses any employee of the Commission or the Division. Resorts contends that there are many employees of these two agencies who do not need access to confidential information.

The Commission does not agree with Resorts' recommendations since, in the Commission's opinion, the concerns expressed by Resorts are adequately met in the proposed regulation. The Commission believes that the present definition of "confidential information" is broad enough to encompass trade secrets and information concerning patrons where such information is clearly "confidential". Similarly, the Commission believes that it is unwise to delimit the statutory definition of confidential information (see sections 74(d) and (e)) by listing particular items that may be considered "confidential" under the Act. Such an approach is too rigid and would preclude the Commission from considering all relevant factors notwithstanding the initial semblance of confidentiality. The Commission also believes that the present definition of "authorized personnel" is appropriate to achieve operational efficiency for the regulatory agencies without jeopardizing confidentiality. Of primary significance is the fact that not all, but only "authorized personnel who require such information in the performance of their official duties" have access to confidential information (see N.J.A.C. 19:40-3.3; emphasis added). Thus, the definition of "authorized personnel" does not fully define and delimit the class of employees with access to confidential information.

2. Resorts asserts that access to confidential information should be limited to authorized personnel who "need to know" such information rather than those who "require" such information in the performance of their official duties. Assuming that a distinction exists between "need to know" and "require," the Commission believes that operational efficiency and practicality mandate the rejection of this recommendation. Simply, clerical and courier personnel must be able to secure confidential information (some of which is stored at the State Records Storage Center) for use by other personnel.

3. Resorts suggests that the Commission reconsider its policy of requiring an original and 17 copies of all filings because this quantity of documents may heighten the possibility that confidential information will fall into unauthorized hands. It is also requested that the Commission consider the required number of copies of Personal History Disclosure Forms which must be filed. Specifically, Resorts recommends that only an original and one copy of these forms need to be filed.

The Commission believes that this comment is misplaced and should more appropriately be addressed with the context of N.J.A.C. 19:40 (which is presently being revised) -- rules concerning general provisions. The general filing requirement of an

original and 17 copies (an original and two copies for PHD Forms) is presently regarded as necessary for administrative purposes. The Commission believes that the mere fact of the existence of several copies of confidential information is not in itself harmful if we assume, as we can, that State agencies will assiduously apply and enforce their rules (see *In re Martin*, 90 N.J. 295, 324 (1982)). Additionally, once documents have been received by the Commission or the Division, copying is strictly controlled by N.J.A.C. 19:40-3.7.

4. Resorts suggests deleting N.J.A.C. 19:40-3.8(a)1 because it is too broad to ensure confidentiality. Resorts recommends replacing this standard by a specific or standing order of the Commission.

N.J.A.C. 19:40-3.8(a)1 allows confidential information within the possession of the Commission or Division to be released or disclosed in whole or in part where such release or disclosure is "in the course of the necessary administration of the act". This language is merely an iteration of the statutory language. Beyond this, it is a recognized statutory requirement that certain confidential information must be utilized by the Commission and Division within the proper limits of their respective functions. The Commission believes that it would serve no purpose to attempt here to catalogue the various statutory functions and responsibilities of the agencies and to identify those situations in which disclosure would be proper.

5. Resorts recommends amending N.J.A.C. 19:40-3.8(b) to require disclosure of the reason why a release of confidential information was made in the cases specified in N.J.A.C. 19:40-3.8(a)1 and 2, to wit: 1. in the course of the necessary administration of the act; or 2. upon lawful order of a court of competent jurisdiction.

The Commission rejects this recommendation. Neither the Act nor *Martin* require or even suggest that the notice of release or disclosure include the reason why the release or disclosure was made. Additionally, it is clearly the fact of release or disclosure rather than the reason therefore that is of immediate and primary concern to one whose confidential records have been revealed. Finally, the Commission rejects this recommendation because it believes that an investigation into the reason for the release or disclosure may impose substantial burdens upon the disclosing agency without any commensurate benefit to the affected party.

In addition to the comments which were received from Resorts, the Commission approved the following changes: N.J.A.C. 19:40-3.2(b) is amended to include "or any other applicable statutory provision, judicial decision or rule of court" and "or referral to appropriate authorities". The first amendment is merely a technical change to conform reference to confidential information in this section to the definition of "confidential information" in N.J.A.C. 19:40-3.1. The second amendment is a substantive change which clarifies Commission procedure when a decision concerning confidentiality is beyond the sole jurisdiction of the Commission. In these cases the Commission will, pursuant to law, refer the matter to the appropriate authority for a determination.

Full text of the changes between proposal and adoption follows (additions to proposal shown in boldface with asterisks *thus*).

19:40-3.2 Determination of confidential status

(a) (No change from proposal.)

