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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 20 NUMBER 19

October 3, 1988 Indexed 20 N.J.R. 2417-2498

(Includes adopted rules filed through September 12, 1988)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 18, 1988

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 15, 1988

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Disease Control Program

Proposed Readoption with Amendments:

N.J.A.C. 2:2

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

Authority: N.J.S.A. 4:5-1 through 4:5-106.20.

Proposal Number: PRN 1988-493.

Submit comments by November 2, 1988 to:
 Sidney R. Nusbaum, V.M.D., Director
 Division of Animal Health
 N.J. Department of Agriculture
 CN 330
 Trenton, NJ 08625
 Telephone: (609) 292-3965

The agency proposal follows:

Summary

This chapter, which expires on October 3, 1988, was internally reviewed in June, 1988, in compliance with Executive Order No. 66(1978), and found to be adequate, reasonable, and necessary. However, some changes have become necessary. N.J.A.C. 2:2-1.1 provides for an updated list of diseases dangerous to animal health in New Jersey especially foreign diseases, and embraces the U.S. Department of Agriculture's approach to foreign animal diseases. The amendments to N.J.A.C. 2:2-1 further provide measures to immediately control any outbreak, indemnification if necessary, and clarifies the responsibility of knowledgeable people in the livestock industry to report suspected disease to the New Jersey Department of Agriculture.

Amendments mostly of a clarifying or technical nature are proposed for N.J.A.C. 2:2-2, which sets forth the program for brucellosis control and eradication in bovine animals and swine, and N.J.A.C. 2:2-3, which establishes the bovine tuberculosis control and eradication program. N.J.A.C. 2:2-2.7 and 3.5, which established set fees for test procedures performed by private veterinarians, have been deleted and amended, respectively, due to the long term non-utilization of the fee program. All testing is now performed by either private veterinarians at the livestock owner's expense or by Department personnel.

The amendments to N.J.A.C. 2:2-4 provide for adoption of the Federal Swine Health Protection Act Regulations into swine disease control measures while maintaining those rules found to be necessary for the New Jersey disease control.

A new subchapter 5 is incorporated dealing with Bovine leucosis in a voluntary control program.

Swine pseudorabies rules were incorporated at N.J.A.C. 2:2-6 as outlined by Title 9 CFR because the disease is of a national concern as well as local, and the U.S. Department of Agriculture has appropriated funds to help with eradication and control programs. Supplemental rules will be developed by the Pseudorabies Advisory Committee at a future date.

Subchapter 7, Poultry Disease Control, will be eliminated and the text of the Poultry and Turkey Improvement Plans rules, N.J.A.C. 2:7, which expired on September 29, 1988, will replace it.

Subchapter 8, Records of Cattle, Sheep and Swine Dealers, shall be readopted, without change.

The proposed readoption deletes two subchapters, one dealing with sheep scabies (N.J.A.C. 2:2-5), which disease has been controlled and future outbreaks will be treated as a foreign disease. The Nutria rules (N.J.A.C. 2:2-6) are also deleted, as there are no known nutria growers, nor has there ever been any, in New Jersey.

Social Impact

An updating of the list of diseases dangerous to animal health in New Jersey, and the provision for immediate action in the face of an outbreak, along with indemnities, allows for handling of these diseases in a way

to cause minimum amount possible of affect on New Jersey's livestock and poultry industry.

Embracing the Federal Swine Health Protection Act and Pseudorabies regulations provides for consistency in regulations between the State Department of Agriculture, the U.S. Department of Agriculture, and the rest of the United States livestock industry.

Deletion of the rules dealing with nutria and sheep scabies will have no impact on New Jersey livestock since scabies is a foreign animal disease and there are no nutria in New Jersey.

Bovine leucosis, a viral disease of cattle, can be eliminated from well managed herds by programs of testing and culling. There is a growing market for virus free animals. Perspective buyers require proof of freedom by means of centrally controlled programs. The Department of Agriculture intends to provide that advantage to New Jersey farmers through this owner financed program.

These rules will affect a limited number of farmers and veterinarians in a positive way. Beyond providing another way to help maintain agriculture in New Jersey, they are without general social impact on non-participants.

Economic Impact

The readoption of this chapter will have very little, if any, economic impact on the livestock industry. The indemnification procedures could, if funded, control disease spread and help owners compensate for losses enough to replace the animal. Depopulation only occurs if the State Department of Agriculture deems it necessary to prevent devastation to the industry.

The disease control program will help participating New Jersey farmers to maintain leadership role in national and international sales. Beyond the cost to owners, there are no negative economic effects. The fee schedule is somewhat higher than similar programs in two adjoining states, one of which has a direct legislative grant to supplement the laboratory income.

Regulatory Flexibility Statement

While most farmers are small businesses, the rules proposed for re-adoption do not impose reporting, recordkeeping, and/or other compliance requirements other than are mandated by the authorizing statutes.

Further, the purpose of these rules is to control the spread of disease and effect the public health, welfare, and safety; therefore, no regulatory flexibility analysis is needed. The State Department of Agriculture has attempted to balance the needs of restrictions for disease control and the impact on the citizen. However, the Department must err on the side of caution.

The great majority of New Jersey dairy farmers and cattle producers are small businesses. As the Bovine leucosis program will be a voluntary program, it will only effect those small businesses choosing to participate. Therefore, a regulatory flexibility analysis is not necessary.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 2:2.

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

CHAPTER 2 DISEASE CONTROL PROGRAM

SUBCHAPTER 1. REPORTABLE DISEASES

2:2-1.1 Enumeration of diseases dangerous to animal health

(a) The following diseases are designated as a particular and dangerous menace to animal health of the State:

1. Livestock:
 - i. Anaplasmosis;
 - ii. Anthrax;
 - iii. Cattle tick fever;
 - iv. Contagious equine metritis;
 - v. Equine viral encephalitis;
 - vi. Equine infectious anemia;
 - [vii. Foot and mouth disease;
 - viii. Hog cholera;]

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- [ix.]vii. Mucosal disease complex;
- [x.]viii. Paratuberculosis;
- [xi.]ix. Pseudorabies;
- [xii.]x. Rabies;
- [xiii.]xiii. Scabies;
- xiv. Scrabies;
- xv. Screwworm;]
- [xvi.]xi. Swine erysipelas;
- [xvii.]xii. Tuberculosis;
- [xviii.]xiii. Vesicular exanthema;
- [xix.]xiv. Vesicular stomatitis;
- [xx.] Other unusual exotic diseases of dangerous nature.]
- xv. All foreign diseases that pose a threat to the health of livestock in the State as designated by USDA APHIS Title 9 CFR or USDA APHIS emergency declarations.

2. Poultry:

- [i. Asiatic Newcastle;
- ii. Fowl plague;]

i. Avian influenza;

- [iii.]ii. Fowl typhoid;
- [iv.]iii. Paracolon infestation;
- [v.]iv. Paratyphoid infection;
- [vi.]v. Psittacosis or ornithosis;
- [vii.]vi. Pullorum;

[viii.]vii. [Swine e]Erysipelas in poultry;

[ix. Other unusual or exotic diseases of dangerous nature.]

viii. All foreign animal diseases.

2:2-1.2 Provision for Statement of Imminent Peril

Whenever a disease outbreak occurs in New Jersey or in neighboring states that has all the symptoms of being severely devastating by contagious or infectious properties, the Secretary of Agriculture may immediately issue a Statement of Imminent Peril and take necessary steps to prevent spread of the disease to New Jersey livestock and poultry.

2:2-1.3 Provision for epidemic of emergent proportion

Whenever a disease outbreak occurs in New Jersey that appears severely devastating and contagious, the Secretary of Agriculture may declare an epidemic of emergent proportion exists and take whatever steps may be necessary to prevent its spread even before the causative agent may be identified.

2:2-1.4 Indemnification

The Division of Animal Health shall have the authority to destroy or order sent to slaughter any animals it deems necessary to prevent the spread of the diseases that threaten the viability of the industry. For each animal slaughtered to prevent the spread of disease, the owner shall receive the net proceeds, if any, of the sale of the animal and in addition, if funds are available shall be paid an indemnity not to exceed the market value of the animal, if funds for such indemnity are provided.

2:2-[1.2]1.5 Notice of existence of dangerous diseases

Any veterinarian or other person (including but not limited to any auctioneer, broker, dealer, licensed swine farmer, racing commission official, extension agent, etc.) who shall gain knowledge of the existence or suspected existence of such diseases, as set forth in N.J.A.C. 2:2-1.1, within the State shall notify the Department of Agriculture without delay, and in any case within 48 hours.

SUBCHAPTER 2. BRUCELLOSIS CONTROL AND ERADICATION

2:2-2.1 Scope

[The State Board of Agriculture now revises the regulations for the control and eradication of brucellosis. These regulations] This subchapter concerns vaccination, testing, quarantine, disposition of reactors, and indemnification of brucellosis reactors. All [regulations] rules apply to bovine animals. Milk-producing goats and swine are exempt from the requirements for official vaccination, but all other [regulations] rules must be met. Except as otherwise indicated, swine are subject to all rules in this subchapter.

2:2-2.2 Official calfhood Brucella vaccination

Only [Brucella abortus vaccine, desiccated, produced from cultures of Brucella abortus, strain 19, administered subcutaneously] USDA approved Brucella vaccine shall be used for official calfhood Brucella vaccination. Such dosage shall be administered in conformity with the uniform methods and rules of the bovine brucellosis eradication program as published by the United States Department of Agriculture APHIS-91-1.

2:2-2.3 Vaccination of female bovine animals

(a) [All female cattle born in the State of New Jersey after July 1, 1982 and all] All female cattle [born after July 1, 1982] brought into the State under 239 days of age, that are not officially vaccinated, shall be vaccinated against brucellosis between the ages of 120 and 239 days, if they are to be sold for purposes other than immediate slaughter. This shall not be construed to prohibit the sale of any female calf under the age of 120 days.

(b) Female bovine animals will be considered to be officially calfhood Brucella vaccinated only when all of the requirements below are [complied with] met.

1. Approved Brucella abortus vaccine shall be properly injected before the expiration date of the vaccine.

2. The calves shall be four through eight months of age or from 120 to 239 days when vaccinated.

3. The vaccinated calves shall be identified by an ear tag or tattoo and marked as officially calfhood Brucella vaccinated animals by a special tattoo as prescribed by the New Jersey Department of Agriculture.

4. A vaccination report shall be submitted within 15 days of vaccination to the New Jersey Department of Agriculture on forms provided by it.

[5.](c) The New Jersey Department of Agriculture is not responsible for an unfavorable effect that might be attributed to or resulting from the vaccination.

[6.](d) The New Jersey Department of Agriculture shall provide vaccine to accredited private veterinary practitioners to conduct official calfhood Brucella vaccination, provided all laws, regulations, and policies are complied with and reports are submitted within the prescribed period.

[7. The Department of Agriculture will not recognize vaccination of male bovine animals.]

2:2-2.4 Conformity of brucellosis tests with Federal methods

The official brucellosis tests shall be conducted in conformity with the uniform methods and rules of the bovine brucellosis eradication program as published by the United States Department of Agriculture APHIS-91-1, as revised.'

'Copies are filed with and may be received by writing to: Director, Division of Animal Health, N.J. Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625.

2:2-2.5 Tests conducted by the New Jersey Department of Agriculture

(a) Official tests for brucellosis shall be conducted only by the New Jersey Department of Agriculture or other officially appointed personnel under the Department's supervision.

(b) No brucellosis test[s] shall be conducted without written permission of the New Jersey Department of Agriculture.

2:2-2.6 Department or accredited veterinarians to draw blood samples

[(a)] Blood samples for official brucellosis tests shall be drawn by [the] New Jersey [d]Department of Agriculture personnel or by accredited veterinarians under its supervision.

[(b)] An accredited veterinarian shall not draw blood samples for official tests for brucellosis without written authorization from the New Jersey Department of Agriculture.

(c) The New Jersey Department of Agriculture shall be authorized to engage accredited private veterinary practitioners to draw blood samples for official brucellosis tests which cannot be conducted by its regularly employed veterinarians.]

[2:2-2.7 Fees to private veterinarians

Accredited private veterinary practitioners who draw blood samples in connection with the brucellosis eradication program shall be paid \$10.00 for each herd stop and \$1.00 for each animal tested in that herd. This fee shall be for drawing the blood; properly identifying, packaging, and mailing the samples; preparing records and reports, and providing general instructions to the herd owner regarding the control and eradication of brucellosis, and all related actions regarding the drawing of the blood samples.]

2:2-[2.8]2.7 Herd owner responsibilities: employing private veterinarian

(a) The owner or custodian of any herd shall stable all animals eligible for test and shall provide proper restraint for the collection of blood samples by the veterinarian.

(b) If the owner refuses to permit an authorized veterinarian to draw blood samples for an official brucellosis test, he or she may employ an accredited private veterinary practitioner to draw the blood samples within a specified time. This testing shall be accomplished at no cost to the State of New Jersey.

2:2-[2.9]2.8 (No change in text.)

2:2-[2.10]2.9 Times established for brucellosis tests

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

(d) All MCI test eligible cattle as defined in the USDA, APHIS-91-1 are to be back tagged when presented to any auction market. The Department shall supply the necessary tags and glue. Auction markets shall be responsible for correlation in their market records of back tag numbers with their market method of identifying individual cattle. Back tags may be applied at locations other than auction markets when the Department deems its [advisability] **advisable**.

(e) Market swine for slaughter: All breeding swine, sows, and boars over six months of age shall be individually identified as to herd of origin before mixing with other swine. Such identification shall be by either slap tattoo [or], official ear tags or **other approved identification**. The auction market shall be responsible for correlation in their market records of tattoos, [or] individual ear tags or **other approved identification** with their market method of identification. The market shall be responsible for recording the farm or herd of origin of all swine so identified and shall be responsible for maintenance of these records.

(f) (No change.)

2:2-[2.11]2.10 (No change in text.)

2:2-[2.12]2.11 Quarantine on disclosure of brucellosis reactor

Any herd in which a brucellosis reactor or reactors are disclosed shall be quarantined. **Any brucellosis suspect shall be quarantined until epidemiology or further testing determines the status of the individual animal.**

2:2-[2.13]2.12 Conditions for quarantine release

(a) (No change.)

(b) Cattle or swine herds quarantined for brucellosis are to remain under quarantine until conditions are as stated in the Brucellosis Eradication Recommended Uniform Methods and Rules, USDA, APHIS-91-1. [

]These rules can be obtained from the Division of Animal Health, CN 330, Trenton, New Jersey 08625.

2:2-[2.14]2.13 Tagging, segregation and slaughter of brucellosis reactors

(a) All cattle, goats, and swine positive to an official brucellosis test shall not again be presented for test, but shall be immediately identified as set forth in the recommended rules and regulations in USDA, APHIS-91-1 (see N.J.A.C. 2:2-[2.13]2.12(b)).

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

2:2-[2.15]2.14 Brucellosis reactor eligible for indemnification

(a) To be eligible for indemnity, a brucellosis reactor must meet all the requirements of this subchapter, including the following conditions:

1. Have previously been tested in New Jersey without positive reaction; have been born in New Jersey and was not previously old enough to be subjected to a brucellosis test; or have been officially calfhooed brucella vaccinated and was not previously old enough to be subjected to brucellosis test.

2.-7. (No change.)

8. All female cattle [born after July 1, 1982,] are to have been officially calfhooed brucella vaccinated and bear proof of such vaccination. The following items shall constitute proof of vaccination.

i.-iv. (No change.)

(b) For each bovine animal slaughtered to prevent the spread of brucellosis, the owner shall receive the net proceeds, if any, of the sale of the animal and in addition thereto, shall, subject to the provisions of N.J.S.A. 4:5-93.32, be paid an indemnity not to exceed \$1,000 [of the appraised value of] for a purebred animal and \$750.00 [of the appraised value of] for a grade animal. Nonregistered or grade bulls or animals considered by the Department to be of no breeding value shall be appraised at slaughter prices. In the case of registered animals, the owner shall furnish the certificate of registration to the Department. The indemnity paid by the Federal government plus the indemnity of the State plus the salvage, if any, shall not exceed the appraised value of the animal. The cost of disposal of animals destroyed because of brucellosis[,] shall be borne by the owner.

(c) (No change.)

2:2-[2.16]2.15 Market cattle and goats to go to immediate slaughter

All cattle **not born in New Jersey** and exceeding [200] 500 pounds in weight and all goats delivered to any regularly established auction market shall be consigned for immediate slaughter purposes only. The buyer will keep the above mentioned animals isolated from all other farm stock and will slaughter or present for slaughter at a recognized slaughter establishment within 15 days of the purchase date.

2:2-[2.17]2.16 Swine brucellosis

Eradication of brucellosis from swine breeding herds in New Jersey shall be conducted by the swine owner in conformity with the recommended uniform methods and rules in USDA, APHIS-91-1, Chapter II, with the cooperation and supervision of the New Jersey Department of Agriculture (see N.J.A.C. 2:2-[2.13]2.12(b)).

2:2-[2.18]2.17 Swine brucellosis: [T]esting of swine moved intrastate

Swine moved intrastate for breeding or exhibition purposes must be tested negative to a brucellosis test within 30 days prior to movement. Swine originating from a Brucellosis Validated Free herd are exempt from this requirement. Form DAH 111 or a **Certificate of Veterinary Inspection** must accompany swine for movement intrastate with the test dates or validation dates stated on the certificate. [1] [This] **These** forms can be obtained from the Division of Animal Health, CN 330, Trenton, New Jersey 08625.

2:2-[2.19]2.18 Brucellosis testing for intrastate movement (No change in text.)

SUBCHAPTER 3. TUBERCULOSIS CONTROL AND ERADICATION

2:2-3.1 to 3.3 (No change.)

2:2-3.4 Quarantine of herd during tests

(a) (No change.)

(b) Herds in which reaction occurs shall remain in quarantine until released by the Secretary of Agriculture.

2:2-3.5 Fees to private veterinarians

[(a) Accredited private veterinary practitioners who tuberculin test animals in connection with the tuberculosis eradication program shall be paid \$10.00 for each herd stop and \$1.00 for each animal tested. This fee shall be for injecting tuberculin and reading the test 72 hours after injection according to procedures approved by the New Jersey Department of Agriculture; properly identifying the animals tested; preparing records and reports; and providing general instructions to the herd owner regarding the control and eradication of tuberculosis, and all other related actions regarding the test for tuberculosis.]

[(b) A fee of \$1.00 will be paid to the accredited veterinarian for each report of a dispersed herd or one moved to another area. This fee will be paid only for each disposition report, regardless of the number of projects or individuals involved.]

The New Jersey Department of Agriculture shall be authorized to engage private veterinary practitioners to tuberculin test animals which cannot be tested by its regularly employed staff.

2:2-3.6 Indemnification

(a) For each bovine animal slaughtered to prevent the spread of tuberculosis, the owner shall receive the net proceeds, if any, of the sale of the animal and in addition thereto, shall, subject to the provisions of N.J.S.A. 4:5-27, be paid an indemnity not to exceed \$1,000[.00 of the appraised value of] for a purebred animal and \$750.00 [of the appraised value of] for a grade animal.

(b) The indemnity paid by the Federal government plus the indemnity of the State plus the salvage, if any, shall not exceed the [appraised] value of the animal. The cost of disposal of animals destroyed because of tuberculosis shall be borne by the owner.

SUBCHAPTER 4. SWINE DISEASE CONTROL

[2:2-4.1 Subchapter to implement State statutes

The State Board of Agriculture finds that these rules and regulations adopted November 18, 1957, are required to implement Chapter 140, P.L. 1957.¹

¹Copies are filed with and may be received in writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625.]

2:2-4.1 USDA Swine Health Protection Act adopted, supplemented

(a) The New Jersey Department of Agriculture adopts the rules and regulations of the Swine Health Protection Act, Title 9 CFR 166.1-166.15 APHIS, USDA as the official rules and regulations of the New Jersey Program.

(b) In addition, the State Board of Agriculture promulgates the rules found in this subchapter.

2:2-4.2 Compliance with statute and rules for license issuance

Licenses shall be issued to any persons who comply with all provisions of the statute and all provisions of [these rules and regulations] this subchapter.

2:2-4.3 and 4.4 (No change.)

2:2-4.5 Facilities for out-of-State animal shipments

(a) There shall be reasonable facilities for holding out-of-state shipments separate for a period of [10] **30** days.

(b) These facilities shall be adequately cleaned and disinfected before [and after] the introduction of new animals.

2:2-4.6 Water supply

(a) There shall be a sufficient supply of water for cleaning.

(b) There shall be a sufficient supply of clean water available for all swine to drink at all times.

2:2-4.7 through 4.10 (No change.)

[2:2-4.11 Heat treated garbage defined

Heat treated garbage is garbage that has been heated throughout to boiling or equivalent temperature (usually 212 degrees Fahrenheit, at sea level) for thirty minutes, or treated according to a method specifically approved by the Secretary of Agriculture.]

2:2-[4.12] **4.11** Period for accomplishing heat treatment of garbage

Heat treatment of all garbage shall be accomplished within [24] **48** hours of receipt of that garbage on the premises **and must be fed or otherwise disposed of within 72 hours of cooking.** Exception to this requirement may be made by the Secretary of Agriculture on the recommendation of the inspector.

[2:2-4.13 One time garbage treatment

When feeding a ton or less a day, all garbage must be treated at one time.]

2:2-4.12 Holding areas/containers for untreated garbage

Untreated garbage shall be stored in covered, leakproof containers until treated. The covers shall be constructed so as to prohibit rodents, other wild animals, birds, and any escaped swine from access to the garbage or any drainage associated.

2:2-[4.14] **4.13** (No change in text.)

[2:2-4.15 Cooking area: access to raw garbage

(a) The cooking area shall be separate from the swine.

(b) Swine shall not have access to raw garbage.]

Renumber existing 4.16 through 4.20 as **4.14 through 4.18** (No change in text.)

2:2-[4.21] **4.19** Solid waste disposal

(a) Solid wastes, such as residual garbage and manure removed from pens, feeding platforms and buildings, shall be disposed of by[:] **any method that is in compliance with State and local ordinances.**

[1. Burial or landfill;

2. Applied to soil daily;

3. Compost; or

4. Cesspool;]

2:2-[4.22] **4.20** (No change in text.)

2:2-[4.23] **4.21** Dead animal removal

Dead animals shall be removed immediately and held in covered rat proof containers until final disposition **in accordance with local ordinances.**

2:2-[4.24] **4.22** (No change in text.)

[2:2-4.25 Vaccine standards for hog cholera control

(a) Fully virulent hog cholera virus vaccine or modified live virus vaccine shall not be used in vaccinating swine against hog cholera except as provided in Title 9 of the Code of Federal Regulations.¹

(b) Treatment of swine with hog cholera serum or antibody concentrate is permissible.

¹Copies are filed with and may be received by writing to: Director, Division of Animal Health, New Jersey Department of Agriculture, Health-Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625.]

2:2-4.23 (Reserved)

2:2-[4.26]**4.24** (Reserved)

[2:2-4.27 (Reserved)]

2:2-[4.28] **4.25** Premises concentrating swine for public sales construed as livestock market

Any farm or premises where swine are concentrated for public sale shall be considered a livestock market under [these regulations] **this subchapter**, except where only the swine raised on the premises are offered for sale.

2:2-[4.29] **4.26** (No change in text.)

2:2-[4.30] **4.27** Notice of hog cholera illness

(a) Swine owners shall promptly report to their accredited veterinarians or to an agent of the **New Jersey** Department of Agriculture any illness in their herd suggestive of hog cholera.

(b) The accredited veterinarian shall promptly notify an agent [of the Department of Agriculture or the office] of the Division of Animal Health of the State Department of Agriculture or the office of Veterinary Services, United States Department of Agriculture.

Renumber existing 4.31 through 4.33 as **4.28 through 4.30** (No change in text.)

2:2-[4.34] **4.31** Indemnity for swine destroyed by hog cholera

(a) Once official confirmation has been had of hog cholera in a herd of swine, the following measures shall apply as long as funds are available:

1. All infected and exposed swine on the premises alive at the time initial notification of the disease was made to the official cooperating agencies shall be appraised under the following rules:

i. The schedule as set forth below shall apply in respect to appraisal of swine for meat, feeding, or breeding, but in no instance

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shall the appraisal exceed the actual value of the animal. The basis for appraisal will be established by averaging the quotations from three of the major quality feeder and slaughter swine markets in the United States. Swine may be appraised in groups provided they are of the same type or of the same value per pound. Swine shall be appraised at their actual value for meat, feeding or breeding purposes except that in the case of grade animals only females shall be eligible for appraisal based on breeding values and that no such appraisal shall exceed three times the animal's meat or feeding value. Swine presented for appraisal as purebreds shall be accompanied by their certificate of pure breeding.

ii. Expenses for the care and feeding of swine held for destruction and the expense of destruction, burial, incineration and/or transportation and other expenses incidental to their slaughter will be the responsibility of the owner of the swine.

iii. Any indemnity claim for swine destroyed shall contain owner certification that the swine were, or were not, covered by a mortgage. If the owner states that there is a mortgage, forms furnished by the cooperating agencies shall be signed by the owner and by each person holding a mortgage on the swine consenting to the payment of any indemnity allowed to the person specified thereon.

iv. The New Jersey Department of Agriculture agrees to pay the owner of swine destroyed for hog cholera not to exceed 50 percent of the difference between the appraised value of each swine so destroyed and the net salvage received by the owner thereof. [v.] State indemnity shall not exceed \$100.00 per head for purebred, inbred or hybrid swine and for breeding swine, or \$50.00 for all other swine and in no case shall State indemnity exceed 50 percent of the difference between the appraised value of each swine so destroyed and the net salvage, if any, received by the owner.

[vi.]v. No indemnity will be paid until the premises and associated vehicles are cleaned and disinfected in a manner approved by the cooperating agencies.

[vii.]vi. Following disclosure of hog cholera infection on a premises, prompt depopulation of all swine, indemnity payments by the cooperating agencies and premises disinfection, restocking of such premises with swine will be permitted provided owners and/or operators of such a swine farm follow recommendations of the cooperating agencies for the prevention of hog cholera. Failure to follow such agencies shall render owners and/or operators ineligible for indemnity should hog cholera reinfection occur on such premises.

[viii.]vii. Any swine owner who has willfully violated any [regulations] rules of the [d]Department, that would result in the herd, will be ineligible for indemnity.

[ix.]viii. Feeder swine moving intra-State must be ear tagged by the owner with tags supplied by the [d]Department and recorded in triplicate on an owner's certificate, one copy of which must accompany the swine to destination, one copy to be forwarded to the Division of Animal Health, and one copy to be retained by the owner.

2:2-[4.35]4.32 Swine consigned to livestock markets

(a) Swine offered for sale at livestock markets for other than immediate slaughter shall be individually identified by ear tag, tattoo or other approved individual identification, and shall be so recorded on the market records as to [form or] farm of origin.

(b) Swine for immediate slaughter shall also be identified either by slap tattoo [or], individual ear tag or other approved individual identification and recorded in the market records as to the farm of origin.

Renumber existing 4.36 through 4.38 as 4.33 through 4.35 (No change in text.)

2:2-[4.39]4.36 Authority of [secretary] Secretary of Agriculture or his or her agents

[(a)] The [secretary] Secretary of Agriculture or his or her authorized agent shall have the authority to enter any premises on which swine are kept, and have the power to have appraisal and order the disposal of any and all swine that have been exposed to hog cholera.

[(b)] This shall become effective upon filing with the Director of Administrative Procedures.]

2:2-[4.40] 4.37 Swine pseudorabies vaccination

(a) No person shall vaccinate swine for pseudorabies unless a permit has been issued by the [d]Department. Permits may be granted only to veterinarians licensed in the State [for the vaccination of swine in infected or high risk herds].

(b) No person or firm shall sell, distribute or give away any pseudorabies vaccine unless they have received permission from the [d]Department.

(c) All premises at which garbage has been fed to swine in violation of this subchapter shall be quarantined for a minimum of 30 days during which time no garbage cooked or uncooked may be fed. The 30-day period commences after cleanup and disinfection is approved by Department personnel. The quarantine may be released by testing negative of all or a statistically significant amount of swine for hog cholera and African swine fever or observation and examination of all swine by veterinarians of the Department or USDA and found to be disease free. The selection of the release method shall be at the discretion of the State veterinarian.

(d) All waste feeding swine farms or suspected waste feeding swine farms shall be inspected regularly to assure compliance with garbage feeding rules.

(e) A licensee shall notify an inspector or veterinarian immediately upon detection of illness or death not normally associated with the licensee's operation in animal species on the licensee's premises.

[SUBCHAPTER 5. SHEEP DISEASE CONTROL

2:2-5.1 Scope of subchapter to eradicate sheep scabies

Scabies, commonly known as mange, is a contagious skin disease of sheep caused by the parasite, Psoroptes equi. var. ovis. In order to eradicate this disease, the regulations contained in this subchapter must be met.

2:2-5.2 Inspection of sheep flocks; owner responsibilities

(a) All sheep flocks shall be inspected semiannually by authorized agents of the New Jersey Department of Agriculture.

(b) All owners of sheep are required to present their sheep for inspection and dipping when so requested by the department.

(c) Reinspection of the flock shall be made 60 days after release from quarantine.

2:2-5.3 Quarantine on positive diagnosis of sheep scabies; sheep identification

(a) A positive diagnosis of sheep scabies shall result in a quarantine being placed on all sheep on the premises.

(b) Sheep in infected flocks will be individually identified until released from quarantine.

2:2-5.4 Dip treatment to eradicate sheep scabies

(a) All sheep on an infected premises shall be dipped twice, 10 to 14 days apart, with permitted dip as approved for treatment of sheep scabies by the Federal Code of Regulations, Title 9, part 74¹, as amended. Quarantine upon recommendation of an agent of the department may be removed.

(b) All exposed sheep shall be quarantined by the department and dipped once. The sheep shall then be released from quarantine on recommendation of the agent. The owner of an infected or exposed flock shall arrange proper confinement of his flock so that dipping can be properly and readily accomplished. The owner shall render all necessary assistance in accomplishing the dipping process.

(c) The department shall furnish a portable dipping vat, supervise the preparation of the permitted dip and the dipping of all the sheep in the flock.

(d) The department may require the dipping of all sheep in a specified area of the State, should such procedure be necessary in the eradication of sheep scabies.

¹Copies are filed with and may be received by writing to: Director, Division of Animal Health, Health-Agriculture Building, John Fitch Plaza, Trenton, N.J. 08625

2:2-5.5 Disinfecting facilities exposed to contamination

All infected premises, vehicles and other facilities exposed to contamination by the infective agent, shall be disinfected with an approved disinfectant under the supervision of an agent.

2:2-5.6 Dip treatment of sheep sold at auction markets

All sheep and lambs sold at auction markets or stockyards, for other than immediate slaughter, must be dipped with a permitted dip as specified in Title 9, Part 74, of the Federal Code of Regulations¹ (9 CFR Part 74).

2:2-5.7 Movement of sheep to slaughter

(a) Sheep in infected flocks may be moved to direct slaughter within 10 days of dipping to a slaughter point within the State under written permit by the Department.

(b) Where sheep have been dipped in lindane or toxaphene, they will be withheld from slaughter for 60 days and 28 days respectively.]

SUBCHAPTER 5. BOVINE LEUCOSIS PROGRAM

2:2-5.1 Scope and authority

The Division of Animal Health shall make rules and conduct a voluntary program leading to the eradication of the bovine leucosis virus from individual herds and may designate the animals in those herds as New Jersey Bovine Leucosis Free.

2:2-5.2 Definitions

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

"Bovine leucosis" means a disease of cattle caused by the bovine leukemia virus which is of economic significance.

"Infected animal" means an animal examined by the recognized testing method and found to be infected with the bovine leucosis virus.

"Official test" means the bovine leukemia agar gel immunodiffusion procedure recognized by the United States Department of Agriculture.

2:2-5.3 Procedures

(a) To be eligible for the bovine leucosis program, the following requirements shall be met:

1. All animals in a herd shall be included in an initial test.
2. Owners shall actively implement a culling program of animals found to be infected.
3. Owners shall practice those husbandry methods which reduce the spread of infection.
4. Owners will conduct retests according to a schedule to be cooperatively developed between the owner and the Division of Animal Health based upon the findings. Failure to follow the agreed upon schedule will exclude the herd from the official program.
5. Herds that have had at least one completely negative free herd test, and any additional testing that is required if they comply with (a)3 and 4 above, shall be designated "Leucosis Free" for a period of one year.
6. A "Leucosis Free" status shall be maintained by retesting all cattle over seven months between 340 and 390 days after the date of achieving "Leucosis Free Status". The results of such retesting must be negative for all cattle in the herd to be identified as Leucosis Free for another year.

2:2-5.3 Costs and fees

(a) Cattle owners will enter into a Memorandum of Agreement with the Division of Animal Health containing the following:

1. All costs shall be borne by the owner.
2. The owner agrees to comply with the rules of the program, but is free to withdraw at any time.
3. Accredited veterinarians will sample and identify animals and counsel owners.
4. The Division of Animal Health will provide information to accredited veterinarians, laboratory services, and interpretive and planning assistance.
5. The Division of Animal Health will provide information regarding the disease and program to the owners.

(b) The Division of Animal Health is authorized to establish the following fee schedule for laboratory services:

1. Herds (per animal) in the official program: \$6.00 for the first sample, \$1.75 thereafter.
2. Herds (per animal) not in the official program: \$6.00 per sample.

[SUBCHAPTER 6. NUTRIA]

[2:2-6.1 Application for registration; fees

A person engaged in the raising or breeding of nutria shall make application for registration on forms supplied by the department and accompanied by a registration fee of \$1.

2:2-6.2 Inspection of premises and facilities

(a) After receipt of request for registration, inspection of the facilities and premises of the applicant shall be made by a duly authorized representative of the Department to insure compliance with the law and regulations as stated in this subchapter.

(b) An inspection of the facilities and premises shall be made as often as may be deemed necessary by the Department, but at least annually, to insure compliance with the law and regulations.

2:2-6.3 Housing; pen construction

(a) All nutria shall be maintained in escape proof pens.

(b) Breeders' pens shall be constructed of cement block, brick, poured cement, or other suitable material that cannot be chewed by the animals. Sides of uncovered pen areas must have a minimum of height of 30 inches, unless a side is contiguous to interior pen water in excess of 10 inches deep in which case the height of the side must be at least 2 inches above the water level.

(c) Holding or pelting pens shall be constructed of cement block brick, poured concrete or wire at least four feet high above ground and buried at least 18 inches deep in the ground. The wire shall be of no less than number 11 gauge of not more than a standard two inch mesh. The fence shall be topped with an overhang of similar wire not less than 12 inches in width or tin of a minimum width of eight inches slanting inward, at a minimum of 30 degrees from the vertical.

(d) All breeding and holding pens shall further be surrounded by a fence of garden or poultry type wire of not less than number 16 gauge at least four feet in height and fit snugly to the ground at such distance from the breeding or holding pens as the owner may elect.

2:2-6.4 Sanitation of premises and animals

The premises and animals shall be maintained in a clean and sanitary manner.]

SUBCHAPTER 6. SWINE PSEUDORABIES VIRUS

2:2-6.1 Adoption of USDA Rules

The New Jersey Department of Agriculture adopts the rules and regulations of Title 9 CFR 85.1-85.13 APHIS, USDA as the official rules and regulations of the New Jersey Swine Pseudorabies program. Copies of these regulations may be obtained by writing the New Jersey Department of Agriculture, Division of Animal Health, CN 330, Trenton, NJ. 08625.

SUBCHAPTER 7. POULTRY DISEASE CONTROL

[2:2-7.1 Registration of poultry vaccinators

Vaccinators of poultry, other than the owner of the flock or any veterinarian, shall register with the New Jersey Department of Agriculture.

2:2-7.2 Vaccinators review sessions; examination

Vaccinators shall attend a review session on poultry vaccination procedures to be concluded by a written examination, and shall satisfactorily demonstrate their ability to properly administer vaccines.

2:2-7.3 Vaccinators cards

(a) Vaccinators cards will be issued annually to those that qualify, which may be revoked upon evidence of violation of these regulations.

(b) Vaccinators will carry cards at all times.

2:2-7.4 Records of vaccine used

Vaccinators shall keep records of vaccine used, which shall fully and clearly disclose source of vaccine, lot number, expiration date, amount used, and number of birds vaccinated, such information to be submitted to the Division of Animal Health at such times as requested on forms supplied by the Department.

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2:2-7.5 Temperatures for maintaining vaccine

All vaccine shall be maintained at satisfactory temperatures at all times.

2:2-7.6 Sanitation measures

Agents will practice such sanitation measures as are prescribed by the Department:

- (a) Clean clothing for each farm.
- (b) Cleaned and disinfected footwear.
- (c) Equipment to be cleaned and disinfected prior to use on each farm.
- (d) Burn all unused portions of mixed vaccine after each day's work.

2:2-7.7 Inspection of vaccinators techniques

Vaccinators shall be inspected by agents of the Department at any time to check on proper techniques of administration of the vaccine, dosage and sanitation.]

2:2-7.1 National Plan adopted, supplemented

(a) The State Board of Agriculture adopts the rules and regulations of the National Poultry and Turkey Improvement Plans of the United States Department of Agriculture as the official rules and regulations of the New Jersey Program.

(b) In addition, the State Board of Agriculture promulgates the rules and regulations found in the following sections of this chapter.

2:2-7.2 General regulations

(a) All poultry hatcheries and flocks within New Jersey must qualify as National Plan hatcheries. All hatcheries and flocks shipping to New Jersey must qualify as United States pullorum-typhoid clean; or they must meet equivalent requirements for pullorum-typhoid control under official supervision.

(b) All shipments of products, other than United States pullorum-typhoid clean or the equivalent, into the state are prohibited except for immediate slaughter.

(c) All poultry, except water fowl, shown in public exhibitions in New Jersey must originate from United States pullorum-typhoid clean or equivalent flocks, or have a negative pullorum-typhoid test within 90 days of the movement to the public exhibition.

2:2-7.3 Pullorum-typhoid disease testing and testing agents

(a) All breeding birds to be tested shall be selected and banded by a veterinarian or inspector of the New Jersey Department of Agriculture or by qualified testing agents under Department supervision.

(b) The pullorum-typhoid test shall be done by representatives of the New Jersey Department of Agriculture or qualified testing agents under Department supervision.

(c) Testing agents shall take a minimum one-day course of training as prescribed by the New Jersey Department of Agriculture and shall pass a written examination on National Poultry Improvement Plan (NPIP) rules and sanitation and a practical test to prove their ability to select and test birds for pullorum-typhoid diseases before being certified. A refresher training course shall be required annually for recertification.

(d) Applications for certification shall be made in writing, sufficiently in advance to permit the early scheduling of work by the Department of Agriculture.

(e) Certification or recertification will be denied pursuant to provisions of NPIP or violation of these rules.

(f) Any reactors must be submitted for bacteriological examination for pullorum-typhoid disease. The bacteriological examination must be done in one of the following laboratories:

1. New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, Trenton, New Jersey 08625; or
2. Poultry Pathology, Department of Animal Science, Cook College/New Jersey Experiment Station, Rutgers, the State University, New Brunswick, New Jersey 08903.

2:2-7.4 Reporting and quarantine provisions

(a) Pullorum-typhoid diseases are reportable diseases under N.J.A.C. 2:2-1.1 and must be reported by any veterinarian or other person to the New Jersey Department of Agriculture.

(b) Upon receipt of a report of pullorum-typhoid, the Division of Animal Health shall direct the immediate investigation by an authorized representative to determine the origin and avenue of transmission of the infection.

(c) The flocks or hatching eggs deemed to be infected with pullorum-typhoid shall be quarantined. Quarantined flocks or any portion thereof shall not be removed from the premises where the infection was detected or disposed of except in accordance with the written permission of the Department of Agriculture.

SUBCHAPTER 8. (No Change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Limited Dividend and Nonprofit Housing Corporations and Associations Rents and Charges; Payments in Lieu of Property Taxes

Proposed Amendment: N.J.A.C. 5:13-1.14.

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

Authority: N.J.S.A. 55:16-11.

Proposal Number: PRN 1988-489.

Submit comments by November 2, 1988 to:
Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625-0802

The agency proposal follows:

Summary

N.J.S.A. 55:16-18 provides that the payment in lieu of taxes to be made by a limited dividend or nonprofit sponsor of a project that has been given tax exemption shall be "in such amount, not exceeding the tax on the property on which the project is located for the year in which the undertaking of said project is commenced or 15 percent of the annual gross shelter rents obtained from the property, whichever is the greater, as may be agreed to by the municipality and the housing corporation or housing association and approved by the authority." The "authority", that is, the Department of Community Affairs, is proposing a rule to make clear its understanding, as the agency authorized to approve agreements as to "in lieu" payments, as to how the amount of such payments is to be determined.

It has come to the Department's attention that some municipal representatives have taken the position that the payment in lieu of taxes is required to be either the amount of the taxes in the year the project is begun or 15 percent of annual gross shelter rents, whichever is more, and that the municipality does not have the option of accepting a lesser amount. The proposed amendment makes it clear that that interpretation is not correct and that an amount equal to the greater of the preexisting taxes or 15 percent of annual gross shelter rents represents only the maximum amount that can be charged. As support for this position, the Department cites the statutory phrase "as may be agreed to by the housing corporation or housing association and approved by the authority." If the amount of the payments in lieu of taxes were required to be the greater of two clearly defined and readily determinable amounts, it would be derived by calculation, not be negotiation subject to the Department's approval.

The proposed amendment balances the needs of the housing sponsor and the municipality by making it clear that the payment is to be set at the highest level, subject to the statutory maximum, at which it will not have an adverse impact upon project viability.

Social Impact

By making it clear that payments in lieu of taxes may, where necessary for project viability, be set at a level below the statutory maximum, the proposed amendment will eliminate a recurring source of controversy

between municipalities and housing sponsors and may encourage the development of projects which would not be financially feasible if maximum payments in lieu of taxes were imposed.

Economic Impact

By facilitating the construction of projects which would not otherwise be built because maximum "in lieu" payments would make the project economically nonviable, the proposed amendment will benefit low and moderate income people by increasing the supply of affordable housing. In most cases, the payments made by the sponsor of a project paying less than the maximum amount will still be more than the taxes levied on the site prior to construction of the project, so there still be some additional revenue for the municipality. A municipality which views a project as a financial drain will not be compelled to allow tax exemption in the first place.

Regulatory Flexibility Statement

This proposed amendment would affect limited dividend corporations and associations, virtually all of which would qualify as "small businesses" for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would be beneficial to them in that it would increase the likelihood of project viability. No added burdens would be imposed and there would be no basis for differential treatment.

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

5:13-1.14 Rents and charges

(a) The rent schedule approved by the Authority [will] **shall** be adequate to pay all necessary and reasonable expenses including, but not limited to, the cost of operation and maintenance, reserves for replacement, vacancy and other contingencies, payments in lieu of taxes, mortgage interest and amortization payments, mortgage insurance premiums, and dividends on investments.

(b) **The amount of payment in lieu of taxes approved by the Authority shall be the maximum amount, not exceeding the statutory maximum, that is, the greater of the tax on the property on which the project is located for the year in which the undertaking of the project is commenced or 15 percent of the annual gross shelter rents, that can be paid without endangering or impairing the viability of the project. The payment in lieu of taxes shall be in an amount less than the statutory maximum during any year in which such lesser amount is necessary for project viability.**

(a)

DIVISION ON AGING

**Congregate Housing Services Program
Income, Program Costs, and Service Subsidy
Formula**

Proposed Amendment: N.J.A.C. 5:70-6.3

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

Authority: N.J.S.A. 52:27D-188.

Proposal Number: PRN 1988-484.

Submit comments by November 2, 1988 to:

Ann Zahora, Director
Division on Aging
CN 807
Trenton, N.J. 08624

The agency proposal follows.

Summary

The Congregate Housing Services Program has been in operation since the rules were originally adopted on August 16, 1982. The program provides a supportive environment to frail, elderly tenants living in subsidized housing facilities through the provision of selected services such as a daily meal, homemaking and personal care services. In addition, the program provides subsidies to those meeting the income eligibility guidelines formulated under the rules of the program.

The proposed amendment is pursuant to the requirement of N.J.A.C. 5:70-6.3(f) that "service subsidies shall be adjusted annually on January 1. The adjustment shall be made on the basis of the percentage increase

in Social Security benefits given to Social Security recipients pursuant to 42 U.S.C.A. 415 for the immediately preceding calendar year".

The adjustment in categories of disposable income reflects the increase in Social Security benefits. Under the current rules, the participants in the congregate housing service program may be required to pay an additional amount for program costs if they receive an increase in Social Security. With the adoption of this amendment, they will not be required to pay this additional amount.

Social Impact

A growing and major social problem is the need to plan for the health and welfare of tens of thousands of "young old" who moved into the many senior citizen housing projects developed during the 1960's and 1970's and who are still residing in these housing projects. These people are now into their late 70's and 80's and some are approaching or are in their 90's.

Approximately half of the tenants using congregate housing services could be defined as pre-nursing home candidates, and at least 25 percent of the tenants would probably be Medicaid eligible for nursing home entry if not maintained in their independent setting.

The Congregate Housing Services Program is having a profound impact upon management of subsidized housing facilities. There is growing evidence that persons can now be admitted to these facilities with a higher degree of frailty than was previously possible and can, therefore, remain in their apartments longer before long-term nursing home care is necessary.

In addition, tenants are able to return to the facility after a hospital or nursing home stay because of the availability of the program.

Economic Impact

The economic impact of the adjustment in the categories of disposable income will be on the older tenant living in subsidized housing facility who is receiving congregate housing services or who will be eligible for a subsidy. Each income category set forth was multiplied by the percentage increase given to the Social Security Recipients pursuant to 42 U.S.C.A. 4.5, immediately preceding the calendar year. This will have a positive economic impact on the participants of the Congregate Housing Services Program, in that they will not be disadvantaged by having to pay more, in the event they receive a percentage increase in Social Security benefits pursuant to 42 U.S.C.A. 415.

Regulatory Flexibility Statement

This proposed amendment applies to qualified housing agencies under the Congregate Housing Services Act. Such agencies include nonprofit and those limited dividend housing sponsors which qualify as small businesses.

The proposed amendment requires such agencies to prepare and maintain the same type of records and reports as have been required under the Department's existing rules for the Congregate Housing Services Program. These reports and records concern: the individuals receiving program subsidies for certain living expenses they incur while residing at housing projects owned and operated by these agencies; and the manner in which such agencies utilize program funds in defraying the costs of certain services to such individuals.

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

5:70-6.3 Income, program costs and service subsidy formula

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

(e) Service subsidies for eligible program participants will be provided in accordance with the following formula:

1. STEP I

$$\text{NET INCOME} - \text{RENT} = \text{DISPOSABLE INCOME}$$

$$(\text{N.I.}) - (\text{R}) = (\text{D.I.})$$

[1. The following STEP II shall be operative until December 31, 1987:

STEP II

D.I. of \$0-159.00: SERVICE SUBSIDY = 95 percent of Program Cost

D.I. of \$160-\$224.00: SERVICE SUBSIDY = 75 percent of Program Cost

D.I. of \$225.00-\$369.00: SERVICE SUBSIDY = 60 percent of Program Cost

D.I. of \$370.00-\$506.00: SERVICE SUBSIDY = 20 percent of Program Cost

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2. The following formula shall become operative on January 1, 1988:

STEP II

D.I. of \$0.00 to \$159.00: SERVICE SUBSIDY = 95 percent of Program Cost

D.I. of \$160.00 to \$268.00: SERVICE SUBSIDY = 80 percent of Program Cost

D.I. of \$269.00 to \$377.00: SERVICE SUBSIDY = 60 percent of Program Cost

D.I. of \$378.00 to \$486.00: SERVICE SUBSIDY = 40 percent of Program Cost

D.I. of \$487.00 to \$595.00: SERVICE SUBSIDY = 20 percent of Program Cost]

2. The following STEP II formula shall become operative on January 1, 1989:

D.I. of \$0.00 to \$166.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of \$167.00 to \$279.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of \$280.00 to \$393.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of \$394.00 to \$506.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of \$507.00 to \$620.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

(f) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Surface Water Quality Standards

Proposed Repeal: N.J.A.C. 7:9-4 Indexes A, B, C, D, E, F, G and Guide to Use of Indexes B through F

Proposed New Rule: N.J.A.C. 7:9-4.15

Proposed Amendments: N.J.A.C. 7:9-4.4, 4.5, 4.6 and 4.14(c)

Extension of Comment Period

Take notice that the Department of Environmental Protection is extending until October 14, 1988 the period for the submission of written comments on the proposed rules concerning surface water quality standards. The proposed rules were published on July 18, 1988 in the New Jersey Register at 20 N.J.R. 1597(a). Please refer to the proposal (DEP Docket No. 024-88-06) for further information.

Submit comments by October 14, 1988 to:

Edward J. Morrison, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

(b)

DIVISION OF WATER RESOURCES

Standards for Individual Subsurface Sewage Disposal Systems

Proposed New Rules: N.J.A.C. 7:9A

Proposed Repeals: N.J.A.C. 7:9-2

Extension of Comment Period

Take notice that the Department of Environmental Protection is extending until October 14, 1988 the period for the submission of written

comments on the proposed rules concerning standards for individual subsurface sewage disposal systems. The proposed rules were published on August 1, 1988 in the New Jersey Register at 20 N.J.R. 1790(a). Please refer to the proposal (DEP Docket No. 026-88-07) for further information.

Submit comments by October 14, 1988 to:

Rachel Lehr, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

(c)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Hazardous Waste Fees

Proposed Amendments: N.J.A.C. 7:26-1.1, 1.4, 4

Proposed New Rules: N.J.A.C. 7:26-4A

Extension of Comment Period

Take notice that the Department of Environmental Protection is extending until October 14, 1988 the period for the submission of written comments on the proposed rules concerning hazardous waste fees. The proposed rules were published on August 15, 1988 in the New Jersey Register at 20 N.J.R. 1995(a). Please refer to the proposal (DEP Docket No. 031-88-07) for further information.

Submit comments by October 14, 1988 to:

Carl Will
Division of Regulatory Affairs
Department of Environmental Protection
CN-402
Trenton, New Jersey 08625

HUMAN SERVICES

The following proposals are authorized by Drew Altman, Commissioner, Department of Human Services.

(d)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Screening and Screening Outreach Programs

Proposed Repeal: N.J.A.C. 10:37-5.6, 5.16

Proposed New Rules: N.J.A.C. 10:31

Authority: N.J.S.A. 30:4-27.1 et seq., especially 30:4-27.5.

Proposal Number: PRN 1988-481.

Submit comments, in writing, by November 2, 1988 to:

Alan Kaufman, Director
Division of Mental Health and Hospitals
13 Roszel Road
Princeton, NJ 08540

The agency proposal follows:

Summary

These proposed new rules for a Screening and Screening-Outreach Program in every geographic area in the State of New Jersey are proposed pursuant to P.L. 1987, c.116. (N.J.S.A. 30:4-27.1 et seq). The State of New Jersey is responsible for the provision of care, treatment and rehabilitative services to mentally ill persons who are dangerous to themselves, others or property, yet do not seek appropriate voluntary treatment. Because involuntary commitment entails the loss of certain liberties, it is necessary to balance the basic value of liberty with the need for safety and treatment. Citizens of New Jersey who are mentally ill and in need of treatment are entitled to receive that treatment in the least restrictive, clinically appropriate setting as close to their own community as possible. The Screening and Screening-Outreach Programs meet that need by providing emergency psychiatric services and screening on and off site, as needed. Hospitalization is considered within the context of a larger network of acute care services. The Division will designate a limited number of screening centers and screening outreach programs. Staff at these centers will be highly trained in the assessment and evalu-

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ation of individuals regarding need for acute or other mental health services, and in the use of community-based programs as an alternative to psychiatric hospitalization. In many instances, it has been shown that use of such alternatives can be most successful in providing effective crisis stabilization while simultaneously averting the greater stigma, restrictions, and psychiatric regression often associated with lengthy in-patient hospitalizations. Each case needs to be evaluated individually and a complete assessment made before a treatment plan is developed. Involuntary commitment is processed only after a Certified Screener and a psychiatrist affiliated with a Designated Screening Center have determined that the individual is mentally ill and dangerous to him or herself, others or property and all stabilization options have been considered or exhausted.

These rules describe a screening process which seeks to provide services in the least restrictive, clinically appropriate setting possible and thereby avoid the need for unnecessary hospitalization. It must be acknowledged that not all geographic areas within the State may have available to them all components of a community mental health system described in these rules. However, each geographic area will, at a minimum, provide screening and screening outreach as described in N.J.A.C. 10:31-2.1.

These rules shall become effective upon adoption. An extension of the effective date for P.L. 1987, c.116 has been requested and is anticipated prior to adoption of these rules. These rules will become operative on this new date.

The rules being proposed for repeal, N.J.A.C. 10:37-5.6 and 5.16, cover current provisions for emergency and screening services, which will not be necessary upon adoption of N.J.A.C. 10:31.

Social Impact

The proposed new rules are being enacted to ensure that persons suffering from mental illness receive a higher quality of screening and assessment prior to being considered for involuntary commitment and that all available services options be available to clients, regardless of the geographic area in which they live. Previously, persons could be evaluated and involuntarily committed to State hospitals by a wide range of service providers.

The establishment of Screening Centers will facilitate the development of a system of acute care services in the community to assure that whenever possible a person receive services in their own community. Currently 22,000 persons who are mentally ill are seen for emergency services; these rules will upgrade the quality of services to these persons.

It is anticipated that these rules will receive the general support of mental health providers and advocacy groups, though it is anticipated that there will be a number of outstanding issues from individual groups.

Economic Impact

These proposed rules would economically affect hospitals and community mental health providers who contract with the Division of Mental Health and Hospitals to provide psychiatric screening services. No negative impact is expected as a result of these rules, since services are expected to be contracted by DMH&H. The general public, the mentally ill and the families of the mentally ill, can be expected to experience both social and personal savings by the anticipated increase in diversions from more costly in-patient hospitalizations to less costly community-based services that screening services will provide.

Increases in State Psychiatric Hospital costs can be better contained through a combination of screening services and short term care in general hospitals. Costs to implementing agencies, that is, screening centers, will be borne by contracts with the Division of Mental Health and Hospitals.

Regulatory Flexibility Statement

These rules will have no impact on small businesses in New Jersey, as they are defined in N.J.S.A. 52:14B-16. Screening centers will be operated by nonprofit hospitals or community mental health agencies. The Department does not believe that non-profit agencies fall into the definition of small businesses, and, therefore, does not consider that a regulatory flexibility analysis is required.

Full text of the proposed repeal may be found at N.J.A.C. 10:37-5.6 and 5.16.

Full text of the proposed new rules follows:

CHAPTER 31

SCREENING AND SCREENING-OUTREACH PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

10:31-1.1 Scope

(a) The Screening and Screening-Outreach Program is designed to provide on and off site screening and crisis stabilization services, 24-hours per day, 365 days per year, in every geographic area in the State of New Jersey. The mode of stabilization will depend on the seriousness of the impairment, degree of potential dangerousness and the availability of appropriate services. The locus of treatment will be as close to the patient's home as circumstances permit.

(b) The Screening and Screening-Outreach Program shall be established in every geographic area as a new program or as an expansion of an existing emergency service. The Screening and Screening-Outreach Program shall be provided by a screening center, designated by the Division.

10:31-1.2 Purpose

(a) The purposes of the Screening and Screening-Outreach Program are as follows:

1. To provide clinical assessment and crisis stabilization in the least restrictive clinically appropriate setting, as close to the patient's home as possible;
2. To provide, at a minimum, outreach to individuals who are in crisis and are unable or unwilling to come in to the screening center as stipulated in P.L. 1987, c.116;
3. To expand outreach to include other crisis and emergency situations whenever possible;
4. To assure referral and linkage of persons provided screening and/or screening outreach services to appropriate mental health and social services;
5. To coordinate access, where appropriate, to the publicly affiliated acute care psychiatric resources serving a designated geographic area, that is, acute partial care, crisis house, voluntary inpatient services;
6. To provide screening for involuntary commitment;
7. To serve as the admission screener and primary route of access to the short term care facility, county psychiatric hospital, and State psychiatric hospital;
8. To provide training and technical assistance concerning psychiatric emergencies to other social service and mental health providers in the geographic area;
9. To coordinate a system for review and monitoring of the effectiveness and appropriateness of screening and screening outreach service use, including impact upon admissions to State and county psychiatric hospitals.

10:31-1.3 Definitions

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

"Acute care" means community and in-patient psychiatric services designed to provide stabilization during the acute phase of psychiatric illness.

"Acute in-home service" means family or significant other focused interventions provided on an outreach basis in the consumer's residence (for example, boarding home, own home, etc.) to prevent a more restrictive placement by assisting all individuals in the client's living situation.

"Acute partial care" means a day treatment program whose purpose is to promote stabilization and acute symptom reduction through structured individual and group activities and interventions which are provided throughout the day and early evening.

"Assessment" means evaluation of the individual in crisis in order to ascertain his or her current and previous level of functioning, psychosocial and medical history, potential for dangerousness, factors contributing to the crisis, and support systems that are available.

"Certified screener" means an individual who has fulfilled the requirements set forth in N.J.A.C. 10:31-3.3 and has been certified by the Division to assess a patient's eligibility for involuntary commitment.

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"Client" means an individual receiving assessment or treatment in a screening center or any ambulatory mental health service.

"Clinical case management program (CCMP)" means the case management program provided to mentally ill individuals who do not accept or engage in facility-based mental health programs and/or have multiple service needs and require extensive service coordination. The CCMP ensures a coordinated and integrated client service system for the targeted mentally ill individual.

"Clinical certificate" means a form developed by the Division of Mental Health and Hospitals and approved by the Administrative Office of the Courts that is completed by a psychiatrist or other physician, which states that the person designated therein is in need of involuntary commitment.

"Clinical director" means the person who is designated by the director or chief executive officer of the screening center to provide medical leadership in a screening center. This may be a full or part-time position.

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

"Community gatekeeper" means an individual such as a police officer, religious leader, family member, etc., who may refer an individual for mental health services.

"Crisis companion" means an individual who is trained and experienced in the care of the acutely mentally ill patient and provides supervision on an as-needed basis on a variety of settings.

"Crisis housing" means a community-based crisis stabilization program providing an alternative setting for stabilization of individuals who are assessed by an emergency screening service as being in acute psychiatric crisis.

"Crisis intervention counseling" means an attempt to facilitate crisis stabilization through the use of specific, time-limited counseling techniques. Crisis intervention counseling focuses on the present, providing pragmatic solutions to identified problems.

"Crisis intervention specialist" means an individual employed by a screening center or emergency service who meets the educational and experiential requirements set forth in N.J.A.C. 10:31-3.4 and 4.3, and provides assessment, crisis stabilization services, hotline coverage, outreach and referral to people who are in crisis.

"Crisis outreach" means outreach provided by an emergency service for the purpose of crisis stabilization. It does not include screening.

"Crisis stabilization" means that intensive crisis intervention efforts have resulted in a significant reduction of positive symptomatology and some improvement in level of functioning, bringing the individual closer to the level of functioning demonstrated prior to the crisis.

"Crisis stabilization services" means acute care services.

"Dangerous to self" means that, by reason of mental illness, the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his or her need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future.

"Dangerous to others or property" means that, by reason of mental illness, there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination takes into account a person's history, recent behavior and any recent act or threat.

"Designated screening center" means a public or private ambulatory care service designated by the Commissioner, which provides mental health services including assessment, screening, emergency and referral services to mentally ill persons in a specified geographic area. A designated screening center is the facility in the public mental health care treatment system wherein a person believed to be in need of commitment to a short-term care, psychiatric facility or special psychiatric hospital undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be most appropriately provided.

"Division" means the Division of Mental Health and Hospitals, Department of Human Services.

"Emergency service (ES)" means a mental health provider responsible for the provision of service to people in crisis. ES includes mental health and social service provision or procurement and advocacy. Emergency services offer immediate crisis intervention services and service procurement to relieve the client's distress and to help maintain or recover his or her level of functioning. Emphasis is on stabilization, so that the client can actively participate in needs assessment and service planning.

"Emergency service coordinator" means an individual employed by an emergency service who meets the educational and experiential requirements set forth in N.J.A.C. 10:31-4.2 (a) and fulfills the duties set forth in N.J.A.C. 10:31-4.2 (b).

"Geographic area" means a geographically distinct area designated by the Commissioner to be served by one screening center. This area may be a county, portion of a county, or a multi-county area.

"Hotline" means a telephone line answered directly by a clinical worker 24 hours per day for the purpose of providing telephone crisis intervention counseling, information and referral.

"Holding bed" means a bed provided in a secluded secure area where an individual can be held for up to 24 hours while being assessed and receiving intensive supervision and medication monitoring.

"Involuntary commitment" means the procedure for enacting treatment of an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property, and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short-term care facility, psychiatric facility or special psychiatric hospital because other services are not appropriate to meet the person's mental health care needs.

"Linkage" means referral to and enrollment in a mental health and/or non-mental health program.

"Medication monitoring" means the provision of a variety of medication-related services which may include assessment for appropriateness of medication, titration of dosage, prescription, administration, evaluation and management of side effects and education related to psychotropic medication.

"Mental health board" means the county board appointed by each county board of freeholders or county executive or governing body, to review progress in the development of comprehensive community mental health services in the county.

"Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgement, behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment as defined herein.

"Natural support system" means the patient's family, friends, neighbors, or significant others who are willing and able to provide emotional, financial or other help.

"Off site" means service provided in any location other than the screening center.

"On site" means service provided at the screening center.

"Personal contact" means either face-to-face or telephone contact.

"Program" means a set of related organizations, resources and/or services directed to the accomplishment of a defined set of objectives or missions for a specific target group(s). A program may include the activities of more than one agency, program element, division or department.

"Psychiatric facility" means a State psychiatric hospital listed in N.J.S.A. 30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital.

"Psychiatrist" means a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

"Psycho-education" means information dissemination, professional guidance and consultation and skill development to families in becoming essential contributors in the rehabilitation process.

"Quality assurance (QA)" means the ongoing objective and systematic monitoring and evaluation of a service's or system's components to ensure quality, effectiveness, and appropriateness of care and the pursuit of opportunities to further improve the care.

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"Referral" means services which direct, guide, and link a recipient with appropriate services provided by community resources outside of the organization itself.

"Screening" means the process by which it is ascertained that the individual being considered for commitment meets the standards for both mental illness and dangerousness as defined in P.L. 1987, c.116 (N.J.S.A. 30.4-27.1 et seq), and that all stabilization options have been explored or exhausted.

"Screening center coordinator" means an individual who is employed by a designated screening center, who meets the educational and experiential requirements set forth in N.J.A.C. 10:31-3.2 (a) and fulfills the duties set forth in N.J.A.C. 10:31-3.2 (b).

"Screening outreach" means an evaluation provided off site by a certified screener, wherever the person to be screened may be located when clinically relevant information indicates the person may need involuntary commitment and is unable or unwilling to come to a screening service.

"Short-term care facility (STCF)" means an inpatient, community-based mental health treatment facility which provides acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self, or dangerous to others, or property.

"Stabilization options" means treatment modalities or means of support used to remediate a crisis. They may include, but are not limited to, crisis intervention counseling, acute partial care, crisis housing, acute in-home services, holding bed with medication monitoring or emergency stabilization regimes, voluntary admission to local inpatient unit, referral to other 24-hour treatment facilities, referral and linkage to other community resources, and use of natural support system.

"Treatment facility" means a legal entity, public or private, providing mental health, mental retardation and/or drug and alcohol services.

SUBCHAPTER 2. PROGRAM REQUIREMENTS**10:31-2.1 Functions of a screening center**

(a) A screening center shall perform the following direct service functions:

1. Assessment of the crisis situation, and the need for stabilization and support services and/or screening for, involuntary commitment. This shall take place throughout the geographic area served by the center including other emergency service (see N.J.A.C. 10:31-2.2);
2. Crisis intervention counseling;
3. Assessment, referral via personal contact, linkage and follow-up in order to maintain contact with all clients until they are engaged in another service, accepted for clinical case management, or are no longer in crisis (see N.J.A.C. 10:31-2.1(d)9.);
4. A 24-hour hotline which shall be answered directly by a certified screener, crisis intervention specialist, or other clinical personnel under the supervision of the screener or crisis intervention specialist, which hotline shall receive calls which have been forwarded from other ES during off hours;
5. Twenty-four hour per day screening outreach, which shall include provision of mobile screening services in any location in the geographic area, under the following circumstances:
 - i. Whenever there is indication that there may be a reasonable likelihood of dangerousness to self, or others, or property due to mental illness;
 - ii. Whenever the individual is unable or unwilling to come to the screening center or transporting the individual may put him or her or others at further risk; and
 - iii. If the client's history, behavior or location presents safety concerns, consultation by the screening outreach team with the police, if necessary, and coordination of the outreach with them;
6. Operation of holding bed(s) with 24-hour capability, which shall be used for crisis stabilization;
7. Provision of protocol and procedures for use of various medication techniques, including emergency stabilization regimes;
8. Provision of medication monitoring, which shall include medication on-site for the purpose of crisis stabilization;

9. Provision for face-to-face follow-up visits (either on site or off site) until the crisis is resolved or linkage completed;

10. Psycho-educational and/or supportive services to family members who are involved at time of initial crisis.

(b) Each screening center shall submit and have approved by the Division a plan for prioritizing response to screening outreach calls and provide time frames for response. Time frames shall reflect the unique characteristics of the geographic area. The plan shall also include a protocol for police involvement.

(c) The center shall maintain responsibility for medication until this responsibility is transferred to another agency according to the procedure set forth in an affiliation agreement. Linkage shall be completed within seven days.

(d) Screening outreach services may be expanded to provide additional prevention, intervention, and stabilization services. This is strongly encouraged when resources are available.

(e) One or more functions of a screening center may be delegated in accordance with a county plan approved by the Division.

(f) In addition to the direct service functions listed in (a) above, for the geographic area's acute mental health services, the screening center shall:

1. Have exclusive access, assured by the Division through its contracting process, to a specifically designated portion of Division-funded acute care services in its geographic area. The intent of this provision is to ensure that acute care services are prioritized for use by persons in crisis, and that equitable utilization of resources occurs throughout the geographic area. These services shall include acute partial care, crisis housing (including a crisis house, foster home or crisis bed model), acute in-home services and crisis companions. The following options may be utilized:

- i. The screening center may itself operate the acute care services;
- ii. The screening center may sub-contract all or a portion of the acute care services; and/or
- iii. The screening center may affiliate with another provider which is under contract to the Division to provide some or all acute care services within the geographical area;

2. Maintain an affiliation with the STCF(s) serving the geographic area which will be utilized for involuntary hospitalization and screen admissions to the STCF;

3. Notify the provider of liaison services whenever an individual is involuntarily hospitalized at a STCF or State or county psychiatric hospital;

4. Develop written affiliation agreements with other community agencies which ensure immediate access to psychiatric evaluation for medication and other mental health support services;

5. Provide training or technical assistance for police and other community gatekeepers as needed, directly or through affiliation with other agencies;

6. Assure that a plan for transporting clients in crisis be developed, which includes transportation to an emergency service or screening center and from these services to an appropriate treatment facility once identified;

7. Provide crisis intervention training for ES providers in the geographic area as needed;

8. Develop and coordinate mechanism for acute care system review for all acute care services listed in N.J.A.C. 10:31-2.1(a);

9. Maintain a system for tracking currently available treatment openings in acute mental health services for which the screening center is granted access either directly, by subcontract, or by affiliation; and

10. Comply with N.J.A.C. 10:37-6.13 regarding records of all persons seen by the center and compile information regarding disposition of such persons for review by the systems review committee N.J.A.C. 10:31-5.).

10:31-2.2 Functions of an emergency service (ES)

(a) In addition to the designated screening center, a geographic area may include one or more ES's. All emergency services shall be affiliated by written agreement with the geographic area's designated screening center. Each ES shall provide all of the following services:

1. Crisis intervention counseling for clients, family members, and/or significant others;

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2. Provision and monitoring of medication on site for the purpose of crisis stabilization and provision for medication until this responsibility is transferred to another agency or service;

3. Assessment, referral, linkage, and follow-up, which shall include maintenance of contact with all clients until they are engaged in another service or their problem has been resolved;

4. A hotline, answered directly by clinical staff during peak hours, and provision for calls to be forwarded to the designated screening center at other times;

5. Linkage to acute care services (such as crisis housing, acute partial, and acute in-home services), facilitated through the designated screening center; and

6. Provision of linkage and necessary follow-up to other mental health and non-mental health services;

(b) The following services may also be directly provided by the emergency service:

1. Holding bed(s) with 24 hour capacity;
2. Protocol and procedures for use in various medication techniques, including emergency stabilization regimes;
3. Follow-up visits to ensure stabilization;
4. Crisis intervention outreach; and
5. Follow-up visits off-site.

10:31-2.3 Screening process and procedures

(a) The screening process shall involve a thorough assessment of the client and his or her current situation to determine the meaning and implication of the presenting problem(s) and the nature and extent of efforts which have already been made. The screener shall make every effort to gather information from the client's family and significant others to determine what the clinical needs of the client are and to determine what services are in the best interest of the client. The screener, in conjunction with affiliated mental health care providers, shall advocate for services to meet client needs and encourage the system to respond flexibly.

(b) Whenever possible and appropriate, all stabilization options including the following shall be explored before involuntary commitment is considered.

1. Use of natural support system;
2. Referral and linkage to community resources;
3. Crisis intervention counseling;
4. Outpatient services for medication monitoring and follow-up;
5. Acute partial care;
6. Acute in-home services;
7. Holding bed with medication monitoring;
8. Crisis housing;
9. Referral to other 24-hour treatment facility; and
10. Voluntary admission to local in-patient unit.

(c) After exploring the appropriateness of, and exhausting all options listed in (b)1 above, the screener shall ascertain whether the individual being considered for commitment:

1. Meets the standard for mental illness as defined in P.L. 1987, c.116 (N.J.S.A. 30:4-27.1 et seq); and
2. Meets the standard for dangerousness as defined in P.L. 1987, c.116 (N.J.S.A. 30:4-27.1 et seq); and N.J.A.C. 10:31-1.3. If so, the screener shall complete the screening certificate and refer the patient to the psychiatrist for evaluation.

(d) The psychiatrist shall complete a psychiatric evaluation and complete the clinical certificate if the client meets the standards for commitment.

(e) A client shall receive a thorough assessment if he or she is referred to a screening center because of possible dangerousness resulting from mental illness and failure to obtain the bare necessities of life.

1. If the assessment reveals that a client does not meet the commitment standard, the screening center shall refer the client to the appropriate social service agency(s). It shall be the responsibility of such agencies to procure needed services. If the client is in need of mental health services, the screening center shall facilitate the necessary linkages to mental health services.

2. If the assessment reveals that a client is dangerous to self due to a failure to obtain essential provisions required to sustain life, it

shall be the responsibility of the screening center to arrange the provision of such services for the client.

(f) Each screening center shall have the capability to provide mobile screening outreach in the community, 24 hours per day. Outreach teams are preferable and should be utilized, based on both clinical and safety factors. Such outreach shall take place whenever clinically relevant information indicates that a person may be mentally ill and a danger to himself or others. The mobile team shall determine priority and respond to all such calls within one hour. Screening outreach shall take place wherever the client is located whether in a private home, hospital, boarding home or other location. Police shall be requested to accompany the mobile team when necessary. The outreach screener shall provide appropriate intervention, referral and linkage following a face-to-face assessment whether or not the individual is found to meet the commitment standard.

(g) The screening of clients seen in an ES (other than the designated screening center) may be accomplished in any of the following ways, in accordance with affiliation agreements developed between the screening center and the emergency service, and as determined by the screening center, based upon the best interest of the client and with the goal of avoiding the transportation of the client, except where necessary for treatment purposes:

1. Outreach by a screener to the ES: If this option is utilized, the screener shall be available within one hour to provide the outreach. There shall be sufficient staff and space at the ES to maintain the client until the screener arrives.

2. By a screener stationed in the ES: If ES utilization justifies this option, a screener, employed by the designated screening center and credentialed by the host ES, shall be stationed at the ES during peak hours.

3. By transportation of a client to the screening center: This option shall be utilized only after a telephone consultation with the screening center confirms that there is reason to believe that the person may meet the criteria for commitment and the screening center has given approval for the transfer. If this option is utilized, alternative treatment planning shall occur at the screening center if the client does not require commitment; that is, the client shall not be transferred back to the ES for such alternative treatment planning. During the telephone consultation, if there is a disagreement about disposition, a face-to-face evaluation by the screener shall take place prior to transport.

4. In the case of (g)1 and 2 above, if the screener has seen the person, explored all options and involuntary commitment is needed, the screener may fill out the screening document and the person may be seen by the emergency service psychiatrist for assessment and, if necessary, the completion of a clinical certificate, prior to admission to an inpatient service.

10:31-2.4 Confidentiality

(a) Screening centers shall comply with N.J.S.A. 30:4-24.3, as follows:

"All certificates, applications, records, and reports made pursuant to the provisions of this Title and directly or indirectly identifying any individual presently or formerly receiving services in a noncorrectional institution under this Title, or for whom services in a noncorrectional institution shall be sought under this act shall be kept confidential and shall not be disclosed by any person, except insofar as:

1. The individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or

2. Disclosure may be necessary to carry out any of the provisions of this act or of article 9 of chapter 82 of Title 2A of the New Jersey Statutes; or

3. A court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient's current medical condition to any relative or friend or to the patient's personal physician or attorney if it appears that the information is to be used directly or indirectly for the benefit of the patient.

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Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health and Hospitals in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are defined in section 2 of P.L. 1987, c.116, from disclosing information that is relevant to a patient's current treatment to the staff of another such agency".

10:31-2.5 Availability of staff

(a) A designated screening center shall have, at a minimum, the following personnel:

1. A psychiatrist, who shall be available 24 hours per day, 365 days per year, to provide telephone consultation, medication orders, and face-to-face evaluation as needed, with the amount of on-site coverage appropriate to the amount of volume experienced by this service;

2. Certified screener(s) who shall be available 24 hours per day, 365 days per year, to provide screening as needed on site at the screening center and off site through mobile screening outreach services;

3. Personnel, as specified in the contract between the center and the Division, who shall be on-site to provide continuous monitoring of the patient in the holding bed(s) and administration of medication as needed;

4. A screening center coordinator, or his or her designee, who shall be available 24 hours per day, 365 days per year, to provide administrative and treatment planning direction as needed;

5. A clinical director, who shall be available on either a full-time or part-time basis to provide/coordinate medical services; and

6. Personnel, as specified in the contract between the center and the Division, sufficient to provide required consultation and education, hotline coverage, psycho-education, and other appropriate services, including coordination of the acute care system review procedures,

(b) An emergency service shall have, at a minimum, the following personnel:

1. A psychiatrist, who shall be available 24 hours per day, 365 days per year, to provide telephone consultation, medication orders, and face-to-face evaluation as needed;

2. A crisis intervention specialist who shall be available 24 hours per day, 365 days per year, to provide assessment, monitoring, and treatment planning as needed; and

3. Those emergency services which have holding bed(s) and administer medication must have personnel, as specified in the contract between the center and the Division.

SUBCHAPTER 3. SCREENING AND SCREENING- OUTREACH PERSONNEL REQUIREMENTS

10:31-3.1 Composition of screening and screening outreach staff

Screening and screening outreach staff shall include psychiatrists, registered nurses and screeners. The Division recommends that the staff also include social workers, psychologists, and/or other mental health professionals.

10:31-3.2 Screening center coordinator requirement, qualifications and duties

(a) Each screening center shall have a coordinator possessing a minimum of a master's degree in social work, psychology, nursing, or a related field, who shall have a minimum of three years post master's work experience in the provision of mental health services. Previous supervisory experience is desirable but not necessary. The coordinator shall have completed the Division's Crisis Training Course, level 1 and 2.

(b) The duties of the screening center coordinator shall include, at a minimum, the following:

1. Ensuring appropriate staff availability 24 hours per day, 365 days per year;

2. Ensuring adequate levels of clinical staff supervision, skill development and support;

3. Completion and monitoring of affiliation agreements with police, corrections, other mental health, social service, and health service systems;

4. Provision of formal liaison with police and sheriff departments regarding interface issues, transportation, screening outreach escort/accompaniment, etc.;

5. Monitoring fulfillment and appropriate documentation of the various screening center functions listed in N.J.A.C. 10:31-2.1 and 2.2;

6. Participation of the screening service in local mental health, health and human services planning activities;

7. Coordination between the screening center and short term care facility, State psychiatric hospital and county psychiatric hospital;

8. Responsibility for ensuring access to all acute services in the screening center's geographic area;

9. Coordination of the Systems Review Committee; and

10. Coordination of emergency service education in the geographic area.

10:31-3.3 Screener certification requirement, qualifications and duties

(a) Each screening center shall have one or more screeners available on each shift, who shall be certified by the Division.

(b) Screener certification shall be granted to individuals who have completed the Division's screener certification course.

(c) The following shall be prerequisites to the Division's screener certification course:

1. Evidence of the following educational/experiential background. Although a master's degree is preferable, any of the following is acceptable:

i. A master's degree plus one year of experience in a psychiatric setting; or

ii. A bachelor's degree plus three years mental health experience, one of which is in a crisis setting; or

iii. A bachelor's degree plus two years mental health experience, one of which is in a crisis setting and currently enrolled in a master's program; or

iv. A registered nurse designation with three years of mental health experience, one of which is in a crisis setting.

2. Completion of the Division's Crisis Training Course.

(d) Screener certification shall be valid for two years from the date of certification, with recertification in accordance with (e) below.

(e) Biannual recertification shall be granted after a screener has submitted evidence of:

1. Completion of 15 continuing education hours (of the screener's choice) relevant to emergency or screening services; and

2. Completion of periodic updated emergency service training provided by the Division (not to exceed eight hours per year). These training hours can be applied towards the 15 continuing education hours required in (e)1 above.

(f) Temporary certification may be granted at the discretion of the Division. Temporary credentialing may be granted to those individuals who have completed the Division's Crisis Training Course and are eligible for the screener certification course. Individuals receiving temporary certification shall enroll in the screener certification course within one year of receiving the certificate. Those individuals who possess either a bachelors degree or are registered nurses, plus four years of acute psychiatric experience, or a masters degree plus two years of acute psychiatric experience, and have met the necessary training requirements, may be granted temporary certification for a period of up to two years.

(g) The duties of a screener shall include, but not be limited to, the following:

1. Assessment, referral and linkage;

2. Hotline coverage;

3. Crisis stabilization;

4. Development of alternative treatment plans;

5. Consultation, training and technical assistance to other clinical staff;

6. Supervision and monitoring of patients;

7. Screening outreach;

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- 8. Screening of patients who may be in need of commitment; and
- 9. Screening for admission to STCF's

10:31-3.4 Crisis intervention specialist qualifications and duties

(a) A screening center may employ one or more crisis intervention specialist(s).

(b) The crisis intervention specialist shall possess, at a minimum:

- 1. A master's degree;
- 2. A bachelor's degree, plus two years of experience in a psychiatric setting; or
- 3. For good cause and upon review of a formal request, the Division may grant a waiver in regard to the credentials in (b)1 and 2 above.

(c) The duties of the crisis intervention specialist shall include, but are not limited to, the following:

- 1. Crisis intervention counseling, on and off-site;
- 2. Monitoring and supervision of patients;
- 3. Assessment, referral and linkage;
- 4. Hotline coverage; and
- 5. Crisis outreach.

(d) The screening center utilizing certified screeners shall orient and provide training for all new crisis intervention specialists, prior to unaccompanied and unsupervised performance of their duties.

(e) The Division recommends, but does not require, that at least one of the crisis intervention specialists employed by the screening center be a registered nurse, who, in addition to the duties listed above shall:

- i. Provide medication monitoring;
- ii. Provide nursing assessment; and
- iii. Provide education to staff regarding health care issues.

10:31-3.5 Psychiatrist requirement, qualifications and duties

(a) Each screening center shall employ one or more psychiatrists. The psychiatrist shall be a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

(b) The duties of the psychiatrist shall include, but not be limited to, the following:

- 1. Psychiatric assessment and management;
- 2. Prescription and monitoring of medication;
- 3. Completion of clinical certificates; and
- 4. Participation in the planning of alternatives to hospitalization.

10:31-3.6 Clinical director requirement, qualifications and duties

(a) Each screening center shall employ a clinical director in a full or part time capacity. The clinical director shall be a psychiatrist; however, those persons serving in a clinical director position as of the effective date of this chapter shall not be affected by this requirement.

(b) The duties of a clinical director shall include, but not be limited to, the following:

- 1. The organization of medical services provided by the screening center;
- 2. The organization and participation in clinical training for the screening center staff; and
- 3. The ensurance of availability of psychiatric services.

SUBCHAPTER 4. EMERGENCY SERVICE PERSONNEL REQUIREMENTS

10:31-4.1 Composition of emergency service staff

The ES staff shall be made up of an appropriate balance of representatives from the following disciplines: medicine, nursing, social work, and psychology, or related field.

10:31-4.2 ES coordinator requirement, qualifications and duties

(a) Each ES shall have a coordinator. The coordinator shall possess a minimum of a master's degree in social work, psychology, nursing, or a related field and have a minimum of three years post master's work experience in the provision of mental health services. Previous supervisory experience is desirable, but not required. The coordinator shall have completed the Division's Crisis Training Course. Completion of the Division's screener certification course is desirable, but not required.

(b) The duties of the ES coordinator shall be to ensure the following:

- 1. Appropriate staff availability 24 hours per day, 365 days per year;
- 2. Adequate levels of clinical staff supervision, skill development and support;
- 3. The completion and monitoring of affiliation agreements with police, other mental health, social service and health service systems; and
- 4. Monitoring of the fulfillment and appropriate documentation of the various ES functions.

10:31-4.3 Crisis intervention specialist requirement, qualifications and duties

(a) Each ES may employ one or more crisis intervention specialist(s). The crisis intervention specialist shall possess two years of experience in a psychiatric setting and either a master's degree or a bachelor's degree or shall be a registered nurse.

(b) The duties of the crisis intervention specialist shall include, but not be limited to, the following:

- 1. Crisis intervention counseling, on and off-site;
- 2. The monitoring and supervision of patients;
- 3. Assessment, referral and linkage; and
- 4. Hotline coverage.

(c) The Division recommends, but does not require, that at least one crisis intervention specialist be a registered nurse. In addition to the duties listed above, the registered nurse shall:

- 1. Provide medication monitoring;
- 2. Provide nursing assessment; and
- 3. Provide education to ES staff regarding health care issues.

10:31-4.4 Psychiatrist requirement, qualifications and duties

(a) Each emergency service shall employ one or more psychiatrists. The psychiatrist shall be a physician who has completed the training requirements of the American Board of Psychiatry and Neurology.

(b) The duties of the psychiatrist shall include, but not be limited to, the following:

- 1. Psychiatric assessment and management;
- 2. The prescription and monitoring of medication;
- 3. Participation in the planning of alternatives to hospitalization; and
- 4. Consultation with and provision of support for families and/or significant others regarding emergency services received by clients.

SUBCHAPTER 5. SYSTEMS REVIEW IN THE ACUTE CARE SYSTEM

10:31-5.1 Development of acute care system review

(a) Each geographic area shall develop a process to monitor the provision of acute care services. The development of this process shall be coordinated by the screening center in consultation with the Division. Technical assistance shall be provided by the Division as necessary. The monitoring process shall be accomplished by a committee which meets monthly.

(b) The monitoring process shall be integrated with the system-wide quality assurance process, where the quality assurance process exists.

10:31-5.2 Composition of the systems review committee

(a) The systems review committee shall include representatives from:

- 1. Each of the separately identifiable programs comprising the acute care services available in a geographic area;
 - 2. The State or county psychiatric hospital, STCF and affiliated voluntary psychiatric inpatient unit;
 - 3. The county mental health board and the Division; and
 - 4. Family and consumer organizations concerned with the quality and provision of acute care services, and/or consumers and family members of consumers who have been recipients of acute care services.
- (b) Confidentiality shall be observed by all committee members.

10:31-5.3 Role of the systems review committee

(a) The systems review committee shall perform the following functions:

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1. Identify gaps in the acute care system and bring them to the attention of the appropriate county mental health board(s) and the Division;
2. Monitor utilization of acute care resources to ensure that services are fairly and appropriately distributed;
3. Ensure that clients receive the highest quality of care in the most appropriate, least restrictive environment;
4. Review transfers from the STCF to State psychiatric hospitals (as well as direct admissions to State psychiatric hospitals) to monitor appropriateness;
5. Identify those concerns which shall be considered by an agency's internal quality assurance committee, notify that committee, and provide the internal agency committee with any relevant information;
6. Investigate and make recommendations to appropriate boards and regulatory authorities regarding impediments and obstacles in the acute care system;
7. Discuss additional systems issues within the geographic area, and make recommendations to the appropriate Boards and regulatory authorities;
8. Study the medication monitoring practices within the system and make recommendations for change when necessary; and
9. Undertake comprehensive reviews of clients who do not accept or engage in facility-based mental health programs and those who have multiple service needs.

SUBCHAPTER 6. PLANNING

10:31-6.1 Designation of screening centers

(a) A designated screening center shall be named in each geographic area. Although a geographic area will usually consist of a county, depending on geographic size, population, demographics or other factors, the Division may designate a portion of a county or a multi-county area as a geographic area. The following procedure shall be used for designation of the screening centers:

1. The county mental health board shall make a recommendation to the Division regarding the boundaries of the geographic area to be covered by the screening center;
 2. The Division shall designate the geographic area after consideration of this recommendation; and
 3. The county mental health board shall recommend an agency to be designated as the screening center, based on, but not limited to, the following factors:
 - i. Demonstrated history of providing quality services;
 - ii. Knowledge of, and willingness to provide services to, target populations;
 - iii. Ability to provide mental health services in a cost effective manner; and
 - iv. The documented ability to comply with this chapter.
- (b) In order to assure the availability and provision of necessary medical services, a designated screening center shall be physically located in a hospital, and shall be either directly operated by or formally affiliated by written agreement with said hospital.

(c) The Division shall designate a screening center after reviewing the mental health board's recommendation and evaluating the proposed agency or hospital's ability to comply with this chapter. Continued designation is contingent upon the center's ability to perform mandated functions.

(d) Re-designation shall be required after the first year of operation and every two years thereafter.

(e) Once designated, the screening center shall have the sole authority to provide screening in, and for, the geographic area in which it is located, and shall assume all of the functions listed in N.J.A.C., 10:31-2.1.

SUBCHAPTER 7. TERMINATION OF SERVICES

10:31-7.1 Standards for termination of services

- (a) Persons will be terminated from the screening center for any of the following reasons:
1. The person is not at risk and refuses further services;
 2. The crisis has been resolved;
 3. The person has been successfully linked to another service or accepted for clinical case management;

4. The person has been voluntarily admitted to a hospital or other treatment facility; or

5. The person has been involuntarily committed to a STCF, State psychiatric hospital or county psychiatric hospital.

(b) Persons will be terminated from the emergency service for any of the following reasons:

1. The person has been linked to the screening center for further evaluation or commitment;
2. The person is not at risk and refuses further services;
3. The crisis has been resolved;
4. The person has been successfully linked to another service or accepted for clinical case management; or
5. The person has been voluntarily admitted to a hospital or other treatment facility.

SUBCHAPTER 8. POLICE INVOLVEMENT

10:31-8.1 Transportation of clients

A certified screener may request that a law enforcement officer transport an individual to a screening center, if the screener has evaluated the individual and signed a screening document indicating that the individual may meet the commitment standard, and requires further evaluation.

10:31-8.2 Police request for evaluation

(a) A screening center shall evaluate an individual who is brought to the screening center by a law enforcement officer if, based on personal observation, that officer has reason to believe that the individual meets the commitment standard.

(b) A screening center shall provide mobile screening outreach at the request of a law enforcement officer if the screening center determines that, based on clinically relevant information provided by a law enforcement officer with personal knowledge of the individual subject to screening, the person may need involuntary commitment and is unwilling or unable to come to the screening center for an assessment.

10:31-8.3 Provision of security

A screener may request that a law enforcement officer shall remain at the screening center whenever his or her presence is necessary to protect the safety of the client or other individuals. He or she shall request that the officer remain at the screening center until the situation is secured.

SUBCHAPTER 9. CLIENT'S RIGHTS

10:31-9.1 Client rights

(a) Clients shall not be involuntarily detained at a screening center for evaluation and emergency treatment for more than 24 hours, unless involuntary commitment procedures are followed.

(b) Clients who are detained at a screening center shall have the following rights:

1. The right to impartial access to all screening center services regardless of race, religion, sex, ethnicity, age, handicap, or ability to pay;
2. The right to receive a prompt and adequate evaluation of his or her psychiatric, social, and economic needs and to receive services of a qualified professional of the appropriate disciplines (medicine, nursing, psychiatry, social work, or psychology) as indicated, which evaluation and services shall be delivered in a manner which is respectful of the dignity of the individual;
3. The right to a professional assessment in the least restrictive, clinically appropriate manner and the right to referral to the least restrictive, clinically appropriate, available service;
4. The right to an explanation of their condition, the treatment being provided, and a response to questions they may have about their condition or treatment;
5. The right to participate in treatment planning to the fullest extent that his or her condition permits;
6. The right to prompt access to medical treatment for physical ailments;
7. The right to be free from unnecessary or excessive medication;
8. The right to be free of physical restraints and isolation except in situations where there is reason to believe that the client may cause

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imminent harm to himself or herself, to others, or property. The reason for physical restraint or isolation shall be documented in the client's chart and a physician's order obtained within one hour;

9. The right to have reasonable access to and use of telephones, both to make and receive calls; and

10. The right to be free of corporal punishment.

(c) Notice of the rights in (b) above shall be prominently posted and written copies shall be available in language easily understandable by clients at each screening center.

(a)

**DIVISION OF DEVELOPMENTAL DISABILITIES
Access to Client Records and Record Confidentiality
Proposed New Rules: N.J.A.C. 10:41-2**

Authority: N.J.S.A. 9:6-8, 10a, 30:1-12; 30:4-24.3; 30:6D-4(f).
Proposal Number: PRN 1988-491.

Submit comments by November 2, 1988 to:
James M. Evanochko, Administrative Practice Officer
Division of Developmental Disabilities
CN 700
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department is proposing rules to govern the confidentiality of client records, records of components of the Division of Developmental Disabilities (Division) and records of provider agencies under contract with or regulated by the Division. These rules are necessary to protect the confidentiality of information concerning clients. The content of client records is defined.

The proposed rules also describe the content of agency records, and go on to define those records of the agency which are considered to be privileged information.

The proposed rules delineate to whom and under what circumstances client or agency records may be released. They also contain the safeguards required to maintain the security of records. Fees for reproducing client or agency records are also included.

Social Impact

The proposed new rules are intended to protect clients and their legal guardians from improper disclosure of individual information. The rules also provide guidelines for staff of Division components and agencies under contract with or regulated by the Division concerning what measures should be taken with regard to client and agency records. The rules indicate to members of the general public the requirements to be met in order to secure client or agency records.

The Division currently serves approximately 14,000 clients. There are approximately 800 private service providers. There has been uncertainty as to what records should be released. The proposed rules benefit all affected parties by providing a clear definition of records and specific requirements for their release.

Economic Impact

The proposed new rules require that individuals requesting copies of client or agency records pay for the costs of reproducing the records. Such a requirement is necessary, since staff time and duplication costs to the Division component or provider agency can be considerable. There is no anticipated economic impact on clients or their families beyond the costs of copying any materials requested. Fees paid to the Division will be returned to the general fund of the Department of Treasury.

Regulatory Flexibility Statement

In addition to affecting Division components, approximately 800 service providers are affected by the proposed new rules, some of whom may be classified as small businesses pursuant to N.J.S.A. 52:14B-16. Annual costs are expected to be minimal. The only costs involved are the requirements for secure storage of records and costs of reproducing records for which agencies are to be reimbursed. Initial capital costs are expected to be negligible. Because of an overriding concern for the welfare of clients and their families, the Department will not exempt any small businesses from compliance with these rules.

**CHAPTER 41
ADMINISTRATION**

SUBCHAPTER 1. (RESERVED)

**SUBCHAPTER 2. ACCESS TO CLIENT RECORDS AND
RECORD CONFIDENTIALITY**

10:41-2.1 Purpose

The purpose of this subchapter is to provide a uniform approach to records management within the Division which safeguards the confidentiality of client records.

10:41-2.2 Scope

This subchapter applies to all service components of the Division and all providers contracted with or regulated by the Division.

10:41-2.3 Definitions

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

"Department" means the Department of Human Services.

"Division" means the Division of Developmental Disabilities.

"Agency records" means the organized compilation of documents that relate to the operation of a Division component or a provider agency under contract with or regulated by the Division.

"Client record" means the organized compilation of documents that relate to the provision of services to an individual client.

"Public record" means those records required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done to perform that function.

"Pupil record" means the organized compilation of documents that relate directly to the provision of educational services to an individual school-age client as required by New Jersey law or rule.

"Service component" means any developmental center, regional office, day training or adult activity center of the Bureau of Special Residential Services.