(b) Any question concerning whether or not a specific item of information or data within the possession of the commission or division is deemed to be confidential information under N.J.S.A. 5:12-74(d) and (e) *, **or any other applicable statutory provision, judicial decision or rule of court,*** shall be submitted to the commission or its designee for determination ***or referral to appropriate authorities***.

OTHER AGENCIES

ADOPTIONS

(a)

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

**Schedule of Charges
Public Aircraft Parking, Storage Charges,
Public Ramps, Apron Area and Metered
Parking Area**

Adopted: August 16, 1983 by The Port Authority of New York and New Jersey, Doris C. Landie, Secretary.
Filed: August 30, 1983 as R.1983 d.384, (exempt from APA as "exempt agency", see N.J.S.A. 52:14B-2a).

Effective Date: October 1, 1983.

Full text of the adoption follows:

Kennedy International, Newark International and LaGuardia Airports-Revision to Schedule of Charges-Public Aircraft Parking and Storage Charges and Public Ramps and Apron Area Charges
RESOLVED, that Schedule of Charges for the use of the Public Landing Area, Public Passenger Ramp and Apron Area, Public Cargo Ramp and Apron Area and Public Aircraft Parking and Storage Area at LaGuardia Airport, adopted by the Committee at its meeting on October 5, 1970, as amended; at Kennedy International Airport, adopted by the Committee at its meeting on January 5, 1950, as amended; and at Newark International Airport, adopted by the Committee at its meeting on January 5, 1950, as amended, be and the same are hereby amended, as follows:

1. By revising the section entitled "Public Aircraft Parking and Storage Areas Charges" in each Schedule, effective October 1, 1983, as set forth below:

	For first Eight Hours or Fraction thereof	For each additional Eight Hours or Fraction thereof
La Guardia For each aircraft not exceeding 5,000 pounds maximum gross weight for take-off		
5,001-10,000 lbs	\$10.00	\$10.00
10,001-15,000 lbs	10.00	10.00
15,001-25,000 lbs	10.00	10.00
25,001-50,000 lbs	10.00	10.00
50,001-75,000 lbs	10.00	10.00
75,001-100,000 lbs	11.00	10.00
over 100,000 lbs	12.00	10.00
	17.00	15.00

	For first Eight Hours or Fraction thereof	For each additional Eight Hours or Fraction thereof
JFKIA & NIA For each aircraft not exceeding 5,000 pounds maximum gross weight for take-off		
5,001-10,000 lbs	\$10.00	\$10.00
10,001-15,000 lbs	10.00	10.00

15,001-25,000 lbs	10.00	10.00
25,001-50,000 lbs	10.00	10.00
50,001-75,000 lbs	10.00	10.00
75,001-100,000 lbs	11.00	10.00
100,001-125,000 lbs	12.00	10.00
125,001-150,000 lbs	15.00	13.00
150,001-175,000 lbs	17.00	15.00
175,001-200,000 lbs	20.00	18.00
200,001-225,000 lbs	22.00	20.00
225,001-250,000 lbs	27.00	25.00
	32.00	30.00

For each additional
25,000 lbs or fraction
thereof over 250,000 lbs
an additional charge

	5.00	5.00
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2. By revising Section II "Public Ramp and Apron Area Charges" in the LaGuardia Schedule and in the Newark Schedule, deleting Sections II and III, and substituting a new Section II, "Public Ramp and Apron Area Charges", both to read as follows:

For an aircraft remaining on the public ramp and apron area for more than 10 minutes after the Manager of the Air Terminal has directed that such aircraft be removed because of congestion of aircraft upon the said area, the urgency for making space available for other aircraft, snow removal, or other operational requirements, which said notice shall not in any event be given to an aircraft which has been assigned a parking position until the aircraft has been on such area for 20 minutes:

For the first 15 minutes or fraction thereof	\$ 50.00
For each additional 15 minutes of fraction thereof	\$100.00

La Guardia Airport-Revision to Schedule of Charges-Metered Parking Area

RESOLVED, that the resolution establishing fees for parking vehicles on public vehicular parking areas at Port Authority Air Terminals, adopted by the Board, at its meeting on March 11, 1948, as subsequently amended, be and the same is hereby amended, effective October 1, 1983, by revising the metered rate at La Guardia Airport, as follows:

Meters: _____ \$.25 per 10 minutes

EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

EMERGENCY

ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF ENVIRONMENTAL QUALITY

Specifications for Exhaust Gas Analytical System

Adopted Emergency Amendment and Concurrent Proposal: Standards Referenced in N.J.A.C. 7:27-15.1

Emergency Amendment Adopted: August 29, 1983 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c): September 1, 1983.

Emergency Amendment Filed: September 2, 1983 as R. 1983 d.407.

Authority: P.L. 1983, c.236, amending N.J.S.A. 39:8-1, 39:8-2 and P.L. 1975, c.156, and supplementing Title 39 of the Revised Statutes.

Emergency Amendment Effective Date: September 2, 1983.

Emergency Amendment Expiration Date: November 1, 1983.

DEP Docket No. 054-83-08.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Daniel Cowperthwait
Division of Environmental Quality
380 Scotch Road
Trenton, NJ 08628

This amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency amendment are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1983-521.

A summary of the agency emergency adoption and concurrent proposal follows:

Summary

On June 30, 1983, Governor Thomas Kean signed into law New Jersey Senate Bill No. 3472, amending N.J.S.A. 39:8-1, 39:3-2 and P.L. 1975, c.156 and supplementing Title 39 of the Revised Statutes. The amended law permits the Director, Division of Motor

Vehicles, to designate licensed reinspection centers as official inspection stations for a temporary period of time. Unless there is an extension of the program, it will expire June 1, 1984, and all licensed official inspection stations will revert back to the designation of reinspection centers.

Among the provisions of the amendments to the statute is a requirement that within 90 days of the effective date, the Department of Environmental Protection shall adopt standards for the certification of vehicle emission testing equipment used by private garages licensed after May 1, 1983. Private garages which have been licensed by the Director, Division of Motor Vehicles, prior to May 1, 1983 will not be required to comply with the standards until May 1, 1985. These standards shall include, but not be limited to, the following:

1. An automated system to control test sequencing, the automatic pass or fail decision, and the format for the test report and recorded magnetic tape file;
2. An exhaust gas analysis portion;
3. A device to accept and record vehicle identification information; and
4. A device to provide a printed record of the test results to the consumer.

N.J.A.C. 1:30-4.4 requires that for adoption of an emergency rule the agency head find an imminent peril which necessitates immediate rulemaking action. Specific reasons may include the immediate need to conform rules to the requirements of Federal and State statutes. Based on the statutory deadline in Senate Bill No. 3472 and pursuant to N.J.S.A. 52:14B-4(c) and N.J.A.C. 1:30-4.4, concerning adoption of emergency rules, the Commissioner, Department of Environmental Protection, finds that an imminent peril to the public health, safety or welfare exists which requires adoption of the standards as an emergency amendment.

State law would permit the Department of Environmental Protection to adopt the amendment without prior notice or hearing if the Governor concurs in writing that an imminent peril exists.

The Department rule concerning Control and Prohibition of Air Pollution from Light-Duty Gasoline-Fueled Motor Vehicles, N.J.A.C. 7:27-15.1, establishes the definition for "approved exhaust gas analytical system" as a requirement for performing either emission inspections at State-operated inspection stations or emission reinspections at private licensed reinspection centers. N.J.A.C. 7:27-15.1 provides that system specifications for these analyzers be kept on file with the Department.

Specifications referred to in this notice are adopted pursuant to S. 3472. For the period of this legislation, licensed reinspection centers converted to licensed official inspection stations will be authorized to inspect motor vehicles using emission analyzers conforming to specifications previously approved for licensed reinspection centers. Specifications referred to in this notice apply only to analyzers used by private garages licensed after May 1, 1983 by the Division of Motor Vehicles to perform vehicle emission tests.

The specifications are based on those recommended by the United States Environmental Protection Agency (EPA), Document Numbers EPA-AA-IMS-80-5-B and EPA-AA-IMS-80-5-C, with the exception that the California Bureau of Air Resources 1980 (BAR-80) specification for the gas analysis portion has been substituted for the EPA's recommended specifications. In several specified locations an option is allowed, at the discretion of the manufacturer, to achieve the intended program results by employing either the EPA or BAR-80 specification. Automatic features required by the specifications include automatic gas spanning, automatic leak checking, automatic hydrocarbon hang-

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up check, automatic test averaging (i.e., automatic read system), automatic test sequencing and automatic data collection. Additionally, the specifications require that analyzers possess a vehicle diagnostic/tune-up capability, a low-flow lockout capability, an anti-dilution capability and an engine speed monitoring capability. The system includes a computer or micro-processor, a display, an operator prompt and a printer.

The Department plans to create a Technical Review Board, consisting of representatives from both the private and public sectors, to review the specifications and to advise the Department of necessary revisions.

The Department shall use all reasonable and effective methods to publicize the contents of this emergency rule to the citizens of the State of New Jersey. Copies of the specifications shall be available to the public upon request.

Social Impact

The emergency amendment and concurrent proposal is part of a regulatory scheme that will enable private garage owners to purchase emission analyzers to perform vehicle emission tests. This increase in the number of available inspection stations will provide an added convenience for motor vehicle owners.

Economic Impact

The adoption of standards for emission analyzers is needed to enable new licensed private garages to perform emission tests on motor vehicles.

Environmental Impact

S. 3472 added a requirement that emission tests be performed for commercial vehicles with the expectation that emissions of air contaminants from these vehicles will thereby decrease. The specifications will help insure the accuracy of emission testing equipment used by private garages.