10:41-2.4 Division policy

N.J.S.A. 30:4-24.3 mandates that all certificates, applications, records and reports that directly or indirectly identify an individual currently or formerly receiving services from the Division be kept confidential and not subject to public disclosure. Any records which may be released shall not contain the name of any client other than the client whose records have been requested. Other clients shall be identified by initials. Employees of the Division or agencies under contract with or regulated by the Division who violate confidentiality may be subject to disciplinary action.

10:41-2.5 Copying fees

Copies of records which may be released shall be provided in accordance with the provisions of this chapter and upon payment of the fees listed in N.J.S.A. 47:1A-2.

10:41-2.6 Electronic records

Any client records which are maintained electronically shall be subject to the same requirements in this chapter as records which are maintained manually.

10:41-2.7 Security of records

All service providers, including those under contract with the Division, shall be responsible for securing records of clients in their care against loss, defacement and use or copying by unauthorized persons.

10:41-2.8 Public and non-public agency records

(a) Agency records which are public include:

1. The standard contract documents;
2. Appendices and supporting materials;
3. Programmatic and financial reports;
4. Monitoring and evaluation reports;
5. Auditing reports;
6. Licenses to operate; and
7. Inspection reports for licensure.

(b) Agency records which are not public include:

1. Investigation of unusual incidents;

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- 2. Internal communication between agency personnel;
- 3. Memos to file which indicate informal agency action or which does not directly relate to the client's medical condition or IHP goal;
- 4. Internal procedures; and
- 5. Referrals to other agencies.

10:41-2.9 Client record

(a) The client record contains official information which is required by law. Only court commitments and payments of maintenance shall be considered to be public information. The client record includes but is not limited to:

- 1. Eligibility determinations;
- 2. Applications for services;
- 3. Medical examinations and reports;
- 4. Evaluations reports;
- 5. Individual Habilitation Plan (IHP);
- 6. Progress notes relating directly to the client's physical condition or IHP goals;
- 7. Communication to legal guardian;
- 8. Initial reports of unusual incidents; and
- 9. Social history.

10:41-2.10 Release of records

(a) A client currently or formerly receiving services from the Division, or a guardian, or, if a minor, a parent or guardian, is entitled to inspect or copy the client's records upon request.

(b) Client information shall be kept confidential and be released only under the following circumstances:

- 1. To a client, if a competent adult, and the guardian of incompetent adult or minor;
- 2. In response to the plaintiff in a tort claim (that is, a suit for damages to which the Commissioner, Department, Division or employee of the Division is named as a defendant), as directed by the Office of the Attorney General;
- 3. To Department components, if directly related to their administration;
- 4. Information concerning the client's current medical condition (not the entire record) may be released upon written inquiry to a client's relative, friend, personal physician, or attorney if the information appears directly or indirectly for the benefit of the client;
- 5. When a client is transferred from one component of the Department/Division to another;
- 6. When medical staff outside the Department have assumed temporary medical responsibility for a client, to the extent that such records or information are necessary for the treatment of the client provided that the client or guardian is given notice of such access;
- 7. When the information is already a matter of public record, such as court commitments or payments of maintenance;
- 8. If a client is missing, the following information relating to the client may be released:
 - i. Name;
 - ii. Age;
 - iii. Home address;
 - iv. A physical description including a photograph, if available; and
 - v. Other significant personal data, such as medical condition or dangerous to self or others;
- 9. To agencies, insurers, trustees and other persons through whom financial assistance is or may be available for the client's care, treatment, training or supervision; and
- 10. To an agency authorized to investigate allegation of client abuse or neglect (for example, the Division of Youth and Family Services (DYFS) in the case of children, the Ombudsman for the Institutionalized Elderly for persons over 60 years of age).

(c) Except as set forth in (b) above, client information shall not be released to third parties without written authorization from the client, if a competent adult, or the guardian of an incompetent adult or minor.

(d) A competent client presently or formerly receiving services from the Division is entitled to inspect or copy his or her own records.

(e) Records of a client shall be open to inspection by other persons upon receipt of written authorization by the client, if a competent adult, or the guardian of an incompetent adult or minor.

(f) Pursuant to the provisions of N.J.A.C. 6:3-2.3 et seq., private and public facilities shall permit local school district representative access, without client or guardian consent, to pupil records of students for whom they are responsible.

(g) In the case of guardianship actions, the Public Advocate shall be recognized as the attorney representing the client, unless another attorney is noted in the client's record.

(h) Copies of privileged information shall be transferred between components of the Division when the client is transferred.

(i) If it has been specifically indicated that a report is not to be shared except by the person or agency issuing the report, the Division shall not release that report, and

1. The individual requesting the release of the report shall be directed to the issuing entity; or

2. In the instance where the Division is referring the client for services, the Division shall be responsible to request the release of the report from the issuing entity.

(j) Any questions concerning access to records shall be referred to the Division's Administrative Practice Officer.

(k) Division components or agencies under contract with or regulated by the Division shall ensure that their record keeping practices conform to the provisions of this subchapter.

10:41-2.11 Court orders and subpoenas

(a) Records may be released upon proper judicial order. A subpoena is not sufficient to produce a client record. If a subpoena is received, legal advice shall be sought.

10:41-2.12 Staff assistance

The client, or parent or guardian of the client, as applicable, has the right to review the client record. Staff shall provide assistance in reviewing the record, if it is requested by the client or parent or guardian.

10:41-2.13 Release of records to further the client's habilitation

(a) Records shall be released to persons whose activities serve to further the habilitation of the client, including, but not limited to:

1. Program staff and associated professional personnel (including students completing professional internships or field placements) who provide habilitation services to the client; and

2. Persons authorized by the Department to monitor the quality of services being offered to the client.

(b) The persons specified in (a) above shall agree in writing to safeguard the confidentiality of records.

10:41-2.14 Safeguarding confidentiality of the record

(a) The chief executive officer or regional administrator or bureau chief has the responsibility for safeguarding the records of clients in their service component, including who may inspect or copy the record, how the record may be used, how long the record may be used, and other restrictions on access to the record, in accordance with this subchapter and N.J.S.A. 30:4-24.3.

(b) All requests for release of client, or agency information shall be made to the administrative head of the Division component or provider agency.

(c) All requests for the release of client information shall be made in writing and identify the specific information requested, as well as the intended uses of the information. The request for client records shall be accompanied by a written release of information by the client, if a competent adult, or the guardian of an incompetent adult or minor.

(d) Only those records which are necessary to meet the legitimate purposes of the person requesting the record shall be released, and whenever possible, the name of the client(s) or other identifying information shall be removed from the records before their release.

(e) A list shall be maintained of every person other than those identified at N.J.A.C. 10:41-2.11 who reviews, inspects or obtains copies of a client's record, the stated use to be made of the information, and the person authorizing the release of the record. That list shall be considered internal information and not filed in the client record.

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES**Viral Hepatitis B****Proposed New Rules: N.J.A.C. 10:48-2**

Authority: N.J.S.A. 30:1-12 et seq. and 30:6D-5 (b).

Proposal Number: PRN 1988-490.

Submit comments by November 2, 1988 to:

James M. Evanochko, Administrative Practice Officer
 Division of Developmental Disabilities
 CN 700
 Trenton, N.J. 08625

The agency proposal follows:

Summary

Hepatitis B, an inflammation of the liver, is caused by the hepatitis B virus. Five to 10 percent of persons who contract hepatitis B become chronic carriers with the potential for developing long-term complications such as chronic active hepatitis, cirrhosis, and primary cancer of the liver.

The incidence of hepatitis B is higher in the institutionalized population than in the general population. Many clients presently served by the Division have been institutionalized at some point. Because of the possible presence of hepatitis B, some programs have been reluctant to accept Division clients.

The proposed new rules require that persons who live in or are admitted to institutions be tested for the presence of hepatitis. Persons who are hepatitis B carriers or who have active hepatitis B shall receive immunization.

Persons served by the Division in other than institutional settings shall be tested, based upon the clinical judgment of the treating physician. One criterion for testing is whether a person is "at risk"; that term is defined in the rules.

A client who is a hepatitis B carrier cannot be discriminated against because he or she is a carrier. Any decision not to participate in a program will be made by the client's interdisciplinary team. If a person who has hepatitis B is placed in a program, staff shall be trained in appropriate hygiene precautions. Staff shall also be offered the opportunity for screening and immunization. Should a staff member be interested in receiving the immunization, he or she shall provide informed consent to the Division. If no other funding source is available, the Division shall bear the costs of the immunization.

Social Impact

The Division serves 14,000 clients. There are more than 800 providers of service. The Division has approximately 11,800 employees.

The proposed rules represent a proactive approach to the problem of hepatitis B. Clients who are carriers of hepatitis B are often feared by the families of other clients and staff, due to the risk of contagion and the serious long-term effects of the disease. Provider agencies have been reluctant to accept clients with hepatitis B because of these fears.

The proposed rules require the testing of persons most likely to be exposed to the disease and offer immunization to those "at risk". They require training in basic precautions against contracting the disease and prohibit arbitrary discrimination against carriers of hepatitis B. Finally, they require the Division to be aware of those clients who are carriers and to monitor their condition.

It is anticipated that clients, their families and client advocacy groups would be supportive of the rules since the rules ensure that carriers and non-carriers will have the opportunity for testing. The proposed new rules, therefore, can be expected to aid in decreasing the incidence of hepatitis among clients. Staff may also support the rules for the same reasons. The providers of service are generally expected to support the rules, due to the provision for the Division to bear the costs of screening and evaluation, if no other source is available.

Economic Impact

The cost of the screening is approximately \$115.00. The vaccine costs approximately \$125.00. The immunization is administered in three doses; costs for administering each dose may vary depending upon who administers the dose (that is, personal physician, clinic, etc.).

The Division will bear the costs of immunization and screening when there is no other funding source. Actual cost cannot be projected. The majority of the institutionalized population in developmental centers has been screened and immunized. Screening and immunization in non-institutional programs is dependent upon individual circumstances. Histori-

cally, once staff have been trained in proper hygiene techniques, few have requested immunization. By addressing this problem, clients may be placed out of institutions in less costly community based programs.

Regulatory Flexibility Statement

The rule directly applies to private mental retardation facilities, some of which may be small businesses. Currently there are six such facilities in New Jersey. The agencies are obligated to screen and immunize clients. However, since the Division will bear the cost, only where no other funding source is available, the adverse economic impact on small businesses is minimal. Because of an overriding concern for public health, the Department will not exempt any small businesses from compliance with these rules.

Full text of the proposal follows.

SUBCHAPTER 2. VIRAL HEPATITIS**10:48-2.1 Purpose**

The purpose of this subchapter is to delineate Division of Developmental Disabilities policies and procedures regarding the screening, treatment and control of viral hepatitis B in the service components of the Division.

10:48-2.2 Scope

(a) This subchapter applies to those employees and clients within the following service components of the Division of Developmental Disabilities:

1. Developmental Centers;
2. Community Services; and
3. Special Residential Services.

(b) This subchapter also applies to programs offered by private mental retardation facilities licensed in accordance with N.J.A.C. 10:47.

10:48-2.3 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings:

"Active viral hepatitis B" means the highly infectious phase of viral hepatitis B which is identified by positive blood tests for HBsAg, HBeAg and other elevated liver function tests.

"Anti-HBc" means the presence of the antibody to hepatitis B core antigen which indicates that the person is no longer susceptible to contracting viral hepatitis B.

"Anti-HBs" means the presence in the blood of the antibody to hepatitis B surface antigen which indicates that the person has had hepatitis B or has received either immune globulin or hepatitis B vaccine. Anti-HBs means the person is not infectious.

"At risk" means the designation of a person who is neither a carrier of hepatitis B virus, nor has an antibody to hepatitis B, and who is, or may be expected to be, exposed to the blood or body fluids of a client who is hepatitis B surface antigen positive, through either the person's own designated duties or through the behavior of the client, which may include, but is not limited to, biting, scratching, salivating, or drooling. The presence of antigen in the client enhances the risk to a susceptible care giver.

"Carrier" means a person in whom the surface antigen for hepatitis is found in the blood twice consecutively, when tested at six-month intervals.

"Client" means a person who is eligible for, and is receiving, the services of the Division.

"Department" means the Departments of Human Services.

"Developmental Center" means those State-operated facilities providing residential services to specified clients.

"Division" means the Division of Developmental Disabilities within the Department of Human Services.

"Hepatitis B carrier" means a person whose HBsAg is positive, in association with progression to chronic hepatitis and indicates that the person is highly infectious.

"Individual habilitation plan" ("IHP") means a written plan of intervention and action that is developed by the interdisciplinary team. It specifies both the goals and objectives being pursued on behalf of the individual and the steps being taken to achieve them by each agency. It identifies a continuum of skill development that outlines progressive steps and the anticipated outcomes of services.

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The individual habilitation plan is a single, consistent and comprehensive plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a service plan, a treatment plan, and a health care plan. Various aspects of the plan, such as education, rehabilitation, health care, and others, are assigned to those persons or agencies who can provide, or are legally required to provide, the training or services.

“Institution” means residential schools, homes or specialized facilities.

“Interdisciplinary team” (“IDT”) means an individually constituted group of relevant individuals responsible to develop a single integrated IHP. The team shall consist of the client, the client’s parent (if the client is a minor or an adult who deserves that the parent be included), guardian or advocate, those persons who work most directly with the client and professionals and representatives of service areas who are relevant to the identification of the client’s needs and the design and evaluation of programs to meet them.

“Private mental retardation facility” means an institution for the mentally retarded, whether operated for profit or not, which is not maintained, supervised or controlled by any agency of the government, or the state, or any county or municipality and which maintains and operates facilities and collects fees for the residential care and habilitation training of 16 or more, non-related developmentally disabled individuals for periods exceeding 24 hours.

“Special residential services” means that component of the Division which is responsible for client placed in Private Mental Retardation Facilities.

“Susceptible person” means a person who has an absence of the hepatitis B surface antibody (Anti-HBs) or whose surface antigen (HBsAg) is negative.

“Transfer” means the removal of a clients from one service unit and placement into another service unit, as follows:

From	To
Developmental Center	Developmental Center Community Services Special Residential Services
Community Service	Developmental Center Special Residential Services
Special Residential Services	Developmental Center Community Services
Special Residential Service	Special Residential Service (Transfers between New Jersey Private Licensed Mental Retardation Facilities)

“Viral hepatitis B” means a type of inflammation of the liver. Hepatitis B virus is found in the blood, blood products, and to a lesser degree, in other body secretions. The major mode of transmission is blood to blood contact.

10:48-2.4 Exclusion from programs

(a) Clients identified by a physician as hepatitis B carriers, or individuals who have active hepatitis B, shall not be excluded from regular participation in services solely on the basis of being diagnosed as hepatitis B infected or carriers.

(b) The placement in programs of clients who have active hepatitis B or who are carriers of hepatitis B shall be determined on a case by case basis. Any exclusion of a client from a program or from program activities shall be based upon objective criteria as determined by the client’s interdisciplinary team and shall be related to a direct danger of infection to others. Reasonable and appropriate alternate activities, as determined by the interdisciplinary team, shall be provided to clients who are excluded because of a diagnosis of active hepatitis B or carrier.

(c) If a client is excluded from programming because of a diagnosis of hepatitis B or carrier of hepatitis B, the client, guardian or family shall be advised of the reason for exclusion.

10:48-2.5 Immunization expenses

(a) When clients and/or staff who are considered to be at risk are offered the opportunity to be immunized for hepatitis B, health care

benefits and entitlements, medical insurance, or other means of medical coverage shall be utilized first as a means of payment.

(b) To the extent that the immunization costs are not covered by the sources in (a) above, the Division shall incur the expense either partially or totally.

(c) As a prerequisite for admission to a developmental center, appropriate immunization shall be required.

10:48-2.6 Requirements for program participation or placement of persons with hepatitis B

(a) Decisions concerning placement or program participation within community programs or Special Residential Services shall be made jointly by the Division and the service provider, in consultation with the client’s physician.

(b) Medical questions may be referred to a mutually agreed-upon expert for consultation.

(c) Clients shall be immunized for hepatitis before placement in a developmental center.

10:48-2.7 Staff training

(a) Before the admission to service of a client who has active hepatitis B or who is a hepatitis carrier, all staff shall receive instruction in the methods by which hepatitis B is transmitted and how personal hygiene can prevent the transmission of hepatitis.

(b) Staff shall be informed of the various types of hepatitis vaccine and the protection provided by each type and shall be given the opportunity to receive immunization.

(c) The service provider shall provide, or cause to be provided, the required training.

(d) Training shall be repeated as circumstances require.

10:48-2.8 Responsibility for testing and monitoring

(a) The provisions of this subchapter shall be followed in developmental centers and in private mental retardation facilities in New Jersey.

(b) The provisions of this subchapter may be used as guidelines by physicians of clients in community programs.

10:48-2.9 Testing and monitoring process

(a) Except in emergency situations, each client shall have a blood test to determine the presence of HBsAg and anti-HBc, using currently accepted techniques, within 60 days before the admission of the client to developmental centers or private mental retardation facilities.

(b) In emergency situations which require that the client be admitted before testing has been completed or before the test results are obtained, the testing and monitoring process shall be completed as soon as possible after the client is admitted.

(c) If the client is HBsAg positive and HbeAg negative, the client shall be tested at six-month intervals for the first year. Testing thereafter shall be conducted as medically indicated.

(d) If the client is HBsAg positive and HBeAg positive, testing shall be conducted as follows:

1. Testing shall be conducted at three month intervals for the first year;
2. Testing shall be conducted at six month intervals for the second year;
3. Testing shall be conducted annually for three successive years; and
4. Testing thereafter shall be conducted as medically indicated.

(e) No further testing is required if the anti-HBs and/or the anti-HBc is positive and the patient is certified by a physician as having a natural immunity.

10:48-2.10 Admission of client

(a) A client may be admitted to a developmental center if he or she has been tested and found to have active hepatitis B or be a carrier of hepatitis B, if the developmental center can provide adequate medical care and precautions, as determined by the Medical Director of the center.

(b) A client may be admitted to a community program or to a Special Residential Services program if he or she has been tested and found to have active hepatitis B or be a carrier of hepatitis B, upon

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evaluation on a case by case basis, by the Division and the program, in consultation with the client's physician.

10:48-2.11 Transfer of client

(a) If a client is to be transferred, testing shall be performed if the client has not been identified as immune to hepatitis, or is an identified carrier who has not had hepatitis B testing within 30 days prior to the proposed transfer date. Monitoring and retesting shall be conducted as indicated in N.J.A.C. 10:48-2.8 and 2.9.

(b) If testing has occurred within 30 days prior to the proposed transfer date, the monitoring and retesting shall be conducted as indicated in N.J.A.C. 10:48-2.8 and 2.9.

(c) Any delays in transferring a client who has active hepatitis B or who is a hepatitis B carrier shall be reviewed on a case-by-case basis by the sending and receiving programs. A decision to delay the transfer of a client shall be reviewed no less than every 90 days.

10:48-2.12 Immunization of susceptible individuals at risk

(a) All clients in day or residential programs in New Jersey who are not carriers and who do not have natural immunity and are at risk of contracting hepatitis B shall be provided with the opportunity to receive hepatitis B vaccine, under the terms indicated in N.J.A.C. 10:48-2.4 (a) and (b).

(b) Any staff member considered to be at risk contracting hepatitis B while employed in a program operated by, or under contract with, the Division in New Jersey shall be given an opportunity to be tested and to receive hepatitis B vaccine, under the terms of N.J.A.C. 10:48-2.4 (a) and (b).

10:48-2.13 Informed consent

(a) Staff responsible for testing or vaccination shall obtain the client's or client's guardian's, or staff person's, informed consent before testing or vaccination. The informed consent shall be placed in the client's or staff person's file, as appropriate.

(b) Clients who are not mentally deficient or incompetent and staff who are at risk shall be informed of the risk of contracting hepatitis B and of the availability of vaccines, the benefits of the vaccines and possible adverse effects of the vaccines. Written documentation of the information given to the client or staff person shall be placed in the client's or staff person's file, as appropriate.

(c) In the case of minors or mentally deficient or incompetent adult clients who are at risk, the guardian of the person shall be informed of the availability of the vaccine, the benefits of the vaccine, and the possible adverse side effects. Written documentation of the information given to the guardian of the person shall be placed in the client's file.

(d) The person being informed shall be advised to consult his or her personal physician, or the personal physician of the minor or the mentally deficient or incompetent client, as appropriate, to determine if the vaccine is contraindicated in the particular situation.

(e) A staff member, a client who is competent, a guardian of a minor or a guardian of a deficient or incompetent client may elect to decline the offer of vaccination, after receiving information on the vaccine from the staff person designated to obtain consent.

(f) A staff member, a client who is competent, a guardian of a minor or a guardian of a mentally deficient or incompetent client shall sign a statement that he or she understands the benefits and the possible side effects of the vaccine and that he or she either agrees to or refuses the testing and/or the vaccine. The signed statement shall be kept in the employee's or client's file.

(g) The requirements of (a) through (f) above shall be documented and kept in the client's or employee's file. Documentation shall be kept on file of all informed consent forms distributed and whether or not they were returned.

10:48-2.14 Immunization of clients scheduled to be admitted to developmental centers

(a) Prior to the admission of a client to a developmental center, at least one dose of the hepatitis B vaccine shall be administered to any client who has been tested and is HBsAg, HBeAg or Anti-Hbs negative.

(b) The following procedures shall be followed for emergency admissions:

1. If admission occurs before testing and immunization can be initiated, then full hepatitis B testing and immunization shall take place as part of the initial admission medical evaluation;

2. If admission occurs after testing is completed, but before immunization, and the client's test is HbsAg positive, HBeAg positive or Anti-HBs negative, the first dose of the Hepatitis B vaccine shall be given within 14 days from admission.

10:48-2.15 Treatment for those who have been exposed to hepatitis and have not been immunized or who have no natural immunity

(a) Treatment for those who have been exposed to hepatitis and have not been immunized or who have no natural immunity shall be administered as follows:

1. Appropriate Division or agency staff shall inform the client or guardian and staff that immunization is recommended in some cases, including, but not limited to, the following:

i. When the client or staff person has been bitten by an individual who tests positive for HBsAg, if the bite breaks the skin;

ii. When the client or staff person has been exposed to the blood or other body fluids of an individual who tests positive for HBsAg.

2. Appropriate Division or agency staff shall inform the client or guardian or staff person that the appropriate immunization, as determined by a physician, should be given within 24 hours of exposure or no later than seven days after the exposure, and should be repeated one month later.

10:48-2.16 Registry of carriers of hepatitis B

(a) A registry of hepatitis B carriers shall be maintained by developmental centers, regional Offices of Community Services and the Bureau of Special Residential Services of the Division, which shall contain the names of all clients of the center, office, or bureau who have been determined by a physician to be carriers of hepatitis B.

(b) The registry shall be confidential, in accordance with N.J.A.C. 10:41-2.

(c) The registry shall contain the client's:

1. Name;
2. Date of birth;
3. Guardianship status;
4. Current residential placement name and address;
5. Current day program name and address;
6. Hepatitis B surface antigen status;
7. Hepatitis Be antigen status; and
8. A notation regarding the presence or absence of Down's Syndrome.

(d) The Community Services Registry shall contain, for each client on the registry, a history of the person's institutional placement, and shall include psychiatric hospital, developmental center, or other placement, as applicable.

(e) The registry shall be maintained as follows:

1. In the developmental center, by the staff person responsible for infection control;
2. In the Bureau of Special Residential Services, by the Office of the Chief; and
3. In the regional offices, by the Regional Nurse.

(f) A client's name shall be removed from the registry if he or she becomes immune.

10:48-2.17 Limitations to program participation

(a) A client who has active hepatitis B or who is a carrier of hepatitis B shall be included in all programs designated for the client in the IHP, unless a determination has been made by the IDT that the client should not participate in programming. This determination shall be fully documented in the client's IHP.

(b) Where exclusion from a specific program activity has been determined appropriate by the IDT, reasonable and appropriate alternatives shall be provided to the client, consistent with the recommendations in his or her IHP.

(c) Any exclusion of a client from a program shall be based upon objective criteria, including, but not limited to, medical and behavioral consideration of any of the client's behaviors which result in increased risk of transmission of hepatitis to others (for example,

biting, scratching, uncontrolled drooling, poor handwashing skills, incontinence).

(d) The client or family of the client or the guardian, as appropriate, shall be informed in writing of the client's exclusion and of the reason(s) for the exclusion.

(e) The IDT shall evaluate exclusion of clients from programming every 90 days as long as the exclusion is in effect. The evaluation shall be noted in the client's file.

10:48-2.18 Appeal of exclusion of client from program

If the client, family, or guardian disagrees with the exclusion from programming, an appeal may be made in accordance with the provisions of N.J.A.C. 10:48-1.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Lifeline Credit Program/Tenants Lifeline Assistance Program Manual

Proposed Readoption with Amendments: N.J.A.C. 10:69B

Authority: N.J.S.A. 48:2-29.15, 16, 17; 48:2-29.31, 32, 33; P.L. 1987, c.221.

Proposal Number: PRN 1988-479.

Submit comments by November 2, 1988 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, NJ 08625

The agency proposal follows:

Summary

The purpose of this proposal is to readopt existing rules known as the Lifeline Credit Program (LCP)/Tenants Lifeline Assistance Program (TLAP) Manual. The current text of this chapter is scheduled to expire on November 21, 1988, pursuant to Executive Order No. 66(1978), commonly known as the "Sunset" Executive Order. The Chief, Bureau of Lifeline Programs, within the Division of Medical Assistance and Health Services, has reviewed the existing rules and found them necessary for the continued operation of the Lifeline Programs. The rules establish eligibility procedures and standards, describe the method of payment of the Lifeline benefit, set forth the administrative organization, and explain the procedures for recoveries of benefits incorrectly paid.

The New Jersey Lifeline Credit Program was established by P.L. 1979, c.197, as amended and supplemented, and codified as N.J.S.A. 48:2-29.15 et seq. The New Jersey Tenants Lifeline Assistance Program (TLAP) was established by P.L. 1981, c.210, as it amends and supplements P.L. 1979, c.197, which was codified as N.J.S.A. 48:2-29.31 et seq.

The laws cited above provide that both utility customers and tenants whose utility costs are included in their rent can qualify for the Lifeline benefit, which is currently \$225.00, annually. Utility customers who qualify for the Lifeline Credit Program receive a credit of \$225.00 toward their utility costs. Tenants who qualify under TLAP receive a check for \$225.00, annually. Persons who are eligible for SSI (Supplemental Security Income) receive an additional State supplement in their monthly SSI check. The new income levels are applicable to eligible utility customers and tenants.

There are some amendments associated with this readoption. The amendments are being made to subchapter 4, entitled "Eligibility". N.J.A.C. 10:69B-4.2 is being amended to indicate the income eligibility limits will be \$13,650 for a single individual and \$16,750 for married persons. These income levels were established by P.L. 1987, c.221, which amended the Pharmaceutical Assistance to the Aged and Disabled (PAAD) legislation. Since the income levels for the Lifeline Programs are the same as for PAAD, the rule needs to be amended to reflect the current statutory limits. Persons applying for the Lifeline benefit have been, and will continue to be, determined eligible based on these figures.

N.J.A.C. 10:69B-4.8 is being amended to indicate that persons already enrolled in the Lifeline Only Program will receive a preprinted form LL-2. This form obviates the need for the person to again provide residency

and/or age. N.J.A.C. 10:69B-4.10 was amended to indicate that the LL-2 form is an acceptable certification.

Other amendments associated with this readoption involve the deletion from N.J.A.C. 10:69B-4.3 of the reference to having the applicant photocopy their Social Security check as proof of residency. The other acceptable proofs of residency were renumbered. With respect to acceptable proofs of age at N.J.A.C. 10:69B-4.4, language was added indicating that a letter from the Railroad Retirement Board could be acceptable proof. N.J.A.C. 10:69B-4.4(a)6 was added to indicate another acceptable proof of age was a Third Party Query Form which can be obtained from the local Social Security office.

There are technical amendments to N.J.A.C. 10:69B-1.3, 2.4 and 4.9.

The rules are necessary, adequate, reasonable, efficient and responsive for the purpose for which they were promulgated. The rules have been effective in providing the Lifeline benefit for eligible persons and/or households. Therefore, the rules should be continued.

Social Impact

The Lifeline Programs provide financial relief to approximately 277,000 households from increased utility costs during the winter months.

The proposed readoption impacts directly on public utility companies, who are already performing administrative functions, such as confirming customer status and issuing credits.

The rules should be continued, so that persons who are eligible for the Lifeline programs can continue to receive this benefit.

Economic Impact

Persons who qualify for Lifeline will receive \$225.00. For utility customers, this amount will be applied as a credit against their utility bills. Tenants whose utilities are included in their rent will receive a lump sum check. SSI recipients will receive a special utility supplement in their monthly SSI check.

The cost of the Lifeline Programs was approximately \$66,356,691 in State Fiscal Year 1987. The Lifeline Programs are completely State funded.

Regulatory Flexibility Analysis

The Division does not believe a regulatory flexibility analysis is required. Eligibility determinations are made by the Bureau of Lifeline Credit Program within the Division of Medical Assistance and Health Services. The public utility companies also perform administrative functions. Neither the State nor the utility companies could be considered as "small businesses" as defined in N.J.S.A. 52:14B-16 et seq.

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

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

10:69B-1.3 Definitions

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

...
"Applicant" means an individual who applies for **the** Lifeline benefit either personally or through an authorized agent.

...
"Beneficiary" means an individual who has been found eligible for **the** Lifeline benefit[s].

...
"Lifeline Credit" means a benefit in the form of a credit in an amount established by law made to the utility account(s) of an individual who has been determined to be eligible for the Lifeline Credit Program.

...
"Resident" means one legally domiciled within the State of New Jersey for a period of 30 days immediately preceding the date of application for inclusion in the Program. Mere seasonal or temporary residence within the State, [or] of whatever duration, does not constitute domicile.

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10:69B-2.4 Agency controls

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

(c) The Bureau of Medical Care[:] Surveillance of the Office of Program Integrity Administration within the Division of Medical Assistance and Health Services, is responsible for monitoring beneficiaries participating in the Lifeline Programs.

10:69B-4.1 Eligibility requirements

(a) (No change.)

(b) When an individual is not a residential utility customer but is a tenant, as defined in N.J.A.C. 10:69B-1.3, who has the cost of utilities included in his/her monthly rental and on July 1st or during the succeeding six months, the individual meets the eligibility requirements as outlined in N.J.A.C. 10:69B-4.1(a)1-2, the individual is eligible to receive benefits from the Tenants Lifeline Assistance Program.

10:69B-4.2 Income standards

(a) Any single, permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and is receiving Social Security Title II disability benefits must have an annual income of less than [\$12,000] **\$13,650** to be eligible for Lifeline.

(b) Any married permanent resident of New Jersey who is 65 years of age or over or who is under 65 and over 18 years of age and receiving Social Security Title II disability benefits must have a combined (applicant and spouse) annual income of less than [\$15,000] **\$16,750** to be eligible for Lifeline.

1.-2. (No change.)

(c)-(h) (No change.)

10:69B-4.3 Residency requirement

(a) (No change.)

(b) The applicant must be able to substantiate residence upon request by the Division of Medical Assistance and Health Services, and is required to submit copies of two documents showing evidence of current residence at the time of application. The following are examples of proof of residence:

1. Motor Vehicle records ([e.g.] **for example**, valid driver's license);
 - [2.]2. Copy of applicant's Social Security check;]
 - [3.]2. Landlord's records and rent receipts;
 - [4.]3. Public utility records and receipts ([e.g.] **for example**, electric bill);
 - [5.]4. Personal property assessment records;
 - [6.]5. Records of professional people or businesses ([e.g.] **for example**, doctors, department stores, etc.);
 - [7.]6. Post office records;
 - [8.]7. Records of social agencies, public or private;
 - [9.]8. Employment records.
- (c)-(d) (No change.)

10:69B-4.4 Age

(a) The Lifeline applicant who is 65 years of age or older must be able to document his/her age upon request of the Division of Medical Assistance and Health Services. The applicant must submit a copy of one of the following acceptable proofs of age:

- 1.-3. (No change.)
4. Social Security form number 2458 (can be obtained from the local Social Security office); [or]
5. Railroad Retirement letter[.] (**can be obtained from the Railroad Retirement Board**); or
6. **Third Party Query Form (can be obtained from the local Social Security Office).**

(b) If the applicant cannot supply a copy of one of the proofs of age listed in (a)1-[5]6 above, the applicant must submit copies of any two of the following acceptable proofs of age:

1.-18. (No change.)

10:69B-4.6 Disability

(a) The Lifeline applicant who is under 65 and over age 18 and receiving Social Security Title II Disability benefits must be able to document his/her Social Security disability determination upon request of the Division of Medical Assistance and Health Services. The applicant must submit a copy of one of the following documents:

- [1. Applicant's green Social Security Disability check; or]
- [2.]1. Social Security Award Certification (SSA-L30) issued by the Social Security Administration within the last six months of application; or
- [3.]2. Report of Confidential Social Security Beneficiary Information (SSA-2458).

10:69B-4.8 Lifeline eligibility applications

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

(c) **For those Lifeline recipients who met the qualifications for Lifeline Only in the previous year and received benefits, a preprinted form (LL-2) will be sent to them. The LL-2 form obviates the need for an applicant to again prove residency and/or age.**

[(c)](d) When the Bureau of Lifeline Programs receives the completed application forms, either LL1, LL-2 or LL-3, the Bureau will determine whether the beneficiary is eligible for Lifeline Credit or Tenants Lifeline Assistance and authorize credit/payment accordingly.

10:69B-4.9 Social Security Account Number

(a) Each applicant for the Lifeline benefit must include his/her Social Security Account Number (SSAN) on the application form. The SSAN, a unique and verifiable number, is utilized to differentiate between persons with the same name. Married persons must also indicate the SSAN of their spouse.

(b) (No change.)

10:69B-4.10 Certification

The applicant for Lifeline benefits must certify that all answers to the questions and items on the application forms, LL-1, LL-2 and LL-3, are true and accurate to the best of his/her knowledge. This certification must be dated, signed (or marked) by the applicant and spouse (if married), and the preparer of the form (if other than the applicant), before the application can be processed.

CORRECTIONS

THE COMMISSIONER

The following proposals are authorized by William H. Fauver, Commissioner, Department of Corrections.

Submit comments by November 2, 1988 to:

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

(a)

Security and Control Search Plan

Proposed Amendment: N.J.A.C. 10A:3-5.2

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

Proposal Number: PRN 1988-486.

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:3-5.2 in order to provide superintendents of adult institutions and the Assistant Commissioner of the Division of Adult Institutions with documented evidence that the institutional search plan is being implemented.

Social Impact

The proposed amendment, requiring the preparation and submission of reports, will provide the superintendents and the Assistant Commissioner with evidence of the implementation of the institutional search plan.

Economic Impact

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

CORRECTIONS

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Regulatory Flexibility Statement

The proposed amendment impacts on inmates and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act.

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

10A:3-5.2 Search plan

(a) Each correctional facility shall develop and implement a comprehensive written plan governing searches of facilities and inmates. Each plan shall be submitted to the Office of the Deputy Commissioner for legal review and approval on or before February 15 of each year.

(b) **Each adult institution shall appoint an officer, at a rank no less than captain, as Institutional Search Plan Coordinator.**

(c) **The Institutional Search Plan Coordinator shall submit a monthly written report, on the appropriate implementation of the Institutional Search Plan, to the Superintendent.**

(d) **The superintendent of each adult institution shall submit, in the first calendar week of January and July, a written report on the appropriate implementation of the Institutional Search Plan to the Assistant Commissioner, Division of Adult Institutions.**

(a)

**Juvenile Detention Facilities
Log for the Temporary Restriction of Juveniles**

Proposed Amendment: N.J.A.C. 10A:32-6.5

Authority: N.J.S.A. 2A:4A-37 and 30:1B-10.

Proposal Number: PRN 1988-488.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:32-6.5 specifies four additional items of information which should be recorded in the log when a juvenile is temporarily restricted to his or her sleeping room or an isolation room. The items in the proposed amendment are listed in the Department of Corrections Manual of Standards for Juvenile Detention Facilities and they were inadvertently omitted when the requirements of the manual were adopted into the New Jersey Administrative Code. This additional recordkeeping is necessary in order to establish a chain of accountability for restriction decisions.

Social Impact

The proposed amendment will have no significant social impact because it is a codification of existing Department of Corrections' Standards which were inadvertently omitted when N.J.A.C. 10A:32-6.5 was adopted. The four additional items to be recorded in the log constitute an insignificant increase in recordkeeping for facilities.

Economic Impact

No increased costs to the Department of Corrections or juvenile detention facilities will result from the slight additional recordkeeping required under the proposed amendment, which is a codification of existing Department of Corrections' Standards.

Regulatory Flexibility Statement

The proposed amendment impacts upon inmates in Juvenile Detention Facilities and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act.

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

10A:32-6.5 Log for the temporary restriction of juveniles

(a) In accordance with the provisions of N.J.A.C. 10A:32-7.4, Temporary restriction, whenever a juvenile is removed from the group or ongoing program and temporarily restricted to his[] or her sleeping room, or an isolation room, the following information shall be recorded in a log maintained for that purpose:

1. (No change.)
2. **Date and time of juvenile's [release from the restricted quarters.] restriction;**
3. **Name of staff member requesting restriction;**

4. **Name of supervisor authorizing restriction;**
5. **Reason for juvenile's temporary restriction; and**
6. **Date and time of juvenile's release from the restricted quarters.**

(b)

**Municipal and County Facilities
Cell Equipment**

Proposed Amendment: N.J.A.C. 10A:34-2.8

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

Proposal Number: PRN 1988-487.

The agency proposal follows:

Summary

The proposed amendment modifies N.J.A.C. 10A:34-2.8 in order to delete N.J.A.C. 10:34-2.8(e). N.J.A.C. 10A:34-2.8(e) is deleted because it is difficult and, in many instances, impossible for municipalities with older detention facilities to comply with the requirement that cell sanitary units must have modesty partitions.

Social Impact

The proposed amendment deleting N.J.A.C. 10A:34-2.8(e) will make it easier for the municipalities with older detention facilities to comply with requirements related to cell equipment. There will be no impact on the county and municipal inmate facility population, as most facilities do not possess the enumerated partitions, and the amendment does not require the removal of partitions presently in place.

Economic Impact

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

Regulatory Flexibility Statement

The proposed amendment impacts on municipalities and the Department of Corrections and does not affect small businesses as defined in the Regulatory Flexibility Act.

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

10A:34-2.8 Cell equipment

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

[(e) Sanitary units shall have a modesty partition constructed of steel or reinforced concrete.]

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

LABOR

(c)

**DIVISION OF WORKERS' COMPENSATION
Practice and Procedure before the Division of
Workers' Compensation
Conduct of Judges of Compensation**

**Proposed Repeals: N.J.A.C. 12:235-3.11 through
3.18**

**Proposed New Rules: N.J.A.C. 12:235-3.11 through
3.23**

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12 and 34:15-1 et seq., specifically 34:15-64.

Proposal Number: PRN 1988-494.

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LABOR

Submit comments by November 2, 1988 to:

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

The agency proposal follows:

Summary

Upon review of N.J.A.C. 12:235-3.11 through 3.18, concerning the capacity of judges of compensation to preside and the proceedings regarding removal, the Division of Workers' Compensation has determined that the existing rules require extensive revision, both substantive and technical. Therefore, the Department has decided to repeal the existing rules at N.J.A.C. 12:235-3.11 through 3.18 and propose new rules.

The proposed new rules clarify the existing rules, and incorporate provisions of the New Jersey Superior Court rules. The proposed new rules also establish a Commission of Judicial Performance, which will evaluate complaints raised against judges of compensation and make recommendations to the Director of Workers' Compensation.

N.J.A.C. 12:235-3.11 establishes the Commission of Judicial Performance, and outlines its composition, powers and responsibilities.

N.J.A.C. 12:235-3.12 describes the conditions necessary for physical capacity to preside, and incorporates the existing text of N.J.A.C. 12:235-3.11. The section also provides that the Director may, upon recommendation of the Commission on Judicial Performance or for good cause, require a judge to submit to a medical examination.

N.J.A.C. 12:235-3.13, which addresses a judge's mental capacity to preside, incorporates much of the existing text of N.J.A.C. 12:235-3.12, and adds a provision that entitles the Director to require a judge to consult with the Employee Advisory Services.

N.J.A.C. 12:235-3.14 addresses the situations in which judges of compensation may be removed from office. This section incorporates in substance the existing text of N.J.A.C. 12:235-3.13, and adds two additional reasons for removal from office, namely: the commission of an enumerated offense pursuant to N.J.S.A. 2C:51-2, and the accumulation of two unsatisfactory ratings in five years, from either the interim or annual review, from the Director of the Division of Workers' Compensation.

N.J.A.C. 12:235-3.15 outlines the procedures to be followed for instituting a removal proceeding, which are those currently stated at N.J.A.C. 12:235-3.14.

N.J.A.C. 12:235-3.16 states that the Attorney General or a designee shall prosecute removal proceedings, unless the Commissioner of Labor is authorized by the Attorney General to designate an attorney for that purpose. It is the same provision found in the existing section N.J.A.C. 12:235-3.15.

N.J.A.C. 12:235-3.17 addresses a judge's suspension pending resolution of the removal proceeding. It incorporates in substance the existing concepts found at N.J.A.C. 12:235-3.16.

N.J.A.C. 12:235-3.18 states that a judge shall have the right to counsel. This section is based in part on the existing text of N.J.A.C. 12:235-3.17.

N.J.A.C. 12:235-3.19 provides for a formal hearing for suspension or removal, and incorporates the entire section of existing N.J.A.C. 12:235-3.18.

N.J.A.C. 12:235-3.20 outlines the procedures to be followed for the minor discipline of a judge of compensation.

N.J.A.C. 12:235-3.21 lists the forms of discipline that may be dispensed following a formal or informal hearing.

N.J.A.C. 12:235-3.22 provides that all personnel proceedings shall be confidential.

N.J.A.C. 12:235-3.23 is a separability provision.

Social Impact

The proposed new rules will enable the Director of the Division of Workers' Compensation to fairly evaluate the conduct of the judges and to mete out discipline when it is deserved. The new rules will ensure that judges of compensation are fit to remain in office, which will ensure the fair and impartial treatment of the public. Finally, the proposed new rules will provide parties appearing before the judges with a forum for registering complaints regarding judicial conduct.

Economic Impact

As the proposed new rules are merely a clarification and improvement of the existing rules concerning judicial conduct, the Department does not foresee any economic impact on affected parties.

Regulatory Flexibility Statement

The proposed new rules do not impose any reporting, recordkeeping or other requirements upon small businesses, as the rules merely address actions concerning judges of compensation. Thus, a regulatory flexibility statement is not required.

Full text of the proposed repeals can be found in the New Jersey Administrative Code at N.J.A.C. 12:235-3.11 through 3.18.

Full text of the proposed new rules follows:

12:235-3.11 Commission of Judicial Performance

(a) Pursuant to this subchapter, a Commission of Judicial Performance (Commission) is established.

1. The Commission shall consist of seven members. The Director shall designate one member to serve as Chairman and another member to serve as Vice Chairman. At least two members shall be judges of compensation, not less than three members shall be members of the Bar, and not more than four members shall be laymen who do not hold public office of any nature. The members shall be appointed by the Director, and shall serve at the pleasure of the Director. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

2. A quorum shall consist of four members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership; provided, however, that if the Commission finds sufficient cause therefor, and recommends to the Director the institution of formal proceedings which may lead to censure, suspension, or removal of a judge of compensation, such recommendation shall be made only on the affirmative vote of four members of the Commission who have considered the record and at least two of whom were present at any hearing at which oral testimony was produced.

3. Whenever in the judgment of the Commission it shall appear necessary or expedient to do so, the Chairman of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion thereof, the panel shall make a report or recommendation to the Commission, which shall review the report or recommendation in accordance with (a)2 above.

4. The function of the Commission shall be to give advisory opinions, recommendations and reports to the Director.

(b) The Commission shall make a preliminary investigation to determine what, if any, action should be taken, upon receiving a written statement or criticism or complaint, not obviously unfounded or frivolous, or relating to a matter solely subject to an appeal from the criticized conduct or action, alleging facts indicating that a judge of compensation may be suffering from a mental or physical disability which is disabling him or her and may continue to disable him or her indefinitely or permanently from the performance of his or her duties, or is guilty of:

1. Misconduct in office;
2. Willful failure to perform his or her duties;
3. Incompetence;
4. Habitual intemperance;

5. Violations of any law, rule, regulation, policy or procedure of the Division, the Department of Labor or the State of New Jersey; or

6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(c) The Commission may make a preliminary investigation of any judge of compensation on its own motion without receiving a statement, criticism or complaint as set forth in (b) above.

(d) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified.

1. If the judge of compensation involved is aware of the statement, criticism or complaint, he or she should be notified of the Commission's finding and action;

2. If the judge has not been made aware of the statement, criticism or complaint, the Commission in the exercise of its discretion in the

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particular circumstances may furnish information to him or her or withhold information from him or her as to the action taken.

(e) If the preliminary investigation indicates that further inquiry into the matter is necessary, the Commission shall:

1. Require the complainant to file a verified complaint against the judge unless the circumstances render it unnecessary;

2. Notify the judge of the nature of the charge, the name of the person making it, and that the judge has the opportunity to present within such reasonable time as the Commission shall fix, such matters as he or she may choose with respect to it, including, on his or her request, the right to appear before the Commission, on notice to the complaining party, and to make such statement under oath as he or she deems appropriate. If the judge does make a statement before the Commission, on request, the complainant shall be permitted to make further statement as he or she deems material. Such statements may be taken stenographically or by a sound recording device, in the discretion of the Chairman.

i. The notice to the judge referred to in (e)2 above shall specify in ordinary and concise language the charges against him or her and the alleged facts upon which they are based.

(f) All Division personnel shall cooperate fully with the investigation and shall provide all such information to the Commission as may be deemed necessary by the Director or Chief Judge.

(g) Upon completion of the preliminary investigation, the Commission may:

1. Dismiss the charges and notify the parties of the action taken if it finds that the charges are without merit. If the matter has been made public, the Commission may, at the request of the judge involved, issue a short statement of clarification and correction;

2. Issue a short explanatory statement, if a judge is publicly charged with having engaged in grievous reprehensible conduct or having committed a serious offense, and if after the preliminary investigation it is decided that there is no basis for further proceedings or recommendation respecting the issuance of a formal complaint;

3. Request the judge to appear at a time and place designated for an informal discussion of the matter if the investigation reveals some departures by the judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys and the like, or other conduct or demeanor which would reflect unfavorably upon the functions of the Division and administration of justice if persisted in or were to become habitual or more substantial in character. After making the judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may dismiss the complaint, and advise the parties of the action taken, and the reasons for the dismissal.

i. Conferences may be recorded, in the discretion of the Chairman, by a qualified reporter or by a sound recording device and a transcribed record, if made, and all the papers in the proceeding shall be filed with the Commission.