Full text of the specifications can be reviewed at the Office of Administrative Law, 88 East State Street, Trenton, and the Department of Environmental Protection, Labor and Industry Building, 8th Floor, Rm 802, John Fitch Plaza, Trenton. Copies may be obtained from Daniel Cowperthwait, Division of Environmental Protection, 380 Scotch Road, Trenton, N.J.

LAW AND PUBLIC SAFETY (a)

DIVISION OF MOTOR VEHICLES Enforcement Service Motor Vehicle Reinspection Centers

Adopted Emergency Amendment and New Rules, and Concurrent Proposal: N.J.A.C. 13:20-32.4, 32.14 and 32.15

Emergency Amendment and New Rules Adopted: August 30, 1983, by Clifford W. Snedeker, Director, Division of Motor Vehicles.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): August 30, 1983.

Emergency Amendment and New Rule Filed: September 2, 1983 as R.1983 d.404.

Authority: N.J.S.A. 39:8-34 (P.L. 1983, c. 236, §13).

Emergency Amendment and New Rules Effective Date: September 2, 1983.

(CITE 15 N.J.R. 1608)

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Emergency Amendment and New Rules Expiration Date: November 1, 1983.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before October 19, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery Street
Trenton, NJ 0866

The amendment and new rules were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of this emergency adoption are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The concurrent proposal is known as PRN 1983-520.

The agency emergency adoption and concurrent proposal follows:

Summary

The proposed amendment and new rules implement P.L. 1983, Chapter 236, by requiring mechanic certification for those reinspection centers licensed subsequent to May 1, 1983. This certification may be by taking a prescribed training course or completion of an examination offered by the National Institute for Automotive Service Excellence. The amendment and new rules set out the requirements for the prescribed training course.

Those reinspection centers licensed prior to May 1, 1983 will not have to meet the mechanics certification until May 1, 1985.

Social Impact

The proposed amendment and new rules will provide for increased knowledge of emissions testing and procedures for automotive mechanics who perform these tests at licensed reinspection centers.

Economic Impact

There will be an economic impact on the State in monitoring the training course. There will be an economic impact on those mechanics who will have to comply with these requirements.

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

13:20-32.4 Applicant qualification

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

(e) The applicant or someone in his employ shall [have:

1. At least three years of paid experience in general automotive repair and service, or if applying for limited service license, in the applicable rejection categories; or

2. Have completed a course in automotive repair at an approved vocational school and at least one year of applicable experience; or

3. Have been certified as a general mechanic, or in the applicable categories, by the National Institute for Automotive Service Excellence.] **be qualified as provided in N.J.A.C. 13:20-32.14.**

13:20-32.14 Mechanic qualifications

(a) **If licensed as a reinspection center prior to May 1, 1983, it shall be sufficient until May 1, 1985 for the licensee to meet the requirements of this rule if the licensee or someone in his employ shall have:**

1. At least three years of paid experience in general automotive repair and service; or

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2. Have completed a course in automotive repair at an approved vocational school and at least one year of applicable experience; or

3. Have been certified as a general mechanic, or in the applicable categories, by the National Institute for Automotive Service Excellence.

(b) If licensed as a reinspection center subsequent to May 1, 1983, and for all licensees subsequent to May 1, 1985, the licensee or someone in his employ shall meet one of the following criteria:

1. One year experience as a paid automotive mechanic and successful completion of advanced courses in automotive mechanics, specifically designed for and restricted to professionals engaged in the trade which shall meet the requirements of N.J.A.C. 13:20-32.15; or

2. Three or more years paid experience in general automotive repair and service or at least one year paid experience and completion of an automotive repair course at a vocational school may be certified, provided the applicant has successfully passed the National Institute for Automotive Service Excellence test for engine tuneup and at least one other test from the following areas:

- i. Brakes;
- ii. Front End;
- iii. Automotive Electrical Systems.

13:20-32.15 Course requirements

(a) To be considered an advanced course pursuant to N.J.A.C. 13:20-32.14, course in automotive mechanics must meet the following criteria:

1. Minimum of 16 contact hours of verified attendance in automotive emissions diagnosis with a minimum of eight hours devoted to hands-on instruction in the following areas:

- i. Inspection/diagnosis/repair equipment;
- ii. Hydrocarbon failures;
- iii. Carbon monoxide failures;
- iv. Carburetion;
- v. Current emission control technologies.

2. A minimum of 16 contact hours of verified attendance with a minimum of eight hours devoted to hands-on instruction, in one of the following areas:

- i. Brakes;
- ii. Front end;
- iii. Automotive electrical systems.

3. A final competency evaluation consisting of at least:

- i. Twenty-five questions on automotive emissions diagnosis.
- ii. Twenty-five questions in one of the following areas:

- (1) Brakes;
- (2) Front end;
- (3) Automotive electrical systems.

4. An instructor meeting at least one of the following criteria:

i. Four years experience as a paid automotive mechanic and successful completion of auto mechanics courses as stated in this section;

ii. A Bachelors degree in Automotive Industrial Arts; or

iii. An Associates degree in Automotive Industrial Arts may be substituted for two years of the experience requirement.

(b) All necessary equipment, tools, and materials needed for the course shall be accessible to the students.

(c) No more than 15 students per class with no more than five students per available item of demonstration equipment.

(d) Course sponsors may be required to demonstrate that proper measures are being taken for examination security and for proctoring the examination. The student must obtain a score of at least 75 percent in order to pass. The sponsoring organization must provide a copy of the questions and answers for the final examination to the Department of Environmental Protection and Division of Motor Vehicles for review. All questions are to be equally weighed, regardless of grouping.

(e) Courses are subject to unannounced evaluations by New Jersey officials. Courses and examinations which have been approved as complying with these specifications will be kept on file with the Director, Division of Motor Vehicles, Director of Environmental Quality, and Department of Environmental Protection.

(f) The sponsoring organization must issue a certificate for successful course completion. This certification must include the name of the sponsoring organization, the name of the student, the date of issue, and the signature of a sponsoring organization official.

MISCELLANEOUS NOTICES

CIVIL SERVICE

ENVIRONMENTAL PROTECTION

(a)

(b)

CIVIL SERVICE COMMISSION

NEW JERSEY NOISE CONTROL COUNCIL

Petition for Rulemaking

Public and Private Resources for Protection from Environmental Noise

N.J.A.C. 4:1-17.2, Leaves of Absence Without Pay

Public Hearing

Petitioner: Ms. Perna-Saravia, Sr.

Take notice that the New Jersey Noise Control Council will hold a public hearing on November 1, 1983 at 9:00 A.M. at:

Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Lewis Hermann Labor Education Center
New Brunswick, New Jersey

Pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6, the Department of Civil Service is filing a notice of petition with the Office of Administrative Law.

Government priorities are causing a shift downward in the control of noise to public and private efforts at the local level. The Commissioner of the New Jersey Department of Environmental Protection has delegated to the Noise Control Council the task of drafting new model noise control ordinances for adoption by local governments. The Council has been involved in the accumulation of data and recommendations from multiple sources to complete this task. To supplement these documents, the Noise Control Council is seeking information on noise control programs that are or might be carried out by local governments, professional groups, private individuals, and self-help organizations.

Take notice that on July 25, 1983, Ms. Chris Perna-Saravia, Sr. filed a petition for a new rule or an amendment to N.J.A.C. 4:1-17.2(b)2. Petitioner requests that 1. The word "day" as it applies to leaves of absence without pay be revised from calendar day to working day; 2. Provisional and temporary employees be granted 40 working days extendable to 60 days without pay for maternity leave and an additional 20 working days without pay for child care. Petitioner identifies two areas of concern: Calendar days which equal a seven-day week are not applicable to leaves of absences since two days a week are not normally work days; and provisional and temporary employees are not granted adequate disability leave for reasons of maternity and child care.

This public hearing is being held as a forum for gathering and sharing ideas on community noise control efforts. The Noise Control Council will present a status report on its efforts. The Council has invited certain other individuals and State and local groups to discuss their experiences and make suggestions. Testimony is also earnestly solicited from the general public.

Department of Civil Service response

The topic to be addressed is: "What public and private resources are available to communities for the control of noise?"

Provisional employees, such as Ms. Perna-Saravia, Sr. are not tenured and therefore have no entitlement to leave of absence without pay; however, such leaves may be granted at the employer's discretion. N.J.A.C. 4:1-17.2, Leaves of Absence Without Pay, does grant 60 days of leave without pay to provisional employees; "day," by definition, means a calendar day.

Though not intended to be all-inclusive, sub-questions that might be discussed are the following:

The petition as received from Ms. Perna-Saravia coincides with a Department of Civil Service review of Subchapter 17, Leaves of Absence, in accordance with the provisions of Executive Order No. 66. Therefore, the question of the use of "working days" as it applies to leaves of absence and a consideration of extending or modifying the rule concerning maternity leave to apply to non-tenured employees can be considered as part of this comprehensive review. To attempt to address these issues prior to the comprehensive review would not be timely or productive. Civil Service therefore denies the petition at this time but will refer the matter to be included in the review which, according to Executive Order, would conclude no later than May 25, 1984.

1. What have you, as a public official, accomplished for noise control in your community?

2. What have you, as a private citizen or private professional, public interest or service organization, accomplished for noise control?

3. What assistance from government agencies would be helpful to local officials involved in noise control?

4. What assistance from government agencies would be helpful to private individuals or organizations involved with noise control?

5. In anticipation of new model noise control ordinances, what role might private individuals and organizations take in encouraging their adoption and implementation by local governments?