(h) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for censure, suspension or removal of the judge, and that formal proceedings to that end should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission with the Director of the Division of Worker's Compensation. The Commission shall issue also without delay and serve upon the judge a notice advising him or her that it has filed such a recommendation with the Director.

(i) After the Director has received reports and recommendations from the Commission, the Director shall take such action as is deemed appropriate.

12:235-3.12 Physical capacity to preside

(a) Judges of compensation shall necessarily be in good health to execute the rigorous duties of their office.

(b) When judges of compensation are unable to carry out the duties of their office for an indefinite period of severe incapacitating disease or severe, incapacitating injury, the Commissioner may grant an indefinite leave, with or without pay, until the afflicted individuals are capable of resuming their duties.

(c) The Director may, upon recommendation of the Commission or for good cause, require a judge to submit to a medical examination.

12:235-3.13 Mental competency to preside

(a) Judges of compensation shall be of sound mind in order to execute the duties of their office.

(b) In the event that a complaint alleging mental incompetency to perform the duties of the office is made by affidavit and filed with the Division, or on the recommendation of the Commission or for good cause, the Director shall have the power to:

1. Require the judge in question to consult with the Employee Advisory Services, and abide by their recommendations; or

2. Order the judge in question to submit to a psychiatric examination.

i. The examination shall be by two psychiatrists selected by the Commissioner; and

ii. The psychiatric examination shall be for the purpose of determining whether or not the judge is afflicted with any mental illness that would impair that individual from performing the duties of office.

12:235-3.14 Removal from office

(a) Judges of compensation may be removed from office if it is found by clear and convincing proof that:

1. They have violated any provision of this subchapter;

2. They have been convicted for the commission of any indictable offense;

3. They have been found to be incompetent or incapable of executing the duties of their office;

4. They have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2, which details the circumstances for forfeiture of public office; or

5. They have accumulated two or more unsatisfactory, or the equivalent, evaluations from the Director, within a five year period, including evaluations from both interim or annual reviews pursuant to the merit evaluation system established by the Division or the Department of Labor.

12:235-3.15 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the Commissioner by the Director.

12:235-3.16 Prosecution of removal proceeding

The Attorney General or a designated representative shall prosecute the removal proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.

12:235-3.17 Suspension pending resolution of the proceeding

(a) The Commissioner may suspend judges of compensation from office or from performing his or her regular duties, with or without pay, prior to the resolution of the proceeding.

(b) If judges accused of misconduct are reinstated to the prior position held, and have been denied salary during suspension, then restitution for the period of the suspension, which exceeded the period of the penalty, shall be made.

12:235-3.18 Right to counsel

The accused in a hearing for removal shall be given a reasonable time to prepare a defense and shall be entitled to counsel retained and paid for by the accused.

12:235-3.19 Formal hearing for suspension or removal

(a) A formal hearing shall be conducted at the request of the Director before the Commissioner or a representative designated by the Commissioner.

(b) The hearing shall commence within 30 days of the filing of such a complaint and shall be tried on a continuous basis to conclusion.

12:235-3.20 Minor discipline

(a) Any action other than an action for removal in which the penalty sought will result in suspension of judges for more than five days will be processed in the same fashion as a cause for removal.

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(b) Any action in which the penalty sought will not result in a suspension of more than five days shall be heard by the Commissioner or a designated representative who may be the Director, Chief Judge or any other individual designated by the Commissioner and shall be conducted in a summary manner after the accused has been given formal notification of the charges, and afforded an opportunity to be heard. The decision of the Commissioner or his or her designated representative shall be final.

12:235-3.21 Forms of discipline

(a) The Commissioner or a designated representative may dispense the following discipline after any informal or formal hearing:

1. Removal from office;
2. Suspension;
3. Fine;
4. Written reprimand; or
5. Verbal reprimand.

12:235-3.22 Confidentiality

All personnel proceedings concerning judges of compensation shall be conducted in a confidential manner. The Director shall, in his or her discretion, have the sole responsibility for releasing information concerning personnel matters.

12:235-3.23 Separability

If any provision of this subchapter, or its application to any person or circumstances, is held invalid, the remainder of this subchapter and its application to other persons or circumstances shall not be affected.

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(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Roulette Table; Physical Characteristics

Roulette; Inspection Procedures; Security During Non-Gaming Hours

Proposed Amendments: N.J.A.C. 19:46-1.7 and 1.9

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-69(c) and 5:12-70(i).

Proposal Number: PRN 1988-483.

Submit comments by November 2, 1988 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
Princeton Pike Office Park
Building No. 5, CN-208
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:46-1.7 would permit alternative color designations for the pockets of the roulette wheel upon which the ball comes to rest. The color of each pocket would either correspond to those depicted on the ring of numbers or would be of a solid neutral color as approved by the Commission. The amendment to N.J.A.C. 19:46-1.9 would permit the use of a roulette wheel with component parts but requires that whenever any parts are adjusted, it be done during non-gaming hours by a casino supervisor or member of the casino maintenance department, in the presence of a security department member. The amendment further requires that whenever any component parts of the roulette wheel are replaced an inspection be completed by the Division of Gaming Enforcement prior to reopening the roulette wheel and table for gaming activity. A log of all adjustments and replacements to the roulette wheel will be required to be maintained by the casino.

These proposed amendments are in response to a petition for rulemaking filed with the Commission on March 3, 1988 by Paul-Son Dice & Card, Inc., notice of which was published in the April 4, 1988 New Jersey

Register at 20 N.J.R. 824(c). With the consent of the petitioner, minor modifications were made for the purpose of clarity.

Social Impact

Because the proposed amendments permit the use of a roulette wheel that does not have its pockets colored red and black alternately but has a ring around the wheel that corresponds to the position of the pockets and is alternately colored red and black, this may cause patrons some confusion initially but there would be no effect on the use of the wheel and, therefore, there should be no direct impact on the public. Furthermore, any initial patron confusion would be easily outweighed by the positive impact this type of wheel has on the integrity, honesty and fairness of the game. When any bias is noticed on the wheel, it can be easily adjusted rather than replacing the whole wheel. The wheel can be adjusted periodically so that no one has the ability to recognize or profit from any possible bias in the roulette wheel.

Economic Impact

Because the proposed amendments would provide greater flexibility in the use of roulette wheels, casinos would save the cost of replacing a whole new wheel anytime a bias is discovered.

Regulatory Flexibility Statement

These proposed amendments will only affect the operations of New Jersey casino licensees and will not impact on any small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; therefore, a regulatory flexibility analysis is not required.

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

19:46-1.7 Roulette table; physical characteristics

(a) (No change.)

(b) Each roulette wheel shall be of a single zero variety or a double zero variety as described and depicted below:

1. Each single zero roulette wheel shall have 37 equally spaced [compartments] **pockets** around the wheel **where the roulette ball shall come to rest. The roulette wheel shall also have a ring of 37 equally spaced areas to correspond to the position of the pockets** with one marked zero and colored green and the others marked 1 to 36 and colored alternately red and black which numbers shall be arranged around the wheel as depicted in the following diagram unless otherwise approved by the Commission[.]. **The color of each pocket shall either be a corresponding color to those depicted on the ring or a neutral color as approved by the Commission.**

2. Each double zero roulette wheel shall have 38 equally spaced [compartments] **pockets** around the wheel **where the roulette ball shall come to rest. The roulette wheel shall also have a ring of 38 equally spaced areas to correspond to the position of the pockets** with one marked zero and colored green, one marked **double zero (00)** and colored green and others marked 1 to 36 and colored alternately red and black which numbers shall be arranged around the wheel as depicted in the following diagram unless otherwise approved by the Commission. **The color of each pocket shall either be a corresponding color to those depicted on the ring or a neutral color as approved by the Commission.**

(c) (No change.)

Editor's Note: (No change.)

19:46-1.9 Roulette; inspection procedures; security during non-gaming hours

(a) Prior to opening a roulette table for daily gaming activity, a casino supervisor or member of the casino security department shall:

1. (No change.)

2. Inspect the roulette wheel to assure that it is level and rotating freely and evenly; [and]

3. **Inspect the roulette wheel to assure that all parts are secure and free from movement; and**

[3.]4. Inspect the roulette ball by passing it over a magnet or compass to assure its non-magnetic quality.

(b) **If a casino licensee uses a roulette wheel which has movable parts, a casino supervisor or a member of the casino maintenance department shall, in the presence of a security department member, make any adjustments to the movable parts only during non-gaming hours. These adjustments shall be completed prior to the required inspections in (a)**

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above. The casino licensee may replace any of the movable parts at any time provided, however, an inspection is completed by the Division prior to reopening the roulette wheel and table for gaming activity. A log shall be maintained which shall include, at a minimum, the date, the roulette table number, whether an adjustment or replacement was completed and the signature of the person making the adjustment or replacement.

[(b)](c) (No change in text.)

(a)

CASINO CONTROL COMMISSION

**Equal Employment Opportunity
Set-Aside Goals For Casino Business with Minority
and Women's Business Enterprises**

Proposed New Rules: N.J.A.C. 19:53-2

Authorized By: Casino Control Commission, Joseph A. Papp,
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69 and 190.

Proposal Number: PRN 1988-492.

Submit comments by November 2, 1988 to:

Luis A. Fuentes, Director
Affirmative Action and Planning
Casino Control Commission
1300 Atlantic Avenue
Citicenter Building, 4th Floor
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed new rules, N.J.A.C. 19:53-2, are intended to implement the provisions of Article 13 of the Casino Control Act, N.J.S.A. 5:12-184 et seq. (the Act), which establish set-aside goals for casino licensee business with minority business enterprises (MBEs) and women's business enterprises (WBEs). More specifically, Article 13 requires casino licensees to establish goals of expending certain percentages of their contracts for goods and services, and their bus business, with certified MBEs and certified WBEs within specified statutory intervals. Casino licensees are required to make good faith efforts to meet the set-aside percentages established in N.J.S.A. 5:12-186 and 187 and to demonstrate annually that such efforts have been made.

The Act requires the Department of Commerce, Energy and Economic Development to establish and administer a unified certification procedure for WBEs and MBEs that do business with casino licensees. The certification procedures promulgated by the Department of Commerce, Energy and Economic Development are codified at N.J.A.C. 12A:11-1.

Generally, the proposed new rules provide that any casino licensee that achieves the specified statutory goal in an annual review period shall be entitled to a prima facie determination that it has made the good faith efforts required by the Act. See N.J.A.C. 19:53-2.10(b) and 2.11(a). If the casino licensee fails to reach a set-aside goal during an annual review period, the casino licensee would be required to make a detailed report to the Commission documenting its good faith efforts to reach the relevant set-aside goal. See N.J.A.C. 19:53-2.10(b) and 2.11(b).

In accordance with the requirements of Article 13, casino licensees are required to record and report the dollar value of its bus business with certified MBEs and WBEs. Since the majority of bus business in which casino licensees engage does not result in any monetary consideration flowing from the casino licensee to the bus owner or operator, the proposed rules identify two distinct categories of bus business which must be independently recorded and reported. The first category includes all agreements pursuant to which a casino licensee either directly or indirectly compensates a bus owner or operator for the use of its bus (see N.J.A.C. 19:53-2.6(a)1). The second category requires the recording and reporting of all complimentary goods or services provided to the passengers of bus owners or operators (see N.J.A.C. 19:53-2.6(a)2). This latter category is intended to provide a measure of casino licensee dollars expended in support of a bus operator's business where no direct or indirect compensation is flowing from the casino licensee to the bus operator.

Proposed new rule N.J.A.C. 19:53-2.7 requires each casino licensee to submit a quarterly report which will enable the Commission to track and determine the good faith efforts of casino licensees to reach the statutory

set-aside goals. Each casino licensee will also be required, pursuant to the terms of N.J.A.C. 19:53-2.8, to prepare and submit for Commission approval a set-aside plan which details the means by which the casino licensee intends to meet its set-aside obligations during the next annual compliance period. Should a casino licensee fail to attain a set-aside goal in any annual compliance period, N.J.A.C. 19:53-2.11(b) sets forth the criteria which will be considered by the Commission in determining whether a casino licensee has made the good faith efforts required by the Act and the proposed rules.

Social Impact

The most significant requirements imposed by the proposed new rules merely reflect requirements established by Article 13 of the Casino Control Act. Accordingly, the primary social impact of the rules is directly related to the enabling legislation. It is anticipated that the proposed new rules will help to fulfill the legislative policy of creating opportunity for full minority and women's business enterprise participation in the casino industry so that social and economic parity may be obtained by minority and women business persons and so that the economy of Atlantic City can be stimulated as contemplated by the Casino Control Act (see N.J.S.A. 5:12-184).

Economic Impact

Once again, the primary economic impact of the proposed new rules, namely, the enhancement of casino business opportunities for certified minority and women's business enterprises, is due to the set-aside goals and good faith effort requirements established by Article 13 of the Act. The proposed new rules will require casino licensees to incur various expenses in complying with the provisions of the Act and regulations. For example, casino licensees will be required to record and report all expenditures for goods and services and bus business in a manner which will enable the State to determine what proportion of its business is being provided to certified WBEs and MBEs. In addition, casino licensees will be required, for the first time, to generate a set-aside plan and to report annually on its compliance with the set-aside goals of the Act and regulations.

It is also anticipated that the proposed new rules will result in some additional expenses for the Commission and the Division of Gaming Enforcement in monitoring and enforcing casino licensee compliance with the set-aside requirements established by the Act and rules. It is not presently anticipated, however, that these additional expenses will be significant.

Regulatory Flexibility Statement

The proposed new rules only apply to casino licensees, none of which qualify as a small business within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed new rules follows:

**SUBCHAPTER 2. SET-ASIDE GOALS FOR CASINO
BUSINESS WITH MINORITY AND
WOMEN'S BUSINESS ENTERPRISES**

19:53-2.1 Applicability and scope

(a) The rules in this chapter implement the requirements of Article 13 of the Act, N.J.S.A. 5:12-184 et seq., concerning casino business set-aside goals for minority and women's business enterprises.

(b) The Act requires the Department of Commerce, Energy and Economic Development to establish and administer a unified certification procedure for minority and women's business enterprises that do business with casino licensees on contracts for goods or services or contracts for bus business. The certification procedures promulgated by the Department of Commerce, Energy and Economic Development are codified at N.J.A.C. 12A:11-1. All questions concerning applications or eligibility for certification as a minority or women's business enterprise should be addressed to:

N.J. Department of Commerce,
Energy and Economic Development
Set-Aside and Certification Office
CN 835
One West State Street
Trenton, New Jersey 08625

(c) Pursuant to the provisions of N.J.S.A. 5:12-190, the Commission is required to adopt such rules as may be necessary to interpret and implement the casino business set-aside goals estab-

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lished by the Act. Questions concerning the obligations of casino licensees and the applicability of these rules should be addressed to:

New Jersey Casino Control Commission
 Division of Affirmative Action and Planning
 1300 Atlantic Avenue, 4th Floor
 Atlantic City, New Jersey 08401

(d) Certification of an enterprise as a minority or women's business enterprise does not in any way relieve that enterprise or any casino licensee of its obligation to comply with any requirement of the Casino Control Act or the Commission's rules concerning enterprises doing business with casino licensees.

19:53-2.2 Definitions

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

"Bus" means any "autobus" as defined in N.J.S.A. 48:4-1; provided, however, for purposes of this subchapter, such term shall include any autobus engaged in intrastate or interstate commerce.

"Bus business" means any direct or indirect agreement, arrangement or contract between a casino licensee and the owner or operator of a bus pursuant to which a bus is used to transport passengers for the direct or indirect benefit of the casino licensee.

"Certified MBE or WBE" means any business enterprise that has been certified by the Department of Commerce, Energy and Economic Development as being a minority business enterprise or women's business enterprise as defined in N.J.S.A. 5:12-185b and d.

"Contract" means any written or unwritten agreement between a casino licensee and any other person.

"MBE" means minority business enterprise.

"Minority" is defined in N.J.S.A. 5:12-185c.

"Minority business enterprise" is defined in N.J.S.A. 5:12-185b.

"WBE" means women's business enterprise.

"Women's business enterprise" is defined in N.J.S.A. 5:12-185d.

19:53-2.3 Casino set-aside goals: contracts for goods and services

(a) Every casino licensee shall, beginning on January 1, 1988, or on the date of receipt of its casino license, whichever is later, make a good faith effort to expend each year at least five percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-2.4, with certified MBEs and WBEs.

(b) Every casino licensee shall, beginning on January 1, 1991, or three years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 10 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-2.4, with certified MBEs and WBEs.

(c) Every casino licensee shall, beginning on January 1, 1994, or six years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 15 percent of the dollar value of its contracts for goods and services, calculated in accordance with the provisions of N.J.A.C. 19:53-2.4, with certified MBEs and WBEs.

19:53-2.4 Determination of expenditures for goods and services

(a) In determining the total dollar value of contracts for goods and services expended by a casino licensee each year and the percentage thereof awarded to certified MBEs and WBEs, a casino licensee shall record the dollar value of all expenditures for goods and services made by the casino licensee; provided, however, that expenditures for the following categories of goods and services shall be excluded:

1. Utilities and taxes;
2. Financing costs, such as mortgages, loans or any other type of debt;
3. Medical insurance;
4. Dues and fees to the Atlantic City Casino Association;
5. Fees and payments to a parent or affiliated company of the casino licensee other than those that represent fees and payments for goods and services supplied by non-affiliated persons through an affiliated company for the use or benefit of the casino licensee;

6. Rents paid for real property and any payments constituting the price of an interest in real property as a result of a real estate transaction; and

7. Bus business recorded pursuant to N.J.A.C. 19:53-2.6.

(b) A casino licensee may fulfill up to 70 percent of the set-aside goals established by N.J.S.A. 5:12-186 and N.J.A.C. 19:53-2.3, or any part thereof, by requiring contractors to set aside portions of their contracts for certified MBEs and WBEs, to the extent that dollars are actually expended with certified MBEs and WBEs. In determining the good faith efforts of a casino licensee to comply with the provisions of N.J.S.A. 5:12-186 and this subchapter, no consideration shall be given to dollars expended by casino contractors with certified MBEs and WBEs in excess of this 70 percent limitation. Any casino licensee seeking set-aside credit for subcontracts awarded to certified MBEs or WBEs by a casino contractor shall provide proof of the amount of the set-aside to the Commission. Such proof shall include:

1. Executed copies of the contract and subcontract;
2. Copies of any payment orders and checks made payable to the certified MBE or WBE subcontractor; and
3. Any other information the Commission may require.

19:53-2.5 Casino set-aside goals: bus business

(a) Every casino licensee shall, beginning on January 1, 1988, or on the date of receipt of its casino license, whichever is later, make a good faith effort to expend each year at least five percent of the dollar value of its bus business, calculated in accordance with the provisions of N.J.A.C. 19:53-2.6, with certified MBEs and WBEs.

(b) Every casino licensee shall, beginning on January 1, 1991, or three years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 10 percent of the dollar value of its bus business, calculated in accordance with the provisions of N.J.A.C. 19:53-2.6, with certified MBEs and WBEs.

(c) Every casino licensee shall, beginning on January 1, 1994, or six years after the receipt of its casino license, whichever is later, make a good faith effort to expend each year at least 15 percent of the dollar value of its bus business, calculated in accordance with the provisions of N.J.A.C. 19:53-2.6, with certified MBEs and WBEs.

19:53-2.6 Determination of bus business expenditures

(a) In determining the total dollar value of bus business expended by a casino licensee each year and the percentage thereof awarded to certified MBEs and WBEs, a casino licensee shall record the dollar amount of its bus business in each of the following categories:

1. Direct or indirect payments to bus owners or operators. This category shall include the total dollar value of all bus business pursuant to which a casino licensee either directly or indirectly compensates a bus owner or operator for the use of its bus. The amount of bus business to be recorded under this category shall be equal to the value of the compensation provided to the bus owner or operator. Examples of bus business in this category shall include, without limitation, arrangements whereby:

- i. The casino licensee directly charters and pays for the use of the bus;
- ii. The casino licensee indirectly pays for the use of the bus by reimbursing the user of the bus specifically for the cost of transportation;
- iii. The casino licensee reimburses a third party for providing the bus for the use of other persons; or
- iv. The casino licensee pays for the cost of advertising or other goods or services which directly benefit the owner or operator of the bus.

2. Complimentary goods or services provided to the passengers of bus owners or operators. This category shall include the total dollar value of all complimentary goods or services which are directly or indirectly provided by the casino licensee to the passengers of the bus owner or operator (see N.J.A.C. 19:45-1.9). For example, if a casino licensee has an arrangement with a bus operator whereby the casino licensee agrees to provide each bus passenger brought to its casino by the bus operator with complimentary goods or services worth \$20.00, the amount of bus business to be recorded under this category shall equal the number of passengers who are entitled to

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and actually receive the complimentary goods or services multiplied by \$20.00.

(b) If any bus business includes both payments and complimentary within the categories identified in (a) above, each component shall be separately recorded in accordance with the requirements of this section.

19:53-2.7 Quarterly expenditure reports

(a) Each casino licensee shall submit to the Commission and the Division a quarterly report listing for each category of goods and services identified in (c) below:

1. The total dollar value of all disbursements in the category made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.4;

2. The name of each certified MBE or WBE with whom the casino licensee did business during the quarter, as well as:

- i. The certification status of the enterprise (MBE or WBE);
- ii. The commodity code established by the Commission for the good or service provided by the enterprise;
- iii. The total dollars disbursed to the enterprise; and
- iv. The total amount of dollars, if any, which were disbursed to the certified MBE or WBE by a contractor pursuant to an agreement authorized by N.J.S.A. 5:12-186c.;

3. The total dollar amount of disbursements in the category made to certified MBEs and WBEs during the quarter and the year to date by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (a)1 above that each listed amount represents; and

4. The total dollar amount of disbursements in the category made during the quarter and the year to date to certified MBEs and WBEs by contractors pursuant to agreements authorized by N.J.S.A. 5:12-186c.

(b) Each quarterly report required pursuant to (a) above shall also include:

1. The total dollar amount of disbursements in all categories of goods and services combined made by the casino licensee during the quarter and the year to date;

2. The total dollar amount of disbursements in all categories of goods and services combined made to certified MBEs and WBEs during the quarter and the year to date by either the casino licensee or its contractors, listed by MBEs, WBEs and combined total, and the percentage of the total disbursements reported pursuant to (b)1 above that each listed amount represents; and

3. The total dollar amount of disbursements in all categories of goods and services combined made to certified MBEs and WBEs by contractors pursuant to agreements authorized by N.J.S.A. 5:12-186c.

(c) The information required by (a) above shall be reported for each of the following major purchasing categories of goods and services:

1. Food and beverage, including alcoholic beverages;
2. Non-durable hotel supplies, including paper products, chemicals and allied products, linens, cleaning products, hardware supplies, water, office supplies, uniforms, textiles, carpeting and apparel;
3. Construction, renovation and repair of the casino hotel and related facilities, including construction materials and supplies;
4. Entertainment, including theatrical supplies, sound equipment, audiovisual aids and the hiring of entertainment services, such as musical contractors, musicians and performers;
5. Durable hotel supplies, including furniture and fixtures, office equipment and data processing equipment;
6. Maintenance services, including cleaning services, both general and construction, and landscaping services;
7. Advertising, including marketing, photographic services, and print and broadcast media;
8. Laundry and drycleaning;
9. Tour, travel and junket services not recorded under N.J.A.C. 19:53-2.6;
10. Gaming related equipment; and

11. Other products and services, including, but not limited to, fuel oil, lease arrangements not involving real estate, floral services, freight moving services, garbage handling services, interior decorating services and professional services.

(d) Each casino licensee shall submit to the Commission and the Division a quarterly report listing for each category of bus business identified in N.J.A.C. 19:53-2.6 the following:

1. The total dollar value of all disbursements in the category made by the casino licensee during the quarter and the year to date, recorded in accordance with the requirements of N.J.A.C. 19:53-2.6;

2. The name of each certified MBE or WBE with whom the casino licensee did bus business during the quarter, as well as the information required by (a)2i through iii above; and

3. The information required by (a)3 above.

(e) Each quarterly report required pursuant to (d) above shall also include the information required by (b)1 and 2 above, except that total disbursements in both categories of bus business shall be substituted for total disbursements in all categories of goods and services combined.

(f) When recording or reporting the dollar value of its expenditures for goods or services or bus business, a casino licensee may record or report an expenditure with an enterprise that has been certified as both an MBE and a WBE only once.

(g) The quarterly reports required by this section shall be filed with the Commission and the Division within 15 days of the expiration of the quarter. Casino licensees operating under a calendar year compliance period pursuant to N.J.A.C. 19:53-2.3 and 19:53-2.5 shall file reports on a calendar quarter basis. All other casino licensees shall file quarterly reports in accordance with a schedule approved by the Commission.

19:53-2.8 Casino licensee set-aside plans

(a) Each casino licensee shall prepare and submit for approval by the Commission a set-aside plan which shall detail the means by which the casino licensee intends to meet the set-aside goals established by N.J.S.A. 5:12-186, 5:12-187 and this subchapter during the next annual compliance period. Such plan shall, without limitation, include:

1. The efforts that the casino licensee will make to assist MBEs and WBEs to:

- i. Apply for certification;
- ii. Qualify for appropriate contracts; and
- iii. Submit all necessary documentation to the casino licensee and regulatory authorities;

2. The means by which the casino licensee will provide notice to certified MBEs and WBEs of its intent to purchase goods or services;

3. The internal controls and procedures which the casino licensee will use to document its good faith efforts to utilize the services of certified MBEs and WBEs;

4. A general description and estimated cost of the goods and services anticipated to be purchased by the casino licensee during the next annual compliance period; and

5. A list of those contracts or expenditures which the casino licensee anticipates to be made with certified MBEs and WBEs, either directly or through a contractor pursuant to the provisions of N.J.S.A. 5:12-186c and N.J.A.C. 19:53-2.4(b).

(b) The initial set-aside plan required by (a) above shall be submitted to the Commission and the Division as follows:

1. Each holder of a casino license shall submit its plan no later than 120 days following the effective date of this section;

2. Each applicant for a casino license shall submit its plan no later than 120 days prior to the anticipated issuance of its casino license, unless such submission date would be prior to the effective date of this section, in which event the requirements of (b)1 above will govern the submission of the plan.

(c) Each casino licensee shall submit a revised set-aside plan reflecting any changes which are proposed to the last set-aside plan approved by the Commission at least 90 days prior to the start of its next annual compliance period.

19:53-2.9 Responsibility for implementation of set-aside plan

Each casino licensee's chief executive officer shall be ultimately responsible for insuring that its approved set-aside plan is fully im-

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plemented. The casino licensee's equal employment officer shall be directly responsible for implementing the casino licensee's obligations under this subchapter. The equal employment officer shall, among other things, act as a liaison and provide assistance to the Commission, the Division and the Department of Commerce, Energy and Economic Development.

19:53-2.10 Annual demonstration of good faith efforts

(a) Pursuant to N.J.S.A. 5:12-186b and 5:12-187b, each casino licensee is required to demonstrate annually its good faith efforts to meet the set-aside goals established by the Act and this subchapter.

(b) Each casino licensee shall, within 30 days of the end of each annual compliance period established by N.J.A.C. 19:53-2.3 and 19:53-2.5, file a report with the Commission and Division which either:

1. Demonstrates that the casino licensee is entitled to the prima facie determination of good faith efforts authorized by N.J.A.C. 19:53-2.11(a); or

2. Documents its good faith efforts to achieve the set aside goals established by the Act and this subchapter, which report shall address the criteria listed in N.J.A.C. 19:53-2.11(b) and shall include, but not be limited to, the following:

i. Documentation demonstrating its compliance with the terms of its approved set-aside plan;

ii. A summary and analysis of its expenditures for goods and services and bus business during the annual reporting period and the availability of certified MBEs and WBEs to fulfill its needs;

iii. A summary and analysis of all contracts awarded during the annual reporting period which required the contractor to set aside a portion of its contract for certified MBEs and WBEs, and the contractor's compliance therewith; and

iv. Any other information relevant to the casino licensee's efforts to comply with the set-aside goals established by the Act and this subchapter.

(c) Notwithstanding the provisions of (b)1 above and N.J.A.C. 19:53-2.11(a), the Commission may require any casino licensee to comply with all or any part of (b)2 above if the Commission has cause to question the actual good faith efforts of that casino licensee.

(d) Within 90 days of the receipt of any report required by this section, the Commission shall hold a hearing and make a determination with regard to the good faith efforts of the casino licensee to comply with the set-a-side goals established by the Act and this subchapter. If, after an appropriate hearing, the Commission determines that a casino licensee has failed to make a good faith effort to comply with all or any part of the requirements established by the Act and this subchapter, the Commission may impose any sanction or combination of sanctions authorized by the Act and this subchapter.

19:53-2.11 Criteria for determining good faith efforts to meet set-aside goals

(a) A casino licensee shall be entitled to a prima facie determination that it has satisfied its obligation to make the good faith efforts required by N.J.S.A. 5:12-186 or N.J.S.A. 5:12-187 if the casino licensee demonstrates for the relevant annual compliance period that

it has expended the following percentage of the dollar value of its contracts for goods or services or bus business with certified MBEs and WBEs during the specified year:

1. Five percent during any calendar year prior to 1991, or during any of the first three years in which the casino licensee holds a license if the license was initially issued after January 1, 1988;

2. Ten percent during any calendar year after 1990 but prior to 1994, or during any of the fourth through sixth years in which the casino licensee holds a license if the license was initially issued after January 1, 1988; or

3. Fifteen percent during any calendar year after 1993, or during any year after the sixth year the casino licensee has held a license if the license was initially issued after January 1, 1988.

(b) If a casino licensee is required by N.J.A.C. 19:53-2.10(b)2 or 2.10(c) to document its good faith efforts to achieve the set-aside goals established by N.J.S.A. 5:12-186, 5:12-187 and this subchapter, the Commission shall consider the following criteria when determining whether the casino licensee has satisfied its good faith obligations:

1. The casino licensee's compliance with the set-aside plan approved by the Commission pursuant to N.J.A.C. 19:53-2.8;

2. The general availability of certified MBEs and WBEs to provide needed goods and services in the appropriate area;

3. The casino licensee's willingness to require its contractors to set aside a portion of their contracts for certified MBEs and WBEs;

4. The number of different certified MBEs and WBEs used by a casino licensee and their distribution among the categories of bus business identified in N.J.A.C. 19:53-2.6 and the major purchasing categories identified in N.J.A.C. 19:53-2.7;

5. The relative amount of total dollars expended with certified MBEs versus certified WBEs;

6. The casino licensee's participation in conferences, workshops and expositions designed to enhance the development of minority and women's enterprises; and

7. Any other relevant evidence submitted by the casino licensee.

19:53-2.12 Sanctions

(a) If the Commission determines that all or any part of the requirements of N.J.S.A. 5:12-186, 5:12-187 or this subchapter have not been met by a casino licensee, the Commission may impose any sanction authorized by the Act or this subchapter to ensure that the casino licensee makes good faith efforts to meet the expenditure goals established for certified MBEs and WBEs, including, without limitation, the:

1. Imposition of appropriate fines;

2. Imposition of license conditions;

3. Suspension of the casino license; or

4. Revocation of the casino license.

(b) If a determination is made that a casino licensee has failed to demonstrate compliance with the provisions of N.J.S.A. 5:12-186 and 5:12-187, the casino licensee shall have 90 days from the date of the determination of noncompliance within which to comply with the provisions of those sections.

(c) Sanctions proceedings shall be conducted in accordance with N.J.A.C. 19:42.

RULE ADOPTIONS

BANKING

(a)

DIVISION OF SAVINGS AND LOAN ASSOCIATIONS

Conversion of 3121 Associations from Mutual to Capital Stock

Adopted Amendments: N.J.A.C. 3:32-1.1, 1.2, 1.4, 1.6 and 1.7

Adopted New Rules: N.J.A.C. 3:32-1.10, 1.11

Adopted Repeal: 3:1-2.17.

Proposed: April 4, 1988 at 20 N.J.R. 697(a).

Filed: September 7, 1988 as R.1988 d.472, **without change.**

Effective Date: October 3, 1988.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

The Department of Banking received one comment in response to this proposal. The comment was from a trade association representing savings and loan associations.

COMMENT: The comment pointed out an error in the Summary portion of the proposal notice. The Summary stated that P.L. 1987, c.225 required all State-chartered savings and loan associations to have obtained Federal insurance of accounts by July 30, 1988, or be liquidated. The commenter indicated that the deadline for obtaining FSLIC insurance under the statute was actually July 30, 1990.

RESPONSE: The Department agrees that the deadline date for obtaining FSLIC insurance which is set forth in the Summary of the proposal should have been July 30, 1990 instead of July 30, 1988. This error in the Summary, however, has no effect whatsoever on the proposal, which is being adopted without change.

Full text of the adoption follows.

3:1-2.17 (Reserved)

3:32-1.1 Authorization for conversion

(a) An insured mutual association may convert to a capital stock association subject to the limitations and provisions of article XXI of the Savings and Loan Act (1963) as amended, N.J.S.A. 17:12B-1 et seq., and this chapter. The association shall also be subject to the same requirements promulgated by the Federal Savings and Loan Insurance Corporation in 12 CFR 563b of the regulations for insurance of accounts.

(b) A 3121 Association, as defined in N.J.A.C. 3:32-1.10(a), may convert to a capital stock association subject to this chapter and, where applicable, to article XXI of the Savings and Loan Act (1963) as amended N.J.S.A. 17:12B-1 et seq.

3:32-1.2 Application

(a) Applications and other forms provided by the Federal Savings and Loan Insurance Corporation shall be considered as acceptable material by the Commissioner for compliance with the provisions of this chapter and article XXI of the Savings and Loan Act (1963) as amended N.J.S.A. 17:12B-1 et seq. Copies of all forms required to be filed with the Federal Savings and Loan Insurance Corporation should be forwarded to the Commissioner as part of the application for preliminary approval.

(b) A 3121 Association may comply with this section by submitting the form provided by the Commissioner.

3:32-1.4 Meeting of members

(a) Savings and/or borrowing members, as defined by the mutual association's bylaws, who are 16 years of age, or over, shall be entitled to vote at the special meeting to consider conversion to a capital stock association.

(b) The record date for determining those members eligible to vote at the special meeting called to consider the plan of conversion shall not be less than 90 days prior to the date of approval of such plan by the board of directors.

(c) A special meeting of the members shall be called by the board of directors, not later than 180 days following preliminary approval of the plan of conversion by both the Commissioner and the Federal Savings and Loan Insurance Corporation. In the case of a 3121 Association, a special meeting of the members shall be called by the board of directors not later than 180 days following preliminary approval of the plan of conversion by the Commission. The members shall consider and vote upon, either in person or by proxy, the following business:

1. The adoption of the plan of conversion of the mutual association into a capital stock association;

2. The election of directors to hold office from the effective date of conversion until the next annual meeting; and

3. The adoption of bylaws for the capital stock association.

(d) Upon the affirmative vote of a majority or, in the case of a 3121 Association, the affirmative vote of at least two-thirds of the members present either in person or by proxy, determining to convert the mutual association into a capital stock association, the board of directors shall within 45 days file with the Commissioner the following documents:

1. A copy of the minutes of the proceedings of such meeting;

2. A certificate of incorporation as provided in article XXI, section 18 of the Savings and Loan Act (1963), as amended;

3. A copy of the bylaws for the stock corporation; and

4. The conversion application for final approval.

3:32-1.6 Stock purchase rights

(a) Eligible account holders shall be entitled to subscription rights to purchase capital stock pro rata to the value of their holdings. Eligible account holders under 18 years of age shall be entitled to purchase stock under a custodian agreement.

(b) The exercise of the subscription rights of the eligible account holders shall be in accordance with 12 CFR 563b of the regulations for insurance of accounts.

(c) An "eligible account holder" means any person holding a savings account in a converting association on the eligibility record date established by the Commissioner which shall not be less than 90 days prior to the approval of the plan of conversion by the board of directors.

(d) Notwithstanding (a) and (b) above, subscription rights of eligible account holders of 3121 Associations shall be determined pursuant to N.J.A.C. 3:32-1.10.

3:32-1.7 Purchase price of stock

(a) The application for final approval shall fix a subscription price per share not less than \$5.00 and not more than \$50.00, except that the subscription price may exceed \$50.00 per share upon a showing of special circumstances.

(b) Prices are to be established by persons independent of the converting association who are experienced and expert in corporate appraisal. The independence of the persons shall not be deemed to have been compromised merely because they participated in selling the stock or received from the association a fee for price appraisal services. The persons shall be acceptable to the Commissioner and the corporation.

3:32-1.10 3121 Associations

(a) A "3121 Association" shall mean a mutual association whose board of directors adopts a resolution to convert to a stock association after July 29, 1987, and before October 1, 1988, and which at the time its board of directors adopts such a resolution is not insured by the Federal Savings and Loan Insurance Corporation.

(b) The Commissioner shall not approve any conversion plan submitted by a 3121 Association which, in the judgment of the Commissioner, does not provide for the payment of fair value to the members for their interest in the association, or which is, in any other aspect, unfair or inequitable to the members.

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COMMUNITY AFFAIRS

3:32-1.11 Fees; conversion from mutual to capital stock association
A filing fee of \$1,500 shall accompany every application for the conversion of a mutual association to a capital stock association.

to be made in accordance with N.J.A.C. 5:2-1.5(d). In-kind services or costs of other on-going services shall not be allowed as a substitute for the \$1.00 per \$5.00 cash match requirement.

COMMUNITY AFFAIRS

OFFICE OF THE COMMISSIONER

(a)

Handicapped Persons' Recreational Opportunities Act

Readoption with Amendments and Recodification: N.J.A.C. 5:2

Proposed: August 1, 1988 at 20 N.J.R. 1765(a).
Adopted: September 1, 1988 by Anthony M. Villane, Jr., D.D.S., Acting Commissioner, Department of Community Affairs.
Filed: September 1, 1988 as R.1988 d.459, without change.
Authority: N.J.S.A. 52:27D-173.
Effective Date: September 1, 1988 for Readoption; October 3, 1988 for Amendments.
Expiration Date: September 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:51.

Full text of the adopted amendments to the readoption follows.

CHAPTER 2
MANAGEMENT ASSISTANCE PROGRAMS

SUBCHAPTER 1. HANDICAPPED PERSONS' RECREATIONAL OPPORTUNITIES ACT

5:2-1.1 Introduction and general provisions

- (a) (No change.)
- (b) The Handicapped Persons' Recreational Opportunities Act of 1978 is administered by the Department of Community Affairs through the Office of Recreation and in cooperation with the Governor's Council on Physical Fitness and Sports. All correspondence and inquiries should be addressed to the Office of Recreation, Department of Community Affairs, 101 South Broad Street, CN 005, Trenton, New Jersey 08625.
- (c) (No change.)

5:2-1.2 Definitions

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

... "Commissioner" means the Commissioner of the Department of Community Affairs or his or her designee.

... "Office" means the Office of Recreation of the Department of Community Affairs.

5:2-1.3 Eligible applicants

- (a) (No change.)
- (b) The following activities for the handicapped shall be accepted as eligible activities for participation in the program.
 - 1.-2. (No change.)
 - (c) Grants to be awarded for Special Events or Comprehensive Recreational Services shall be subject to the following limitations:
 - 1.-2. (No change.)
 - 3. Grants to be awarded for Special Events or Comprehensive Recreational Services to local governments shall be made in the amount of \$5.00 for each \$1.00 appropriated by local government. The \$1.00 per \$5.00 match required of a local government must be a cash match contribution under the provisions of the grant formula,

5:2-1.4 (No change in text.)

5:2-1.5 Application processing and review procedure

- (a) Professional staff of the Office shall register and review the application for conformity with application procedures and regulations established by the Department.
- (b) Upon review of the Commissioner, applications shall be processed in accordance with standard departmental procedures.
- (c) A contract shall be offered by the Department to the approved local government for the review and signature of the local chief executive.
- (d) Prior to any payment being made, a local government shall submit one of the following documents:
 - 1. A copy of the resolution providing for the insertion of a special item of revenue in the current year's budget pursuant to N.J.S.A. 40A:4-87 as approved by the Director, Division of Local Government Services, which also indicates that the match requirement of N.J.A.C. 5:2-1.3(c)3 has been met;
 - 2. A certificate of appropriated funds;
 - 3. A letter from the Chief Financial Officer or the Chief Executive Officer stating that, upon adoption of its budget, the local government shall comply with N.J.S.A. 52:27D-170 et seq.; or
 - 4. A certificate guaranteeing that the local government will include in its budget an appropriation for the necessary matching funds and, upon adoption of the budget, will comply with N.J.S.A. 52:27D-170 et seq.

5:2-1.6 Additional determinations

The Commissioner shall, as may be required, make such additional determinations as may be necessary to determine eligible activities or other matters pertaining to the most effective conduct of this program.

(b)

Nonpublic Records

Readoption with Amendments: N.J.A.C. 5:3

Proposed: August 1, 1988 at 20 N.J.R. 1763(a).
Adopted: September 1, 1988 by Anthony M. Villane, Jr., D.D.S., Acting Commissioner, Department of Community Affairs.
Filed: September 1, 1988 as R.1988 d.458, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-3(f).
Effective Date: September 1, 1988 for the readoption; October 3, 1988 for the amendments.
Expiration Date: September 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

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

CHAPTER 3
OFFICE OF THE COMMISSIONER

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. NONPUBLIC RECORDS

5:3-2.1 Nonpublic records

(a) Throughout the entire Department of Community Affairs, the following shall not be deemed to be public records subject to inspection, examination and available for copying pursuant to P.L. 1963, c.73:

- 1. All confidential reports, executive memoranda and evaluations submitted to the Commissioner or any other State agency;

2. All personnel records, job applications and statements filed pursuant to the Department of Community Affairs' Code of Ethics.

(b) The following records of the Division of Local Government Services are also deemed to be nonpublic records:

1. Those reports entitled "Special Confidential Reports" which are filed by any registered municipal accountant;

2. Those reports pertaining to the inspection of local administration and inquiry into financial affairs pursuant to N.J.S.A. 52:27BB and Titles 46 and 47 of the New Jersey Statutes;

3. "Questionnaire" for registered municipal accountants;

4. Auditor evaluations conducted as a continuing program by municipal registered accountants;

5. Internal management reports concerning plans, programs and methods of the Division of Local Government Services.

6. Any correspondence and records dealing with specific programs prior to execution of the intended contract;

7. All resource recovery contracts submitted to the Division of Local Government Services during the period of time in which such contracts are undergoing staff review for compliance with *[the appropriate regulations]* ***applicable law***.

(c) The following records of the Division of Housing and Development are also deemed to be nonpublic records:

1. All records containing personal or financial information submitted by applicants for rooming or boarding house owner's or operator's licenses or for loans under the Boarding House Life Safety Loan Program or submitted by public agencies or other persons with respect to such applicants.

2. All records containing personal or financial information submitted by applicants for rental assistance under the Section 8 Existing Housing, Section 8 Moderate Rehabilitation and Boarding House Life Safety Loan programs or submitted by public agencies or other persons with respect to such applicants.

3. All records containing the name of a complainant which are submitted to or maintained by the Department pursuant to the Public Employees Occupational Safety and Health Act (P.L. 1983, c.516; N.J.S.A. 34:6A-25 et seq.).

4. All records containing applicant information submitted to the Affordable Housing Management Service for inclusion on the referral waiting list.

(b) The Commissioner shall certify the record upon which the recommendation is based and remit the record, so certified, together with two copies of the recommendation to the State Board within three days after the recommendation is filed.

(c) Within 10 days after the recommendation is filed, a respondent contesting the recommendation shall file a Notice of Intention to Contest with the State Board of Education and with the Commissioner, identifying the recommendation and stating that the respondent intends to contest it. A notice filed on behalf of a district board shall have appended thereto a certification that the district board has authorized the filing of the notice by resolution of the board adopted by roll call vote.

(d) Within 15 days after the filing of notice, the respondent shall file with the State Board an original and 17 copies of its exceptions to the recommendation, and shall serve one copy upon the Commissioner.

1. The exceptions shall specify the basis upon which the respondent contests the recommendation and shall include the respondent's argument, clearly and concisely stated, as to why the State board should not issue an administrative order creating a State-operated school district.

2. Any transcript or exhibit admitted into evidence, or portion thereof, relied upon shall be specifically identified.

3. The respondent's exceptions may be in letter form, but shall not exceed 30 pages unless leave of the State Board has been obtained.

(e) Within 10 days after the respondent has filed its exceptions, the Commissioner may file a response not exceeding 30 pages, which shall specifically identify any transcript or exhibit admitted into evidence, or portion thereof, upon which the Commissioner relies in the response.

(f) No other papers shall be served or filed without leave of the State Board.

(g) Oral argument before the State Board, or a committee thereof, may be granted on request of the respondent made by a separate captioned paper filed concurrently with its exceptions, or, in the case of any recommendation, upon direction of the State Board.

(h) If no notice is filed as provided by (c) above, or exceptions are not filed within the 15 day period provided by (d) above, the decision of the State Board will be based solely on the record certified to it by the Commissioner.

(i) Except as otherwise provided, the rules included in this subchapter are applicable to proceedings pursuant to this section.

(j) Determinations of the State board made pursuant to this section shall be embodied in a written decision, which shall be certified to the Commissioner and simultaneously mailed to the respondent or its attorney of record.

(k) The decision of the State Board shall be deemed filed three days after the date of mailing.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Issuance of an Administrative Order Creating a State-operated School District

Adopted New Rule: N.J.A.C. 6:2-1.21

Proposed: July 5, 1988 at 20 N.J.R. 1505(a).

Adopted: September 7, 1988 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: September 9, 1988 as R.1988 d.475, **without change**.

Authority: N.J.S.A. 18A:4-1 through 18A:4-20, 18A:6-27 through 18A:6-29, 18A:7A-15 and 18A:7A-25.

Effective Date: October 3, 1988.

Expiration Date: March 1, 1989.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

6:2-1.21 Issuance of an administrative order creating a State-operated school district

(a) A recommendation made to the State Board by the Commissioner of Education for the issuance of an administrative order creating a State-operated school district shall be deemed filed three days after the date of mailing to the respondent.

HIGHER EDUCATION

NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)

(b)

Guaranteed Student Loan Program Student Loan Program: Policies and Procedures Readoption with Amendments: N.J.A.C. 9:9

Proposed: July 18, 1988 at 20 N.J.R. 1636(a).

Adopted: September 12, 1988, by the New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.

Filed: September 12, 1988 as R.1988 d.478, **with technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:72-10.

Effective Date: October 3, 1988.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:**No comments received.**

The NJHEAA has made several technical changes for purposes of clarification.

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

CHAPTER 9

STUDENT LOANS: PROCEDURES AND POLICIES

SUBCHAPTER 1. STUDENT LOAN PROGRAM—POLICIES AND PROCEDURES

9:9-1.1 Definitions

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

"Default" means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the United States Secretary of Education or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments.

"Foreign school" is a school not located in the United States.

"Guaranteed Student Loan Program" shall mean the Stafford Student Loan Program.

"PLUS" is a loan program which is targeted for parents of dependent undergraduate or graduate students.

"SLS" is a loan program targeted for independent undergraduate students, graduate students, and dependent undergraduate students whose parents are unable to procure a PLUS loan.

(b) Terms not defined in this section shall be defined in accordance with 34 C.F.R. §682.200.

9:9-1.2 Loan amounts

(a) No student shall be permitted to borrow a second time for the same stated grade level in school, as indicated on the previous loan application, if the request is the result of either academic failure or the failure to complete a full-time course load for the stated grade level at the institution attended; provided, however, that the Authority shall have the discretion to permit borrowing a second time for the same stated grade level in school when, in the discretion of the Authority, the borrower's request for repetitive funding is substantially based upon circumstances which were beyond his or her immediate control.

(b) The minimum amount the Authority will guaranty is \$200.00.

9:9-1.3 (No change.)

9:9-1.4 (Reserved)

9:9-1.5 Change of lenders

(a) A student should obtain all loans from the same lender. If the student is unable to do so, the student must:

1. Request the new lender to purchase the prior outstanding loan;
2. Submit a letter to the Authority from the original lender stating it is unwilling to process his or her current application; or
3. Submit to the Authority a letter from the original lender stating it is willing to process his or her current application and a letter from the student requesting a change of lenders.

9:9-1.6 Insurance and origination fees

(a) An applicant for a student loan must:

1. Pay an insurance fee of one percent of the guaranteed amount of the loan. Any adjustments or refunds shall be made by the lender or the Authority. The fee is only charged upon disbursement; however, the fee is not charged twice if the student changes schools within the same academic year;
2. Pay an origination fee based upon a rate assigned by Federal guidelines, on the principal amount of the loan. Refunds shall be

made by the lender in accordance with promulgated Federal guidelines.

(b) The above fees may be directly deducted from the proceeds of the loan prior to disbursement by the lender or paid to the lender prior to processing.

(c) No educational institution may charge an applicant a fee for processing an application for a Guaranteed Student Loan, PLUS Loan, or SLS Loan.

9:9-1.7 Authority action

Upon approval of the loan application, the lending institution will receive the student loan Guarantee Notice/Disclosure Statement. This is the lender's guarantee and authorization to disburse the funds and must then be attached to the application/note or otherwise maintained. Notification of guarantee will be sent to the student and the school at the same time.

9:9-1.8 Securing the note

Prior to approval of the loan, the lender must secure the student's signature on the application/note. The forms provided by the Authority must be used in all cases except when prior approval by the Authority has been given to the lender's forms.

9:9-1.9 Disbursement procedures

(a) Disbursement of funds shall not be made more than 30 days prior to the beginning of the academic year.

(b) The check shall be made jointly payable to the borrower and the school. The check must be sent directly to the school by the lender. For students attending foreign schools, the check shall be made payable solely to the borrower and sent directly to the borrower.

(c) Requirements of single or multiple disbursements shall be handled as prescribed by Federal regulations.

(d) At or before the disbursement of funds, the lender shall provide the borrower with a disclosure statement and other borrower information required by Federal regulations.

9:9-1.10 Change of school before disbursement

If, prior to disbursement of funds, the applicant indicates he or she will be attending a school other than the one indicated on the application, he or she must notify the lender to cancel the loan application. The loan is not transferable from school to school. Another application for the new school must be completed. No insurance fee will be charged if amounts remain the same.

9:9-1.11 Interest

(a) Interest is charged on the unpaid principal balance but, if not paid when due, may at the option of the holder of the note be capitalized and added to the unpaid principal balance.

(b) Interest must be calculated on a simple interest basis by all lenders.

(c) On all loans not approved for Federal interest subsidy, the borrower will be required to pay the full amount of interest.

9:9-1.12 Repayment of loan; installment arrangements

When a borrower ceases to be enrolled at least half time at an eligible school, the borrower must contact the lender within four months prior to the expiration of the grace period for the purpose of making arrangements toward repayment of the loan.

9:9-1.13 Delinquent payments; responsibility of lender

When an account becomes delinquent as a result of nonpayment of interest on a nonsubsidized loan when due or nonpayment of *an* installment when due or the failure to return funds due to non-enrollment in school, the Authority must be notified to such an event at the time of occurrence.

9:9-1.14 (No change.)

9:9-1.15 Notification of bankruptcy proceedings

In the event the lender is notified of any bankruptcy proceedings against the borrower subsequent to purchase of the defaulted loan by the Authority, the lender shall be responsible for protecting the Authority's interests by actively participating in all legal proceedings before the courts and filing the appropriate documents with the courts and shall notify the Authority of such action.

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9:9-1.16 Procedure for filing claim.

(a) With loans meeting the definition of default status, a request for claim forms may be submitted upon expiration of the required default time period as set forth in Federal regulations provided the lender has been in compliance with all Federal and State due diligence regulations.

(b) More than one loan may be combined on one claim form as long as the interest rate is the same. The lender will be reimbursed for the total unpaid principal and interest due for a period not to exceed 90 days beyond the date of default. The original note(s), properly assigned to the Authority, must be forwarded with the claims. By law, the Authority may not reimburse the lender for late charges.

9:9-1.17 (Reserved)

9:9-1.18 Certification of loans outstanding

At least annually, a list of loans outstanding will be sent to each lending institution. This list shall be checked against the lender's records and returned within 60 days with necessary corrections. Loans which have been cancelled, paid in full, reduced in amount, currently on installment or on deferment shall be noted and documented.

9:9-1.19 Certification of student enrollment in school

If a lender suspects a student is no longer attending the institution stated on the most recent application, steps shall be taken immediately to verify this data in the following manner. The lender shall communicate with the student requesting written evidence of current status from the school and shall simultaneously notify the Authority.

9:9-1.20 (No change.)

9:9-1.21 Notification of paid or cancelled loans

Lenders must return immediately to the Authority a copy of the application and/or the promissory note appropriately marked in a clear fashion when the loan is either paid in full*[,] *or* cancelled *[or has entered default status]*.

SUBCHAPTER 2. GUARANTEED STUDENT LOAN PROGRAM STATUTES AND REGULATIONS

9:9-2.1 Rules and statutes incorporated by reference

(a) The part of the Code of Federal Regulations known as 34 C.F.R. §682.100 through and including 34 C.F.R. §682.830 (as of July 1, 1987) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(b) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part B, 20 U.S.C. §1071 through and including §1087e3 (as of December 22, 1987) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations with modifications indicated in (c) below.

(c) The following are modifications to (b) above:

1. 20 U.S.C. §1078-1 is deleted.
2. 20 U.S.C. §1078-2 is deleted.
3. 20 U.S.C. §1078-3 is deleted.
4. 20 U.S.C. §1086 is deleted.

SUBCHAPTER 3. POLICY GOVERNING PLUS AND SUPPLEMENTAL LOANS FOR STUDENTS (SLS) LOAN PROGRAMS

9:9-3.1 Rules and statutes incorporated by reference

(a) The part of the Code of Federal Regulations known as 34 C.F.R. §682.100 through and including 34 C.F.R. §682.830 (as of July 1, 1987) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(b) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part B, 20 U.S.C. §1078-1 (as of June 3, 1987) including all subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(c) The provisions of subchapter 1 of this chapter, N.J.A.C. 9:9-1, governing the Guaranteed Student Loan Program shall also apply to loans made under the PLUS/SLS programs unless they are in-

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consistent with or otherwise excepted within the provisions of this subchapter.

9:9-3.2 Eligibility

An applicant for a PLUS or SLS loan must meet the requirements set forth in 34 C.F.R. §682.201.

9:9-3.3 Insurance fee

An applicant for a PLUS or SLS loan must pay an insurance fee as set forth in N.J.A.C. 9:9-1.6; however*,* no applicant for a PLUS or SLS loan shall be charged an origination fee as provided in N.J.A.C. 9:9-1.6(a)*[(2)]**2*.

9:9-3.4 Interest

Interest must be calculated on a simple interest basis by all lenders.

9:9-3.5 Capitalization of accrued interest

(a) For PLUS or SLS loans insured under a guarantee agency program, a lender may add accrued interest and unpaid insurance premiums to the borrower's unpaid principal balance according to the institution's own billing cycle but in no case more frequently than quarterly.

(b) For all PLUS or SLS loans made prior to July 6, 1987, this section shall only be applicable upon the written consent of the borrower.

SUBCHAPTER 4. POLICY GOVERNING DIRECT GUARANTEED STUDENT LOANS (GSL)

9:9-4.1 Qualifications for eligibility

(a) To be eligible for a direct GSL loan:

1.-3. (No change.)

4. An applicant must request assistance in obtaining a loan from the Authority.

9:9-4.2 Loan amount

(a) Students unable to obtain a sufficient amount of loans needed to defray educational costs may apply for the difference between the amount granted by an eligible lender and the maximum loan amount per academic year allowed by Federal regulations.

(b) The entire loan amount, not to exceed the maximum allowable amount, may be obtained from the Authority.

9:9-4.3 and 4.4 (No change.)

SUBCHAPTER 5. POLICY GOVERNING GRADUATE INSURED LOANS

9:9-5.1 through 5.4 (No change.)

SUBCHAPTER 6. SALE, CONSOLIDATION, AND REFINANCING OF LOAN

9:9-6.1 Eligible lenders

Refinancing by an eligible lender or holder of student loans guaranteed by the Authority shall be in conformance with all applicable Authority statutes, rules and regulations, as amended, and Authority guidelines for loan servicing.

9:9-6.2 Written notification of transfer/refinance

Upon transfer or refinance of an Authority guaranteed note, an eligible lender or holder shall give written notification of such transfer/refinance to the Authority. Each notification shall contain the name of the student borrower, the student borrower's Social Security number, the amount of the student borrower's loan(s), and any other documentation required by the Authority.

9:9-6.3 Notice of rejection

If an eligible lender or holder rejects a note after its transfer/refinance, the eligible lender or holder shall immediately notify the Authority of such rejection. If the eligible holder permits the eligible lender to substitute a new note in place of the rejected note, the eligible holder shall immediately notify the Authority of such substitution and shall provide the Authority with the requisite information.

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9:9-6.4 Consolidation loans

(a) Student borrowers may apply for a separately guaranteed consolidation loan to consolidate certain prior educational loans. Loans eligible for consolidation include a Federally Insured Student Loan (FISL), Guaranteed Student Loan (GSL), Perkins (formerly National Direct Student Loan (NDSL)), PLUS (student), Supplemental Loan for Students (SLS), and Health Professions Student Loan (HPSL) programs. Health Education Assistance Loans (HEAL) and PLUS loans made to parents may not be consolidated.

(b) To be eligible for a consolidation loan, a student must:

1. Have a minimum debt of at least \$5,000 under the eligible loan programs;
2. Be in his or her grace periods or repayment status on all loans being consolidated;
3. Not be over 90 days delinquent on any loan being consolidated; and
4. Not currently have another application for a consolidation loan pending.

(c) The interest rate on consolidation loans is the greater of nine percent or the weighted average of the interest rates of the loans discharged by consolidation, rounded to the nearest whole percent.

(d) Repayment of a consolidation loan must begin within 60 days after all loans selected for consolidation have been discharged.

(e) There shall be no origination or insurance fees levied on the borrower by either the Authority or the lender for consolidation loans.

(f) Purchase of defaulted consolidation loans by the Authority shall be subject to all pertinent Federal and State requirements for the purpose of defaulted Guaranteed Student Loans.

9:9-6.5 Refinancing to secure combined payment

(a) If requested by a borrower, a lender may combine into a single repayment schedule a borrower's SLS and PLUS loans held by that lender.

(b) The interest rate on the refinanced loan will be the weighted average of the rates of all loans to be included.

(c) The 10 year repayment period for the refinanced loan begins on the first day of the repayment period of the most recent included loan. The lender must report the extension of any repayment of an included loan made under this option to the Authority.

(d) The borrower may not be charged an additional insurance premium, and a new promissory note is not required.

9:9-6.6 Refinancing to secure a variable interest rate

(a) If requested by a borrower, a lender may refinance an outstanding fixed-rate SLS or PLUS at a variable interest rate.

(b) This ***variable*** interest rate, which ***[will change]*** ***is set and published by the U.S. Department of Education*** each July 1, may not exceed 12 percent.

(c) The lender may charge the borrower a fee of up to \$100.00 per loan to cover its administrative costs. The lender shall pay the Authority 50 percent of the amount charged the borrower to cover the costs of reissuance.

(d) No additional insurance premium may be charged to the borrower.

9:9-6.7 Refinancing by discharge of previous loan

(a) If a lender holding a borrower's PLUS/SLS loan denies the borrower the option of refinancing to secure a variable interest rate under N.J.A.C. 9:9-6.6, the borrower may apply to another lender for a new loan discharging the loans held by the original lender. The lender making the new loan shall send the proceeds of the loan to the original lender to retire the original debt.

(b) The borrower may be charged an insurance premium on the new loan, but may not be charged a refinancing fee.

(c) The length of the repayment period on the original loan may not be extended, except if necessary for an adjustment due to changes in the interest rate.

9:9-6.8 Refinancing ineligibility

Loans that are in default or otherwise uninsurable are not eligible for refinancing as set forth in N.J.A.C. 9:9-6.5, 6.6, and 6.7.

9:9-6.9 Rules and statutes incorporated by reference

(a) The part of the United States Code known as Title 20, Chapter 28, Subchapter IV, Part B, 20 U.S.C. §1078-3 through and including §1087e (as of December 22, 1987) including subsequent amendments and supplements is hereby adopted as rules and incorporated within these regulations.

(b) Federal regulations regarding deferments and periods of repayment applicable to the original loan(s) shall be applicable to loans refinanced pursuant to N.J.A.C. 9:9-6.5, 6.6, and 6.7.

(c) Purchase of defaulted refinanced loans by the Authority shall be subject to all pertinent Federal and State requirements for the purchase of defaulted Guaranteed Student Loans.

SUBCHAPTER 7. (RESERVED)

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 9:9-7.

SUBCHAPTER 8. POLICY CONCERNING THE INSTITUTION OF THE HIGHER EDUCATION EDUCATIONAL LOAN ACT

9:9-8.1 through 8.6 (No change.)

SUBCHAPTER 9. POLICY GOVERNING DIRECT PLUS/SLS LOANS

9:9-9.1 Qualifications for eligibility

An applicant for a direct PLUS/SLS loan shall fulfill the requirements set forth in 34 C.F.R. §682.201.

9:9-9.2 Loan prerequisites

(a) Prior to obtaining a direct PLUS/SLS loan, the borrower must satisfy the following additional requirements:

1. A first-time applicant must exhaust the possibility of using eligible lenders first, by providing documented evidence of loan denial by at least one eligible lending institution;

2. An applicant who has previously borrowed under the PLUS/SLS program must provide documented evidence that the previous lender will not grant an additional loan;

3. Each applicant may be required to have a co-signer for each loan at the discretion of the Authority; ***[and]***

4. Each applicant, along with the co-signer, may be required to personally appear at the office of the Authority prior to disbursement of the loan funds; and

5. Creditworthiness will be evaluated on both the borrower and the co-signer.

9:9-9.3 Loan amount

(a) The maximum amount a parent of a dependent undergraduate student or a graduate student may borrow for one academic year (grade level) shall not exceed \$4,000 excluding Guaranteed Student Loan funds.

(b) The maximum amount a full-time independent undergraduate student may borrow for one academic year shall not exceed \$4,000 including any amounts borrowed under the Guaranteed Student Loan Program for the same academic year.

(c) The total amount to any one student or parent shall not exceed \$20,000 excluding Guaranteed Student Loan funds for the parent of a dependent undergraduate student, a graduate student, or an independent undergraduate student.

9:9-9.4 Application procedure; applicant

(a) An applicant for a direct PLUS/SLS loan shall:

1. Provide written evidence of denial from a participating PLUS/SLS lender. An applicant who has previously borrowed under the PLUS/SLS program must provide documented evidence that the previous lender will not grant an additional loan;

2. Once loan denial has been proven, an applicant will be forwarded an application and two credit applications (for borrower and co-signer); these forms may only be obtained from the direct PLUS/SLS loan office at the Authority;

3. Complete the application and two credit applications following the directions on the forms; all parts of the application and credit

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applications must be completed regardless of the applicant's and co-signer's age or marital status;

4. Submit the application to the eligible educational institution the borrower plans to attend for certification of enrollment and completion of school section;

5. Pay an insurance fee of one percent of the requested amount of the loan. Checks shall be made payable to "Treasurer, State of New Jersey" and must be submitted with the application. No refunds will be issued after the application has been approved by the Authority;

6. If approved, borrower and co-signer should appear at the direct loan office to procure the check; however, in some cases where the borrower and co-signer are unable to appear at the direct loan office, the check will be mailed to the borrower.

9:9-9.5 Interest rates

Loans shall be governed by the interest rates of the PLUS/SLS program in effect at the time the loan is made.

9:9-9.6 Repayment

Terms of repayment shall be governed by the regulations of the PLUS/SLS program, 34 C.F.R. §682.209 et seq., as amended.

9:9-9.7 Deferral of payment

Deferrals of payment shall be governed by the regulations of the PLUS/SLS program, 34 C.F.R. §682.210 et seq., as amended.

SUBCHAPTER 10. (RESERVED)

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 9:9-10.

SUBCHAPTER 11. POLICY GOVERNING *EDUCATIONAL* INSTITUTION*[AL]* COMPLIANCE WITH THE GUARANTEED STUDENT LOAN PROGRAM; CORRECTIVE MEASURES

9:9-11.1 through 11.4 (No change.)

(a)

Guaranteed Student Loan Program Policy Governing Institution Compliance; Corrective Measures—Noncompliance Standards

Adopted Amendment: N.J.A.C. 9:9-11.2

Proposed: July 18, 1988 at 20 N.J.R. 1641(a).

Adopted: September 12, 1988 by the New Jersey Higher Education Assistance Authority, Jerome Lieberman, Chairman.

Filed: September 12, 1988 as R.1988 d.477, **without change**.

Authority: N.J.S.A. 18A:72-10.

Effective Date: October 3, 1988.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:9-11.2 Evaluation review procedures

(a) Program review findings utilized to ascertain program non-compliance shall include but not be limited to the following areas:

1. The student loan default rate;
2. Student withdrawals before completion of programs or academic year;
3. Failure to provide timely notification to the Authority of student enrollment status changes;
4. Failure to refund loan monies to lenders on behalf of students or refunds not made in a timely manner; and
5. Failure of student files to include information required pursuant to Federal regulations, or inaccurate or missing student files.

(b) Institutions which exceed any of the standards set forth in this subsection demonstrate serious deficiencies in loan program administration and these institutions shall be subject to corrective action by the Authority. The standards of noncompliance for the categories enumerated in (a) above shall be:

1. For audits covering the period 1984-85:
 - i. Paragraph (a)1 above: 33 percent; and
 - ii. Paragraphs (a)2 through 5 above: 33 percent.
2. For audits covering the period 1986-87:
 - i. Paragraph (a)1 above: 30 percent; and
 - ii. Paragraphs (a)2 through 5 above: 23 percent.
3. For audits covering the period 1988-89:
 - i. Paragraph (a)1 above: 25 percent; and
 - ii. Paragraphs (a)2 through 5 above: 15 percent.
4. For audits covering the period 1990 and thereafter:
 - i. Paragraph (a)1 above: 20 percent; and
 - ii. Paragraphs (a)2 through 5 above: 10 percent.
5. For audits covering time periods which fall into more than one of the categories set forth in (b)1 through 4 above, the audit shall be governed by the standards pertaining to the earliest audited year.

(c) This subchapter shall not restrict the Authority's ability to limit, suspend, or terminate an institution's Guaranteed Student Loan Program participation where the program review indicates that the institution is in substantial violation of other Federal or State Guaranteed Student Loan Program regulations.

CORRECTIONS

THE COMMISSIONER

(b)

Classification Process Decision Making Criteria for Facility or Program Assignment

Adopted Amendment: N.J.A.C. 10A:9-11.4

Proposed: July 18, 1988 at 20 N.J.R. 1645(a).

Adopted: September 2, 1988 by William H. Fauver, Commissioner, Department of Corrections.

Filed: September 6, 1988 as R.1988 d.467, **without change**.

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

Effective Date: October 3, 1988.

Expiration Date: January 20, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows:

10A:9-11.4 Decision making criteria for facility or program assignment

- (a) (No change.)
- (b) Criteria for assignment to a correctional facility or program are as follows:
 - 1.-3. (No change.)
 4. The Girls Unit at the Training School for Boys at Skillman provides a disciplinary unit for female juvenile offenders when behavior is of such a nature that they can no longer be contained at the Turrell Residential Group Center or the Alpha House Community Treatment Center.
 - i. Transfers to the Girls Unit at the Training School for Boys at Skillman must be approved by the Supervisor of Juvenile Female Programs. In his or her absence, the Deputy Director or the Assistant Commissioner of the Division of Juvenile Services shall be contacted for approval.
 - ii. Whenever a female juvenile is transferred to the Girls Unit at the Training School for Boys at Skillman, it shall be considered a disciplinary action, subject to the due process requirement stated in N.J.A.C. 10A:4 INMATE DISCIPLINE.

(a)

**Medical and Health Services
Inmate/Therapist Confidentiality**

Adopted Amendment: N.J.A.C. 10A:16-4.4

Proposed: August 1, 1988 at 20 N.J.R. 1772(a).
 Adopted: September 7, 1988 by William H. Fauver,
 Commissioner, Department of Corrections.
 Filed: September 9, 1988 as R.1988 d.476, **without change.**

Authority: N.J.S.A. 30:1B-6, 30:1B-10 and *In the Matter of Rules Adoption Regarding Inmate-Therapist Confidentiality (N.J.A.C. 10A:16-4.4)*, Docket No. A-4205-86T1 (App. Div. 1988).

Effective Date: October 3, 1988.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

The Department of Corrections received one comment which is addressed below:

COMMENT: A commenter suggested that N.J.A.C. 10A:16-4.4(c)3 and 5 be deleted from the rules related to inmate-therapist confidentiality.

RESPONSE: The Department of Corrections does not agree with this suggestion because the proposed amendment more clearly specifies the circumstances under which communication between a clinical practitioner and an inmate must be disclosed in accordance with the Appellate Division decision regarding inmate/therapist confidentiality, *In the Matter of Rules Adoption Regarding Inmate-Therapist Confidentiality (N.J.A.C. 10A:16-4.4)*, Docket No. A-4205-86T1 (App. Div. 1988), which mandated the deletion of subsection (b) and a more stringent exception standard in paragraphs (c)3 and 5.

Full text of the adoption follows.

10A:16-4.4 Inmate/therapist confidentiality

(a) (No change.)

(b) The following exceptions to privileged communications are applicable only in situations which present a clear and imminent danger to the inmate or others:

1. Where the inmate discloses planned action which involves a clear and substantial risk of imminent serious injury, disease or death to the inmate or other identifiable persons;

2. Where an escape plan is disclosed to the clinical practitioner;

3. Where drug trafficking for profit or illicit influence on others, involving Controlled Dangerous Substances (C.D.S.) or drug paraphernalia, presents a clear and imminent danger to the inmate or other identifiable persons;

4. (No change.)

5. Where the inmate discloses a past, previously unreported murder, aggravated sexual assault (meaning those offenses set forth in N.J.S.A. 2C:14-2(a)) or arson which resulted in a death, under circumstances which present a clear and imminent danger to other identifiable persons.

Redesignate existing (d) through (k) as (c) through (j) (No change in text.)

(b)

**Medical and Health Services
Special Medical Unit**

Adopted Amendments: N.J.A.C. 10A:16-11.4 and 11.5

Adopted Repeal and New Rule: N.J.A.C. 10A:16-11.14

Proposed: August 1, 1988 at 20 N.J.R. 1773(a).
 Adopted: September 1, 1988 by William H. Fauver,
 Commissioner, Department of Corrections.
 Filed: September 2, 1988 as R.1988 d.460, **without change.**

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

Effective Date: October 3, 1988.

Expiration Date: April 6, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10A:16-11.4 Special Medical Unit (S.M.U.) staff

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

(c) The concerns of both the custody and the Professional Services staff members shall be given equal consideration in decision-making regarding the development of programs for the Special Medical Unit.

10A:16-11.5 Orientation

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

(e) The Professional Service staff shall be advised by the Custody Supervisor that an inmate has been assigned to the Special Medical Unit. The social worker shall meet with the newly assigned inmate during orientation and advise the inmate of the programs and services available within the Special Medical Unit.

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

10A:16-11.14 Recreation

Inmates in the Special Medical Unit shall be permitted exercise and recreation activity to the extent of their physical abilities to participate, dependent upon medical factors as determined by the Director of Medical Services of the Department of Corrections and the attending physician(s).

INSURANCE

(c)

DIVISION OF ACTUARIAL SERVICES

Individual Health Insurance Rate Filings

Adopted Amendments: N.J.A.C. 11:4-18.3, 18.5 and 18.10

Proposed: September 8, 1987 at 19 N.J.R. 1620(b).

Adopted: September 6, 1988 by Kenneth D. Merin,

Commissioner, Department of Insurance.

Filed: September 7, 1988, as R.1988 d.473, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:8-1; 17:1C-6(e); 17B:26-1 et seq., specifically 17B:26-44.6 and 17B:26-45.

Effective Date: October 3, 1988.

Operative Date: January 31, 1989.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

The Department received comments from five insurance companies on its proposed amendments to N.J.A.C. 11:4-18.3, 18.5 and 18.10 (Individual Health Insurance Rate Filings). The comments included general observations regarding the amendments as well as criticisms or questions directed to specific provisions.

COMMENT: One commenter stated that the 65 percent loss ratio is too high and that increasing the minimum standards may force insurers to leave New Jersey and discourage policy introduction in experimental areas. Another commenter stated that the 65 percent loss ratio standard should not generally be applied to health insurance policies such as nursing home and long term care coverages. To include such policies would discourage or prevent companies from marketing a long term care product in New Jersey as long term care type coverage is a new concept and claim experience data are scarce or nonexistent. It was argued that because of the paucity of data, a higher contingency margin is necessary to justify marketing these types of products. The observation was made that in almost all states, long term care type coverages have a 55 percent loss ratio (or lower) and that only four states require a 60 percent loss ratio. There are no states which presently require a 65 percent loss ratio on long term care products. The writer concluded that since this product is untested and riskier, a lower loss ratio is imperative actuarially to justify marketing the product. Additionally, the writer pointed out that the Health Insurance Association of America (HIAA), an industry trade association, has adopted the position that a maximum 55 percent loss

ratio be applied to such coverage thus underscoring the insurance industry's position that a lower loss ratio is necessary to justify marketing this product. Finally, it was stated that with this type of coverage promoted by the private sector, the State's assumption of long term care expenses under Medicaid will be lessened. Therefore, it is in the best interest of the State, the insuring public and insurers that the present loss ratios not be modified.

RESPONSE: The Department agrees that the greater the number of long term products sold in this State, the lower will be the Medicaid cost to the State for long term care. Nevertheless, the loss ratio requirement should not pose a barrier for insurers writing long term products in New Jersey where a 65 percent loss ratio is already required for policies, long term care or otherwise, issued to people aged 65 and older. The proposed amendments would result in a logical grading of loss ratios for issue ages under age 65 to the 65 percent loss ratio for issue ages 65 and over. This grading is the main effect of the proposed amendments.

Comments basing the need for a lower loss ratio on the newness of the long term care product, lack of claim experience data, and the assertion that the product is "untested and riskier", are rhetorical in content and lack any support, actuarial or otherwise. The Department has observed that any additional margins in premiums provided by lower loss ratios are not reserved, but are passed on to field underwriting agents in the form of additional compensation. In addition, since the benefits under long term care products are rather limited, the greatest element of risk exposure to insurers is that of frequency of claims. However, since none of the companies are issuing these policies on a noncancellable basis, they have available to them the contractual right to increase premiums when experience would justify increases. Moreover, long term care products are very costly. Therefore, the margins included in the premiums for such products provide more than adequate compensation in risk provision for any insurer.

COMMENT: Two insurers questioned the elimination of statutorily required reserves from the calculation of loss ratios stating that this will make it even more difficult to meet minimum loss ratio standards and will likely require repricing and revision of previously filed policies together with modification of the computer systems which administer the policies. The loss ratios of many previously filed forms include statutory reserves as specifically allowed under the current rules. The efforts required to comply with the amendments will result in a cost to insurers, the amount of which will depend on the number of policies involved and whether repricing and revision of policy forms are necessary. In the case of mutual insurers, it may be necessary to revise policies to change them from participating to non-participating to help offset the loss of ability to include statutorily required reserves in the calculation of loss ratios.

RESPONSE: The rules presently require that the loss ratio be calculated over the lifetime of the policy. Therefore, inclusion of the increase of the statutory policy reserve in such calculation, as is presently required, is erroneous. The proposed amendments correct this error by deleting the inclusion of such increases. Obviously, the deletion results in the calculation of a lower loss ratio, as it should, for any insurer which would include reserve increases in the calculation of the ratio to be submitted to the Department. The Department is aware of only one insurer that has attempted to include such increases in the calculation of the loss ratios. Therefore, few if any insurers will be required to recalculate premiums or refile policy forms. No actuarial justification can be advanced for the inclusion of statutory policy reserve increases in the loss ratio calculation. The position that increases in the statutory reserves should be maintained in the calculation of the loss ratio lacks merit completely.

COMMENT: One insurer expressed concern over the effect that the proposed amendments would have on the definitions of "anticipated loss ratio" and "aggregate loss ratio". It was argued that, currently, the definition of "anticipated loss ratio" is based on a ratio including reserves that insurers are required by statute to hold. These reserves are held based on the interest rate required by New Jersey law and the ratio includes a present value calculation based on those interest rates. Under the proposed revision, the present value calculation would be based on "realistic" rates instead of statutory rates. "Realistic" is not defined and could mean any rate chosen by the Department. It is inconsistent for the Department to require insurers to develop an anticipated loss ratio with reserves determined on a basis other than the basis at which the statutory reserves are held. Similarly, the interest rate used in the definition of "aggregate loss ratio" is based on the rate used in determining the anticipated loss ratio. The proposed change would result in the Department requiring insurers to determine the aggregate loss ratio on the policy

at a "realistic" rate. It was suggested that this rate could be inappropriate for products marketed 15 to 20 years ago.

RESPONSE: The writer asks from whose viewpoint "realistic" should be perceived. The Department believes that the answer is self-evident—that the perception of "realistic" is from the insurer's viewpoint. All of the assumptions which are used in the calculation of the required loss ratio must be realistic and from the insurer's perspective. Insurers have no qualms with the use of realistic morbidity assumptions, realistic lapse assumptions and realistic expense assumptions. Therefore, the Department sees no reason why insurers should have any problems with the use of realistic interest rate assumptions.

In practice, the Department, over the last two years, has permitted insurers to use one of three sets of interest rate assumptions. The first set of interest rate assumptions is based on recent, current and future expected investment earnings of a filing company for new policies and on actual investment earnings for older policies. The second set is a graded interest rate assumption which the Department specifies and changes from time to time based on its review of marketplace rates. The third set is simply a level interest rate assumption over the life of the policy, which the Department specifies and changes from time to time and which is intended to be equivalent in effect to the graded rate assumption. The second and third sets pertain only to new policy filings and serve as a proxy for the first set which represents the insurer's realistic interest rate assumptions.

A close reading of the existing rules reveals that the interest rate assumptions to be used in a loss ratio calculation are not specified. For policy forms for which statutory policy reserves are required, the only specification which the rules give is that the interest rate assumption cannot be less than that interest rate inherent in the statutory policy reserves. For other types of policies, no interest rate assumption is specified. For interest rates, as well as for all other classes of assumptions, it should be evident that the use of any assumptions other than realistic assumptions gives rise to the calculation of pseudo loss ratios.

The writer infers that the Department requires it to develop an anticipated loss ratio with reserves determined on a basis other than the basis for which statutory reserves are held. This statement is incorrect, for the proposed amendments remove from the calculation of the loss ratio any increase in policy reserves.

COMMENT: One commenter stated that the proposed amendments would add administrative complexity thereby increasing the cost of the product. The writer asserted that in filing anticipated loss ratios, insurers would be required to report two sets of loss ratios: the overall loss ratio and one from attained age 65 on. In reporting aggregate loss ratios, policies would have to be split into two groups according to attained age and the split would change every year.

RESPONSE: There is no doubt that some insurers will incur a one time administrative expense to convert or modify computer systems to differentiate a product line which currently does not differentiate experience on the basis of attained age. However, the computer logic for such a modification should already be present in other systems and the public policy merits of the proposed amendments override any incremental administrative cost and complexity that may be experienced by insurers.

COMMENT: One writer suggested that the Department had not taken into consideration criteria that should be utilized in establishing the reasonableness of price including recognition of reasonable expenses related to marketing and other necessary operating functions, a reasonable return on capital investment and reasonable rewards for undertaking the risk of loss. Studies of the expenses being incurred by insurers under individual health insurance programs during recent years were cited as giving some indication that the proposed allowance for expenses and risks of 35 percent of premiums for some segments of this insurance is wholly inadequate. The writer concluded that given the competitive marketplace for this insurance and its constraints on an insurer's expenses, there is some indication that a general expense ratio of at least 45 percent for individual health insurance should be recognized. Additionally, risk charges of three to five percent should be recognized depending on the risk environment for a given type of insurance.

RESPONSE: The writer uses industry ratios taken from Schedule H to argue that the provision for expenses and profits (that is, the complement of 100 percent and the prescribed loss ratio) is inadequate. The argument lacks merit on several counts. First, the use of such statistics must distinguish between maintenance expenses and acquisition expenses. Secondly, the use of such statistics within the two categories of maintenance and acquisition expenses must further distinguish between marketing

and other expenses. The writer has made none of these distinctions. Therefore, no legitimate conclusion can be drawn from this particular comment.

COMMENT: The same writer maintained that age is not a proper classification for differentiating expenses and risk charge ratios in the rate regulatory process. The writer was unaware of any pervasive marketing and administrative differences between insurance programs sold to insureds age 25, 45 or 65. It was argued that operational functions are similar and the costs of those operations vary as they are impacted by the benefits involved. For example, disability insurance involves the same selling effort, billing costs, claim adjudication processes, etc., regardless of age. As a percent of premium, the related costs can vary based on average size of premium (to the extent that functional costs are independent of premium size) and persistency (to the extent that amortization of nonrecurring functional costs is involved). But, these factors (that is, premium size and persistency) are dependent on many criteria besides age, such as type and size of benefit, whether the coverage is supplemental versus primary, the characteristics of the policyholders served, etc. In many cases, the characteristics of programs sold to persons over age 65 produce expense plus risk ratios greater than average just as other programs sold to persons over age 65 involve lower than average ratios. Based on this analysis, the writer concluded that consideration should be given to attaining the goal of uniform loss ratios between persons issued coverage over age 65 and persons issued coverage below 65 who later become 65 by removing the current special standard for persons issued coverage over age 65.

RESPONSE: Public policy in New Jersey has been translated into the various loss ratio prescriptions. These prescriptions differ significantly from the ones this writer would have New Jersey adopt. The argument that there are no persuasive marketing and administrative differences between insurance policies sold at the various issue ages simply chooses to ignore the public policy of New Jersey. Besides, there are significant marketing and administrative differences within the age spectrum to warrant different public policy positions. It is precisely for those differences that different loss ratio requirements are prescribed. New Jersey has a fairness statute which would abrogate significant subsidy between different age groups when the basic insurance costs between those age groups are substantially different. This abrogation applies to expenses, especially marketing expenses, as well as basic benefit costs. The writer's statement that the risk fluctuation expected for younger ages is smaller than for older ages is erroneous. In fact, just the opposite result is expected.

COMMENT: Based on the definition of "anticipated loss ratio" and "over 65 coverage", one insurer stated that a policy sold with issue age or step rated premiums which remain in force to age 70 with premiums calculated to provide coverage to age 70 would require a considerably higher loss ratio than the same coverage which terminates at age 65. The extension of coverage to age 70, it was argued, could easily involve greater financial risk which calls for lower loss ratios to be used in determining the age 25 premium, for example, not higher loss ratios as proposed. It was suggested that this situation might be corrected by changing the definition of "anticipated loss ratio" to include only the portion of the rating period after age 65 when applying a special standard to persons turning age 65 after issue.

RESPONSE: The writer erroneously infers that the financial risk is a function of the mean expected value rather than its standard deviation. Since the standard deviation of the risk, as a percentage of the mean, is less at older ages than at younger ages, the requirement for risk at the older ages is less than it is at the younger ages. By suggesting a change in the definition of the loss ratio, the writer reflects a misunderstanding of what the proposed amendments are intended to accomplish.

COMMENT: The same insurer questioned what loss ratio would apply to policies that meet more than one classification. For example, what loss ratio would apply to "accident only coverage" which is also "over 65 coverage"? The fear expressed is that the higher of the two loss ratios will be applied.

RESPONSE: The proposed amendments do not change the coverage classifications. The question is best answered in terms of the specific example cited. For accident only coverage which does not differentiate by age in the premiums, the proposed amendments clearly prescribe a 40 percent loss ratio. For accident only coverage which differentiates by age in the premiums, the loss ratio prescribed by the proposed amendments is 50 percent, 55 percent, and 60 percent, respectively, for non-cancellable, guaranteed renewable and nonrenewable for stated reasons policies, for coverage under age 65; and is 65 percent for coverage for ages 65 and over.

COMMENT: One commenter noted that the proposed amendments were being implemented in reference to the Medicare market, even though the impact of the proposed amendments would affect all individual health policies including disability income. This concern is summarized with the following question: "If a disability income contract were issued to someone age 35 for a certain issue age premium and the person were allowed to continue the coverage after age 65, would the proposal so written require the use of a 65 percent loss ratio over the entire contract period?"

RESPONSE: The answer to this question is no. Obviously, if the answer were yes the expressed concerns would be legitimate and, indeed, if that were the case, the proposed amendments would not be in the best interest of the public.

COMMENT: Several commenters stated that the time period allowed for implementing the new standards was too short and would present serious problems for consumers, sales forces, insurers and the Department of Insurance alike.

RESPONSE: Although the Department believes that most companies can bring their policies into compliance with the proposed amendments within 60 days, the Department agrees that this time frame can be extended to 120 days.

Summary of Agency Initiated Changes:

Former N.J.A.C. 11:4-18.10, proposed for recodification as N.J.A.C. 11:4-18.10(a), is a rule of administrative procedure which was erroneously codified as part of N.J.A.C. 11:4-18. It is hereby deleted in accordance with N.J.A.C. 1:30-4.3(c).

Full text of the adoption follows: (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks ***[thus]***).

AGENCY NOTE: The amendments to this subchapter shall become operative 60 days after publication of the notice of adoption in the New Jersey Register.

11:4-18.3 Definitions

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

1. (No change.)

2. Terms related to loss ratios are:

i. (No change.)

ii. "Anticipated loss ratio" means the ratio of the present value of the expected benefits, not including dividends, to the present value of the expected premiums, not reduced by dividends, over the entire period for which rates are computed to provide coverage. For purposes of this ratio, the present values must incorporate realistic rates of interest which are determined before federal taxes but after investment expenses.

iii. "Aggregate loss ratio" means the ratio of item (1) to (2) below, where:

(1) Is the accumulated value of past benefits, from the original effective date of a form to the date as of which the ratio is determined, and the present value of future benefits; and

(2) Is the accumulated value of past premiums from the original effective date of that form to the date as of which the ratio is determined, and the present value of future premiums.

NOTE: For purposes of the "aggregate loss ratio", benefits shall not be increased nor premiums reduced by actual or anticipated dividends, and interest shall be included in the accumulated values and present values on the same basis as in the present values for the "anticipated loss ratio".

3. Other terms are:

i. "Accident only coverage" means all individual insurance which covers only losses due to accident.

ii. "Over 65 coverage" means all individual insurance where premiums are rated by age and the attained age is 65 years or more or when the insurance is issued only to persons age 65 or more.

iii. "Policy" means any policy, certificate, rider, endorsement or amendment which is required to be filed pursuant to N.J.S.A. 17B:26-1 and N.J.S.A. 17:44A-21.

11:4-18.5 Loss ratio standards

(a) For new forms, the benefits provided are presumed reasonable in relation to the premiums charged if the anticipated loss ratio meets the following standards:

1. For over 65 coverage, the ratio is at least 65 percent;
2. For accident only coverage, the ratio is at least 50 percent;
3. For short term nonrenewable trip policies which do not cover loss due to sickness, the ratio is at least 40 percent;
4. For coverage other than as listed in 1, 2, and 3 above and which are:
 - i. Collectively renewable insurance, the ratio is at least 60 percent;
 - ii. Guaranteed renewable insurance or nonrenewable for stated reasons only insurance, the ratio is at least 55 percent;
 - iii. Noncancellable insurance or noncancellable and guaranteed renewable insurance, the ratio is at least 50 percent.
5. For any insurance not listed in 1 through 4 above, the ratio is at least 55 percent.

(b) (No change.)

11:4-18.10 *[Effective date; compliance]* ***Compliance***

*[(a) This regulation shall be effective after it has been accepted by the Legislature. Acceptance by the Legislature will occur 60 days after the regulation has been submitted to the Legislature, unless the Legislature passes a concurrent resolution stating in substance that the Legislature does not favor this regulation.

(b)]* All policies of insurance previously filed with the Commissioner which are not in compliance with this subchapter as of the operative date shall be deemed to be withdrawn from filing and disapproved. No new policy of insurance shall be delivered or issued for delivery in this State until the policy has been filed with the Commissioner.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Licensing and Regulation of Auto Body Repair Facilities

Adopted New Rules: N.J.A.C. 13:21-21

Proposed: September 8, 1987 at 19 N.J.R. 1624(c).

Adopted: June 16, 1988, Glenn R. Paulsen, Director, Division of Motor Vehicles.

Filed: September 7, 1988 as R.1988 d.474, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 39:13-7.

Effective Date: October 3, 1988.

Expiration Date: December 16, 1990.

Summary of Public Comments and Agency Responses:

The New Jersey Division of Motor Vehicles received three comments with regard to the proposed new rules. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, New Jersey 08666. The comments were carefully reviewed and considered by the Division, and are summarized below, along with the Division's responses:

COMMENT: The Division should change the rules to provide that a customer who desires to receive replaced parts from an auto body repair facility must sign or initial the appropriate line on the written estimate requesting such parts, and the Division should delete the provision which deems the absence of a signature or initials on the appropriate line on the written estimate to mean that the customer exercises his or her right to receive replaced parts.

RESPONSE: The Division does not agree with this comment. N.J.A.C. 13:21-21.10(e) provides that each written estimate provided to a customer by an auto body repair facility shall contain a statement informing the customer of his or her right to receive replaced parts. Since the customer has a right to receive his or her replaced parts if he or she so desires, the Division believes it to be appropriate that a waiver of that

right by the customer be effectuated by an affirmative act on the part of the customer (that is, his or her signature or initials on the appropriate line on the written estimate as provided by the rules, the absence of which is deemed to mean that the customer exercises his or her right to receive the replaced parts). Accordingly, N.J.A.C. 13:21-21.10(e) has not been changed. It should be noted that N.J.A.C. 13:21-21.10(e)(4) provides that an auto body repair facility shall not be liable to the customer in those cases where the customer fails to take the replaced parts after paying for the repair work or picks up his repaired automobile.

COMMENT: The Division should clarify that the rules are not intended to regulate insurance companies or their employees (including claims adjusters) who are already regulated by the Department of Insurance.

RESPONSE: The Division believes that additional language in the rules on this point is not necessary, since the rules do not purport to regulate insurance companies or their employees (including claims adjusters) in the conduct of their insurance business. As set forth in N.J.A.C. 13:21-21.1, these rules are intended to establish a system for the licensure of auto body repair facilities and to establish standards to protect the public from dishonest, deceptive and fraudulent practices in the repair of automobiles damaged by collision.

COMMENT: The Division should provide clear guidelines in the rules as to precisely when it is permissible for an auto body repair facility to commence repair work on a customer's automobile based upon an oral authorization (as opposed to a written authorization) from the customer to proceed with the requested repair services.

RESPONSE: The Division agrees with this comment. Accordingly, N.J.A.C. 13:21-21.11(a)2 has been changed to specify that if the customer's automobile is presented to an auto body repair facility during other than normal business hours or by one other than the customer, oral authorization from the customer under such circumstances to proceed with the requested repair services shall form a sufficient basis upon which an auto body repair facility may commence repair work on the customer's automobile. This change clarifies the meaning of the term "impractical" pertaining to written authorization, which was contained in the proposed rule and is deleted upon adoption.

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

SUBCHAPTER 21. AUTO BODY REPAIR FACILITIES

13:21-21.1 Purpose

(a) The Auto Body Repair Facility Act, N.J.S.A. 39:13-1 et seq., as amended by L. 1985, c.148, provides for the licensure and regulation of auto body repair facilities by the Director of the Division of Motor Vehicles. The purposes of this subchapter are to:

1. Establish a system for the licensure of auto body repair facilities; and
2. Establish standards and procedures necessary to protect the public from dishonest, deceptive and fraudulent practices in the repair of automobiles damaged by collision and to eliminate or exclude from licensing those persons who engage in such practices or who otherwise demonstrate unfitness.

13:21-21.2 Scope

(a) This subchapter shall apply to every person engaged in the business of an auto body repair facility.

(b) No person shall, on or after the operative date of this subchapter, engage in the business of an auto body repair facility unless licensed by the Director in accordance with the provisions of this subchapter.

13:21-21.3 Definitions

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

"Advertising" means any printed or published materials, including but not limited to direct mail, circulars, leaflets, pamphlets, newspapers, magazines, billboards, yellow pages of any telephone directory, radio and/or television broadcasts, and any other advertising medium of communication used to induce the public to seek the services of the auto body repair facility. The term "advertising" shall

not include printed or published materials appearing in the white pages of any telephone directory.

"Applicant" means any person applying under the provisions of this subchapter for an initial license to engage in the business of an auto body repair facility or to renew an existing license. In the case of a partnership or corporation applying for a license, the term "applicant" shall respectively include all partners and/or officers and directors.