6. What additional steps can you suggest to help prevent noise in communities?

MISCELLANEOUS NOTICES

OTHER AGENCIES

(a)

(b)

DIVISION OF WASTE MANAGEMENT

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Management Plan (1983–1986) for Hazardous Waste Site Cleanups

**Clean Air Council
Governor's Science Advisory Committee**

Public Hearing on Acid Rain

Public Hearings

The Clean Air Council, an advisory body to the Commissioner of the Department of Environmental Protection, will hold its annual public hearing jointly with the Governor's Science Advisory Committee. The hearing will be held at the State Museum, Culture Center Auditorium, 205 W. State Street, Trenton, NJ 08625, on October 17, 1983 from 10:00 A.M. until the close of testimony. The topic for discussion is: What are the potential effects of acid rain in New Jersey?

Take notice that the Department of Environmental Protection, Division of Waste Management, intends to hold public hearings to receive comments regarding the Management Plan (1983–1986) for Hazardous Waste Site Cleanups in New Jersey. The purposes of the Management Plan are to develop a systematic approach to remedial action to be taken at hazardous discharge sites, to coordinate cleanup and enforcement actions, and to identify future funding needs and sources.

A number of experts have been invited to prepare and present testimony before a panel of the New Jersey Clean Air Council and the Governor's Science Advisory Committee on the impact of acid rain in New Jersey.

The hearings listed below will be held to receive comments on the Management Plan. As specific site cleanup plans are developed, additional hearings will be held in the area of the State in which the site is located.

Interested persons are invited to provide additional testimony or comment on the material presented by the experts and to present any other information pertinent to this topic. Anyone wishing to testify may notify John Elston, Division of Environmental Quality, CN 027, Trenton, NJ 08625, 609-292-6710.

Copies of the Management Plan are available from Dr. Jorge Berkowitz at the address listed below. Copies are also available for review at all State Depository Libraries.

OTHER AGENCIES

Public hearings concerning the Management Plan (1983–1986) for Hazardous Waste Site Cleanups in New Jersey will be held at the following times and locations:

(c)

October 3, 1983, 7:00–9:00 P.M.
Labor Education Center
Rutgers University
Ryderson Lane
New Brunswick, NJ 08901

CASINO CONTROL COMMISSION

October 4, 1983, 1:00–5:00 P.M.
Brown Student Center
Trenton State College
Pennington Road (Route 31)
Trenton, NJ 08625

**Petition for Rulemaking
N.J.S.A. 5:12-144, Investment Obligations
and Investment Alternative Tax**

October 5, 1983, 7:00–9:00 P.M.
Woodbury High School
25 North Broad Street
Woodbury, NJ 08696

Petitioner: Department of the Public Advocate, Division of Public Interest Advocacy.

Authority: N.J.S.A. 5:12-69(c), 5:12-70(e), 5:12-144, N.J.A.C. 19:42-8 and N.J.S.A. 52:14B-4(f).

Interested persons may submit in writing, data, views or arguments relevant to the Management Plan on or before November 1, 1983. These submissions, should be addressed to:

Take notice that on August 18, 1983, the Department of the Public Advocate petitioned the Casino Control Commission to promulgate rules concerning the investment obligation and investment alternative tax imposed upon casino licensees by Section 144 of the Casino Control Act (N.J.S.A. 5:12-144).

Dr. Jorge Berkowitz
Acting Administrator
Hazardous Site Mitigation Administration
Department of Environmental Protection
CN 028
Trenton, NJ 08625

The petition requests the Commission to adopt uniform standards and procedures concerning the eligibility of casino investments. The petition also seeks to have rules adopted which would target casino investments toward the redevelopment of Atlantic City by requiring casino licensees to dedicate:

1. At least 25 percent of their investments in Atlantic City to the construction or rehabilitation of low or moderate income housing; or

2. One hundred percent of their investments in Atlantic City to projects or proposals undertaken in accordance with a plan or plans adopted by the Commission for the redevelopment of blighted areas in the city.

OTHER AGENCIES

MISCELLANEOUS NOTICES

More specifically, the Public Advocate requests the Commission to republish and adopt its "Proposed Rules Concerning Investment Obligation and Investment Alternative Tax" which were originally proposed at 12 N.J.R. 166 (March 6, 1980). The petition requests, however, that these rules be republished with certain amendments proposed by the Public Advocate. The proposed amendments concern the eligibility of investments to be made by casino licensees and would implement the redevelopment goals outlined above.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c), N.J.A.C. 19:42-8 and N.J.S.A. 52:14B-4(f).