"Auto body repair facility" means any person who for compensation engages in the business of repairing, removing or installing integral component parts of an engine, power train, chassis or body of an automobile damaged as a result of a collision. For the purpose of this subchapter, the following are not deemed to be an auto body repair facility and are not required to be licensed:

1. Any employee of an auto body repair facility who engages in the business of repairing automobiles solely by reason of his employment;
2. Any person who is solely engaged in the business of repairing automobiles owned or leased by a single commercial or industrial establishment;
3. Any person whose activities consist solely of fueling, changing oil, water, batteries or tires, replacing fan belts, air filters or oil filters, installing windshield wiper blades, light bulbs, communication equipment, or such other minor repair and servicing functions; or
4. Any person who solely examines automobiles to determine the cause or location of malfunctions. No such person shall prepare an estimate and/or repair any automobile damaged as a result of a collision.

"Collision" means any damage caused to a motor vehicle as a direct result of a motor vehicle accident, or any damage caused by missiles, falling objects, fire, theft, larceny, windstorm, hail, earthquake, explosion, riot or civil commotion, malicious mischief, vandalism, water, flood, lightning, external discharge or leakage of water, smoke or colliding with a bird, animal or stationary object.

"Controlling interest" means possession of the power to direct or cause the direction of the management and policies of an auto body repair facility, whether through the ownership of voting securities or otherwise. The Director will presume that control in fact exists if any person or entity directly or indirectly owns, controls, holds the power to vote, or holds proxies representing 10 percent or more of the voting securities of any auto body repair facility. This presumption may be rebutted by showing that control does not in fact exist. The director may determine control in fact exists, notwithstanding the presence or absence of a presumption to that effect.

"Customer" means the owner of record with the Division of the automobile or any family member, employee or any other person whose use of the automobile is authorized by such owner of record.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

"Engaged in the business" means:

1. Any person who for compensation repairs, removes or installs integral component parts on more than four automobiles damaged as a result of a collision during any calendar year;
2. Any person who for compensation subcontracts, or has any type of business arrangement, with an auto body repair facility or other person to repair more than four automobiles damaged as a result of a collision during any calendar year;
3. Any person who for compensation prepares estimates to be used by an auto body repair facility or other person to repair more than four automobiles damaged as a result of a collision during any calendar year; or
4. Any person who for compensation negotiates, in any manner, claims with any insurer or customer to repair more than four automobiles damaged as a result of collision during any calendar year.

"Estimate" means any written determination prepared by an auto body repair facility of the approximate cost of the parts and labor needed to perform the requested repair services.

"Integral component part" means those major motor vehicle component parts as defined in N.J.S.A. 39:10B-1(b) and also includes the hood and trunk.

"Person" means any natural person, business, company, firm, partnership, association, corporation or any other entity.

"Place of business" means the address or location where the services of the auto body repair facility are offered or ordinarily performed.

"Suspension, revocation or refusal to grant or renew" means administrative action by the director, in accordance with the provisions of this subchapter, to refuse to grant or renew an auto body repair facility to an applicant or to suspend or revoke an existing license.

13:21-21.4 Initial application for a license

(a) Any person seeking to engage in the business of an auto body repair facility shall apply, in accordance with the provisions of this subchapter, to the Director for a license authorizing him to engage in such business. An application for an auto body repair facility license may be obtained from the Auto Body Licensing Unit of the Division. The address of the Auto Body Licensing Unit is:

Division of Motor Vehicles
Bureau of Registrations and Titles
Auto Body Licensing Unit
135 East State Street
CN 017
Trenton, New Jersey 08666-0017

(b) Each applicant for an auto body repair facility license shall file with the director, in such form and detail as may be required by the director, an application setting forth the following:

1. The name, place of business and telephone number of the auto body repair facility;
2. The name, business and residence address(es) and telephone number(s) of:
 - i. The owner and/or possessor of a controlling interest of the facility, in the case of a sole proprietorship;
 - ii. Each partner, in the case of a partnership; or
 - iii. Each officer, director and possessor of a controlling interest, in the case of a corporation.
3. The business in which the applicant has been engaged for the five years preceding the date of application, and if employed, the names and addresses of the employers;
4. Whether the applicant has ever been convicted of a crime, disorderly persons or petty disorderly persons offense;
5. Whether the applicant has ever been denied, or had suspended or revoked, a license to engage in any business, profession or occupation licensed under the laws of any state; and
6. Whether the applicant has any interest in any other auto body repair facility.

(c) Each initial application for an auto body repair facility license shall be accompanied by proof of the following:

1. Certificate of occupancy or the municipality's equivalent thereof issued by the municipality for the place of business set forth in (b)2 above, provided that such certificate of occupancy or equivalent has been issued. In the event that no certificate of occupancy or equivalent has been issued for such place of business, then the initial application for a license must be signed by the municipal clerk, zoning officer or other appropriate municipal official indicating that the Zoning Board or other appropriate municipal board or council has approved the location, establishment and maintenance of an auto body repair facility at the place of business set forth in (b)2 above.
2. New Jersey Sales Tax Identification Number.
3. New Jersey Unemployment Registration Number.
4. Federal Employer Identification Number.

(d) Each initial application for an auto body repair facility license shall be accompanied by a color photograph and a complete set of fingerprints for each natural person required to be listed on the application by this section.

1. The applicable nonrefundable fee payable to the Division of State Police—S.B.I. shall be submitted for each natural person required to be fingerprinted. The payment of this fee shall be in the form of a cashier check, certified check or money order as required by N.J.A.C. 13:59-1.5.

2. Fingerprints required by this section shall be submitted on the standard fingerprint cards as required by N.J.A.C. 13:59-1.4 and

taken by a member of the State Police or municipal law enforcement agency.

(e) Each initial application for an auto body repair facility license shall be accompanied by the applicable fees as specified in N.J.A.C. 13:21-21.6.

(f) If there are multiple locations for an auto body repair facility, then a separate application, accompanying documents, and application fee as specified in N.J.A.C. 13:21-21.6 shall be submitted for each such place of business.

(g) Upon preliminary approval of each initial license application, a license shall be issued to the auto body repair facility. Each initial license issued to an auto body repair facility on or after October 1, 1984 shall continue in force and effect until September 30 of every other year, unless such license is suspended or revoked by the Director. If there are multiple places of business for an auto body repair facility, then a separate license shall be issued for each such place of business.

13:21-21.5 Applicant Qualifications

(a) Each applicant shall in the discretion of the Director, be a proper person to hold an auto body repair facility license.

1. In assessing whether an applicant is a proper person, the director may consider the character, responsibility and criminal record of the individual applicant, if the applicant is a natural person; of the individual partners if the applicant is a partnership; or of the officers, directors and/or persons possessing a controlling interest, if the applicant is a corporation; or anyone else employed by, or otherwise associated in business with, the applicant.

(b) Each applicant must have legal capacity to contract, to be sued and to be liable for all debts.

(c) No applicant shall be entitled to licensure who is under 18 years of age.

13:21-21.6 Application and license fees

(a) Every application for an auto body repair facility license shall be accompanied by a nonrefundable application fee of \$20.00 payable to the Division.

(b) Every application for an auto body repair facility license shall be accompanied by a license fee of \$350.00 payable to the Division. Such license fee shall only be returned to the applicant in the event that the Director refuses to grant or renew an auto body repair facility license to the applicant. Such license fee, or any portion thereof, shall not be refunded to the licensee in the event that the auto body repair facility license is suspended or revoked pursuant to N.J.S.A. 39:13-1 et seq. or this subchapter.

13:21-21.7 License renewals

(a) Every licensee, no later than 30 days before the expiration of the current auto body repair facility license, shall submit to the Director an application to renew its auto body repair facility license provided that such licensee is not prohibited from applying for an auto body repair facility license as specified in N.J.A.C. 13:21-21.21. An application to renew an auto body repair facility license may be obtained from the Auto Body Licensing Unit of the Division at the address specified in N.J.A.C. 13:21-21.4(a).

(b) Each application to renew an auto body repair facility license shall be accompanied by the applicable fees specified in N.J.A.C. 13:21-21.6.

(c) Upon approval of each renewal application, a license shall be issued to the auto body repair facility. Every license issued to an auto body repair facility pursuant to this paragraph on or after October 1, 1984 shall continue in force and effect until September 30 of every other year, unless such license is suspended or revoked by the Director.

13:21-21.8 Surrender of license

(a) Every auto body repair facility license document, although issued and delivered to a licensee, shall at all times be the property of the State of New Jersey.

(b) Upon any suspension, revocation, refusal to renew or other termination of an auto body repair facility license, the license shall no longer be in force and effect and the license document shall, within one business day, be surrendered to the Auto Body Licensing Unit

of the Division. The licensee or other person having possession or custody of the license document shall surrender such license document, either by personal delivery or by certified mail, to the Auto Body Licensing Unit of the Division at the address specified in N.J.A.C. 13:21-21.4(a). Failure to surrender such license document within one business day shall result in administrative action pursuant to this subchapter.

13:21-21.9 Responsibility of licensees

(a) In the case of a sole proprietorship, the owner and/or possessor of a controlling interest in the auto body repair facility shall be responsible to the Director for the conduct of the business of the facility and for all actions performed by its employees in connection with the business of the facility concerning violations of the Auto Body Repair Facilities Act and this subchapter.

(b) In the case of a partnership or corporation, each partner, or corporate officer and/or Director, or any person or entity possessing a controlling interest, as the case may be, shall be held individually responsible to the Director for the conduct of the business of the facility and for all actions performed by its employees in connection with the business of the facility concerning violations of the Auto Body Repair Facilities Act and this subchapter.

13:21-21.10 Estimates and repairs

(a) Every licensed auto body repair facility shall provide a written estimate to any customer seeking their services, provided that the auto body repair facility is willing and able to perform the requested repair services.

(b) Each written estimate shall bear the name of the auto body repair facility and its license number.

(c) Each written estimate shall be signed by the person preparing such estimate.

(d) Each written estimate shall contain the following information:

1. The customer's name;
2. The date of the estimate;
3. A list of parts necessary for each repair, together with the costs for those parts, indicating any parts which are not new parts;
4. The labor charge for each repair, together with the total labor charge; or the total number of hours estimated to perform all the requested repairs, together with the hourly labor rate charged by the auto body repair facility;
5. A description of the vehicle;
6. An approximate or estimated date of delivery, if any such date is given;
7. The terms and limit of any guarantee for the repair work performed; and
8. The odometer reading at the time of the requested repair.

(e) Each written estimate shall include a statement or statements informing the customer of his right to receive replaced parts, and stating that the customer's signature or initials on the following line shall mean that the customer waives his right to receive such replaced parts and that no signature on this line shall mean that the customer exercises his right to receive these replaced parts. A signature line shall be provided immediately below this statement.

1. The customer's signature or initials on this line shall mean that the customer waives his right to receive such replaced parts. No signature or initials on this line shall be deemed to mean that the customer exercises the right to receive such replaced parts.

2. The auto body repair facility may charge a reasonable storage and removal fee to any customer who requests the replaced parts and subsequently fails to take these replaced parts, after paying for the repair work or picks up his repaired automobile, whichever occurs first.

3. If a storage and removal fee is charged by the auto body repair facility, then such fee must be disclosed, in writing, to the customer at the time the customer exercises his right to receive the replaced parts.

4. The auto body repair facility shall not be liable to the customer in those cases where the customer fails to take the replaced parts after paying for the repair work or picks up his repaired automobile.

(f) Each written estimate shall include a statement informing the customer or insurer of their right to inspect the repaired automobile before paying for the repair work.

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(g) Any estimate and/or repair work prepared or performed by a subcontractor shall be deemed to be work performed under the direction of the licensee. The licensee shall be accountable to the Director for all such work subcontracted to others.

(h) An auto body repair facility may charge a reasonable fee for making a written estimate. If a fee is charged for making a written estimate, then the auto body repair facility must disclose, in writing, the amount of the fee to the customer before the written estimate is prepared.

(i) An auto body repair facility may charge a hazardous waste disposal fee. If such a fee is charged, then the auto body repair facility must disclose such fee on the estimate.

13:21-21.11 Authorization for repairs

(a) No auto body repair facility shall commence any repair work, including the ordering of parts, on a customer's automobile unless the facility has obtained:

1. Specific written authorization from the customer to proceed with the requested repair services; or

2. ***If the customer's automobile is presented to the auto body repair facility during other than normal business hours or by one other than the customer,*** ***[O]**o**ral** authorization from the customer to proceed with the requested repair services ***[when such written authorization is otherwise impractical]***. In the case of an oral authorization, the estimate shall contain a notation of the date, time, telephone number, if any, and name of the customer granting such authorization. A copy of the estimate which contains these notations shall be given to the customer.

(b) No auto body repair facility shall commence any additional repair work, including the ordering of additional parts, on a customer's automobile which exceeds any estimate given, including the price, list of parts and labor charge, unless the facility obtains the authorization of the customer to proceed with the additional repair services.

(c) In the case of an oral authorization, the original estimate or any additional estimate prepared shall contain a notation of the date, time, telephone number, if any, and name of the customer granting such authorization. A copy of the estimate which contains these notations shall be given to the customer.

(d) Customers or insurers may test drive the repaired automobile before paying for the repair work, provided that the repairs made by the auto body repair facility are directly related to the operation of the automobile and further provided that such repaired automobile may be safely operated on the highways of this State.

13:21-21.12 Notice and recordkeeping requirements

(a) Each licensee shall display an outdoor sign which shall read: "Registered: State of New Jersey—Licensed Auto Body Repair Facility" and display the license number of the auto body repair facility. The sign must contain letters at least two inches high with a stroke of approximately one-half inch and visible from the road and located in a conspicuous location for the general public to see. In the event zoning ordinances prohibit the posting of this sign or such posting is otherwise impractical, the licensee shall place such sign on the exterior of the auto body repair facility.

(b) Every license document issued in accordance with this subchapter shall be prominently displayed in the office, waiting area or other conspicuous location at the auto body repair facility which is accessible to the public.

(c) Every licensed auto body repair facility shall post in a conspicuous location accessible to the public a "Notice to Consumers" concerning violations of the Auto Body Repair Facility Act and the fact that customers or insurers have a right to inspect the repaired automobile before paying for the repair work. The Notice shall be prescribed and furnished by the Division.

(d) Every licensed auto body repair facility shall maintain copies of all estimates, work orders, invoices, parts purchase orders, appraisals and/or other documents prepared by that facility on repair work performed by that facility or by subcontractors.

1. Such copies shall be kept for two years and shall be available for inspection by the Director, or any person designated by him, during normal business hours.

2. Failure to permit such inspection shall subject the licensee to administrative action pursuant to this subchapter.

(e) Every auto body repair facility shall, upon request of the Director or any person designated by him, provide the Director or his designee with a list of its employees in such form and detail as may be required by the Director or his designee. Failure to provide such list when requested shall subject the licensee to administrative action pursuant to this subchapter.

(f) The licensee shall notify the Director, in writing, within 10 days of any change in address of the auto body repair facility or of any change in address of persons or entities required to be listed on the application by N.J.A.C. 13:21-21.4.

(g) The licensee shall notify the Director, in writing, within 10 days whenever any person or entity required to be listed on the application by N.J.A.C. 13:21-21.4 is no longer associated with the auto body repair facility.

(h) All written notifications required by this subchapter shall be made by either personal delivery or sent by certified mail to the Auto Body Licensing Unit of the Division at the address specified in N.J.A.C. 13:21-21.4(a).

(i) An amended application shall be filed by the licensee with the Director when there is a substitution and/or addition of persons or entities required to be listed on the application by N.J.A.C. 13:21-21.4, and shall meet the requirements of N.J.A.C. 13:21-21.6(a) and N.J.A.C. 13:21-21.4(d).

(j) Any process issued to a licensee pursuant to the statutory authority of the Director, including but not limited to subpoenas, orders, and orders to show cause, may be served upon a licensee or counsel of record, by sending said process by certified mail, or ordinary mail, to the business address of the auto body repair facility or to counsel's address on record with the Division.

13:21-21.13 Advertising

(a) Any advertising used by the auto body repair facility in any printed or published material shall contain and prominently display the license number of the facility.

(b) Any advertising used by the auto body repair facility in any radio broadcast shall disclose that the facility is licensed by the State of New Jersey.

(c) Any advertising used by the auto body repair facility in any television broadcast shall disclose and prominently display the license number of the facility at the end of such broadcast.

13:21-21.14 Storage rates

Every auto body repair facility which charges a fee to store a motor vehicle on its premise shall disclose in writing, as soon as practicable, the amount of such storage charge to the customer on a per diem basis.

13:21-21.15 Additional violations

(a) In addition to any violation of N.J.S.A. 39:13-1 et seq., the Director may impose a civil penalty, refuse to issue a license or a renewal thereof, or suspend or revoke the existing license of any auto body repair facility if he determines that the applicant or licensee:

1. Has made a false statement or concealed a fact in connection with the application for a license or a renewal thereof;

2. Is not the owner of, or possessor of a controlling interest in, the auto body repair facility;

3. Has been found to have violated or conducted fraudulent or deceptive practices concerning the repair of motor vehicles in violation of N.J.S.A. 56:8-1 et seq. or N.J.A.C. 13:45A-7.1 et seq.;

4. Has a criminal record which is disqualifying. A disqualifying criminal record shall include, but is not limited to, bond forfeitures, pleas of nolo contendere or convictions of crimes, disorderly persons or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any other offenses as defined by the laws of New Jersey, such as:

i. Any crime or offense involving the manufacture, transportation, possession, sale or use of a controlled dangerous substance as defined in the "New Jersey Controlled Substance Act", N.J.S.A. 24:21-1 et seq.;

ii. Any crime or offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault, battery or arson;

iii. Any crime or offense involving the taking or misappropriation of property of another person, such as theft, burglary, fraud, larceny or embezzlement;

iv. Any crime or offense indicative of bad moral character or not being a proper person for the purposes of being licensed in accordance with this subchapter; or

v. Any crime or offense which, in the discretion of the director, would relate adversely to the operation of the business of an auto body repair facility.

5. Demonstrates a pattern of conduct whereby repairs made by the auto body repair facility were not made in a workmanship like manner;

6. Issues a check in payment of any fees required by this subchapter which is subsequently dishonored;

7. Has failed to comply with any of the provisions of this subchapter; or

8. Fails to maintain an approved place of business in accordance with N.J.A.C. 13:21-21.4(c)1; or for other good cause.

13:21-21.16 Additional penalties

(a) Where, pursuant to N.J.S.A. 39:13-1 et seq., or any regulation adopted thereunder, the Director has the authority to suspend, revoke or refuse to grant or renew the license of an auto body repair facility, the Director shall also have the authority to impose, as an alternative or in addition to such suspension, revocation or refusal to grant or renew, an official warning and/or a civil penalty of not more than \$2,000 for the first offense and not more than \$5,000 for each subsequent offense.

(b) A civil penalty in the amount of \$5,000 per day shall be imposed on any person or auto body repair facility who continues to operate as an auto body repair facility after its license has been suspended or revoked or whose application for an auto body repair facility license has been refused by the Director pursuant to N.J.S.A. 39:13-1 et seq. or any regulation adopted thereunder.

13:21-21.17 Investigations

(a) The Director shall, on his own initiative or in response to complaints, investigate on a continuous basis and gather evidence of violations of N.J.S.A. 39:13-1 et seq., or of any regulation adopted thereunder, by an auto body repair facility.

(b) The Director, or any person designated by him, shall have the power to conduct investigations, administer oaths, interrogate licensees, issue subpoenas, summonses and/or complaints and compel witnesses to appear at any hearing.

(c) Except as set forth in N.J.A.C. 13:21-21.12(j), subpoenas shall be served in the same manner, and the witnesses shall be entitled to the same fees, as in the case of subpoenas issued out of the Superior Court of New Jersey.

(d) In case of a failure of any person to comply with any subpoena issued under these rules or to testify with respect to any matter concerning which he may be lawfully interrogated, the Superior Court, on application of the Director, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the order of the court may be punished by the court for contempt.

13:21-21.18 Written notice of a suspension, or revocation or refusal to grant or renew a license

(a) The Director shall notify the applicant, in writing by certified mail, of any refusal to grant or renew an auto body repair facility license to the applicant and the grounds thereof. Written notice shall be mailed to the applicant at the address listed on the application or to the place of business on record with the Division.

(b) The Director shall notify the licensee, in writing by certified mail, of any proposed suspension or revocation of the auto body repair facility license and the grounds thereof. Written notice shall be mailed to the place of business on record with the Division. Unless the licensee files with the Director a written request for a hearing in accordance with N.J.A.C. 13:21-21.19, the auto body repair facility

license shall be suspended or revoked as of 12:01 A.M. on the 61st day from the date such notice was sent in accordance with this section.

13:21-21.19 Request for a hearing

(a) If an applicant has been notified in accordance with N.J.A.C. 13:21-21.18(a) that the Director refuses to grant or renew an auto body repair facility to him, then the applicant shall be entitled to an administrative hearing concerning such refusal provided that the applicant has filed and the Director has received a written request for a hearing within 60 days. The 60 day period shall commence on the date such notice was mailed to the applicant by the Division in accordance with N.J.A.C. 13:21-21.18(a).

(b) If a licensee has been notified in accordance with N.J.A.C. 13:21-21.18(b) of a proposed suspension or revocation of his auto body repair facility license, then the licensee shall be entitled to an administrative hearing concerning such proposed suspension or revocation provided that the licensee has filed and the Director has received a written request for a hearing within 60 days. The 60 day period shall commence on the date such notice was mailed to the licensee by the Division in accordance with N.J.A.C. 13:21-21.18(b).

(c) Any written request for a hearing by an applicant or licensee shall be sent to the Auto Body Licensing Unit of the Division at the address specified in N.J.A.C. 13:21-21.4(a). The hearing request shall contain the following information:

1. The name, place of business and telephone number of the auto body repair facility;

2. A concise statement of facts constituting each ground of defense;

3. A specific admission, denial or explanation of each fact alleged by the Division in its notice or order to show cause, or if without knowledge thereof, a statement to that effect; any allegation in the Division's notice or order to show cause which is not answered in accordance with this paragraph shall be deemed to have been admitted; and

4. A statement requesting a hearing.

(d) If the applicant or licensee does not file a written request for a hearing in accordance with (a), (b) or (c) above, then the suspension, revocation or refusal to grant or renew the auto body repair facility license shall be effective 12:01 A.M. on the 61st day from the date such notice was mailed in accordance with 13:21-21.18. The auto body repair facility shall cease all engagements and activities of the business of an auto body repair facility effective 12:01 A.M. on the 61st day from the date such notice was mailed in accordance with N.J.A.C. 13:21-21.18.

13:21-21.20 Hearing procedures

Any hearing concerning the suspension, revocation or refusal to grant or renew an auto body repair facility license shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

13:21-21.21 Limitations on issuance of a license after a suspension, revocation or refusal to grant or renew

(a) No person whose application for an auto body repair facility license is refused shall be entitled to apply for a license under this subchapter for a period of at least one year from the effective date of such refusal.

(b) No person whose license is suspended or revoked shall be entitled to apply for a license under this subchapter during the period of suspension or revocation.

13:21-21.22 License restoration

(a) A fee of \$30.00 shall be payable to the Division for the restoration of an auto body repair facility license which is suspended or revoked pursuant to N.J.S.A. 39:13-1 et seq. or this subchapter. Such license restoration fee shall be paid to the Division before the license may be restored.

(b) Every suspension or revocation of any auto body repair facility license, pursuant to N.J.S.A. 39:13-1 et seq. or any regulation adopted thereunder, shall continue in force and effect until such license is restored by the Director.

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(c) In the case of every suspension or revocation of an auto body repair facility license for a fixed period of time, the licensee, as a condition precedent to restoration, shall make application to the Director, in such form as the Director may prescribe, and pay the license restoration fee specified in (a) above. The Director may, upon due notice and opportunity for a hearing, deny any application for restoration of an auto body repair facility license for good cause.

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF SHORTHAND REPORTERS**

Board of Shorthand Reporters Rules

Readoption: N.J.A.C. 13:43

Adopted Amendments: N.J.A.C. 13:43-2.1, 2.2, 2.7, 2.8, 2.9, 2.13

Adopted Repeals: N.J.A.C. 13:43-2.10, 2.11, 2.12, 2.14, 2.20

Proposed: July 18, 1988 at 20 N.J.R. 1666(a).

Adopted: August 18, 1988 by Board of Shorthand Reporters, Joseph Albanese, Jr., Chairman.

Filed: September 1, 1988 as R.1988 d.457, **without change**.

Authority: N.J.S.A. 45:15A-1.

Effective Date: September 1, 1988 for Readoption; October 3, 1988 for Amendments; October 3, 1988 for Repeals.

Expiration Date: September 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption and adopted repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:43.

Full text of the adopted amendments to the readoption follows.

13:43-2.1 Definitions

13:43-2.2 Scope

The following rules shall constitute the practice and procedure and shall govern the filing and processing of all complaints and violations before the Board.

13:43-2.7 Notice of complaint

(a) Whenever it shall appear to the board that a violation of the act has occurred, is occurring or may occur and that the matter warrants a formal administrative hearing to effectuate the policies underlying said act, it may cause to be issued a notice of complaint seeking any relief authorized by the act.

(b) The complaint shall be returnable in not less than 30 days nor more than 60 days from the date of service thereof.

(c) The complaint shall be directed to the respondent and shall be served in accordance with these rules.

(d) A complaint issued by the board shall contain:

1. A reference to the particular sections of the statute or rule alleged to have been violated;

2. A short and plain statement of the facts giving rise to the alleged statutory or rule violation;

3. A statement of the relief sought by the complainant.

13:43-2.8 Service of notice of complaint

(a) Service of notice of complaint shall be made as follows:

1.-4. (No change.)

5. Affidavit of service, general appearance, acknowledgement of service:

i. The service herein provided for shall be made by the board's director, or Attorney General's agent or employee by showing the respondent the original notice of complaint and delivering a copy thereof to the respondent. The agent or employee shall evidence such service by appending to the original order to show cause, his affidavit of service;

ii. A general appearance or an acceptance of the service of a summons, signed by defendant's attorney or signed and acknowl-

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edged by the defendant (other than an infant or incompetent), shall have the same effect as if the defendant had been properly served.

13:43-2.9 Hearing to conform to law

The conduct of all hearings shall conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

13:43-2.10 (Reserved)

13:43-2.11 (Reserved)

13:43-2.12 (Reserved)

13:43-2.13 Pleadings

(a) A respondent may file an answer to an order to show cause, setting forth any factual or legal defenses he may have to the allegations contained in the complaint.

(b) Where appropriate, the board may require the respondent to file an answer to the complaint.

(c) Filing of an answer shall be made by forwarding an original and two copies to the secretary of the board.

(d) The failure to file an answer, except when ordered to do so, shall not be deemed a default.

13:43-2.14 (Reserved)

13:43-2.15 (Reserved)

13:43-2.16 Board's decision

(a) In those cases where a stenographic recording is made of the proceeding, the board may in its discretion and consistent with the within rules and the Administrative Procedure Act, N.J.S.A. 45:14B-1 et seq., render its decision orally on the record.

(b) Review thereof shall be solely by appeal to the Appellate Division of the Superior Court in accordance with the Rules Governing the Courts of the State of New Jersey.

(c) No review of the board's decision shall be available in any collection or enforcement action initiated pursuant to the act.

13:43-2.20 (Reserved)

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TRANSPORTATION OPERATIONS

(b)

**Restricted Parking and Stopping
Route N.J. 7 in Essex County**

Adopted Amendment: N.J.A.C. 16:28A-1.6

Proposed: August 1, 1988 at 20 N.J.R. 1778(a).

Adopted: September 1, 1988 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: September 2, 1988 as R.1988 d.463, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-197.5 and 39:4-199.

Effective Date: October 3, 1988.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.6 Route 7

(a) (No change.)

(b) The certain parts of State highway Route 7 described in this subsection shall be designated and established as restricted parking spaces for the use of persons who have been issued special vehicle identification cards by the Division of Motor Vehicles in accordance with N.J.S.A. 39:4-197.5 Under the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

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- 1. Restricted parking in the Town of Belleville, Essex County:
 - i. Washington Avenue:
 - (1) Along the west side:
 - (A) Beginning at a point 44 feet south of the southerly curb line of Academy Street to a point 22 feet southerly therefrom.
 - (2) Along the east side:
 - (A) Beginning at a point 45 feet north of the northerly curb line of Academy Street to a point 66 feet northerly therefrom, Monday through Friday 9:00 A.M. to 10:00 A.M. and 2:00 P.M. to 3:00 P.M.
 - (c) (No change.)

(a)

**Restricted Parking and Stopping
Route U.S. 9 in Monmouth County**

Adopted Amendment: N.J.A.C. 16:28A-1.7

Proposed: July 5, 1988 at 20 N.J.R. 1533(a).
 Adopted: August 8, 1988 by John F. Dunn, Jr., Director,
 Division of Traffic Engineering and Local Aid.
 Filed: September 2, 1988 as R.1988 d.465, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and 39:4-199.
 Effective Date: October 3, 1988.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:28A-1.7 Route U.S. 9
- (a) (No change.)
 - (b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:
 - 1.-41. (No change.)
 - 42. Along the southbound (westerly) side in Marlboro Township, Monmouth County:
 - i. Near side bus stop:
 - (1) Ivy Hill Drive—Beginning at the northerly curb line of Ivy Hill Drive and extending 105 feet northerly therefrom.

(b)

**Restricted Parking and Stopping
Route U.S. 130 in Salem County**

Adopted Amendment: N.J.A.C. 16:28A-1.46

Proposed: July 5, 1988 at 20 N.J.R. 1533(b).
 Adopted: August 8, 1988 by John F. Dunn, Jr., Director,
 Division of Traffic Engineering and Local Aid.
 Filed: September 2, 1988 as R.1988 d.464, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1.
 Effective Date: October 3, 1988.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:28A-1.46 Route U.S. 130
- (a) The certain parts of State highway Route U.S. 130 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited.
 - 1. No stopping or standing in Pennsville Township, Salem County:
 - i. Along the westerly (southbound) side:
 - (1) From Jackson Road southerly to the point of the junction of Route 49.

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- ii. Along the easterly (northbound) side:
 - (1) From the northerly curb line of Broad Street to the southerly curbline of Plant Street.
 - 2.-9. (No change.) (see related Proposal at 20 N.J.R. 887(b).)
 - (b)-(c) (No change.)

(c)

Turns

Route N.J. 10 in Essex County

Adopted New Rule: N.J.A.C. 16:31-1.25

Proposed: August 1, 1988 at 20 N.J.R. 1779(a).
 Adopted: September 1, 1988 by John F. Dunn, Jr., Director,
 Division of Traffic Engineering and Local Aid.
 Filed: September 2, 1988 as R.1988 d.462, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-183.6, and 39:4-123.
 Effective Date: October 3, 1988.
 Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

- 16:31-1.25 Route 10
- (a) Turning movements of traffic on the parts of State highway Route 10 described below are regulated as follows:
 - 1. In the Township of West Orange, Essex County:
 - i. No left turn westbound to Skyline Drive southbound.
 - ii. No right turn eastbound to Skyline Drive southbound.

TREASURY-GENERAL

DIVISION OF PENSIONS

(d)

State Health Benefits Program

Adopted New Rules: N.J.A.C. 17:9

Proposed: July 5, 1988 at 20 N.J.R. 1536(a).
 Adopted: September 1, 1988 by the State Health Benefits
 Commission, Gaius Mount, Acting Secretary.
 Filed: September 2, 1988 as R.1988 d.461, **without change**.
 Authority: N.J.S.A. 52:14-17.27 et seq.
 Effective Date: October 3, 1988.
 Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the expired rules adopted as new can be found in the New Jersey Administrative Code at N.J.A.C. 17:9.

(e)

**State Health Benefits Program
Eligible Charges; Copayment**

Adopted Amendment: N.J.A.C. 17:9-2.12

Proposed: July 5, 1988 at 20 N.J.R. 1536(b).
 Adopted: September 1, 1988 by the State Health Benefits
 Commission, Gaius Mount, Acting Secretary.
 Filed: September 6, 1988 as R.1988 d.469, **without change**.
 Authority: N.J.S.A. 52:14-17.27.
 Effective Date: October 3, 1988.
 Expiration Date: October 3, 1993.

ADOPTIONS

TREASURY-GENERAL

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:9-2.12 Major Medical; eligible charges at enrollment (local employees)

(a) For purposes of local coverage, all eligible charges incurred by an eligible employee or his or her covered dependents, from January 1 of a calendar year to the effective date of coverage for his or her participating employer, will be considered to satisfy the deductibles and copayments required under the Major Medical coverage. The above provision is contingent upon the eligible employee being actively at work on the effective date of coverage and his or her dependents not be deferred as stated in N.J.A.C. 17:9-2.8(b).

(b) The charges considered are to be eligible charges under the Major Medical contract and no charges will be considered that would have been paid by the basic plan, had the employee had such coverage. No charges will be used to satisfy deductibles and copayments for which the employee has been reimbursed by any source where any employer participated under another contract.

(c) This section shall apply to all eligible charges incurred on or after January 1, 1987.

(a)

**State Health Benefits Program
Education Retirees' Coverage**

Adopted New Rule: N.J.A.C. 17:9-2.17

Proposed: July 5, 1988 at 20 N.J.R. 1537(a).

Adopted: September 1, 1988 by the State Health Benefits

Commission, Gaius Mount, Acting Secretary.

Filed: September 7, 1988 as R.1988 d.471, **without change.**

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

Effective Date: October 3, 1988.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:9-2.17 Chapters 384 and 386, Laws of 1987; enrollment of retirees

For the purposes of implementing Chapters 384 and 386 of the Laws of 1987, retirees of boards of education participating in the State Health Benefits Program who do not qualify for State payment of premiums for coverage and are not enrolled in the program may enroll within the one-year period from June 1, 1988 to May 31, 1989.

(b)

**State Health Benefits Program
Retired Employee Defined**

Adopted Amendment: N.J.A.C. 17:9-6.1

Proposed: June 6, 1988 at 20 N.J.R. 1182(a).

Adopted: September 1, 1988 by the State Health Benefits

Commission, Gaius Mount, Acting Secretary.

Filed: September 6, 1988 as R.1988 d.470, **without change.**

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

Effective Date: October 3, 1988.

Expiration Date: October 3, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

17:9-6.1 Retired employee defined

(a) "Retired employee" means a person who is eligible for coverage under the program, or under the health insurance plan of the

person's employer where the employer is not participating in the program and the person is eligible to participate under P.L. 1987, c.384, immediately preceding retirement and receives a periodic retirement allowance from a State or locally administered retirement system or plan upon retirement. This "retired employee" status, once established, will continue in effect even though the employer is subsequently disbanded and no successor agency is created upon the dissolution of such employer. An employee who continued his or her coverage while on an official leave of absence for illness without pay but whose coverage terminated when his or her leave exceeded the period established by the statute for the continuation of coverage for such leave, will be permitted to elect to continue health benefits coverage into retirement provided such leave was in effect immediately preceding the date of his or her retirement.

(b)-(h) (No change.)

(c)

DIVISION OF INVESTMENT

Loan Participation Notes

Adopted New Rules: N.J.A.C. 17:16-41

Proposed: August 1, 1988 at 20 N.J.R. 1779(b).

Adopted: September 1, 1988 by Roland M. Machold, Director,

Division of Investment and State Investment Council.

Filed: September 2, 1988 as R.1988 d.466, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: October 3, 1988.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

SUBCHAPTER 41. LOAN PARTICIPATION NOTES

17:16-41.1 Definition

As used in this subchapter, "loan participation notes" means a short term, unsecured promissory note.

17:16-41.2 Permissible investments

(a) Subject to the maturity limitations contained in this subchapter, the Director may invest and reinvest the moneys of any fund in loan participation notes which are not in default as to either principal or interest when acquired and which have been issued by a company incorporated within and transacting business within the United States.

(b) The Director shall submit a list of issuers of loan participation notes to the Council for its approval. Such list may be amended or enlarged from time to time subject to the Council's approval and shall be designated the "Approved List of Issuers of Loan Participation Notes".

(c) The Director may purchase loan participation notes only from originating banks which meet the requirements as permitted under N.J.A.C. 17:16-27 of the rules of the State Investment Council.

17:16-41.3 Eligible funds

The Director may purchase "loan participation notes" for the State of New Jersey Cash Management Fund and any fund under the supervision of the State Investment Council, providing the maturity purchased does not exceed 180 days.

17:16-41.4 Legal papers

(a) Prior to any commitment to purchase loan participation notes, the Director shall obtain:

1. Evidence that the note issuer has a commercial paper rating of A-1 by "Standard & Poor's Commercial Paper Division"; and

2. Approval by the Attorney General of each "Master Participation Agreement" which specifies the terms and conditions between the investor and the originating bank.

OTHER AGENCIES

ADOPTIONS

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming EquipmentAdopted Amendments: N.J.A.C. 19:45-1.36 and 1.45;
N.J.A.C. 19:46-1.19

Proposed: May 16, 1988 at 20 N.J.R. 1069(a).

Adopted: September 2, 1988 by the Casino Control Commission,
Walter N. Read, Chairman.Filed: September 6, 1988 as R.1988 d.468, **with technical changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3) and **with portions not adopted**.Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(f), (i), (j) and (l),
5:12-98, 5:12-99 and 5:12-100.

Effective Date: October 3, 1988.

Operative Date: As to N.J.A.C. 19:46-1.19, January 31, 1989.

Expiration Date: As to N.J.A.C. 19:45-1.36 and 1.45, March 24,
1993; as to N.J.A.C. 19:46-1.19, April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Resorts International, Inc. (Resorts) and Claridge Casino Hotel (Claridge), both casino licensees, submitted comments on the amendment to N.J.A.C. 19:45-1.36 concerning Entry Authorization Logs in slot machines and progressive controllers. Resorts does not object to the requirement of Entry Authorization Logs, but does object to the requirement that the logs be sequentially numbered. It argues that sequential numbering will create administrative problems, given the number of machines and frequency of log changes. Claridge also objects to the sequential numbering of the logs, arguing that it will create an "administrative nightmare."

RESPONSE: The Commission does not consider the proposed amendment to N.J.A.C. 19:45-1.36 to create any significant administrative burdens for casino licensees. Resorts and Claridge appear to have misinterpreted the proposed amendment to require sequential numbering of logs on a casino-wide basis. The proposed amendment only requires that the logs be sequentially numbered for each particular slot machine and progressive controller. Moreover, there is no requirement that the number of the log or slot machine be pre-printed on the form, so that these can be added as the logs are replaced.

COMMENT: Resorts and Claridge also object to the amendment to N.J.A.C. 19:45-1.45, which clarifies that the signature requirements established by that section are applicable to any signature required in a casino licensee's approved system of internal controls, including those required under N.J.A.C. 19:46 relating to gaming equipment. They argue that the amendment is confusing, vague and overbroad.

RESPONSE: The Commission disagrees with the comments submitted by Resorts and Claridge on this amendment. N.J.A.C. 19:45 of the Commission's rules, pursuant to N.J.S.A. 5:12-99, establishes a system of internal procedures and administrative and accounting controls which govern all aspects of a casino licensee's gaming operations. The amendment to N.J.A.C. 19:45-1.45 simply clarifies that the signature requirements imposed by that section are applicable throughout the Commission's rules. Furthermore, the amendment is not overbroad. It is appropriate that the requirements established by N.J.A.C. 19:45-1.45 apply to all internal control procedures, including those relating to gaming equipment, to ensure not only that a signer understands the significance of his or her signature on a document, but also to enable subsequent identification of the signer.

COMMENT: Three casino licensees also objected to the amendment to N.J.A.C. 19:46-1.19, concerning the features required on dealing shoes. These casino licensees were the Sands Hotel and Casino (the Sands), Trump Plaza Hotel and Casino, and the Claridge. These casino licensees argue that the proposed amendment fails to give the requisite notice of the features that are necessary on dealing shoes to satisfy the rule.

RESPONSE: The amendment does identify certain minimum features which are necessary to satisfy the rule. However, the amendment also reserves broad discretion in the Commission to require other features on dealing shoes in certain situations. This flexibility is necessary to ensure that any threat of cheating or impropriety is addressed by the casino

industry without delay. Nevertheless, the Commission's authority in this regard is not unrestricted, as it is limited to features required to "maintain the integrity of the game. . . ."

COMMENT: The Sands also objects to the requirement in the amendment to N.J.A.C. 19:46-1.19 that baccarat dealing shoes have a lid that is opaque covering a distance at least four inches from the face plate. It argues that the figure of four inches is arbitrary, and that some of its dealing shoes, which have opaque areas extending for only three and three-quarters inches, would not comply.

RESPONSE: It is undisputed that an opaque area of some size is required on the lids of baccarat dealing shoes to maintain the integrity of the game. The selection of any particular distance would be somewhat arbitrary. Nevertheless, other comments indicate that the Sands is the only casino licensee which is using baccarat dealing shoes that do not comply with the amendment. The Commission has therefore delayed the operative date of the amendment to permit the Sands time to replace its baccarat dealing shoes with shoes that would comply without suffering undue hardship.

Please note that, since the publication of the Notice of Proposed Amendments for the instant adoption, N.J.A.C. 19:45-1.36 has been amended twice (see 20 N.J.R. 1099(c) and 20 N.J.R. 2090(a)). Therefore, the amendment to N.J.A.C. 19:45-1.36 which is presently being adopted includes technical changes from the proposal to accurately reflect the current state of the law. In addition, the Commission has decided not to adopt the proposed amendments to N.J.A.C. 19:45-1.14 and 1.39, and proposed new rule N.J.A.C. 19:45-1.40B.

The amendments to N.J.A.C. 19:45-1.36 which were adopted since the publication of the proposal are incorporated into the text of the amended rule, appearing, where appropriate, in italics *thus*.

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

19:45-1.36 Slot machines *and bill changers*; coin *and slot token* containers; *slot cash storage box compartments*; keys

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

(d) *The slot cash storage box of each bill changer shall be housed in a separate locked compartment. The slot cash storage box compartment shall have two locks, the keys to which shall be different from each other and one of which shall be different from the keys securing the contents of the slot cash storage box as required by N.J.A.C. 19:45-1.16.*

(e) *One key to the compartment securing the slot cash storage box shall be maintained and controlled by a Commission inspector and the second key to such compartment, which is different from the keys securing the contents of the slot cash storage box, shall be maintained and controlled by the security department in a secure area within the security department, access to which may be gained only by a security supervisor. The security department shall establish a sign-out procedure for all keys removed from the security department in accordance with N.J.A.C. 19:46-1.25.*

[(d)](f) *Keys to each slot machine [, other than the] or any device connected thereto which may affect the operation of the slot machine, with the exception of the keys to the compartments housing the drop bucket and the slot cash storage box, shall be maintained in a secure place and controlled by the slot department.*

[1.](g) *[Whenever it is required that a slot machine or any device connected thereto which may affect the operation of the slot machine be opened, with the exception of a bill changer, an entry shall be made on a form to be entitled "Machine Entry Authorization Log." The entry shall include, at a minimum, the date, time, purpose of opening the machine or device, and signature of authorized employee opening the machine or device. The Machine Entry Authorization Log shall be maintained in the slot machine.]*

[e] *Unless a computer which automatically records the information specified in *[(e)]1. and 2.* *(g)1, 2 and 3* below is connected to the slot machines in the casino, the following entry authorization logs shall be maintained by the casino licensee:*

1. *Whenever it is required that a slot machine or any device connected thereto *which may affect the operation of the slot machine* be opened, *with the exception of a bill changer,* certain information shall be recorded on a form to be entitled "Machine Entry Authorization Log." The information shall include, at a minimum,*

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the date, time, purpose of opening the machine ***or device***, and signature of authorized employee opening the machine ***or device***

The Machine Entry Authorization Log shall be maintained in the slot machine and shall have recorded thereon a sequential number and a slot machine serial number or casino number.

2. Whenever it is required that a progressive controller not housed within the cabinet of a slot machine be opened, the information specified in ***(e)* *(g)***1 above shall be recorded on a form to be entitled "Progressive Entry Authorization Log." The Progressive Entry Authorization Log shall be maintained in the progressive unit and shall have recorded thereon a sequential number and serial number of the progressive controller.

[1.]3,*** Whenever it is required that a bill changer, other than the slot cash storage box compartment, be opened, the entry shall be made on a form to be entitled "Bill Changer Log." The entry shall include, at a minimum, the date, time, purpose of opening the bill changer, and the signature of authorized employee opening the bill changer. The Bill Changer Log shall be maintained in the bill changer and shall have recorded thereon a sequential number and a bill changer serial number or casino number.**

[2. If a computer is connected to slot machines in the casino which automatically records the information required in **/(d)1** above/ this subsection, it is not necessary to maintain the Machine Entry Authorization or Bill Changer Logs.]

/(f)/(h) (No change in text.)

(i) (No change.)

19:45-1.45 Signatures

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

(d) This section shall apply to any signature required in a casino licensee's approved system of internal procedures and administrative and accounting controls, including, without limitation, procedures required by N.J.A.C. 19:46.

19:46-1.19 Dealing shoes

(a) The following words and terms when used in this section shall have the following meanings:

"Base plate" means the interior shelf of the dealing shoe on which the cards rest.

"Face plate" means the front wall of the dealing shoe against which the next card to be dealt rests and which typically contains a cutout.

(b) Cards used to game at blackjack and minibaccarat shall be dealt from a dealing shoe which shall be securely chained to the gaming table during gaming hours and secured in a locked compartment during non-gaming hours. Cards used to game at baccarat shall be dealt from a dealing shoe which shall be secured in a locked compartment during non-gaming hours.

(c) A device which automatically shuffles cards may be utilized at the game of blackjack and minibaccarat in addition to or in place of a dealing shoe, provided that such a device is submitted to and approved by the Commission.

(d) A dealing shoe shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and at a minimum shall adhere to the following specifications:

1. At least the first four inches of the base plate shall be white;

2. The sides of the shoe below the base plate shall be transparent or have a transparent sealed cutout; and

3. A stop underneath the top of the face plate shall preclude the next card to be dealt from being moved upwards for more than one-eighth inch distance.

(e) A baccarat dealing shoe, in addition to meeting the requirements of **(d)** above, shall also adhere to the following specifications:

1. A removable lid shall be opaque from the point where it meets the face plate to a point at least four inches from the face plate;

2. The sides and back above the base plate shall be opaque; and

3. A device within the shoe shall, when engaged, prevent the cards from moving backward in the shoe.

(f) (No change in text.)

EMERGENCY ADOPTION

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Replacement of Contaminated Wellfields

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 7:1A-1, 1.1, 1.2, 1.4, 1.6, 2.1, 2.2, 2.3, 2.4, 2.8, 2.10, 2.12, 2.13, 2.14, 2.15, 5.1 and 5.2.

Adopted Emergency Rules and Concurrent Proposed New Rules: N.J.A.C. 7:1A-7.

Emergency Rule Adopted: September 19, 1988 by Christopher J. Daggett, Acting Commissioner, Department of Environmental Protection.

Gubernatorial Approval (See N.J.S.A. 52:14B-4(c)): September 15, 1988.

Emergency Adoption Filed: September 19, 1988, as R.1988 d.479.

Authority: N.J.S.A. 13:1B-3, 13:1D-9(k), N.J.S.A. 58:1A-1 et seq., particularly N.J.S.A. 58:1A-5, N.J.S.A. 58:12A-1 et seq., and P.L. 1988, c.106.

Emergency Amendments and New Rule Effective Date: September 19, 1988.

Emergency Amendments and New Rule Expiration Date: November 18, 1988.

DEP Docket Number: 037-88-09

Concurrent Proposal Number: PRN 1988-514.

Public hearings concerning the concurrent proposal will be held on:
November 1, 1988 from 7:00 to 9:00 P.M.
Stockton State College
Pomona, New Jersey
November 2, 1988 from 2:00 to 4:00 P.M.
Labor Education Center
Ryderson Lane
Rutgers University
New Brunswick, New Jersey

Submit written comments by November 16, 1988 to:
Ann Zeloof, Esq.,
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The amendments and new rule 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. 1:30-4.5). Concurrently the provisions of the emergency rule 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 of the notice of adoption for filing by the Office of Administrative Law (See N.J.A.C. 1:30-4.5(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The current rules for the Water Supply Bond Loan programs, N.J.A.C. 7:1A, set forth the procedures governing the issuance of loans for projects authorized by the Water Supply Bond Act of 1981, (P.L. 1981, c.261), ("Water Supply Bond Act"), and subsequent appropriations acts.

The proposed amendments and new rules will modify the current rules governing loans made in order to provide or to improve water supply facilities to address contamination problems, as identified by the New Jersey Department of Environmental Protection ("Department"). They modify in some respects procedures and criteria applicable to loans funded under the Water Supply Bond Act, and establish new procedures and criteria applicable to loans funded from other appropriations, including those contained in P.L. 1988, c.106.

A summary of the provisions of the emergency adopted amendments rules follows:

N.J.A.C. 7:1A-1.1, Scope and Construction of Rules, has been amended at subsection (a) to include as sources of statutory authority, the Water Supply Management Act, N.J.S.A. 58:12A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A et seq., and P.L. 1988, c.106. This amendment provides for funds in addition to those made available pursuant to the Water Supply Bond Act. As is discussed below, these additional funds may be utilized according to standards and conditions which differ in some respects from those required for work funded pursuant to the Water Supply Bond Act. The identical amendment has been adopted at N.J.A.C. 7:1A-1.2, Purpose of rules, and N.J.A.C. 7:1A-2.2, Definitions.

N.J.A.C. 7:1A-1.1(a) has additionally been amended by the substitution of the term "facilities" in place of "systems". The substitution more accurately reflects the subject of the chapter, as the term "water supply facilities" is set forth at N.J.A.C. 7:1A-2.2, Definitions. The identical amendment appears at N.J.A.C. 7:1A-1.2(a), Purpose.

N.J.A.C. 7:1A-1.4, Annual budget request, adds the Water Supply Replacement Trust Fund as a source of funds available for the replacement of contaminated wellfields at subsection (a). The identical amendment is found at N.J.A.C. 7:1A-1.5, Legislative appropriations.

N.J.A.C. 7:1A-1.6, Procedure for obtaining a water supply bond loan, is amended to delete the word "bond" from the title and from subsection (a). The correct term is "water supply loan". Additionally, subsection (a) is amended to add a reference to new rule N.J.A.C. 7:1A-7.3 in its list of references concerning eligibility criteria.

N.J.A.C. 7:1A-2.1, Scope, has been amended to include the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and P.L. 1988, c.106 as sources of authority for the provision of State loans.

In N.J.A.C. 7:1A-2.2, Definitions, the definition of "Act" has been expanded to include the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., P.L. 1988, c.106, and "such other acts and appropriations provided to the Department for the purposes specified in this chapter" in order to include new and expanded sources of funding for contamination problems.

The definition of "bonds" has been amended to include bonds authorized to be issued, or issued under legislative authorizations subsequent to the Water Supply Bond Act.

The definition of "borrower" has been amended to delete a reference to the Water Supply Bond Act in order not to limit funding to appropriations made solely pursuant to that Act.

The definition "local unit" has been amended to include the terms "rehabilitation," "interconnection," and "Water Supply Replacement Type A funding" and to make specific reference to the "Water Supply Bond Act of 1981."

The definition of "maximum contaminant level" has been expanded to provide that "primary drinking water rules shall be applicable to individually owned wells." The amendment clarifies that the contamination level of water obtained from private wells is to be evaluated according to the maximum contaminant level standard for drinking water.

The definition of "municipality" has been added to address the type of entity which is eligible for Type B and Type C Funding.

The definition of "residences with contaminated wells" has been included to describe the scope of contamination which must exist before a municipality may apply for Type C Funding.

The definitions "Type A Funding," "Type B Funding" and "Type C Funding," define three types of loans which are available to address contamination problems. Type A loans are those awarded to local units pursuant to the Water Supply Bond Act, to plan, design and construct projects to address contamination problems as identified by the Department. Type B loans, which are made for the same purpose, are loans other than those awarded pursuant to the Water Supply Bond Act or other bond acts, awarded to municipalities or to municipally owned public water systems. Type C Funding describes loans awarded to qualifying municipalities out of appropriations to the Water Supply Replacement Trust Fund to plan, design, and construct projects to address contamination problems or a specified category as defined in these rules. (See N.J.A.C. 7:1A-7.4)

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The definition of "water supply facilities" has been amended to include service connections, house connections, and well sealings.

N.J.A.C. 7:1A-2.8, amount and terms of loan, adds to subsection (b) the provision that the interest rate on loans made pursuant to the Water Supply Bond Act shall be established by either the Department of the Treasury or by subsequent appropriations acts. Amendments to subsections (c) and (d) have been made to conform to loan terms which have been approved by the Department of the Treasury. Amended subsection (e), which concerns all other financial terms for loans, has been amended by adding a specific citation of loans made pursuant to the Water Supply Bond Act.

N.J.A.C. 7:1A-2.10, Effect of loan award, deletes "Water Supply Fund" and substitutes "applicable fund" at subsection (a) in order to clarify that funding is available from sources other than the Water Supply Fund. The identical amendment appears at N.J.A.C. 7:1A-2.14, Unused loan funds.

N.J.A.C. 7:1A-2.15, Recycling of funds, provides that funds from the repayment of loans issued pursuant to the Water Supply Bond Act and this chapter are to be deposited into the Water Supply Fund and remain available for further disbursements as new loans.

N.J.A.C. 7:1A-5.1, Eligibility and criteria, the threshold number of affected dwelling units required for application for Type A or Type B loans has been reduced from five to three at subsection (a). Subsection (c) has been added to require a municipality, local unit, or municipally owned public water system to pass a mandatory connection and/or well sealing ordinance prior to the issuance of a loan. New subsections (d) and (e) have been added in order to address loan payment procedures in the event that other funds are received for the same project undertaken pursuant to these rules.

N.J.A.C. 7:1A-5.2, Priority determination, provides at subsection (a) that no project shall be assigned priority points until the severity and extent of the contamination problem has been analyzed to the satisfaction of the Department, the most cost-effective water supply replacement project, project scope, and costs have been identified, and complete priority information has been submitted to the Department. Amended subsections (b) through (h) address the priority ranking and funding of projects which are classified as "exigent" and "non-exigent".

The new rules at N.J.A.C. 7:1A-7 establish procedures and criteria which govern the Water Supply Replacement Trust Fund ("Fund") and loans made from it. The Fund is a depository for appropriations other than appropriations made pursuant to the Water Supply Bond Act and other bond acts. Appropriations deposited into the Fund will finance alternative water supplies or treatment when existing ground water sources are contaminated.

N.J.A.C. 7:1A-7.1(a) provides that funds appropriated to the Department from acts other than the Water Supply Bond Act of 1981 shall be deposited into the Fund for the purpose of making Type B and Type C loans. The total amount of funding available for Type B and Type C loans is specified in subsection (b). Subsection (c) provides that funds saved from projects whose costs are less than the estimated eligible costs shall be returned to the State and deposited in the Water Supply Replacement Trust Fund. Funds from the repayment of principal and interest on loans issued from the Fund shall also be deposited in this Fund pursuant to subsection (d). Subsection (e) contains provisions which assure future inspection and maintenance for projects utilizing point of entry treatment devices on other than a temporary basis. Where an area of actual or anticipated contamination extends beyond the limits of a single municipality, a single plan shall be developed covering the entire area in accordance with subsection (f).

N.J.A.C. 7:1A-7.2, Amount and terms of loan, describes type of available funding. Paragraph (a)2 states that the loan maturity period shall not exceed 20 years and prepayment is permissible. Amortization is discussed at paragraph (a)3.

N.J.A.C. 7:1A-7.3, Eligibility and criteria, sets the upper limit for Type B Loans at \$3,000,000, and explains that eligibility and criteria for those loans are set forth in N.J.A.C. 7:1A-5.1(a) through (e).

N.J.A.C. 7:1A-7.4, Priority determination, explains that priority ranking for Type B Loans shall be as set forth in N.J.A.C. 7:1A-5.2(a) through (h). For Type C funding, the upper limit for loans is \$8,000,000, and a different set of criteria are provided.

Finally, amendments have been made throughout the text in order to conform the rules to changes in Departmental titles and addresses.

Social Impact

The proposed amendments and new rules will result in the replacement or treatment of contaminated water which would otherwise be consumed

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by New Jersey residents. The amendments and new rules will enhance the ability of the Department to respond to situations in which communities are exposed to contamination of wells by toxic or hazardous substances. Thus, the public health and safety will receive greater protection.

The legislative intent, expressed in the Safe Drinking Water Act, N.J.S.A. 58:12A-1, is to protect the purity of drinking water in order to safeguard the health and welfare of the people of the State. Although the Safe Drinking Water Act addresses public community water supplies, the importance of protecting the integrity of water supplies is the same for all citizens of the State.

Economic Impact

It is estimated that the amended rules and new rules will benefit thousands of well owners and water users. The admittedly high cost of alternate water supply replacement projects must be balanced against the protection of public health. Estimates indicate that the probable cost of water supply replacement projects to address all wells which will be found to be contaminated in New Jersey under the proposed new maximum contaminant levels (See 19 N.J.R. 2227(a), December 7, 1987), will be between 100 and 150 million dollars. The current number of wellfields known to be contaminated is approximately 130. The number of projects funded depends upon legislative action. The purpose of the rule amendments and new rules is to assure that available funds are used to finance the most cost-effective water supply replacement projects.

Only local units, municipalities and municipally owned public water systems will be eligible for these loans, and the maximum or cap amount of three million dollars under Type A or Type B funding available to any one applicant in any application period will prevent the excessive employment of funds to assist any one applicant. Under Type C funding, the maximum or cap of eight million dollars is established for the funding of a water supply replacement project where contamination has had a devastating impact on a significant number of residential wells in a contiguous area of a community. Individual families, small businesses and municipalities are anticipated to be the primary beneficiaries of the amendments and new rules, since most large commercial or industrial consumers of potable water are either self-supplied or supplied by the large investor-owned water systems. Investor-owned utilities are not eligible for these loans.

At the present time the Department is uncertain as to whether a municipality may use the proceeds of a loan made pursuant to P.L. 1988, c.106 to contract with private water companies for the installation, operation or maintenance of a water supply facility. The Department has requested advice from the Attorney General's office concerning this issue. Accordingly, these rules do not permit municipalities to use the proceeds from such a loan to contract with private water companies. If the Department is advised that such use is permissible, appropriate changes will be made to the rules at that time.

Environmental Impact

Within the State of New Jersey there are approximately 130 areas in which private or municipal wells are currently contaminated. Some of the larger areas include several hundred contaminated wells each. As discussed above, the Department has proposed new maximum contaminant levels which will apply stricter standards for the carcinogenic compounds most frequently found in potable wells. It has been estimated that the application of these new limits will require many wells to be declared unacceptably contaminated as soon as they are tested. In order to address contamination problems without delay, an expedited construction program will be required.

The amendments and new rules will have a positive environmental impact as they will improve the State's drinking water quality. They will result in the replacement or treatment of contaminated water. The amendments and new rules will facilitate the replacement of contaminated wellfields by utilizing additional sources of funding to be made available by legislative appropriations and will augment the Department's ability to respond to the drinking water needs of the public by making additional funding available. Local adverse impacts will occur due to digging up roads and streets in order to install pipelines. However, these affects will be temporary and outweighed by the increased protection of the public health which will result.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. the Department has determined that these rules will not impose reporting, recordkeeping or other compliance requirements on small busi-

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nesses because the rules only apply to local government units seeking to obtain loans for water supply replacement projects.

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

SUBCHAPTER 1. GENERAL PROVISIONS

7:1A-1.1 Scope and construction of rules

(a) The following shall constitute the rules governing loans for State or local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply facilities, for the interconnection of unconnected or inadequately connected water systems, and water supply facilities to [resolve] **address** contamination problems as identified by the Department, pursuant to the **Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Bond Act of 1981, P.L. 1981, c.261, P.L. 1983, c.499; P.L. 1988, c.106,** and as recommended by the New Jersey Statewide Water Supply Plan. These rules prescribe procedures, minimum standards for conduct for borrowers, and standards for obtaining loans for the rehabilitation of water supply facilities, for interconnections between water supply systems, and for water supply [systems] **facilities** to [resolve] **address** contamination problems.

(b) (No change.)

7:1A-1.2 Purpose of rules

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the **Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Bond Act of 1981, P.L. 1981, c.261; P.L. 1988, c.106,** and the New Jersey Statewide Water Supply Plan; and amendments.

2. To establish policies and procedures for administration of funds appropriated pursuant to the [Act] **above acts** for the purpose of making State loans for State or local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating water supply transmission facilities, for the interconnection of unconnected or inadequately connected water supply systems, and for water supply [systems] **facilities** to [resolve] **address** contamination problems identified by the Department;

3.-6. (No change.)

7:1A-1.4 Annual budget request

(a) The Commissioner shall submit to the State Treasurer and the New Jersey Commission on Capital Budgeting and Planning with the Department's annual budget request, a plan for the expenditure of funds from the "Water Supply Fund" for the upcoming fiscal year.

(b) The plan shall include the following information:

1.-2. (No change.)

3. A copy of these rules [governing the purposes conducted pursuant to P.L. 1981, c.261]; and

4. (No change.)

7:1A-1.6 Procedure for obtaining a water supply [bond] loan

(a) Each potential applicant for a water supply [bond] loan shall:

1. Determine if it meets the eligibility criteria of N.J.A.C. 7:1A-3.1, 4.1 [or], 5.1, **7.3 or 7.4,** as appropriate;

2. Arrange for a preapplication conference as required in N.J.A.C. 7:1A-2.3; and

3. Complete the application procedures required by N.J.A.C.

7:1A-2.4 [and] or N.J.A.C. 7:1A-7.4(b), as applicable.

7:1A-2.1 Scope

This subchapter shall prescribe procedures and requirements of the award for State loans for projects [pursuant to] **which will effectuate the purposes of the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., P.L. 1988, c.106,** and Section 4 of the Water Supply Bond Act of 1981, P.L. 1981, c.261, **as amended,** and as recommended by the New Jersey Statewide Water Supply Plan.

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7:1A-2.2 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 Water Supply Bond Act of 1981, P.L. 1981, c. 261, the **Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., P.L. 1988, c.106,** and such other acts and appropriations provided to the Department for the purposes specified in this chapter.

"Administrator" means the [Administrator] **Assistant Director** of the Water Supply [and Watershed Management Administration] **Element** of the Division of Water Resources of the Department of Environmental Protection.

... "Bonds" means the bonds authorized to be issued, or issued under the Water Supply Bond Act of 1981, P.L. 1981, c.261 **or subsequent bond acts.**

"Borrower" means an applicant which has received a loan pursuant to the [Water Supply Bond Act, P.L. 1981, c.261] **Act** and [these rules] **this chapter,** and which has executed a loan award document.

... "Local unit" means any political subdivision of the State or agency thereof that applies for **rehabilitation, interconnection or water supply replacement** [a loan] **Type A funding** under the **Water Supply Bond Act of 1981.**

"Maximum contaminant level" or "M.C.L." means the maximum permissible level of a contaminant in water measured at the point at which water is delivered to the free-flowing outlet of the ultimate user of a public water system or other water system to which State primary drinking water [regulations] **rules** apply, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. **Primary drinking water rules shall be applicable to individually owned wells.** For the purposes of this chapter, the parameter of turbidity shall be excluded as a primary drinking water [regulation] **rule,** except when violation of turbidity maximum contaminant levels occur as a result of other contaminants.

"Municipality" means any city, town, township, borough or village or any agency or instrumentality of one or more thereof that applies for **Type B or Type C Funding.**

... "Residences with contaminated wells" means residences in a residential area of more than 1,500 residential units that has been found by the local department of health, or board of health, and the county board of health, or department of health, to have at least 25 percent of the wells supplying potable water to the area with contaminants at the Class II, Class III or Class IV interim action levels for hazardous contaminants in drinking water of the Department of Environmental Protection, or in excess of the maximum contaminant levels adopted by the Department pursuant to P.L. 1983, c.443 (N.J.S.A. 58:12A-12 et seq.) as may be applicable.

... "Type A Funding" means loans awarded to local units out of appropriations made pursuant to the Water Supply Bond Act of 1981, P.L. 1981, c.261, to plan, design and construct projects to address contamination problems as identified by the Department (see this subchapter and N.J.A.C. 7:1A-5).

"Type B Funding" means loans awarded to municipalities or municipally owned public water systems as defined at N.J.S.A. 58:12A-3, out of appropriations other than appropriations made pursuant to the Water Supply Bond Act of 1981, P.L. 1981, c.261 or other bond acts to plan, design and construct projects to address contamination problems as identified by the Department other than those addressed under **Type C Funding** (see this subchapter and N.J.A.C. 7:1A-7).

"Type C Funding" means loans awarded to municipalities, which meet the criteria set forth at N.J.A.C. 7:1A-7.4(b), out of appropriations deposited in the Water Supply Replacement Trust Fund to plan, design and construct projects to address contamination problems meet-

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ing special criteria as identified by the Department (see this subchapter and N.J.A.C. 7:1A-7).

"Water [S]upply [F]acilities" means and refers to the plants, structures, **service and house connections, well sealings**, interconnections between existing water supply facilities, machinery and equipment and other property, personal and mixed, constructed or operated, or to be constructed or operated, in whole or in part by or on behalf of the State, or of a political subdivision of the State or any agency thereof, for the purpose of augmenting the natural water resources of the State and making available an increased supply of water for all uses, and any and all appurtenances necessary, useful or convenient for the collecting, impounding, storing, improving, treating, filtering or transmitting of water, and for the preservation and protection of these resources and facilities and providing for the conservation and development of future water supply resources, and facilitating incidental recreational uses thereof.

7:1A-2.3 Preapplication procedures

(a) (No change.)

(b) Questions concerning the program and requests for a preapplication conference should be directed to:

Division of Water Resources
Water Supply [and Watershed Management
Administration] **Element**
CN-029

[1474 Prospect Street] **401 East State Street**
Trenton, New Jersey 08625

7:1A-2.4 Application procedures

(a) (No change.)

(b) An applicant for a water supply loan shall submit:

1.-4. (No change.)

5. A complete proposal outlining the problems, cause and effect of these problems, the proposed solution along with a discussion of alternatives to the proposed solution. In the case of loans to [remedy] **address** water supply contamination problems, a feasibility study, as approved by the Department, shall be submitted. In the case of rehabilitation loans, measures to insure a safe, continuous and adequately protected water supply to affected project areas shall be included, as appropriate.

6.-8. (No change.)

9. An estimate of preliminary, developmental, and construction costs by unit prices for the project. Labor, equipment, materials, supplies, overhead and contractor's and consultant's profit with supporting background and summary sheets may be requested by the Department to substantiate the estimates of unit costs. Total project costs and those project costs that the applicant anticipates to be eligible for a [bond] loan shall be separately summarized;

10.-11. (No change.)

12. All documentation and other information as may be necessary for the Division to adequately determine the applicant's priority point total pursuant to [section] N.J.A.C. 7:1A-3.2, 4.2, [or] 5.2, or 7.4(a) as appropriate.

(c) (No change.)

(d) Applications should be submitted well in advance of the application closing date for the application period in which the applicant wishes to be awarded a loan. There shall be at least one application period in each fiscal year. For the rehabilitation loan program, the application closing date for the initial application period for each year of the program shall be October 1 of the appropriate fiscal year.

1. For the interconnections loan program, the application closing date for the initial application period shall be June 18, 1984. In the case of loans for [remediating] **addressing** water supply contamination problems, two annual application periods will be established with closing dates of December 31 and June 30, respectively. However, applications will be received and reviewed on a continuous basis. Those projects meeting exigency standards, as defined at N.J.A.C. 7:1A-5.2(b), shall be processed for immediate funding, if available.

2.-3. (No change.)

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(e) (No change.)

(f) Applications shall be sent to:

Division of Water Resources
Water Supply [and Watershed Management
Administration] **Element**
CN-029
[1474 Prospect Street] **401 East State Street**
Trenton, New Jersey 08625

7:1A-2.8 Amount and terms of loan

(a) (No change.)

(b) The interest rate for [the loan] **loans made pursuant to the Water Supply Bond Act of 1981, P.L. 1981, c.261**, shall be established at a rate deemed appropriate by the Department of the Treasury, or as specified in appropriation acts.

(c) For **rehabilitation and interconnection loans**, [The] the loan maturity period shall be for a period of no more than 10 years from the date payments to the borrower begin, unless a longer loan maturity period not to exceed 20 years can be justified to the satisfaction of the Department. **For Type A funding the loan maturity period shall be for a period of no more than 20 years from the date that payments to the borrower begin.** Principal and accrued interest may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

(d) A rate schedule setting for the amounts charged for sale of water by the borrower shall be established for each rehabilitation, interconnection or water supply [contamination] **replacement** loan. For all borrowers, a portion of receipts, as stipulated by the loan award document, shall be dedicated to a specific fund for the purpose of assuring repayment of the loan by the borrower. The Department may require additional collateral to secure to loan when deemed necessary.

1. (No change.)

(e) All other financial loan terms **for loans made pursuant to the Water Supply Bond Act of 1981, P.L. 1981 c.261**, shall be established by agreement between the Department and the Department of the Treasury. Loan terms shall be made available to all applicants by the Department in all cases prior to execution of any loan award document.

7:1A-2.10 Effect of loan award

(a) The loan award document shall become effective immediately after its execution by the Department and the applicant, and shall constitute an obligation of the [Water Supply Fund] **applicable fund** in the amount and for the purposes stated in the loan award document.

(b) (No change.)

7:1A-2.12 Project development phase of water supply [bond] loan program

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

(c) All applicants for water supply [bond] loans shall submit all materials required by this subsection, prepared in accordance with accepted engineering practices within the specified time period.

1. (No change.)

2. The plans for the water supply [bond] loan project shall be prepared by an engineer licensed by the State of New Jersey. Each drawing shall be signed and sealed and shall have a title block giving the name and location of the project, the scale or scales used, date, and the name of the engineer and his or her license number. Plans shall show clearly the datum to which elevations shown [as] **are** referred. The National Geodetic Vertical Datum of 1929, (U.S.G.S.) should be used wherever possible or an equation converting to that datum given. The plans shall clearly reflect and label all existing and proposed features and shall include but not be limited to:

i. A vicinity map showing the location of the water supply [system rehabilitation] **loan** project. A U.S.G.S. 7½ Minute Quadrangle map or acceptable substitute shall be used for this purpose.

ii. A profile and a plan, if required in the judgment of the Division, of the entire transmission-grid system that is to be [rehabilitated] **constructed**. The plan shall include, but not be limited to, an index map, water mains, service connections, fire hydrants, gage valves, blowoff valves, air relief valves, pressure reducing valves, pumping

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stations, surge chambers, and storage tanks. The Plan shall also include, but not be limited to, the location of all utilities and sewer lines, [i.e.] that is, pipelines, telegraph and telephone lines, electrical conduits, and sanitary and storm sewers that will have an effect on the project implementation.

iii.-iv. (No change.)

3.-5. (No change.)

6. A detail cost estimate of expenses related to the planning engineering, design, and construction of the water supply [bond] loan project. The breakdown of the cost estimates shall be by unit prices covering estimated labor, equipment, materials, supplies and contractors overhead and project. Background sheets will be furnished detailing the computation of the unit prices. A summary form showing Item No., description, estimated quality, unit, unit price, and estimated amount is required.

7. (No change.)

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

7:1A-2.13 Eligible project costs

(a) Project costs shall be allowed to the extent permitted by this chapter and the loan award document. Eligible project costs shall be those costs set forth below:

1. Repair, replacement, or reconstruction of all or part of any obsolete, damaged, antiquated, or inadequately operating water supply transmission system, or any obsolete or antiquated water supply interconnection or construction of a new interconnection, or the planning, design and construction of water supply facilities to [resolve] address contamination problems as identified by the Department, within the scope of the approved feasibility study, including planning costs when so approved by the Department.

2.-7. (No change.)

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

7:1A-2.14 Unused loan funds

Funds saved from projects whose actual eligible implementation costs are less than the estimated eligible costs, shall be retained by the State and deposited in the [Water Supply fund] applicable fund to be applied to new water supply rehabilitation, interconnection or contamination projects, as appropriate, pursuant to the act and this chapter.

7:1A-2.15 Recycling of funds

(a) Subject to Federal and/or State law, [F]unds from repayment of loans issued under the authority of the [Act] Water Supply Bond Act of 1981 and this chapter shall be deposited in the Water Supply Fund created pursuant to the [Act] Water Supply Bond Act of 1981 and shall remain available for further disbursements as new loans to be awarded pursuant to [these regulations] this chapter.

(b) Funds from repayment of loans issued under the authority of acts other than the Water Supply Bond Act of 1981 or other bond acts shall be deposited in the Water Supply Replacement Trust Fund and shall remain available for further disbursement as new loans to be awarded pursuant to this chapter.

SUBCHAPTER 5. [CONTAMINATION] WATER SUPPLY REPLACEMENT PROJECTS (TYPE A LOANS AND TYPE B LOANS)

7:1A-5.1 Eligibility and criteria (Type A and B loans)

(a) Any local unit which has received notification from the Water Supply [and Watershed Management Administration] Element, Division of Water Resources that groundwater supply contamination problems exist within their jurisdiction which adversely affect the potable water service of at least [five] three dwelling units is eligible for a Type A loan, provided it satisfactorily completes the loan application, meets the eligibility criteria set forth in this subchapter, receives the minimum priority score and ranks high enough on the priority list (as applicable) to be funded. The above requirements shall also apply to any municipality or municipally owned public water system seeking a Type B loan. To receive a Type A or Type B loan the project shall meet the following criteria to the satisfaction of the Department:

1. (No change.)

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[2. The project shall be an independent and complete water supply project designed to relieve the impact levied by contaminated groundwater upon the existing water supply. An independent and complete project is one which by its implementation alone will resolve the water supply problem and will accomplish the purpose set forth in the application.]

2. The project shall be designed to relieve the impact caused by contaminated groundwater on existing publicly owned or individually owned residential water supplies.

3. For the purpose of determining a project area, the following criteria shall be considered by the Department:

- i. Extent of pollution;
- ii. Area of potential migration; and
- iii. Aquifer vulnerability.

[3.]4. [The project shall not be excessively expensive or cause unacceptably high environmental damage.] The maximum loan amount for any one project shall be \$3,000.00. In awarding a water supply loan, the Department may consider project expense and the degree of environmental impact which the project may have. Any local unit, municipality, or municipally owned public water system may be eligible to apply for one loan in any application period.

Renumber existing 4. through 7. as 5 through 8. (No change in text.)

(b) (No change.)

(c) The local unit, municipality, or municipally owned public water system shall be required to pass a mandatory connection ordinance prior to issuance of the loan award agreement by the Department. The local unit, municipality, or municipally owned public water system shall be required to pass a mandatory well sealing ordinance when in the judgment of the Department such well sealings are necessary to prevent additional migration of contaminants or the potential exists for additional contamination from wells which remain unused and not sealed.

(d) In the event a local unit, municipality, or municipally owned public water system has received approval for a grant, claim, payment, award or other loans from the State for the same project funded pursuant to this chapter, said payment shall be directly credited towards pre-payment of any outstanding principal and interest of the loan to the extent of payment received. As applicable, the outstanding principal and interest on the water supply loan shall be reduced by the amount received from the borrower and a revised repayment schedule shall be issued by the Department for the remaining maturity period of the loan.

(e) In the event a local unit, municipality, or municipally owned public water system receives a grant, claim payment, award, loan or any form of payment from any government agency or receives payment for damages relating to the same loan project funded pursuant to this chapter, the local unit, municipality, or municipally owned public water system shall pre-pay, within 30 days of receipt of such grant, claim, award, loan, payment or damage payment, any outstanding principal and interest of the loan to the extent of payment received. As applicable, the outstanding principal and interest on the water supply loan shall be reduced by the amount received from the borrower and a revised payment schedule shall be issued by the Department for the remaining maturity period of the loan.

7:1A-5.2 Priority determination (Type A and B Loans)

(a) Each project shall be assigned priority points in accordance with the provisions outlined in this section. A project shall be ranked by the number of priority points it receives, with those projects scoring the higher points preferred for funding. No project shall be assigned priority points until the project area has been defined to the satisfaction of the Department; the most cost-effective water supply replacement project, project scope, and cost have been identified; and complete priority information has been submitted.

(b) In order to be considered for funding, a project must receive a minimum score of 100 priority points. Projects which receive a minimum score of 180 points will be considered "exigent" and will be processed for funding and the remainder of the competitive priority ranking provisions shall be waived except as noted in N.J.A.C. 7:1A-5.2(c). Upon determination that a project is exigent and sufficient funds are available, the Department shall notify the applicant of eligibility for project funding.

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(c) In cases where a project [is] classified "exigent" has been issued a notification of eligibility and processed for award but a notice of intent has not been issued and another project application is received and determined to have higher priority, [the "exigent" project of lower priority score will be held and processed until after the higher scoring project is processed] and sufficient funds are not available to fund all priority ranked "exigent" projects, the project of higher exigency will commence processing for funding. In cases where a project attains "exigent" standing but sufficient loan funds are not available to cover the full requested project costs, the Department may by-pass the project to fund another "exigent" status project for which sufficient funds are available. Exigent projects for which sufficient funds are not available shall be withheld and immediately ranked and processed upon availability of funds.

(d) Projects which receive the minimum priority score but do not obtain "exigent" status will be held [over] for the next competitive ranking determination. This determination will be made twice yearly, on January 2 and July 5, respectively, or the first working day thereafter unless extended as provided by N.J.A.C. 7:1A-2.4. Upon completion of the above semi-annual ranking and upon a determination that sufficient funds are available for a non-exigent project, the Department shall notify the applicant of eligibility of the project for funding. In such cases, if a Notice of Intent to Award has not been issued and a project determined to be of higher priority is received and sufficient loan funds are not available to cover all requested project costs, the Department may by-pass the project to fund another non-exigent project for which sufficient funds are available. In such cases where sufficient funds are not available to fund a non-exigent project either upon completion of the semi-annual priority ranking or upon withholding of the project due to receipt of an exigent project, the non-exigent project shall be withheld until the next semi-annual priority ranking.

(e) Appropriations for each of the two annual application periods shall be 50 percent of the total annual water supply contamination program appropriations made by the Legislature to the Department.]

[1.](e) Any appropriation not committed by a notice of intent to award, or released by a recalled Notice of Intent to Award, or by failure of applicant to execute loan documents within the prescribed period, or through termination of the project shall be carried over and added to the next application period [appropriation].

(f) Priority points [shall be awarded for the following three factors and in the amount shown below:] for water supply replacement projects to address nonpublic wells with contamination problems shall be awarded based on the three factors of severity, public hardship, and population served, as indicated below:

1. The total number of dwelling units that will be serviced with potable water by the project will be calculated. The percentage of these dwelling units tested as part of a sampling program approved by the Department that have confirmed levels of contaminants at or in excess of the maximum contaminant level (M.C.L.) will be calculated. The percentage of all dwelling units tested as a part of a sampling program approved by the Department that have confirmed levels of contaminants at or above twice the M.C.L. value will also be calculated.

i. (No change.)

ii. Until the Federal government or the State of New Jersey establishes final standards for volatile organics, the Department will use 100 parts per billion total volatile organics or 50 parts per billion of any single volatile organic contaminant as the maximum contaminant level for volatile organics (V.O.). Upon establishment of a Federal or State standard or guidelines for volatile organics, such standard shall apply and shall be incorporated into applicable department rule pursuant to the Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq.]

iii. The Federal or State standard for contaminants, whichever is lower, shall apply.

iii. For contaminants not included in the primary drinking water regulations or in (f)1. ii above, the Department may, at its discretion, set a standard for the purposes of [these regulations] this chapter based upon a finding that said standard is necessary for the protection of the public health [and]. That standard shall be incorporated into applicable Departmental rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as soon as practicable.

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2. In considering financial hardship, project costs and the relative income levels of those affected will be considered.

i. (No change.)

ii. The Median Family Income Level reported in the latest census for the municipality applying for the loan as well as the "low" and "moderate" family income levels established by the Federal Department of Housing and Urban Development for the municipality will be determined.]

ii. The State Median Family Income Level and Median Family Income Level as reported in the latest census for the municipality or local unit applying for the loan shall be determined.

iii. A point system reflecting the degree of hardship will be used according to the following schedule:

Project Costs:	0 -	\$200/yr/service:	0 pts.
	201-	\$300/yr/service:	15 pts.
	301-	\$400/yr/service:	30 pts.
	401-	\$500/yr/service:	45 pts.
	over-	\$501/yr/service:	60 pts.

Median Family Income Level (M.F.I.L.)

[For M.I.L. of \$7,000 or above established "moderate" level for area: 0 pts.

For M.I.L. less than \$7,000 above established "moderate" level for the area but greater than \$7,000 above established area: 20 pts.

For M.I.L. less than or equal to \$7,000 above established low for the area: 40 pts.]

For a municipal M.F.I.L. at or greater than the State M.F.I.L. 0 pts.

For a municipal M.F.I.L. between the State M.F.I.L. and 20 percent below the State M.F.I.L. 20 pts.

For a municipal M.F.I.L. at or greater than 20 percent below the State M.F.I.L. 40 pts.

iv. The total priority points awarded for the financial burden will be the sum of points awarded for project costs plus those awarded for the Median Family Income Levels.

3. Points will be awarded for population served based upon the following schedule:

For a project serving less than 50 people: 0 pts.

For a project serving less than 100 people but more than 49 people: 10 pts.

For a project serving 100 or more people: 20 pts.

(g) Priority points to address contamination problems related to publicly owned wells shall be awarded based on the three factors of severity, public hardship and population served, as indicated below:

1. Subject to a wellfield sampling program approved by the Department, the following shall address severity:

i. The rated well pump capacity tested and found to be at or greater than the maximum contaminant level divided by the total rated well pump capacity tested multiplied by 100.

ii. The rated well pump capacity tested and found to be at or greater than two times the maximum contaminant level divided by the total rated well pump capacity tested multiplied by 100.

iii. Rated well pump capacity that may be affected in the future divided by the total system rated well pump capacity multiplied by 100.

iv. The above three calculated percentages will be summed and the numerical value of the total will be equal to points awarded for severity.

v. The Federal or State standard for contaminants, whichever is lower, shall apply.

vi. For contaminants not included in the primary drinking water rules, the Department may, at its discretion, set a standard for the purposes of these rules based upon a finding that said standard is necessary for the protection of the public health. That standard shall be incorporated into applicable Departmental rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as soon as practicable.

2. In considering financial hardship, project costs and the relative income levels of those affected will be considered.

i. The total construction cost of the project shall be estimated as near as practicable. A full project cost shall be calculated as 120 percent of this estimate. This full project cost will be assumed to be financed over a 19 year period at an interest rate to be determined by the Department. A yearly operation and maintenance (O&M) cost for the project will be estimated. An annual incremental cost per affected

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service will be calculated based upon the sum of O&M and amortization of full project costs.

ii. The State Median Family Income Level and Median Family Income Level as reported in the latest census for the municipality or local unit applying for the loan shall be determined.

iii. A point system reflecting the degree of hardship will be used according to the following schedule:

Incremental annual project cost per affected service:

0	—\$25/yr:	0 pts.
\$26	—\$75/yr:	15 pts.
\$76	—\$125/yr:	30 pts.
\$126	—\$175/yr:	45 pts.
over	—\$176/yr:	60 pts.

Affected services = Total Services x (present rated well pump capacity of wells presently contaminated plus wells anticipated to be contaminated, as estimated by the Department divided by present rated well pump capacity of total system.)

Median Family Income Levels (M.F.I.L.)

For a municipal M.F.I.L. at or greater than the State M.F.I.L. 0 pts.

For a municipal M.F.I.L. between the State M.F.I.L. and 20 percent below the State M.F.I.L. 20 pts.

For a municipal M.F.I.L. at or greater than 20 percent below the State M.F.I.L. 40 pts.

iv. The total priority points awarded for the financial burden will be the sum of points awarded for project costs plus those awarded for Median Family Income Levels.

3. Points will be awarded for population served based upon the following schedule:

For a project serving less than 50 people 0 pts.

For a project serving less than 100 people but more than 49 people 10 pts.

For a project serving 100 or more people 20 pts.

[(g)](h) For ranking purposes the total priority score shall be the sum of points awarded for each of the three categories [in] at N.J.A.C. 7:1A-5.2(f) or (g) as applicable.

SUBCHAPTER 7. WATER SUPPLY REPLACEMENT PROJECTS (TYPE B LOANS OR TYPE C LOANS)

7:1A-7.1 Water Supply Replacement Trust Fund

(a) Funds appropriated to the Department from acts other than the Water Supply Bond Act of 1981, P.L. 1981, c.261, or other bond acts for the purpose of providing loans for alternative water supplies when contamination problems exist shall be deposited in the Water Supply Replacement Trust Fund. The funds in the Water Supply Replacement Trust Fund are specifically dedicated for the purpose of making Type B and Type C Loans to municipalities or municipally owned public water systems to plan, design and construct projects to address contamination problems as identified by the Department pursuant to this chapter.

(b) The purpose of Type C Loans is to quickly address particularly urgent projects previously recognized by legislative action. Accordingly, not over eight million dollars of the total amount appropriated for funding from sources other than from the Water Supply Bond Act of 1981 will be available for Type C Loans, the remainder being available for Type B Loans and associated costs.

(c) Funds saved from planning and constructing projects whose actual eligible implementation costs are less than the awarded estimated eligible costs shall be retained by the State and deposited in the Water Supply Replacement Trust Fund to be applied to new water supply replacement projects pursuant to this chapter.

(d) Repayment of principal and interest on loans issued from the Water Supply Replacement Trust Fund shall be made to the State of New Jersey as set forth in the loan award document and shall be redeposited in the Water Supply Replacement Trust Fund to be made available for further disbursements as new loans to be awarded pursuant to this chapter.

(e) If a project utilizes point of entry treatment devices on other than a temporary basis, provisions shall be included to assure adequate future inspection and maintenance of such devices, and to minimize liability

EMERGENCY ADOPTION

to the State. Such provisions shall be subject to approval by the Department.

(f) Where the area of actual or anticipated contamination extends beyond the limits of a single municipality, a single plan shall be developed covering the entire area, on the basis of which the optimum plan shall be prepared, covering the entire area. Municipalities shall enter into an agreement for the joint administration of planning and/or design and construction to the extent feasible. Such agreement shall be subject to approval by the Department, and shall at a minimum, prescribe arrangements for the procurement, contracting and payment of joint debt and construction services as well as designate a single municipality to administer the planning, design and construction of the entire project.

7:1A-7.2 Amount and terms of loan

(a) Funds made available for Type B and C Loans under this subchapter shall be subject to the following conditions:

1. Such loans shall bear interest at a rate fixed by the Department of the Treasury, and shall not exceed the rate of two percent per annum. Under hardship circumstances, subject to approval by the Department of the Treasury, loans may be given at interest rates below two percent, based on the percentage of the local unit's municipal median family income level required to plan, design, construct and operate the project.

2. The loan maturity period for all Type B and C Loans issued from the Water Supply Replacement Trust Fund shall be for a period of not more than 20 years from the date disbursement of loan funds to the borrower begins. Principal and accrued interest may be prepaid by the borrower prior to the end of the loan maturity period without penalty.

3. Unless otherwise specified by the Department of the Treasury, the amortization date for all Type B and C Loans issued from the Water Supply Replacement Trust Fund shall be 90 days after the final disbursement of loan funds to the borrower. Accrued interest on all disbursements made prior to the amortization date may be capitalized as part of the principal amount of the loan. The borrower shall make equal semi-annual debt service payments to the State commencing six months after the amortization date. Debt service schedules providing for prepayment of accrued interest and/or declining debt service payments may be approved at the discretion of the Department. However, subject to approval by the Department of the Treasury, annual or semi-annual debt service payments by any utility authority, as borrower, shall become due as specified in the Loan Repayment Schedule and any amendments thereto.

4. For all borrowers, sufficient funds shall be deposited in a specific fund for the purpose of assuring timely repayment of the loan by the borrower.

7:1A-7.3 Eligibility and criteria (Type B Loans)

For Type B Funding, any municipality or municipally owned public water system, including subdivisions or agencies thereof, may be eligible to apply for one loan in any application period. The maximum loan amount awarded to any municipality or municipally owned public water system under any application for Type B Funding shall be \$3,000,000. Eligibility and criteria for Type B Funding shall be as set forth at N.J.A.C. 7:1A-5.1(a) through (e).

7:1A-7.4 Priority determination (Type B and C Loans)

(a) Priority ranking for Type B Loans shall be as set forth at N.J.A.C. 7:1A-5.2(a) through (h).

(b) For Type C Funding, a municipality having residences with contaminated wells as defined in this chapter may make application for and receive one award for a maximum of \$8,000,000 subject to meeting the following criteria to the satisfaction of the Department.

1. The municipality shall have received notification from the Water Supply Element, Division of Water Resources that groundwater contamination problems exist within its jurisdiction which adversely affects the potable water service.

2. The project shall be designed to relieve the impact caused by contaminated groundwater on existing individually owned residential water supplies. For the purpose of determining a project area, the following criteria shall be considered by the Department:

- i. Extent of pollution;
- ii. Area of potential migration; and
- iii. Aquifer vulnerability.

EMERGENCY ADOPTION

3. In awarding a water supply loan, the Department may consider project expense and the degree of environmental impact which the project may have.

4. The project shall not conflict with any other State project nor enforcement proceedings.

5. The application shall be accompanied by adequate explanation of how the applicant plans to repay the loan and pay any other expenses necessary to fully complete and implement the project, the steps it has taken to implement this plan and the steps it plans to take before receiving the loan that will guarantee that at the time of the signing of the loan award document it will be irrevocably committed to repay the loan and pay any other expenses necessary to fully complete and implement the project. The applicant must comply with all standard loan provisions of the State of New Jersey.

6. The application shall be completed to the satisfaction of the Department and shall state and document how the loan will accomplish the goal set out in the application.

7. The municipality shall have a contiguous residential area containing more than 1,500 residential units that has been found by the local department of health, or board of health, and the county board of health, or department of health, to have at least 25 percent of the wells supplying potable water to the area with contaminants at or above Interim Action Levels II, III or IV for hazardous contaminants in drinking

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water, or in excess of the maximum contaminant levels to be adopted by the Department pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., as may be applicable.

8. The potable water supply for the residential area shall have been deemed by the county board of health or department of health to be unfit for human consumption, and the governing body of the municipality shall have adopted a resolution banning new construction in the area pending connection of the area to a public water supply system; or the Department shall have determined that all or a portion of the ground water serving the residential area to be a well-restriction area.

9. The municipality shall certify to the Department the estimated costs for extending a public water supply system to an eligible residential area that satisfies the criteria of this section.

10. In cases where the project costs exceed the \$8,000,000 maximum loan amount, the application shall be accompanied by a detailed financial assessment indicating how the applicant will finance and repay the entire project costs.

11. Compliance with other criteria as set forth at N.J.A.C. 7:1A-5.1(c) through (e).

12. Monies from a Type C loan made hereunder are to be expended solely for the purpose of expanding the public water supply system to residences with contaminated wells as defined in this chapter.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Notice of Correction

Statewide Water Quality Management Planning

Proposed New Rule: N.J.A.C. 7:15-3.4

Take notice that an error exists in the text of proposed new rule N.J.A.C. 7:15-3.4 published in the September 6, 1988 New Jersey Register at 20 N.J.R. 2198(a), 2206. Language contained in the proposed text of N.J.A.C. 7:15-3.4(b)3 as filed with the Office of Administrative Law was inadvertently omitted from the Register.

Full text of the corrected rule follows (omitted language in boldface thus).

7:15-3.4 Water quality management plan amendment procedures

(a) (No change from proposal.)

(b) Procedures for amendment of the Statewide WQM Plan are as follows:

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

3. Statewide Sludge Management Plans, District Sludge Management Plans and sludge management rules that are promulgated or approved by the Department pursuant to N.J.S.A. 13:1E-1 et seq. **shall be considered to be part of the Statewide WQM Plan. Such plan and rules shall be promulgated, revised, updated or approved in accordance with N.J.S.A. 13:1E-1 et seq.,** and shall not be promulgated, revised, updated or approved through the WQM plan amendment process under (b)4 below.

4. (No change from proposal.)

(c)-(k) (No change from proposal.)

HUMAN SERVICES

(b)

Developmental Disability Council Availability of Grants

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the New Jersey Developmental Disabilities Council hereby announces the availability of the following grant program:

A. **Name of Program:** Charity Racing Days for the Developmentally Disabled Program, P.L. 1977, c.200.

B. **Purpose:** To distribute funds received by the New Jersey Racing Commission to nonprofit organizations in New Jersey which expend funds for direct services in full-time programs to individuals who are developmentally disabled.

C. **Amount of Monies in Program:** The amount of monies available is based on money collected on designated racing days by the New Jersey Racing Commission in compliance with N.J.S.A. 5:5-44:2, and distributed proportionally among eligible organizations on the basis of an incidence and service formula as defined in N.J.A.C. 10:141.