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between September 20, 1982, and September 6, 1983, and which have not been adopted and filed by September 2, 1983. **The index does not contain rules proposed in this Register and listed in the Table of Rules in This Issue. These proposals will appear in the next Index of Proposed Rules.**

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit 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 of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which N.J.A.C.

appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

CITATION		PROPOSAL DATE	PROPOSAL NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1			
1:1-1.3	Reaching the merits	9-6-83	15 N.J.R. 1398(a)
1:1-3.2	Placement of case on inactive list	9-6-83	15 N.J.R. 1399(a)
1:1-9.7	Interlocutory review	9-6-83	15 N.J.R. 1399(b)
1:1-12.4	Notice of opportunity to intervene or participate	9-6-83	15 N.J.R. 1400(a)
1:1-16.5	Final decisions: remanding	9-6-83	15 N.J.R. 1400(b)
1:1-17.1	Approving the settlement	9-6-83	15 N.J.R. 1401(a)
1:6A-5.2	Special Education hearings: record keeping	9-6-83	15 N.J.R. 1402(a)
1:30-3.8	Rulemaking: Agency status reports	11-1-82	14 N.J.R. 1185(a)
AGRICULTURE—TITLE 2			
2:2-1	Animal Health: readopt Reportable Diseases	8-1-83	15 N.J.R. 1202(a)
2:2-2	Readopt Brucellosis Control and Eradication	8-1-83	15 N.J.R. 1203(a)
2:2-3	Animal Health: readopt Tuberculosis Control and Eradication	8-1-83	15 N.J.R. 1203(b)
2:2-4	Readopt Swine Disease Control	8-1-83	15 N.J.R. 1204(a)
2:2-10	Repeal duplicate poultry and turkey rules	8-1-83	15 N.J.R. 1204(b)
2:3-1	Readopt Livestock and Poultry Importations	8-1-83	15 N.J.R. 1205(a)
2:3-1.8	Livestock: prior import permits	8-15-83	15 N.J.R. 1290(a)
2:6	Readopt Biological Products for Diagnostic and Therapeutic Purposes	8-1-83	15 N.J.R. 1205(b)
2:7	Readopt Poultry and Turkey Improvement Plans	8-1-83	15 N.J.R. 1206(a)
2:69	Readopt Commercial Fertilizers and Soil Conditioners	8-1-83	15 N.J.R. 1206(b)
2:69-1.11	Commercial values for fertilizers and conditioners	5-2-83	15 N.J.R. 658(a)
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3:1-13.1	Insurance tie-in prohibition by lenders	6-6-83	15 N.J.R. 820(a)
3:1-13.1	Public hearing: insurance tie-in prohibition by lenders	8-1-83	15 N.J.R. 1207(a)
3:30-1.3, 1.4	Maturity notice on fixed-term and variable savings accounts	8-1-83	15 N.J.R. 1207(b)
CIVIL SERVICE—TITLE 4			
4:1-5	Readopt appeals and hearings rules	7-18-83	15 N.J.R. 1148(a)
4:1-7.6	Title reevaluation requests and appeals (State)	8-15-83	15 N.J.R. 1290(b)
4:1-8	Readopt Examinations and Applications	8-15-83	15 N.J.R. 1292(a)
4:1-12	Readopt Certification and Appointment rules	9-6-83	15 N.J.R. 1403(a)
4:1-18.9, 18.10	Flexitime and operation hours (State)	3-21-83	15 N.J.R. 373(a)
4:1-18.11	Alternative workweek programs (State)	3-21-83	15 N.J.R. 374(a)
4:2-5	Repeal (see 4:1-5)	7-18-83	15 N.J.R. 1148(a)
4:2-8.1, 8.9	Readopt Examinations and Applications (State)	8-15-83	15 N.J.R. 1292(a)
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4:3-5	Repeal (see 4:1-5)	7-18-83	15 N.J.R. 1148(a)
4:3-6.7	Repeal: Modification of sheriff's officer series	6-6-83	15 N.J.R. 820(b)
4:3-8.2, 8.3, 8.7, 8.8	Readopt Examinations and Applications (Local)	8-15-83	15 N.J.R. 1292(a)
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5:10	Readopt Hotel and Multiple Dwellings rules	5-16-83	15 N.J.R. 727(a)
5:23-4.14, 4.20, 5.12	Uniform Construction Code: on-site inspection; fees	9-6-83	15 N.J.R. 1406(a)
5:26-2.3, 3.1, 3.2, 3.4, 4.1-4.4, 5.2, 6.3, 9.1, 10.1, 10.2, 11.1	Planned real estate development full disclosure	7-5-83	15 N.J.R. 1055(a)
5:26-8.7	Planned real estate developments: annual audits	9-6-83	15 N.J.R. 1408(a)
5:30-10.1, 10.2	Local finance: municipal port authorities	8-15-83	15 N.J.R. 1304(a)
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5:37-11.6	Municipal and county employees deferred compensation programs: annual audit	9-6-83	15 N.J.R. 1408(b)
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6:11-3.12, 4.7	Hiring coaches for interscholastic athletics	7-18-83	15 N.J.R. 1152(b)
6:11-4	Readopt Types of Teaching Certificates	7-18-83	15 N.J.R. 1154(a)
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6:20-2.10	Local districts: petty cash fund	6-20-83	15 N.J.R. 982(a)
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7:13-1.11	Floodway delineations in Mullica River Basin	10-18-82	14 N.J.R. 1133(a)
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7:20A	Water diversion for growing use	11-15-82	14 N.J.R. 1249(a)
7:20A	New comment period: Water diversion for growing use	11-15-82	15 N.J.R. 73(a)
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7:25A-1.2	Sale of licensed oyster vessel	9-6-83	15 N.J.R. 1415(a)
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8:43-3.22	Fire protection in residential health care	6-20-83	15 N.J.R. 991(a)
8:43-4.14	Repeal (see 8:43-7)	6-20-83	15 N.J.R. 992(a)
8:43-7	Resident rights in residential health care	6-20-83	15 N.J.R. 992(a)
8:43-8	Residential health care: Maintenance and monitoring services	3-7-83	15 N.J.R. 309(b)
8:43A	Readopt rules on Ambulatory Care Facilities	6-20-83	15 N.J.R. 994(a)
8:43B-6	Readopt Hospital Medical Staff rules	7-5-83	15 N.J.R. 1065(a)
8:44	Readopt Operation of Clinical Laboratories	6-20-83	15 N.J.R. 995(a)
8:70	Readopt: Drug Evaluation and Acceptance Criteria	6-6-83	15 N.J.R. 845(a)
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8:71	Oxycodones; Schedule II policy	10-4-82	14 N.J.R. 1077(a)
8:71	Generic drug list changes (see 15 N.J.R. 339(a), 691(a))	11-15-82	14 N.J.R. 1278(a)
8:71	Generic drug list changes (see 15 N.J.R. 1100(c))	2-7-83	15 N.J.R. 126(b)
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October 17 issue:
 Proposals **September 21**
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New Publications from the Office of Administrative Law