D. **Organizations which may apply for funding under this program:** Agencies which may apply for Charity Racing Days monies must be nonprofit organizations located in New Jersey which expend funds for direct services in programs to New Jersey residents who are developmentally disabled. Agencies must be affiliated with a national organization of the same type and purpose.

E. **Qualifications needed by an applicant to be considered for the program:** An eligible organization shall be a service provider to individuals who are developmentally disabled which expends funds for direct services and has as its main purpose either:

1. The provision of services; or

2. The raising of funds on behalf of a single other organization whose sole purpose is the provision of eligible services.

i. All funds raised shall be contributed to the provision of eligible services (except minimal costs for administration and fund raising).

ii. At least 75 percent of the recipients of eligible services provided by the organization must be developmentally disabled.

(CITE 20 N.J.R. 2478)

NEW JERSEY REGISTER, MONDAY, OCTOBER 3, 1988

F. **Procedure for eligible organizations to apply:** Applications can be requested from:

Susan Richmond
Research Specialist
N.J. Developmental Disabilities Council
108-110 North Broad Street
Trenton, New Jersey 08625
(609) 292-3745

G. **Address for applications to be submitted:** Same as F above.

H. **Deadline by which applications must be submitted:** Completed applications must be submitted by October 31, 1988.

I. **Date by which application shall be notified of approval or disapproval:** Applicants shall receive notice of approval or disapproval within 60 days after deadline for receipt of applications.

(c)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Optional Categorically Needy Program Administration Manual and "JerseyCare" Manual

N.J.A.C. 10:49; N.J.A.C. 10:72

Public Notice

Authority: N.J.S.A. 30:4D-3, 30:4D-6, 30:4D-7a, b, and c;
30:4D-12 and Section 1902(1)(m) of the Social Security Act.

Take notice that Drew Altman, Commissioner, Department of Human Services, is announcing that optional Categorically Needy Medicaid coverage for pregnant women, children, and the aged, blind or disabled, formerly referred to as "JerseyCare," will no longer be described in this manner. The Department of Human Services, and the Division of Medical Assistance and Health Services, will identify the program as "New Jersey Care—Special Medicaid Programs". All references to "JerseyCare" in the New Jersey Administrative Code will be changed administratively to reflect this change.

The Optional Categorically Needy eligibility groups are established pursuant to Federal law and enable qualified persons to receive services covered by the New Jersey Medicaid Program. There is no change in eligibility or services associated with this notice.

Therefore, the name "New Jersey Care—Special Medicaid Programs" will be used to describe the optional categorically needy eligibility groups.

INSURANCE

(d)

OFFICE OF THE COMMISSIONER

Notice of Public Hearing Medical Malpractice Reinsurance Recovery Fund Surcharge

Proposed New Rules: N.J.A.C. 11:18

Take notice that, pursuant to N.J.S.A. 52:14B-4(a)(3), the Department of Insurance will conduct a public hearing on proposed new rules concerning the New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge. The proposed rules were published in the August 15, 1988 New Jersey Register at 20 N.J.R. 2010(a). Generally, the proposed new rules would impose a five percent surcharge on the premiums for all new and renewal policies of medical malpractice liability insurance covering physicians and doctors (as defined in the proposed new rules) effective on or after January 1, 1989.

The public hearing will be held on Monday, October 24, 1988 at 9:30 A.M. at:

Department of Insurance
Mary G. Roebling Building
20 West State Street
Second Floor
Conference Room 218C
Trenton, New Jersey 08625

PUBLIC NOTICES

Persons intending to testify at the hearing are required to provide written prior notice of their intention to Verice M. Mason, Assistant Commissioner, Division of Legislative and Regulatory Affairs, Department of Insurance, by the close of business on Friday, October 14, 1988. The notice must include a brief summary of the testimony. Testimony will be limited to five minutes.

Persons intending to ask questions at the hearing are requested to provide Assistant Commissioner Mason with their intended questions or areas of interest for questioning by October 14. Questions may also be permitted from the floor.

Notice of this hearing has previously been provided to interested persons by means other than publication in the New Jersey Register.

The hearing will be conducted in accordance with the provisions of N.J.S.A. 52:14B-4(g).

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Contract Carrier Application

Take notice that Glenn Paulsen, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E.11 hereby lists the name and address of an applicant who has filed an application for a Contract Carrier Permit.

CONTRACT CARRIER (NON-GRANDFATHER)
Robert E. Washer, Jr., Inc.
RD #1, Box 463B
Belvidere, NJ 07823

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, N.J. 08666 within 20 days (October 23, 1988) following the publication of the application.

STUDY COMMISSION

(b)

COMMISSION TO STUDY SERVICES AND PROGRAMS AVAILABLE TO HEARING IMPAIRED CHILDREN

Notice of Public Hearings

Take notice that the Commission to Study Services and Programs Available to Hearing Impaired Children, created by Joint Resolution No. 2, effective February 19, 1987, will hold public hearings on October 5, 12, 19 and 26, 1988. The hearings will be held at the following places:

October 5, 1988	Ocean County College 5:00 P.M. to 9:00 P.M. College Center Cafeteria College Drive Toms River, New Jersey
October 12, 1988	Rider College 5:00 P.M. to 9:00 P.M. Route 206 Lawrenceville, New Jersey
October 19, 1988	Camden County College 5:00 P.M. to 9:00 P.M. Madison Hall, Room 109 Peter Cheeseman and Little Gloucester Roads Blackwood, New Jersey
October 26, 1988	Bergen County College 5:00 P.M. to 9:00 P.M. Adult Basic Education Building Main Street Hackensack, New Jersey

To help the Commission respond to and evaluate services and programs, the Commission is seeking public comment to the following questions.

STUDY COMMISSION

The Commission is organizing advance registration if anyone wishes to testify. On-site registration will also be held.

Please call or write the Commission at:

6323 Browning Road
Pennsauken, NJ 08109-1548
(609) 488-2309 (voice)
(call after 7:00 P.M.)

Interpreters will be present at all Commission hearings. David Fleming, Chairman.

QUESTIONS FOR PUBLIC HEARINGS

Topic #1: What is the availability and quality of evaluation services for hearing impaired children in New Jersey?

(a) What is the availability, quality, timeliness and effectiveness of the diagnostic procedures used to identify your infant's hearing loss? Was infant hearing screening available to you?

(b) What is the quality of audiological services you received for diagnosis, prescription of hearing aids and referral for additional services?

(c) What is the availability and effectiveness of service delivery by the school psychologists for hearing impaired students? Knowledge of appropriate assessment/evaluation materials, procedures and interpretations for hearing impaired students? Communication skills?

(d) Is at least one specialist in deafness available on Teams evaluating a child with hearing loss? If not, is a qualified outside evaluator made available?

(e) Is the Specialized Child Study Team for the Deaf in your region utilized by your school district?

(f) How satisfactory are the goals and objectives set for hearing impaired children?

(g) What are the criteria used for educational placement of hearing impaired children?

(h) Are parents informed of the range of placement options for hearing impaired children?

Topic #2: How available and effective are parent guidance and parent education for families of deaf and hearing impaired children?

(a) How accessible are early intervention programs? To deaf families?

(b) How appropriate was the information you were given at the time your child was diagnosed as hearing impaired regarding: hearing aids? education? speech/language development? community support services?

(c) To what extent do school programs encourage parents to improve communication and educational involvement with their deaf children?

(d) To what extent do educational programs incorporate parent education, training, and follow-up procedures into their service models?

Topic #3: What is the availability and appropriateness of educational programs for deaf and hearing impaired students in New Jersey?

(a) How accessible to you was information about the availability of specialized early intervention for your hearing impaired child from: your doctor? a local agency? (ex.: Child Find)?

(b) What is the appropriateness and quality of early intervention services? Are specially trained staff in the area of hearing impairment available?

(c) What is the availability, quality and effectiveness of early intervention services to multiply handicapped hearing impaired children?

(d) How available is the certified Teacher of the Deaf or Hard of Hearing to the hearing impaired child's educational program? To the home-bound hearing impaired child?

(e) Are appropriate educational programs available to deaf and hard of hearing children in all regions of the State? If not, what are the shortcomings?

(f) What is the quality of supervision, evaluation and monitoring of the academic progress of hearing impaired children? Are children with permanent and temporary loss of hearing identified, assisted and monitored?

(g) How available are personnel, knowledgeable in deafness, to deaf children placed in classes for other handicapping conditions?

(h) What is the extent of school transfers needed to create a continuation of school programming for hearing impaired children?

(i) What is the availability of educational technology to the hearing impaired schoolchild? Are amplification devices, computer software for speech and language development, telecommunication devices, warning systems and closed captioning available?

(j) What is the availability of extra-curricular activities to the hearing impaired child?

STUDY COMMISSION

PUBLIC NOTICES

(k) Are current vocational educational programs readily accessible to deaf or hard of hearing students who require them?

(l) Are current vocational transition programs sufficient to meet the needs of deaf students when they graduate from secondary school?

(m) Are postsecondary vocational training and community-based training programs available to hearing impaired students?

(n) Are appropriate postsecondary, adult, and continuing educational opportunities available to deaf and hearing impaired youth?

Topic #4: How available and effective are educational programs for multi-handicapped and minority group hearing impaired students?

(a) How adequately are deaf-blind children served? Are personnel appropriately trained and/or certified to work with vision and hearing impaired students?

(b) How adequately are severely impaired multi-handicapped children with hearing loss served? Are personnel appropriately trained and/or certified to work with severe-profoundly impaired children and hearing loss as well?

(c) How adequately are deaf children with mild-moderate secondary impairments served? Are personnel trained and/or certified in education of the hearing impaired, and in special education as well?

(d) How adequately are minority group hearing impaired children served? Are personnel appropriately prepared to meet their unique cultural needs? Is a teacher of the deaf and/or interpreter fluent in the family's native language available to deaf children and their families?

Topic #5: What is the availability and quality of support services to deaf and hearing impaired children in New Jersey schools?

(a) Are adequate support services available to deaf and hearing impaired school children?

(b) What is the extent of the school district's hearing aid maintenance program?

(c) Are classroom interpreters and notetakers available to meet the needs of students who require them? Is sufficient time scheduled to meet students' needs?

(d) What is the availability and effectiveness of service delivery by the speech and language specialists for hearing impaired students? Is sufficient time scheduled to address individual students' needs?

(e) Are counselors knowledgeable in deafness available for hearing impaired children and their families? Knowledge of postsecondary resources for hearing impaired students?

(f) What is the availability and effectiveness of service delivery by the social worker for hearing impaired students?

(g) What is the availability and effectiveness of service delivery by the learning disabilities teacher-consultants for hearing impaired students?

(h) What is the availability and accessibility of Learning Resource Centers to parents and professionals serving hearing impaired students? Are materials and equipment current, relevant, and adequate for enhancing instruction of deaf and hearing impaired students?

(i) What is the availability and effectiveness of service delivery by paraprofessionals, i.e., dorm supervisors, teachers' assistants, for hearing impaired students?

Topic #6: What are the training and technical assistance needs of professionals and staff serving hearing impaired students at all levels of educational programs?

(a) To what extent is the hearing impaired child's mainstreamed classroom teacher prepared to deal with the child's hearing loss, learning style, communication, and social needs? Are support and advisement available from a case manager trained in education of the hearing impaired? Is technical assistance available from a specialist in education of the hearing impaired?

(b) Are sufficient professional development opportunities being offered to administrators and other professionals providing programs and services for deaf and hearing impaired students?

(c) To what extent are all levels of education and government agencies coordinating their training and technical assistance activities for deaf and hearing impaired children and youth?

(d) To what extent are all levels of education and government agencies providing technical assistance activities for deaf and hearing impaired children and youth?

(e) Are New Jersey certification requirements for Teachers of the Deaf or Hard of Hearing sufficient to ensure quality instruction? Are the standards current and in line with national certification standards? Are there appropriate training programs where teachers can obtain certification?

(f) Are evaluation and certification standards and procedures for professionals, e.g., speech/language specialists, education audiologists, educational interpreters, sufficient to ensure quality services? Are there appropriate training programs where professionals can obtain certification?

(g) What are training and technical assistance needs for infant and early childhood education programs? Are there appropriate training programs available?

Topic #7: What is the availability and accessibility of community services for hearing impaired children and youth in New Jersey? Background: Community services being investigated are: childcare, transportation, medical services, police, libraries, recreation programs, welfare, Medicaid, food stamps, SSI, juvenile shelters, criminal system, human service agencies, and group homes.

(a) What has been your experience in trying to obtain community services for your hearing impaired child? Has the lack of services negatively affected your child?

(b) To what extent have you experienced difficulty in using community services? Re: communication, awareness, etc.?

Topic #8: What is the availability and quality of mental health services for hearing impaired children and youth in New Jersey?

(a) When a hearing impaired family member needed professional mental health services, were adequate services found? How? Where?

(b) Did the mental health services satisfy the original referral, and were they satisfactory? Was the mode of communication appropriate?

(c) Was the cost of services more because of a hearing impaired family member? And, why?

(d) Did people consulted have training or experience with the hearing impaired?

(e) Were you denied adequate services because your family member was hearing impaired?

(f) If hospitalization was recommended, was it available, was communication facilitated, and was there adequate discharge planning?

Topic #9: What is the availability and quality of assistance to mental health professionals serving hearing impaired children and youth in New Jersey?

(a) Are mental health professionals aware of sources of assistance and referral services when working with hearing impaired children and youth?

(b) As a professional in the mental health area, were you able to find an interpreter knowledgeable and experienced in therapeutic settings?

(c) Were you able to find an interpreter skilled in facilitating communication in a therapeutic setting?

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Architect-Engineer Selection

Notice of Assignments—Month of August 1988

Solicitations of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated August 1, 1988.

The following assignments have been made:

DBC No.	PROJECT	A, E	CCE
H754	Roof Monitoring & Inspection Maintenance and Security Bldgs. Savitz Library & Esby Gym Glassboro State College Glassboro, NJ	Herbert J. Cannon Assoc., PA	\$32,400 Services
I032	Main Transformer Replacement Montclair State College Upper Montclair, NJ	Amin Engineering	\$130,000
A559	Interior Design Services Floors 2, 3 and 8 Taxation Building Division of Building & Construction	The Hillier Group	\$235,000 Services

PUBLIC NOTICES

TREASURY-GENERAL

A540	Roof Monitoring & Inspection Labor & Industry Building Trenton, NJ	ARMM Designs, Inc.	\$24,732 Services	W031	Facility Consultant FY '89 Division of Fish, Game & Wildlife Dept. of Environmental Protection	Parsons, Brinkerhoff, FG	\$30,000 Services
M794	Steamline Replacement Johnstone Training Center Bordentown, NJ	Edward A. Sears & Assoc.	\$180,000	W033	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	David V. Abramson & Assoc.	\$15,000 Services
P572	Public Sanitary Facilities Reassignment Island Beach State Park	Oliver & Becica	\$200,000	W034	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Berson-Ackermann Assoc.	\$25,000 Services
H873-01	Parking Lot & Repaving Kean College Union, NJ	Abbingtion-Ney Assoc.	\$54,000	W035	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Cody Eckert & Assoc.	\$25,000 Services
C275	80 Bed Maximum Security Modular Unit Edna Mahan Correctional Facility for Women Clinton, NJ	Capriotti & Vining	\$1,700,000	W036	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Kolbe & Poponi, PA	\$15,000 Services
D066	Facility Consultant FY '89 Department of Corrections	Mellick-Tully & Assoc., Inc.	\$20,000 Services	W037	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Lammy & Giorgio, PA	\$50,000 Services
D067	Facility Consultant FY '89 Department of Corrections	Joseph B. Callahan, Inc.	\$10,000 Services	W038	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Maitra Assoc., Inc.	\$50,000 Services
D068	Facility Consultant FY '89 Department of Corrections	Burroughs H. Perkins, Arch.	\$10,000 Services	W039	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	L.J. Mineo, Jr., AIA	\$25,000 Services
D069	Facility Consultant FY '89 Department of Corrections	Harry E. Purnell, PC	\$10,000 Services	W040	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Nadaskay-Kopelson, PA	\$20,000 Services
F052	Facility Consultant FY '89 Montclair State College	Mylan-Valk Partnership	\$15,000 Services	W041	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Parham-Zink	\$40,000 Services
F053	Facility Consultant FY '89 Montclair State College	London Kantor Umland & Assoc.	\$20,000	W042	Facility Consultant FY '89 Division of Parks & Forestry Dept. of Environmental Protection	Stone & Webster Eng.	\$35,000 Services
F054	Facility Consultant FY '89 Montclair State College	A.D. Jilajian & Assoc.	\$10,000 Services	W044	Facility Consultant FY '89 Division of Fish, Game & Wildlife Dept. of Environmental Protection	Purcell Assoc.	\$30,000 Services
F057	Facility Consultant FY '89 Stockton State College	Wasleksi Steelman Sindoni Wertz	\$50,000 Services	X032	Facility Consultant FY '89 Division of Motor Vehicles	Frank R. Holtaway & Son, Inc.	\$50,000 Services
J034	Facility Consultant FY '89 Division of Building & Construction	Frank R. Holtaway & Son	\$50,000 Services	X033	Facility Consultant FY '89 Division of Motor Vehicles	Kolbe & Poponi, PA	\$50,000 Services
J035	Facility Consultant FY '89 Division of Building & Construction	London Kantor Umland & Assoc.	\$50,000 Services	X034	Facility Consultant FY '89 Division of Motor Vehicles	Vaughn Organization, PC	\$50,000 Services
J036	Facility Consultant FY '89 Division of Building & Construction	Maitra Assoc.	\$50,000 Services	X035	Facility Consultant FY '89 Division of Motor Vehicles	Franklyn B. Spiegle, AIA	\$50,000 Services
J038	Facility Consultant FY '89 Division of Building & Construction	Syska & Hennessy	\$50,000 Services	X036	Facility Consultant FY '89 Division of Motor Vehicles	Pennoni Assoc., Inc	\$50,000 Services
J039	Facility Consultant FY '89 Division of Building & Construction	Edward A. Moy Eng., Inc.	\$10,000 Services	X037	Facility Consultant FY '89 Division of Motor Vehicles	John C. Morris Assoc.	\$50,000 Services
J040	Facility Consultant FY '89 Division of Building & Construction	Omdex, Inc.	\$20,000 Services	X038	Facility Consultant FY '89 Division of Motor Vehicles	Turek Associates	\$50,000 Services
J041	Facility Consultant FY '89 Division of Building & Construction	Nadaskay-Kopelson PA	\$20,000 Services	X039	Facility Consultant FY '89 Division of Motor Vehicles	O'Connor Group	\$50,000 Services
J042	Facility Consultant FY '89 Division of Building & Construction	Vaughn Organization	\$50,000 Services	X040	Facility Consultant FY '89 Division of Motor Vehicles	Cody Eckert & Assoc.	\$25,000 Services
J043	Facility Consultant FY '89 Division of Building & Construction	Kraeger-Storb Assoc.	\$20,000 Services	Y022	Facility Consultant FY '89 Dept. of Transportation	Jeffrey & Kallaur, Inc.	\$45,000 Services
R022	Facility Consultant FY '89 Department of Human Services	Barnickel Engineering	\$15,000 Services	Y023	Facility Consultant FY '89 Dept. of Transportation	J.M. DiGiacinto & Assoc.	\$10,000 Services
R023	Facility Consultant FY '89 Department of Human Services	Roy Larry Schlein & Assoc.	\$10,000 Services	Y024	Facility Consultant FY '89 Dept. of Transportation	Barnickel Engineering	\$10,000 Services
R024	Facility Consultant FY '89 Department of Human Services	M. Benton & Assoc.	\$15,000 Services	Y025	Facility Consultant FY '89 Dept. of Transportation	Kitchen & Assoc., PA	\$10,000 Services
R025	Facility Consultant FY '89 Department of Human Services	London Kantor Umland	\$10,000 Services	Y026	Facility Consultant FY '89 Dept. of Transportation	Thomas E. Torricelli, AIA	\$10,000 Services
R026	Facility Consultant FY '89 Department of Human Services	Leslie M. Dennis & Son	\$10,000 Services	Z811	Facility Consultant FY '89 Office of Leasing Operations (GSA)	Stone & Webster Eng.	\$50,000 Services
R027	Facility Consultant FY '89 Department of Human Services	Matthew L. Rue, AIA	\$10,000 Services	Z812	Facility Consultant FY '89 Office of Leasing Operations (GSA)	Thomas Tyler Moore & Assoc.	\$15,000 Services
R028	Facility Consultant FY '89 Department of Human Services	Chyun Associates	\$15,000 Services				
R029	Facility Consultant FY '89 Department of Human Services	Kolbe & Poponi, PA	\$15,000 Services				

TREASURY-GENERAL

PUBLIC NOTICES

Z813	Facility Consultant FY '89 Office of Leasing Operations (GSA)	Vaughn Organization. PC	\$15,000 Services
Z814	Facility Consultant FY '89 Office of Leasing Operations (GSA)	Blackburn Engineering	\$15,000 Services
Z815	Facility Consultant FY '89 Office of Leasing Operations (GSA)	Syska & Hennessy	\$50,000 Services
M772	Air Conditioning of Various DYFS Residential Centers Cedar Grove, Ewing & Woodbridge	Turek Assoc.	\$500,000

COMPETITIVE PROPOSALS

Turek Associates	12.9%
M. Benton & Assoc.	15.98%
Paulus, Sokolowski & Sartor, Inc.	8.75%*

*Non-responsive proposal

P573	Day Use Facility Stony Lake Stokes State Forest	Ronald S. Sebring & Assoc.	\$750,000
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COMPETITIVE PROPOSALS

Ronald A. Sebring & Assoc.	7.30%
James R. Guerra, PA	9.80%
Ronald Schmidt & Assoc.	15.95%

C372	New Gymnasium N.J. Training School for Boys Jamesburg, NJ	Harsen & Johns Partnership	\$1,500,000
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COMPETITIVE PROPOSALS

Harsen & Johns Partnership	5.65%
Kitchen & Assoc., Arch. Services	8.749%
Morton, Russo & Maggio	8.75%

T198	DOT Print Shop Thiokol Building #6 Fernwood Complex Trenton, NJ	Vaughn Organization	\$400,000
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COMPETITIVE PROPOSALS

Vaughn Organization	11.75%
Cody Eckert & Assoc., PA	15.47%

(a)

DIVISION OF PENSIONS

**Teachers' Pension and Annuity Fund
Interfund Transfers**

Notice of Correction: N.J.A.C. 17:3-7.1

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 17:3-7.1(a)4 concerning Interfund transfers; State-administered retirement systems. Notice of the proposal was published in the January 4, 1988 issue of the New Jersey Register at 20 N.J.R. 47(a). The notice of adoption appeared in the March 21, 1988 issue of the Register at 20 N.J.R. 672(b).

Full text of N.J.A.C. 17:3-7.1 should appear in the New Jersey Administrative Code as follows:

17:3-7.1 Interfund transfers; State-administered retirement systems

(a) The system will transfer membership to any State-administered retirement system as follows:

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

4. The member shall enjoy the same service credits established in the present system, subject to the provisions of the new system.

5.-6. (No change in text.)

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

Statement of Ownership, Management and Circulation (Required by 39 U.S.C. 3685) 1A. Title of Publication: NEW JERSEY REGISTER. 1B. Publication number: 03006069. 2. Date of filing: September 19, 1988. 3. Frequency of issue: Semimonthly. A. Number of issues published annually: 24. B. Annual subscription price: \$75 controlled circulation; \$150 first class. 4. Location of known office of publication: New Jersey Office of Administrative Law, 9 Quakerbridge Plaza, CN 301, Trenton, NJ 08625. 5. Location of general business offices of the publisher: New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 6. Names and addresses of publisher, editor, managing editor. Publisher: New Jersey Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Editor: Norman Olsson, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. Managing Editor: Anthony Miragliotta, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 7. Owner: Office of Administrative Law, State of New Jersey, CN 301, Trenton, NJ 08625. 8. Known bondholders, mortgagees, or other security holders owning or holding one percent or more of total amount of bonds, mortgages or other securities: None. 9. Purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes: Has not changed during preceding 12 months. 10. Average

number of copies each issue during preceding 12 months. A. Total no. copies printed: 3,230. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,366 controlled; 264 first class. C. Total paid circulation: 2,630. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 449. E. Total distribution (sum of C and D): 3,079. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 151. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 3,230. Actual number of copies of a single issue published nearest to filing date. A. Total no. copies printed: 3,350. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,449 controlled; 284 first class. C. Total paid circulation: 2,733. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 456. E. Total distribution (sum of C and D): 3,189. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 161. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 3,350. 11. The statements made by me above are correct and complete: Norman Olsson, Editor.

EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	5/4/92
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:20	5/4/92
1:21	5/4/92
1:30	2/14/91
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	9/3/90
2:2	10/3/88
2:3	6/18/89
2:5	6/18/89
2:6	9/3/90
2:7	9/29/88
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	8/1/88
2:69	10/3/88
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	8/29/89
2:90	6/24/90

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	3/19/89
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91
3:21	2/2/92

N.J.A.C.	Expiration Date
3:22	5/21/89
3:23	7/6/92
3:24	8/20/89
3:25	8/17/92
3:26	12/31/90
3:27	9/16/90
3:28	12/17/89
3:30	10/17/88
3:38	10/5/92
3:41	10/16/90
3:42	4/4/93

PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

N.J.A.C.	Expiration Date
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
5:2	9/1/93
5:3	9/1/93
5:4	10/5/92
5:10	12/1/88
5:11	3/1/89
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	11/7/88
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
5:92	6/16/91	7:25	2/18/91
5:100	5/7/89	(Except for 7:25-1 which expired 9/17/85)	

DEPARTMENT OF DEFENSE—TITLE 5A

N.J.A.C.	Expiration Date
5A:2	5/20/90

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:2	3/1/89
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	6/1/89
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	10/18/89
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:79	11/25/92

ENVIRONMENTAL PROTECTION—TITLE 7

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	12/1/88
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:6	12/19/88
7:7	5/7/89
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:10	9/4/89
7:11	5/13/93
7:12	4/11/93
7:13	5/4/89
7:14	4/27/89
7:14A	6/4/89
7:14B	12/21/92
7:15	4/2/89
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/19/88
7:22	1/5/92
7:23	6/18/89
7:24	5/19/91

7:25A	5/6/90
7:26	11/4/90
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36-1	8/5/90
7:36-2	Expired 1/9/86
7:36-3	Expired 1/9/86
7:36-4	8/5/90
7:36-5	Expired 1/9/86
7:36-6	Expired 1/9/86
7:36-7	8/5/90
7:37	Exempt
7:38	9/18/90
7:45	Expired 1/11/85

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	5/21/89
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	8/20/89
8:33D	2/1/87
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/20/89
8:33H	7/19/90
8:33I	9/15/91
8:33J	5/17/89
8:33K	4/16/89
8:34	11/18/88
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/12/91
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43I	3/21/93
8:44	11/7/88
8:45	5/20/90
8:48	8/20/89
8:51	9/16/90
8:52	12/15/91
8:53	8/4/91
8:57	6/18/90
8:59	10/1/89

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
8:60	5/3/90	10:81	10/15/89
8:61	10/6/91	10:82	10/29/89
8:65	12/2/90	10:85	1/30/90
8:70	8/19/93	10:87	3/1/89
8:71	4/2/89	10:89	9/11/90

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
9:1	1/17/89	10:94	1/6/91
9:2	6/17/90	10:95	8/23/89
9:3	10/17/88	10:97	4/16/89
9:4	10/30/91	10:99	2/19/90
9:5	1/21/91	10:100	2/6/89
9:6	5/20/90	10:109	3/17/91
9:6A	1/4/93	10:112	2/17/89
9:7	2/28/93	10:120	9/26/88
9:8	11/4/90	10:121	3/13/89
9:9	10/3/93	10:121A	12/7/92
9:11	1/17/89	10:122	8/6/89
9:12	1/17/89	10:122A	Exempt
9:14	5/20/90	10:122B	9/10/89
9:15	10/25/88	10:123	7/20/90
		10:124	12/7/92
		10:125	7/16/89
		10:127	8/26/93
		10:129	10/11/89
		10:130	9/19/88
		10:131	12/7/92
		10:132	1/5/92
		10:141	2/21/89

HUMAN SERVICES—TITLE 10

N.J.A.C.	Expiration Date
10:1	5/6/88
10:2	1/5/92
10:3	9/19/88
10:4	1/3/88
10:5	12/19/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:40	3/15/89
10:42	8/18/91
10:43	9/1/88
10:44	10/3/88
10:44A	2/7/88
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	11/5/89
10:66	12/15/88
10:67	3/3/91
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/88
10:70	6/16/91
10:71	1/6/91
10:72	8/27/92
10:80	8/23/89

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	7/16/89
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	11/7/88
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:14	7/2/89
11:15	12/3/89
11:16	2/3/91
11:17	4/18/93

LABOR—TITLE 12

N.J.A.C.	Expiration Date
12:5	9/19/93
12:15	8/19/90

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
12:16	4/1/90	13:41	9/3/90
12:17	1/6/91	13:42	11/3/88
12:18	3/7/93	13:43	9/1/93
12:20	11/5/89	13:44	8/20/89
12:35	8/5/90	13:44B	11/2/92
12:45	5/2/93	13:44C	7/18/93
12:46	5/2/93	13:45A	12/16/90
12:47	5/2/93	13:46	6/3/90
12:48	5/2/93	13:47	2/2/92
12:49	5/2/93	13:47A	10/5/92
12:51	6/30/91	13:47B	1/4/89
12:56	9/26/90	13:47C	8/20/89
12:57	9/26/90	13:48	1/21/91
12:58	9/26/90	13:49	12/19/88
12:60	3/21/93	13:51	4/27/92
12:90	12/17/89	13:54	10/5/91
12:100	11/5/89	13:58	9/7/89
12:105	1/21/91	13:59	9/16/90
12:110	1/19/93	13:60	1/20/92
12:112	9/6/93	13:70	2/25/90
12:120	5/3/90	13:71	2/25/90
12:175	12/9/88	13:75	8/20/89
12:190	1/4/93	13:76	6/27/93
12:195	6/24/93	13:77	2/1/93
12:200	8/5/90		
12:210	9/6/93		
12:235	5/5/91		

COMMERCE AND ECONOMIC DEVELOPMENT—TITLE 12A

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	8/15/89
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:100-1	9/8/91
12A:120	9/6/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:1C	Expired 12/1/83
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	5/27/89
13:13	6/17/90
13:18	4/1/90
13:19	8/23/89
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	6/4/89
13:24	11/5/89
13:25	3/18/90
13:26	10/17/88
13:27	4/1/90
13:28	5/16/93
13:29	6/3/90
13:30	4/15/90
13:31	12/12/91
13:32	10/23/92
13:33	3/18/90
13:34	11/21/88
13:35	11/19/89
13:36	11/19/89
13:37	2/11/90
13:38	10/7/90
13:39	1/6/91
13:39A	7/7/91
13:40	9/3/90

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:11	1/27/92
14:17	5/7/89
14:18	7/29/90

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	8/6/89
14A:7	9/16/90
14A:8	9/20/89
14A:11	9/20/89
14A:12	2/7/88
14A:13	2/2/92
14A:14	2/6/89
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

STATE—TITLE 15

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

TRANSPORTATION—TITLE 16

N.J.A.C.	Expiration Date
16:1	8/5/90
16:2	10/3/88
16:6	9/3/90
16:13	5/7/89
16:16	11/7/88
16:17	11/7/88
16:20A	12/17/89
16:20B	12/17/89

N.J.A.C.	Expiration Date
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	8/6/89
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:33	9/3/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:49	3/18/90
16:51	4/6/92
16:53	3/19/89
16:53A	4/15/90
16:53C	6/16/93
16:53D	5/7/89
16:54	4/7/91
16:55	6/14/93
16:56	6/4/89
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	12/19/88
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	2/19/89
17:7	6/6/88
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89
17:16	12/2/90
17:19	3/18/90
17:20	11/7/88
17:25	6/18/89
17:27	11/7/88
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:2	9/6/93
18:3	4/23/89
18:5	4/16/89
18:6	4/2/89
18:7	4/2/89
18:8	4/2/89
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	4/2/89
18:19	4/6/89
18:22	4/2/89
18:23	4/2/89
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	7/13/88
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	9/26/89
19:41	5/12/93
19:42	5/12/93
19:43	4/27/89
19:44	10/13/88
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/88
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/17/89

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 1, 1988 issue.

If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers. A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

Terms and abbreviations used in this Index:

N.J.A.C. Citation. The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

Proposal Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

Document Number. The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1988 d.1 means the first rule adopted in 1988.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 18, 1988

NEXT UPDATE: SUPPLEMENT AUGUST 15, 1988

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
19 N.J.R. 1759 and 1858	October 5, 1987	20 N.J.R. 843 and 950	April 18, 1988
19 N.J.R. 1859 and 1926	October 19, 1987	20 N.J.R. 951 and 1018	May 2, 1988
19 N.J.R. 1927 and 2086	November 2, 1987	20 N.J.R. 1019 and 1126	May 16, 1988
19 N.J.R. 2087 and 2224	November 16, 1987	20 N.J.R. 1127 and 1316	June 6, 1988
19 N.J.R. 2225 and 2324	December 7, 1987	20 N.J.R. 1317 and 1500	June 20, 1988
19 N.J.R. 2325 and 2510	December 21, 1987	20 N.J.R. 1501 and 1594	July 5, 1988
20 N.J.R. 1 and 124	January 4, 1988	20 N.J.R. 1595 and 1758	July 18, 1988
20 N.J.R. 125 and 220	January 19, 1988	20 N.J.R. 1759 and 1976	August 1, 1988
20 N.J.R. 221 and 320	February 1, 1988	20 N.J.R. 1977 and 2122	August 15, 1988
20 N.J.R. 321 and 434	February 16, 1988	20 N.J.R. 2123 and 2350	September 6, 1988
20 N.J.R. 435 and 570	March 7, 1988	20 N.J.R. 2351 and 2416	September 19, 1988
20 N.J.R. 571 and 692	March 21, 1988	20 N.J.R. 2417 and 2498	October 3, 1988
20 N.J.R. 693 and 842	April 4, 1988		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-9.5	Transmittal of clerk's notices	20 N.J.R. 1979(a)		
1:1-14.3	Interpreters for hearing impaired: preproposal	20 N.J.R. 1979(b)		
1:1-14.8	Proceedings on the papers: inaction by requesting party	20 N.J.R. 1979(c)		
1:6-10.1	Discovery in school budget cases	20 N.J.R. 1980(a)		
1:6A-1.1	Applicability: correction to text			
1:30-1.2, 2.8	Agency rulemaking: use of appendices	20 N.J.R. 1021(a)	R.1988 d.383	20 N.J.R. 2325(a)
1:30-3.1	Regulatory flexibility analysis and proposed rulemaking	20 N.J.R. 573(a)		20 N.J.R. 2052(a)

Most recent update to Title 1: TRANSMITTAL 1988-2 (supplement March 21, 1988)

AGRICULTURE—TITLE 2				
2:5-2	Equine infectious anemia control	20 N.J.R. 695(a)	R.1988 d.369	20 N.J.R. 1870(a)
2:33	Agricultural fairs	20 N.J.R. 2125(a)		
2:48-3	Sale of milk in new container sizes	20 N.J.R. 1129(a)	R.1988 d.385	20 N.J.R. 2052(b)
2:68-1	Association standards for commercial feeds	20 N.J.R. 1671(c)		
2:69	Commercial fertilizers and soil conditioners	20 N.J.R. 1673(a)		
2:71	Grades and standards	20 N.J.R. 953(a)	R.1988 d.370	20 N.J.R. 1871(a)
2:71-2.4, 2.5	Jersey Fresh Logo program	20 N.J.R. 1129(b)	R.1988 d.421	20 N.J.R. 2254(a)
2:72	Licensing and bonding of buyers of perishable commodities	20 N.J.R. 955(a)	R.1988 d.371	20 N.J.R. 1872(a)
2:73-2	Eggs: Seal of Quality program	20 N.J.R. 956(a)	R.1988 d.372	20 N.J.R. 1872(b)
2:74-1	Controlled atmosphere storage for apples	20 N.J.R. 956(b)	R.1988 d.368	20 N.J.R. 1873(a)
2:76-6.2, 6.5, 6.6, 6.8, 6.9, 6.10, 6.11, 6.16	Farmland preservation: acquisition of development easements	20 N.J.R. 1503(a)		
2:76-6.2, 6.5, 6.6, 6.9, 6.15, 6.16	Farmland development easements: residual dwelling sites	20 N.J.R. 1761(a)		
2:76-6.9, 6.11, 6.14	Farmland preservation: acquisition of development easements	20 N.J.R. 1319(a)	R.1988 d.435	20 N.J.R. 2254(b)

Most recent update to Title 2: TRANSMITTAL 1988-4 (supplement July 18, 1988)

BANKING—TITLE 3				
3:1-2.17	Repeal (see 3:32-1)	20 N.J.R. 697(a)	R.1988 d.472	20 N.J.R. 2450(a)
3:1-14	Revolving credit equity loans	19 N.J.R. 1594(a)	Expired	
3:1-16	Mortgage loan practices	20 N.J.R. 1021(b)		
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions	20 N.J.R. 1025(a)		
3:6-9	Capital stock savings bank: change in control	19 N.J.R. 1762(a)	R.1988 d.404	20 N.J.R. 2052(c)
3:24-5.1	Licensed check cashing	20 N.J.R. 2353(a)		
3:32-1.1, 1.2, 1.4, 1.6, 1.7, 1.10, 1.11	Conversion of savings and loan associations from mutual to capital stock	20 N.J.R. 697(a)	R.1988 d.472	20 N.J.R. 2450(a)
3:38-5	Repeal (see 3:1-16)	20 N.J.R. 1021(b)		

Most recent update to Title 3: TRANSMITTAL 1988-4 (supplement June 20, 1988)

CIVIL SERVICE—TITLE 4				
4:1-6, 7, 10.1, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:2-6.4-6.10, 7, 27	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4:3-2	Repeal (see 4A:3)	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)

Most recent update to Title 4: TRANSMITTAL 1988-1 (supplement January 19, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PERSONNEL—TITLE 4A				
4A:1-1.3	State and local departments defined	20 N.J.R. 845(b)	R.1988 d.415	20 N.J.R. 2255(a)
4A:3	Classification, services, and compensation	20 N.J.R. 846(a)	R.1988 d.416	20 N.J.R. 2255(b)
4A:6-1.3, 1.10	Sick leave; leave without pay	20 N.J.R. 133(a)		
4A:6-1.3, 1.10	Sick leave, leave without pay: extension of comment period	20 N.J.R. 341(a)		

Most recent update to Title 4A: TRANSMITTAL 1988-2 (supplement June 20, 1988)

COMMUNITY AFFAIRS—TITLE 5				
5:2	Handicapped Persons' Recreational Opportunities grant program	20 N.J.R. 1765(a)	R.1988 d.459	20 N.J.R. 2451(a)
5:3-2	Nonpublic records	20 N.J.R. 1763(a)	R.1988 d.458	20 N.J.R. 2451(b)
5:10	Maintenance of hotels and multiple dwellings	20 N.J.R. 2126(a)		
5:10-1.3, 1.6, 1.10, 1.12, 25	Fire safety in hotels and multiple dwellings	20 N.J.R. 2126(a)		
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:15	Emergency shelters for the homeless	20 N.J.R. 341(b)		
5:23-2.5	Uniform Construction Code: increase in structure size	20 N.J.R. 1026(a)	R.1988 d.389	20 N.J.R. 2073(a)
5:23-2.38, 3.11, 7.2, 7.3, 7.100-7.116	Barrier free subcode: recreation standards	19 N.J.R. 1270(a)	R.1988 d.352	20 N.J.R. 1873(b)
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode	20 N.J.R. 699(b)	R.1988 d.417	20 N.J.R. 2274(a)
5:23-3.21	Uniform Construction Code: one and two-family dwelling subcode	20 N.J.R. 1130(a)	R.1988 d.388	20 N.J.R. 2073(b)
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)		
5:23-7.104, 7.116	Barrier Free Subcode: recreation standards	20 N.J.R. 1764(b)		
5:23-8	Asbestos Hazard Abatement Subcode	20 N.J.R. 1130(b)		
5:24-2.5	Senior citizen and disabled protected tenancy: review of determination documents	20 N.J.R. 1026(b)	R.1988 d.362	20 N.J.R. 1877(a)
5:24-2.7	Senior citizen and disabled protected tenancy: appeal procedure	20 N.J.R. 437(a)	R.1988 d.361	20 N.J.R. 1878(a)
5:27-1.3, 1.6, 5	Fire safety in rooming and boarding houses	20 N.J.R. 2126(a)		
5:29-2.1, 2.2	Termination of lease by tenant because of disabling illness or accident	20 N.J.R. 1139(a)	R.1988 d.384	20 N.J.R. 2073(c)
5:30	Local Finance Board rules	20 N.J.R. 1027(a)	R.1988 d.350	20 N.J.R. 1879(a)
5:30	Local Finance Board rules: waiver of Executive Order No. 66 (1978) expiration provision	20 N.J.R. 1320(a)		
5:38	State intergovernmental review process for Federal programs and direct development activities	20 N.J.R. 2354(a)		
5:51	Handicapped Persons' Recreational Opportunities grant program (recodified as 5:2)	20 N.J.R. 1765(a)	R.1988 d.459	20 N.J.R. 2451(a)
5:92-6.1, 11.4, 11.5, 12.9, 16.6, App. F	Affordable housing council rules	20 N.J.R. 1673(b)		
5:92-11.2	Council on Affordable Housing: excess funds in regional contribution agreements; age restricted units	20 N.J.R. 1140(a)	R.1988 d.440	20 N.J.R. 2376(a)
5:92-12.4	Council on Affordable Housing: initial pricing of rental units	20 N.J.R. 1320(b)	R.1988 d.441	20 N.J.R. 2376(b)
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)	Expired	

Most recent update to Title 5: TRANSMITTAL 1988-7 (supplement July 18, 1988)

VETERANS' AFFAIRS AND DEFENSE—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

EDUCATION—TITLE 6				
6:2-1.21	Issuance of administrative order creating State-operated school district	20 N.J.R. 1505(a)	R.1988 d.475	20 N.J.R. 2452(a)
6:3	School districts	20 N.J.R. 1027(b)	R.1988 d.367	20 N.J.R. 1879(b)
6:3-1.23, 1.24	Principal certification	20 N.J.R. 1320(c)		
6:11-12.5	Substance awareness coordinator	20 N.J.R. 1980(c)		
6:11-3.25, 4.2, 5.7, 10	Principal certification	20 N.J.R. 1320(c)		
6:22-1.2	School site approval	20 N.J.R. 1032(a)	R.1988 d.382	20 N.J.R. 2056(a)
6:22A-1	School facility lease purchase agreements	20 N.J.R. 2127(a)		
6:28-11.12	Special Education Pilot Project: moderate behavior handicap class types	20 N.J.R. 1141(a)	R.1988 d.430	20 N.J.R. 2275(a)
6:29-4.2	Testing for tuberculosis infection	20 N.J.R. 1981(a)		
6:31-1.10	Bilingual education and English as a second language programs: exit testing and reentry process	20 N.J.R. 1034(a)	R.1988 d.448	20 N.J.R. 2383(a)
6:78-1.1, 1.2, 1.3	Marie H. Katzenbach School for the Deaf	20 N.J.R. 1678(a)		

Most recent update to Title 6: TRANSMITTAL 1988-5 (supplement July 18, 1988)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ENVIRONMENTAL PROTECTION—TITLE 7				
7:1-1	Departmental organization	Exempt	R.1988 d.403	20 N.J.R. 2058(a)
7:1A-1.1, 1.2, 1.4, 1.6, 2.1-2.4, 2.8, 2.10, 2.12-2.15, 5.1, 5.2, 7	Replacement of contaminated wellfields	Emergency (expires 11-18-88)	R.1988 d.479	20 N.J.R. 2470(a)
7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1D	Allocation of costs for emergency water supply projects	20 N.J.R. 2197(a)		
7:2	State Park Service: extension of comment period	20 N.J.R. 1035(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7-2.2	Coastal wetlands boundaries in Salem County	20 N.J.R. 349(b)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7A-9.2, 9.4	Freshwater wetlands protection: Statewide general permits for certain activities	20 N.J.R. 1327(a)		
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)	R.1988 d.338	20 N.J.R. 2058(b)
7:7E-3.41, 3.46, 7.41, 8.11	Hudson River waterfront development: extension of comment period	20 N.J.R. 552(a)		
7:7E-3.46	Hudson River waterfront development	20 N.J.R. 1982(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)		
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7:27-25	Control and prohibition of air pollution by vehicular fuels: extension of comment period	20 N.J.R. 2355(a)		
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7:36	Green Acres Program: extension of comment period	20 N.J.R. 869(a)		
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8:60-2.1 (12:120-2.1)	Asbestos removal defined: extension of comment period	20 N.J.R. 1507(b)		
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13:75-1.7	Violent crimes compensation: prosecution of offender	20 N.J.R. 736(b)		
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14:3-7.13	Collection activity on disputed charges; interest on overpayments	20 N.J.R. 963(b)		
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14:3-10.3, 10.5, 10.15	Solid waste: out-of-state solid waste collectors (preproposal)	20 N.J.R. 1669(c)		
14:3-10.20	Solid waste: itemized billing (preproposal)	20 N.J.R. 1670(a)		
14:3-10.21	Solid waste: violations, penalties (preproposal)	20 N.J.R. 1670(b)		
14:3-10.22	Solid waste: contracts (preproposal)	20 N.J.R. 1669(b)		
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16:28-1.35, 1.49, 1.111	Speed rates along Route 35 in Monmouth County, and Routes 87 and 187 in Atlantic County	20 N.J.R. 2039(a)		
16:28-1.41	Speed limits along U.S. 9 in Cape May County	20 N.J.R. 1113(a)	R.1988 d.354	20 N.J.R. 1950(b)
16:28-1.41	Speed limits along U.S. 9 in Atlantic County and Ocean County	20 N.J.R. 2190(a)		
16:28-1.44	Speed rates along Route 27 in Middlesex and Somerset counties	20 N.J.R. 2040(a)		
16:28-1.49	Speed limits along Route 35 in Bay Head	20 N.J.R. 965(a)	R.1988 d.346	20 N.J.R. 1951(a)
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16:28-1.158	Speed limits along Route 179 in Hunterdon County	20 N.J.R. 1176(a)	R.1988 d.364	20 N.J.R. 1952(a)
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16:31-1.25	Turning restrictions along Route 10 in West Orange	20 N.J.R. 1779(a)	R.1988 d.462	20 N.J.R. 2466(c)

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19:47-5.3	Roulette and "no more bets" procedure	19 N.J.R. 1638(a)	Expired	
19:48	Exclusion of persons	20 N.J.R. 2252(a)		
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