**CONTESTED CASE HANDBOOK: A Guide to the
Administrative Hearing Process in
Public Assistance Cases**

The CONTESTED CASE HANDBOOK is a layman's explanation of welfare "fair" hearings before an administrative law judge, prepared especially for the person appearing without a lawyer, or the non-lawyer appearing with a party at a hearing. It discusses the common procedures and problems you might encounter in a hearing involving AFDC, General Assistance, or Food Stamps.

The CONTESTED CASE HANDBOOK traces the procedural steps and some of the rules of the hearing, explains the notices participants receive from the Office of Administrative Law, and what to do about them. It clearly outlines the steps up to, during and after the hearing.

The CONTESTED CASE HANDBOOK also explains some of the special language used during a hearing and gives a brief, to-the-point explanation of terms such as "discovery", "finding of fact", "motion", "proof", and many more. It tells how to prepare for a hearing, what documents and information may be important as evidence, how to get witnesses to appear and give testimony, and how to get help on a case. \$2

**SPECIAL EDUCATION MANUAL:
A Guide to the Administrative Hearing
Process in Special Education Cases**

THE SPECIAL EDUCATION MANUAL is a concise guide prepared for those involved in administrative hearings concerning the education of students with special needs. In plain language, it gives the administrative hearing process conducted by the Office of Administrative Law as part of the Special Education Program in New Jersey. It tells how to request a hearing, when and how to ask for "emergency relief". It explains the notices which parents will receive, the responsibilities of the Department of Education and a board of education in this process, and the due process rights of parents and guardians. It discusses the "discovery" (exchange of information) process, the purpose of a "settlement conference", and what to do at that conference.

The SPECIAL EDUCATION MANUAL also tells how and when hearings are scheduled and how to prepare for a special education hearing, and explains the right to request an independent evaluation of a student. It details how a hearing is conducted, who may appear, how a decision is rendered, and how it may be appealed. A special feature cross-references each step of the hearing process to the appropriate Office of Administrative Law hearing rule in the New Jersey Administrative Code, N.J.A.C. 1:6A. \$2

**ALCOHOLIC BEVERAGE CONTROL Rules (N.J.A.C. 13:2)
with Case Notes on Important Decisions involving the
Application and Interpretation of ABC Rules**

This handbook contains all Alcoholic Beverage Control rules promulgated through June 21, 1982 in the New Jersey Register, and features a comprehensive Cross-Reference Table relating current New Jersey Administrative Code citations to the former Rule and Regulation Numbers of the Division of Alcoholic Beverage Control. In addition, individual rules are annotated with notes on selected cases involving rule interpretation and application. The Case Notes include New Jersey Superior Court and Supreme Court decisions, initial OAL decisions, and agency appellate and disciplinary proceedings as reported in ABC Bulletins. \$5

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